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

Federal Register
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Presidential Documents

Title 3—

The President

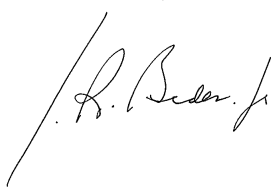
Notice of February 7, 2024

Continuation of the National Emergency With Respect to the Situation in and in Relation to Burma

On February 10, 2021, by Executive Order 14014, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Burma.

The situation in and in relation to Burma, and in particular the February 1, 2021 coup, in which the military overthrew the democratically elected civilian government of Burma and unjustly arrested and detained government leaders, politicians, human rights defenders, journalists, and religious leaders, thereby rejecting the will of the people of Burma as expressed in elections held in November 2020 and undermining the country's democratic transition and rule of law, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on February 10, 2021, must continue in effect beyond February 10, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14014 with respect to the situation in and in relation to Burma.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
February 7, 2024.

[FR Doc. 2024–02844
Filed 2–8–24; 8:45 am]
Billing code 3395–F4–P

Presidential Documents

Notice of February 7, 2024

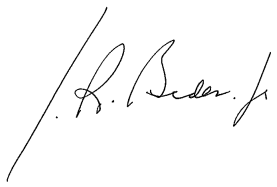
Continuation of the National Emergency With Respect to the Widespread Humanitarian Crisis in Afghanistan and the Potential for a Deepening Economic Collapse in Afghanistan

On February 11, 2022, by Executive Order 14064, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the widespread humanitarian crisis in Afghanistan and the potential for a deepening economic collapse in Afghanistan.

The widespread humanitarian crisis in Afghanistan—including the urgent needs of the people of Afghanistan for food security, livelihoods support, water, sanitation, health, hygiene, and shelter and settlement assistance, among other basic human needs—and the potential for a deepening economic collapse in Afghanistan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. In addition, the preservation of certain property of Da Afghanistan Bank (DAB) held in the United States by United States financial institutions is of the utmost importance to addressing this national emergency and the welfare of the people of Afghanistan. Various parties, including representatives of victims of terrorism, have asserted legal claims against certain property of DAB or indicated in public court filings an intent to make such claims. This property is blocked under Executive Order 14064.

For these reasons, the national emergency declared in Executive Order 14064 of February 11, 2022, must continue in effect beyond February 11, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14064 with respect to the widespread humanitarian crisis in Afghanistan and the potential for a deepening economic collapse in Afghanistan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
February 7, 2024.

[FR Doc. 2024–02845
Filed 2–8–24; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0197; Airspace Docket No. 24–ASO–04

RIN 2120–AA66

Amendment of Class E Airspace; Ozark, AL and Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes the editorial changes, updating the airport names of two Army Airfields (AAF) and replacing the term Notice to Airmen with Notice to Air Missions in the Class E description. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: This final rule may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

FAA Order JO 7400.11H, Airspace Designations, and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it updates airport names and airspace descriptions. This update is an administrative change and does not change the airspace boundaries or operating requirements.

Incorporation by Reference

Class E airspace is published in paragraphs 6002 and 6004 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update. FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends Class E surface airspace and Class E airspace designated as an extension to a Class D surface area for Fort Novosel, Ozark, AL, and Fort Moore, Columbus, GA, by updating each airport's name (formerly Fort Rucker and Fort Benning, respectively), as well as updating the descriptions by making editorial changes, replacing the term Notice to Airmen with Notice to Air Missions in the appropriate descriptions. In addition, this action updates the geographic coordinates of CAIRNES VOR in the Class E airspace designated as an extension to a Class D surface area for Fort Novosel. This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO GA E2 Columbus, GA [Amended]

Columbus Airport, GA
(Lat 32°30′59″ N, long 84°56′20″ W)
Lawson AAF (Fort Moore)
(Lat 32°19′54″ N, long 84°59′14″ W)

That airspace extending upward from the surface within a 4.4-mile radius of the Columbus Airport, and that airspace extending upward from the surface within a 5.2-mile radius of Lawson Army Airfield (Fort Moore), and that airspace within 1 mile each side of the 145° bearing from the AAF extending from the 5.2-mile radius to 6.8 miles southeast of the AAF. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to Class D or Class E Surface Area.

* * * * *

ASO AL E4 Fort Novosel (Ozark), AL [Amended]

Cairns Army Air Field (Fort Novosel), AL
(Lat 31°16′33″ N, long 85°42′48″ W)
Cairns VOR
(Lat 31°16′08″ N, long 85°43′35″ W)

That airspace extending upward from the surface within 3.5 miles on each side of Cairns VOR 231° radial, extending from the 5-mile radius of lat. 31°18′30″ N, long. 85°42′20″ W to 7 miles southwest of the VOR, and within 2 miles each side of Cairns Army Airfield Runway 36 extended centerline, extending from the 5-mile radius to 5 miles south of the runway end.

* * * * *

Issued in College Park, Georgia, on February 5, 2024.

Andreese C. Davis, Manager,

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

[FR Doc. 2024–02610 Filed 2–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0128]

RIN 1625–AA00

Safety Zones; Delaware River Dredging, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the waters of the Delaware River, in portions of Marcus Hook Range and Anchorage 7 off Marcus Hook Range. The safety zones temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River while maintenance dredging is being conducted within the Delaware River. The safety zones are needed to protect personnel, vessels, and the marine environment from hazards created by dredging operations. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port (COTP) or his designated representatives.

DATES: This rule is effective without actual notice from February 9, 2024 through April 30, 2024. For the purposes of enforcement, actual notice will be used from February 6, 2024, through February 9, 2024

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0128 in the search box, and click ''Search.'' Next, in the ''Document Type'' column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Christopher Payne, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (267) 515–7294, email *SecDelBayWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
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 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 it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for dredging operations. The rule must be in force by February 6, 2024 to serve its purpose of ensuring the safety of the public from hazards associated with dredging operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule 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 COTP has determined that there are potential hazards associated with dredging operations, such as submerged and floating pipelines, booster pumps, head sections, and support vessels with a restricted ability to maneuver. The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment within a 250-yard radius of dredging operations and all associated pipeline and equipment.

IV. Discussion of the Rule

This rule establishes two safety zones, both of which will be in effect from February 6, 2024 through April 30, 2024. The safety zones are necessary to facilitate annual maintenance dredging of the Delaware River in the vicinity of Marcus Hook Range and Anchorage 7 off Marcus Hook Range. (The location of the anchorage is described in 33 CFR 110.157(a)(8).) Dredging will most likely be conducted with the dredge ESSEX, though other dredges may be used, along with the associated dredge pipeline and booster pumps. The pipeline consists of a combination of floating hoses immediately behind the dredge and submerged pipeline leading to upland disposal areas. Booster pumps, located between the dredge

pump and the discharge point, allow the dredge pump to operate more efficiently. Due to the hazards related to dredging operations, the associated pipeline and the location of submerged pipeline, safety zones are being established in the following areas:

(1) Safety Zone One includes all navigable waters within 250 yards of the dredge, which will be displaying lights and shapes for vessels restricted in ability to maneuver, as described in 33 CFR 83.27, and all related dredge equipment when the dredge is operating in Marcus Hook Range, and Anchorage 7. This safety zone is being established for the duration of the maintenance project. Vessels requesting to transit the safety zone must contact the dredge on VHF channel 13 or 16 at least 1 hour prior to arrival to arrange safe passage. At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of the safety zone. At no time will the entire main navigational channel be closed to vessel traffic. Vessels should avoid meeting in these areas where one side of the main navigational channel is open and proceed per this rule and the Rules of the Road (33 CFR subchapter E).

(2) Safety Zone Two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8). Vessels wishing to anchor in Anchorage 7 off Marcus Hook Range while this rule is in effect must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. Vessels requesting permission to anchor within Anchorage 7 off Marcus Hook must be at least 650 feet in overall length. The COTP will permit, at maximum, only one vessel to anchor at a time, on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage by the COTP for the required inspection. Vessels are encouraged to use Anchorage 9 near the entrance to Mantua Creek, Anchorage 10 at Naval Base, Philadelphia, and Anchorage 6 off Deepwater Point Range as alternative anchorages.

Preference is being given to vessels at least 650 feet in length in Anchorage 7 while this rule is in effect, because vessels of this size are limited in their ability to utilize other anchorages due to draft. The depth of Anchorage 7 provides an acceptable depth for large vessels to bunker and stage for facility arrival. Smaller vessels maintain a host of other options to include, but are not limited to, Anchorage 9 and 10, as recommended above.

Entry into, transiting, or anchoring within safety zone one is prohibited unless vessels obtain permission from the COTP or make satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). The COTP may issue updates regarding the vessel and equipment being utilized for these dredging operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

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, as amended by Executive Order 14094. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, duration, and traffic management of the safety zones. The safety zones will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic. At least one side of the main navigational channel will be open for vessels to transit at all times. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic can transit the area safely.

Although this regulation will restrict access to regulated areas, the effect of this rule will not be significant because there are a number of alternate anchorages available for vessels to anchor. Furthermore, vessels may transit through the safety zones with the permission of the COTP or make satisfactory passing arrangements with the dredge ESSEX, or other dredge(s) that may be used in accordance with this rule and the Rules of the Road (33 CFR subchapter E). The Coast Guard will notify the maritime public about the safety zones through maritime advisories, allowing mariners to alter their plans accordingly.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones to protect waterway users that would prohibit entry within 250 yards of dredging operations and will close only one side of the main navigation channel. Vessels can request permission to enter the channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating documents mentioned in this preamble as being available in 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T05–1004, to read as follows.

§ 165.T05–1004 Safety Zones, Delaware River Dredging; Marcus Hook, PA

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

(1) Safety Zone One includes all waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, as well as all related dredge equipment, while the dredge is operating in Marcus Hook Range. For enforcement purposes Marcus Hook Range includes all navigable waters of the Delaware River shoreline to shoreline, bound by a line drawn perpendicular to the center line of the channel at the farthest upriver point of the range to a line drawn perpendicular to the center line of the channel at the farthest downriver point of the range.

(2) Safety Zone Two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8) and depicted on U.S. Nautical Chart 12312.

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

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zones described in paragraphs (a)(1) and (2) of this section.

(c) *Regulations.* (1) Entry into or transiting within Safety Zone One is prohibited unless vessels obtain permission from the Captain of the Port via VHF–FM channel 16 or 215–271–4807, or make satisfactory passing arrangements via VHF–FM channel 13 or 16 with the operating dredge per this section and the rules of the Road (33 CFR subchapter E). Vessels requesting to transit shall contact the operating dredge via VHF–FM channel 13 or 16 at least 1 hour prior to arrival.

(2) Vessels desiring to anchor in Safety Zone Two, Anchorage 7 off Marcus Hook Range, must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. The COTP will permit, at maximum, one vessel at a time to anchor on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage for the required inspection by the COTP.

(3) Vessels desiring to anchor in Safety Zone Two, Anchorage 7 off Marcus Hook Range, must be at least 650 feet in length overall.

(4) This section applies to all vessels except those engaged in the following operations: enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by federal, state and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This rule will be in effect and subject to enforcement from February 6, 2024 through April 30, 2024. If the Captain of the Port determines that conditions no longer warrant enforcement of the rule, he will provide notice to that effect via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: February 6, 2024.

Kate F. Higgins-Bloom,

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

[FR Doc. 2024–02704 Filed 2–8–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0630; FRL–11582–02–R4]

Air Plan Approval; Georgia; Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to Georgia's State Implementation Plan (SIP) submitted by the State of Georgia through the Georgia Department of Natural Resources (GA DNR), Environmental Protection Division (EPD), on June 8, 2022, and on June 6, 2023. Georgia's June 8, 2022, SIP revision (hereinafter referred to as Georgia's 2022 I/M SIP revision) removes obsolete references and provisions; updates the State's inspection and maintenance (I/M) requirements; updates terminology, in part to reflect advances in test and vehicle technology; and makes other minor changes. The June 6, 2023, SIP revision (hereinafter referred to as Georgia's 2023 I/M SIP revision) removes outdated terminology; updates with new terminology; removes one requirement; and makes other minor changes to Georgia's enhanced I/M program. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective March 11, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0630. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information may not be publicly available, *i.e.,* 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 www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Weston Freund, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8773. Mr. Freund can also be reached via electronic mail at *freund.weston@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1991, EPA classified a 13-county area in and around the Atlanta, Georgia, metropolitan area as a serious ozone nonattainment area for the 1979 1-hour ozone national ambient air quality standards (NAAQS or standard), triggering the requirement for the State to establish an enhanced I/M program for the area.[1] In 1996, Georgia submitted its enhanced I/M program to EPA for incorporation into the SIP. EPA granted interim approval of the State's program in 1997 and full approval in 2000. *See* 62 FR 42916 (August 11, 1997) and 65 FR 4133 (January 26, 2000), respectively.

On June 8, 2022, and June 6, 2023, Georgia submitted SIP revisions seeking to amend various I/M regulations in Chapter 391–3–20—*Enhanced Inspection and Maintenance,* of Georgia's SIP. In this rulemaking, EPA is approving changes to Rules 391–3–20–.01—*Definitions;* Rule 391–3–20–.03, *Covered Vehicles; Exemptions;* Rule 391–3–20–.04—*Emission Inspection Procedures;* Rule 391–3–20–.05—*Emission Standards;* Rule 391–3–20–.09—*Inspection Station Requirements;* Rule 391–3–20–.10—*Certificates of Authorization;* Rule 391–3–20–.11—*Inspector Qualifications and Certification;* Rule 391–3–20–.13—*Certificate of Emission Inspection;* Rule 391–3–20–.15—*Repairs and Retests;* Rule 391–3–20–.17—*Waivers;* and Rule 391–3–20–.22—*Enforcement.* EPA is approving these revisions because these changes will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.[2]

In a notice of proposed rulemaking (NPRM), published on December 21, 2023 (88 FR 88310), EPA proposed to approve the June 8, 2022, and June 6, 2023, SIP submissions. The details of Georgia's submissions, which remove obsolete references and provisions; update the State's I/M requirements; update and remove outdated terminology; remove a requirement; and makes other minor changes to Georgia's enhanced I/M program of the Georgia SIP, as well as EPA's rationale for approve the changes, are described in the December 21, 2023, NPRM. Comments on the December 21, 2023, NPRM were due on or before January 22, 2024. No comments were received on the NPRM, adverse or otherwise.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Georgia Rule 391–3–20–.09—*Inspection Station Requirements;* Rule 391–3–20–.10—*Certificates of Authorization;* Rule 391–3–20–.13—*Certificate of Emission Inspection;* Rule 391–3–20–.15—*Repairs and Retests;* Rule 391–3–20–.17—*Waivers;* and Rule 391–3–20–.22—*Enforcement,* all of which have a state-effective date of April 19, 2022, into the Georgia SIP. Further, EPA is finalizing the incorporation by reference of Georgia Rule 391–3–20–.01—*Definitions;* Rule 391–3–20–.03, *Covered Vehicles; Exemptions;* Rule 391–3–20–.04—*Emission Inspection Procedures;* Rule 391–3–20–.05—*Emission Standards,* and Rule 391–3–20–.11—*Inspector Qualifications and Certification,* all of which have a state-effective date of March 21, 2023, into the Georgia SIP. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

III. Final Actions

EPA is approving the aforementioned changes to various I/M regulations in Chapter 391–3–20—*Enhanced Inspection and Maintenance,* of the Georgia SIP. Specifically, EPA is finalizing the approval of the June 8, 2022, and June 6, 2023, SIP revisions which amends Georgia Rules 391–3–20–.01—*Definitions;* Rule 391–3–20–.03, *Covered Vehicles; Exemptions;* Rule

[1] On November 6, 1991, EPA designated and classified the following counties in and around the Atlanta, Georgia, metropolitan area as a serious ozone nonattainment area for the 1-hour ozone NAAQS: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. *See* 56 FR 56694.

[2] See CAA section 110(l).

[3] 62 FR 27968 (May 22, 1997).

391–3–20–.04—*Emission Inspection Procedures;* Rule 391–3–20–.05—*Emission Standards;* Rule 391–3–20–.09—*Inspection Station Requirements;* Rule 391–3–20–.10—*Certificates of Authorization;* Rule 391–3–20–.11—*Inspector Qualifications and Certification;* Rule 391–3–20–.13—*Certificate of Emission Inspection;* Rule 391–3–20–.15—*Repairs and Retests;* Rule 391–3–20–.17—*Waivers;* and Rule 391–3–20–.22—*Enforcement.*

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because they approve a state program;
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

EPD did not evaluate EJ considerations as part of its SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in these actions. Due to the nature of the actions being taken here, these actions are expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of these actions, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

These actions are subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. These actions are not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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. These actions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 2, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart L—Georgia

■ 2. In § 52.570(c), amend Table (1) by revising the entries for ''Rule 391–3–20–.01,'' ''Rule 391–3–20–.03,'' ''Rule 391–3–20–.04,'' ''Rule 391–3–20–.05,'' ''Rule 391–3–20–.09,'' ''Rule 391–3–20–.10,'' ''Rule 391–3–20–.11,'' ''Rule 391–3–20–.13,'' ''Rule 391–3–20–.15,'' ''Rule 391–3–20–.17,'' and ''Rule 391–3–20–.22.''

The amendments read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	* *	* *
391–3–20	Enhanced Inspection and Maintenance			
391–3–20–.01	Definitions	3/21/2023	2/9/2024, [Insert citation of publication].	
*	*	*	* *	* *
391–3–20–.03	Covered Vehicles; Exemptions.	3/21/2023	2/9/2024, [Insert citation of publication].	
391–3–20–.04	Emission Inspection Procedures.	3/21/2023	2/9/2024, [Insert citation of publication].	
391–3–20–.05	Emission Standards	3/21/2023	2/9/2024, [Insert citation of publication].	
*	*	*	* *	* *
391–3–20–.09	Inspection Station Requirements.	4/19/2022	2/9/2024, [Insert citation of publication].	
391–3–20–.10	Certificates of Authorization.	4/19/2022	2/9/2024, [Insert citation of publication].	
391–3–20–.11	Inspector Qualifications and Certification.	3/21/2023	2/9/2024, [Insert citation of publication].	
*	*	*	* *	* *
391–3–20–.13	Certificate of Emission Inspection.	4/19/2022	2/9/2024, [Insert citation of publication].	
391–3–20–.15	Repairs and Retests	4/19/2022	2/9/2024, [Insert citation of publication].	
*	*	*	* *	* *
391–3–20–.17	Waivers	4/19/2022	2/9/2024, [Insert citation of publication].	
*	*	*	* *	* *
391–3–20–.22	Enforcement	4/19/2022	2/9/2024, [Insert citation of publication].	

* * * * *

[FR Doc. 2024–02521 Filed 2–8–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0479; FRL–11425–03–R9]

Air Plan Approval; California; California Air Resources Board; Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California Air Resources Board (CARB) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from vapor recovery systems of gasoline cargo tanks. We are approving a local rule that regulates this emission source under the Clean Air Act (CAA or the Act).

DATES: This rule is effective March 11, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0479. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3245 or by email at *evanshopper.lakenya@epa.gov.*

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

Table of Contents

I. Proposed Action

On November 2, 2023 (88 FR 75246), the EPA proposed to approve the following rule into the California SIP.

Local agency	Regulation or provision	Regulation title or subject	Amended	Submitted
CARB	California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014, except sub-sections (a)–(d) *.	Certification of Vapor Recovery Systems for Cargo Tanks.	** 07/12/23	09/13/23
CARB	Certification Procedure CP–204	Certification Procedure for Vapor Recovery Systems of Cargo Tanks.	07/12/23	09/13/23

* Letter dated September 21, 2023, from Michael Benjamin, Chief, Air Quality Planning and Science Division, to Martha Guzman, Regional Administrator, EPA Region IX. The letter states that Section 94014, sub-sections (a)–(d), that describe fee provisions, were inadvertently submitted to the EPA. Therefore, CARB withdrew Section 94014, sub-sections (a)–(d), from consideration for inclusion into the SIP. The EPA is not acting on Section 94014, sub-sections (a)–(d) in this rulemaking.

** The California Air Resources Board amended the introductory paragraph of 17 California Code of Regulations Section 94014 on July 12, 2023, and the changed was filed with Thomson Reuters Westlaw on August 29, 2023. Therefore, the amendment for Section 94014 will be recorded as July 12, 2023.

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received two comments that concerned issues outside the scope of this rulemaking. These comments are available for review in the docket for this action.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The July 12, 2023 versions of CARB's California Code of Regulations (CCR), Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014 and CP–204 Certification Procedure for Vapor Recovery Systems of Cargo Tanks (incorporated by reference) will replace the previously approved versions of this regulation in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of California Air Resources Board, California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014—Certification of Vapor Recovery Systems—Cargo Tanks, excluding sub-sections (a) through (d), amended on July 12, 2023, and Certification Procedure—CP–204 Certification Procedure for Vapor Recovery Systems of Cargo Tanks, amended on July 12, 2023 (incorporated by reference), both of which regulates VOCs from vapor recovery systems of gasoline cargo tanks. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an

EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition 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 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 5, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. In § 52.220a, amend paragraph (c) by:

■ a. In Table 1, revising the entry ''94014'' and;

■ b. In Table 2 revising the entry for ''Certification Procedure CP–204 Certification Procedure for Vapor Recovery Systems of Cargo Tanks''.

The revisions read as follows:

§ 52.220a Identification of plan–in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board); Subchapter 8 (Compliance With Nonvehicular Emissions Standards); Article 1 (Vapor Recovery Systems in Gasoline Marketing Operations)				
94014	Certification of Vapor Recovery Systems for Cargo Tanks.	7/12/2023	2/9/2024, [INSERT **FEDERAL REGISTER** CITATION].	Submitted on September 13, 2023 as an attachment to a letter dated September 21, 2023.
*	*	*	*	*

[1] Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

TABLE 2—EPA-APPROVED CALIFORNIA TEST PROCEDURES, TEST METHODS, AND SPECIFICATIONS

Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*
Certification Procedure CP–204 Certification Procedure for Vapor Recovery Systems of Cargo Tanks.	7/12/2023	2/9/2024, [INSERT **FEDERAL REGISTER** CITATION].	*Submitted on September 13, 2023 as an attachment to a letter dated September 21, 2023.*
*	*	*	*

* * * * *

[FR Doc. 2024–02659 Filed 2–8–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 416, 419, 424, 485, 488, and 489

Office of the Secretary

45 CFR Part 180

[CMS–1786–CN]

RIN 0938–AV09

Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule with comment period; correction.

SUMMARY: This document corrects technical and typographical errors in the final rule with comment period that appeared in the **Federal Register** on November 22, 2023, titled ''Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction'' (referred to hereafter as the ''CY 2024 OPPS/ASC final rule with comment period'').

DATES:

Effective Date: This correcting document is effective February 9, 2024.

Applicability Date: This correcting document is applicable January 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Au'Sha Washington via email, *Ausha.Washington@cms.hhs.gov* or at (410) 786–3736.

Ambulatory Surgical Center (ASC) Payment System, contact Scott Talaga via email at *Scott.Talaga@cms.hhs.gov* or Mitali Dayal via email at *Mitali.Dayal2@cms.hhs.gov.*

Ambulatory Surgical Center Quality Reporting (ASCQR) Program policies, contact Anita Bhatia via email at *Anita.Bhatia@cms.hhs.gov.*

Ambulatory Surgical Center Quality Reporting (ASCQR) Program measures, contact Marsha Hertzberg via email at *marsha.hertzberg@cms.hhs.gov.*

Hospital Outpatient Quality Reporting (OQR) Program policies, contact Kimberly Go via email *Kimberly.Go@cms.hhs.gov.*

Hospital Outpatient Quality Reporting (OQR) Program measures, contact Janis Grady via email *Janis.Grady@cms.hhs.gov.*

Hospital Price Transparency (HPT) policies, contact Terri Postma via email *PriceTransparencyHospitalCharges@cms.hhs.gov.*

Medicare coverage of opioid use disorder treatment services furnished by opioid treatment programs, contact Lindsey Baldwin, (410) 786–1694, Ariana Pitcher, (667) 290–8840, or *OTP_Medicare@cms.hhs.gov.*

OPPS Status Indicators (SI) and Comment Indicators (CI), contact Marina Kushnirova via email at *Marina.Kushnirova@cms.hhs.gov.*

Rural Emergency Hospital Quality Reporting (REHQR) Program policies, contact Anita Bhatia via email at *Anita.Bhatia@cms.hhs.gov.*

Rural Emergency Hospital Quality Reporting (REHQR) Program measures, contact Melissa Hager via email *Melissa.Hager@cms.hhs.gov.*

OPPS Data (APC Weights, Conversion Factor, Copayments, Cost-to-Charge Ratios (CCRs), Data Claims, Geometric Mean Calculation, Outlier Payments, and Wage Index), contact Erick Chuang via email at *Erick.Chuang@cms.hhs.gov,* or Scott Talaga via email at *Scott.Talaga@cms.hhs.gov* or Josh McFeeters via email at *Joshua.McFeeters@cms.hhs.gov.*

All Other Issues Related to Hospital Outpatient Payments Not Previously Identified, contact the OPPS mailbox at *OutpatientPPS@cms.hhs.gov.*

All Other Issues Related to the Ambulatory Surgical Center Payments Not Previously Identified, contact the ASC mailbox at *ASCPPS@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2023–24293 of November 22, 2023 (88 FR 81540), there were a number of technical and typographical errors that are identified and corrected in this correcting document. The corrections in this correcting document are effective as if they had been included in the document that appeared in the November 22, 2023 **Federal Register**. Accordingly, the corrections are effective January 1, 2024.

II. Summary of Errors

A. Summary of Errors in the Preamble

1. Hospital Outpatient Prospective Payment System (OPPS) Corrections

On pages 81546, 82156, 82157, and 82158, we are correcting the estimates of the changes in payments to account for our correction to apply the trim that we inadvertently failed to apply to claims for the Hyperbaric Oxygen Therapy APC (APC 5061). When an individual claim contains 50 or more units on the primary code's line used for ratesetting, the OPPS ratesetting programs exclude, or trim, these lines from the calculation of the geometric mean for an ambulatory payment classification (APC). However, this trim was inadvertently not included in the ratesetting process for two APCs: Hyperbaric Oxygen Therapy (APC 5061) and Ancillary Outpatient Services When Patient Dies (APC 5881). We are applying this trim and removing these lines where the primary code's units contain 50 or more units for CY 2024 OPPS ratesetting. The geometric mean cost for APC 5061 will change significantly as a result of this trim, from what was originally $75.61 to $135.89, because there is a claim for this APC that contained more than 50 units on an individual line that was originally used in CY 2024 OPPS ratesetting.

In addition, the change in the geometric mean cost for APC 5061 necessitates changing the OPPS weight scalar and OPPS relative payment weights to maintain budget neutrality for CY 2024, which results in changes in OPPS payment rates for items and services calculated using the weight scalar.

On page 81578, we are correcting the weight scalar to use the updated number calculated after correct application of the trim.

On pages 81592, 81593, and 81595, we are correcting several figures used in the sample calculations of the full national unadjusted payment rate, the reduced national unadjusted payment rate, and the adjusted copayment amount for an APC group to use the

figures after application of the trim and resulting change in the payment rates.

On page 81669, we are adding additional language that we inadvertently omitted regarding HCPCS codes G2066 (Interrogation device evaluation(s), (remote) up to 30 days; implantable cardiovascular physiologic monitor system, implantable loop recorder system, or subcutaneous cardiac rhythm monitor system, remote data acquisition(s), receipt of transmissions and technician review, technical support and distribution of results), 93297 (Interrogation device evaluation(s), (remote) up to 30 days; implantable cardiovascular physiologic monitor system, including analysis of 1 or more recorded physiologic cardiovascular data elements from all internal and external sensors, analysis, review(s) and report(s) by a physician or other qualified health care professional), and 93298 (Interrogation device evaluation(s), (remote) up to 30 days; subcutaneous cardiac rhythm monitor system, including analysis of recorded heart rhythm data, analysis, review(s) and report(s) by a physician or other qualified health care professional). Specifically, we are adding language that we inadvertently omitted stating that the OPPS status indicators for CPT codes 93297 and 93298 have been revised to indicate that they will be separately payable under the OPPS.

On page 81801, in the table titled ''Table 95: Skin Substitute Assignments to High-Cost and Low-Cost Groups for CY 2024'', we are correcting an inadvertent error in the skin substitute group assignment for HCPCS code Q4282 (Cygnus dual, per square centimeter) for CY 2023 and CY 2024. HCPCS code Q4282 is assigned to the high-cost skin substitute group for those years.

2. Ambulatory Surgical Center (ASC) Payment System Corrections

On pages 81958 and 82162, our application of the trim and correction to the OPPS weight scalar and OPPS relative payment weights, results in a change to the OPPS payment rates. The revised OPPS payment rates required an alteration in our estimate of prospective aggregate ASC expenditures, which in turn necessitates a correction to the ASC weight scalar and ASC relative payment weights because the ASC Payment System ratesetting methodology utilizes the scaled OPPS relative weights. Therefore, we are revising our ASC weight scalar from 0.8881 to 0.889.

3. Hospital Outpatient Quality Reporting (OQR) Program Corrections

On page 81971, we are correcting the Cataracts Visual Function measure CBE number and endorsement date. Additionally, we are replacing inadvertently included language that did not pertain to the Cataracts Visual Function measure with the measure endorsement removal information.

On page 81993, in the table titled ''Table 128: Finalized Hospital OQR Program Measure Set for the CY 2026 Payment Determination,'' we are adding a dagger symbol (''†'') after the Cataracts Visual Function measure name, noting that the CBE endorsement for this measure was removed. We are also adding two double dagger symbols (''††'') both following the COVID–19 Vaccination Among Health Care Personnel (HCP) measure name in Table 128 and as a table note following the table to inform readers that the CBE number was assigned to the original version of the COVID–19 Vaccination Coverage Among HCP measure but not the modified version of the measure that we finalized in the CY 2024 OPPS/ASC final rule with comment period.

On page 81994, in the table titled ''Table 129: Finalized Hospital OQR Program Measure Set for the CY 2027 Payment Determination and Subsequent Years,'' we are removing inadvertent language related to the HOPD Procedure Volume measure—a measure that was proposed in the CY 2024 OPPS/ASC proposed rule and not finalized after consideration of the public comments received—in the table and in the associated table note following the table. We are also adding a dagger symbol (''†'') after the Cataracts Visual Function measure name, noting that CBE endorsement for this measure was removed. We are also adding two double dagger symbols (''††'') both following the COVID–19 Vaccination Among Health Care Personnel measure name in Table 129 and as a table note following the table to inform readers that the CBE number was assigned to the original version of the COVID–19 Vaccination Coverage Among HCP measure but not the modified version of the measure that we finalized in the CY 2024 OPPS/ASC final rule with comment period.

4. Ambulatory Surgical Center Quality Reporting Program (ASCQR) Corrections

On page 82014, we are correcting the citation to the CY 2024 OPPS/ASC COVID–19 Vaccination Coverage Among HCP measure modification proposal for the ASCQR Program.

On page 82031, we are correcting the link referenced in footnote 629 and updating the footnote citation accordingly.

On page 82037, in the table titled ''Table 139: Finalized ASCQR Program Measure Set for the CY 2024 Reporting Period/CY 2026 Payment Determination'', we are correcting the CBE number for the COVID–19 Vaccination Coverage Among HCP measure. We also are adding two dagger symbols (''††'') following the corrected CBE number for the COVID–19 Vaccination Among Health Care Personnel measure, and a related table note following the table associated with the two dagger symbols, to inform readers that the CBE number was assigned to the original version of the COVID–19 Vaccination Coverage Among HCP measure and not the modified version of the measure that we finalized in the CY 2024 OPPS/ASC final rule with comment period.

On page 82038, in table titled ''Table 140: Finalized ASCQR Program Measure Set for the CY 2025 Payment Determination/CY 2027 Payment Determination'', we are correcting the CBE numbers for the COVID–19 Vaccination Coverage Among HCP, and the Risk-Standardized Patient-Reported Outcome-Based Performance Measure (PRO–PM) Following Elective Primary Total Hip Arthroplasty (THA) and/or Total Knee Arthroplasty (TKA) in the ASC Setting (THA/TKA PRO–PM) measures. We also are adding two dagger symbols (''††'') following the corrected CBE number for the COVID–19 Vaccination Among Health Care Personnel measure, and a related table note following the table associated with the two dagger symbols, to inform readers that the CBE number was assigned to the original version of the COVID–19 Vaccination Coverage Among HCP measure and not the modified version of the measure that we finalized in the CY 2024 OPPS/ASC final rule with comment period.

On page 82142 through 82148, we inadvertently neglected to carry over the correct number of ASCs that performed THA/TKA procedures and the average number of paid Medicare FFS claims for THA/TKA procedures performed by ASCs in CY 2022, reflected in Table 138, into our burden calculation estimates. We are correcting the estimates of the number of ASCs that will perform THA/TKA procedures and the average number of THA/TKA procedures that will be performed by ASCs for the CY 2025 through 2028 reporting periods as well as the associated burden estimates for those same reporting periods.

5. Rural Emergency Health Quality Reporting Program (REHQR) Corrections

On page 82072, in the first full paragraph, first sentence, we incorrectly stated that REHs would be granted the opportunity to review their data before the information is published during a 30-day review and corrections period in our discussion of the preview period policy and public reporting of quality data generally. We are making corrections to state that REHs would be granted the opportunity to preview their data before the information is published during a 30-day preview period. Similarly, in the following sentence, we are replacing the current reference to ''preview process'' to ''preview period policy,'' to make clear that the policy described in this paragraph would align with that of the Hospital OQR Program. We are also adding inadvertently omitted language to finalize our policies as proposed related to public reporting of quality data generally under the REHQR Program and codifying these policies at § 419.95(f).

On page 82073, we are adding inadvertently omitted language to finalize our policies as proposed related to public reporting of REHQR Program claims-based measures.

On page 82074, we are adding inadvertently omitted language to finalize our policies as proposed related to public reporting of the Median Time from ED Arrival to ED Departure for Discharged ED Patients measure.

6. Hospital Price Transparency Corrections

On pages 81545, 82081, 82082, 82084, 82085, 82088, 82097, 82113, and 82120, we made grammatical and typographical errors.

On page 81547, we made a technical error. Specifically, the summary language that we included in the CY 2024 OPPS/ASC proposed rule was not updated to reflect the hospital price transparency regulatory impact analysis that we included in the CY 2024 OPPS/ASC final rule with comment period.

On page 82081, we made a technical error in our reference to the Consolidated Appropriations Act, 2021.

On pages 82099 and 82118, we inadvertently left out the links to articles referenced in the footnotes which should be included for ease of access.

On page 82171, we made a technical error in the link included in footnote 858 such that it does not direct the reader to the article referenced.

7. Medicare Coverage for Opioid Use Disorder Treatment Services Corrections Furnished by Opioid Treatment Programs Corrections

On page 81850, in the second full sentence in the third column, the citations to the CY 2024 Physician Fee Schedule (PFS) final rule are incorrect and should have instead read 88 FR 79089 through 79093. In that same sentence, the current policy description is inaccurate. We are correcting these errors by replacing the sentence with the following: ''Currently, periodic assessments are allowed to be furnished via audio-only telecommunication through CY 2023, and in the CY 2024 PFS final rule (88 FR 79089 through 79093), we finalized that periodic assessments may be furnished audio-only through the end of CY 2024, to the extent that use of audio-only communications technology is permitted under the applicable SAMHSA and DEA requirements at the time the service is furnished, and all other applicable requirements are met.''

On pages 81854, 81855 and 82162, we are making corrections to the value of the payment adjustment for IOP services furnished by OTPs due to technical corrections to the OPPS weight scalar.

B. Summary of Errors in and Corrections to the OPPS and ASC Addenda Posted on the CMS Website

1. Hospital Outpatient Prospective Payment System (OPPS) Addenda Summary of Errors

a. Errors in Addendum A

Due to the technical correction to apply a trim to lines for the primary codes for two APCs, Hyperbaric Oxygen Therapy (APC 5061) and Ancillary Outpatient Services When Patient Dies (APC 5881), which remove the resulting excluded claims from CY 2024 OPPS ratesetting, there is a significant change to the geometric mean cost for APC 5061. As there is a significant change in the payment rate for APC 5061, we had to slightly reduce the OPPS weight scalar and relative payment weights to maintain OPPS budget neutrality. This change results in a slight reduction in payment rates for other OPPS items and services calculated using the weight scalar. As a result of the technical correction to apply the trim and the associated adjustment to the weight scalar, all payment rates and copayment amounts for items and services calculated using the weight scalar have changed in Addendum A. We note that these changes to the OPPS payments and copayments are minor. The updated file is available online on the CMS website at *https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient.*

b. Errors in Addendum B

Due to the technical correction to apply the trim to two APCs, Hyperbaric Oxygen Therapy (APC 5061) and Ancillary Outpatient Services When Patient Dies (APC 5881), which remove the resulting excluded claims from CY 2024 OPPS ratesetting, there is a significant change to the geometric mean cost for APC 5061. As there is a significant change in the payment rate for APC 5061, we had to slightly reduce the OPPS weight scalar and relative payment weights to maintain OPPS budget neutrality. This change results in a slight reduction in payment rates for other OPPS items and services calculated using the weight scalar. This correction will require minor changes to most payment and copayment rates in Addendum B. The updated file is available online on the CMS website at *https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient.*

We inadvertently failed to account for the cost of a device that is an integral part of the kidney histotripsy procedure in our assignment of HCPCS code C9790 (Histotripsy (*i.e.,* non-thermal ablation via acoustic energy delivery) of malignant renal tissue, including image guidance) to APC 1575, which has payment rate of $12,500.50 and a minimum unadjusted copayment of $2,500.10. We failed to include the cost of the device for the kidney histotripsy procedure in the payment rate that we reported for HCPCS code C9790 in the CY 2024 OPPS/ASC final rule. To correct this error, we are assigning HCPCS code C9790 to the APC with a payment rate that includes the device cost for the kidney histotripsy procedure—APC 1576—with a payment rate of $17,500.50 and a minimum unadjusted copayment of $3,500.10.

We incorrectly assigned status indicator ''E1'' to CPT code 90623 (Meningococcal pentavalent vaccine, conjugated Men A, C, W, Y- tetanus toxoid carrier, and Men B–FHbp, for intramuscular use), meaning the code is not covered by Medicare, even though the meningococcal vaccine has approval from the Food and Drug Administration (FDA). We are correcting the error by changing the status indicator from ''E1'' to ''M,'' to indicate that the code is not paid under the OPPS.

We incorrectly assigned HCPCS code A9272 (Wound suction, disposable, includes dressing, all accessories and components, any type, each) status indicator ''E1'' to indicate that the code

is not covered by Medicare, even though this code is payable under the Home Health Prospective Payment System (HH PPS) effective January 1, 2024. We are correcting this error by changing the status indicator from ''E1'' to ''A'' to indicate that the code is payable under a fee schedule or payment system other than the OPPS.

We incorrectly listed HCPCS code C7561 (Debridement, bone (includes epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed); first 20 sq cm or less with manual preparation and insertion of drug-delivery device(s), deep (*e.g.,* subfascial)) as an active code with an OPPS status indicator of ''E1'' to indicate that the code is an ASC-only code that is not separately payable under the OPPS because the combined service, as described by the code, is not reasonable and necessary. However, this code already exists as HCPCS code C7500 (Debridement, bone including epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed, first 20 sq cm or less with manual preparation and insertion of deep (*e.g.,* subfacial) drug-delivery device(s)), and therefore this service does not require a new HCPCS code. Consequently, we are deleting HCPCS code C7561 and will not be establishing the code for the January 2024 update.

We inadvertently assigned CPT code 96202 (Multiple-family group behavior management/modification training for parent(s)/guardian(s)/caregiver(s) of patients with a mental or physical health diagnosis, administered by physician or other qualified health care professional (without the patient present), face-to-face with multiple sets of parent(s)/guardian(s)/caregiver(s); initial 60 minutes) a status indicator of ''E1,'' which indicates that the code is not covered by Medicare, even though this code is payable in settings other than the outpatient hospital setting. We also incorrectly assigned CPT code 96203 (Multiple-family group behavior management/modification training for parent(s)/guardian(s)/caregiver(s) of patients with a mental or physical health diagnosis, administered by physician or other qualified health care professional (without the patient present), face-to-face with multiple sets of parent(s)/guardian(s)/caregiver(s); each additional 15 minutes (list separately in addition to code for primary service)) a status indicator of ''N,'' which means that a service is payable in the OPPS but its cost is packaged into an associated primary service, because CPT code 96203 is an add-on code that is billed with CPT code 96202. However, an add-on service cannot have a payable status in the OPPS when its associated primary service has a non-payable status in the OPPS. These services are covered Medicare services and are assigned payable indicators under the Physician Fee Schedule (PFS). While these services are not payable under OPPS, they are payable under the PFS; therefore, we are correcting the status indicator to ''A.''

c. Errors in Addendum C

Due to the technical correction to apply a trim to two APCs, Hyperbaric Oxygen Therapy (APC 5061) and Ancillary Outpatient Services When Patient Dies (APC 5881) and removing the resulting excluded claims from CY 2024 OPPS ratesetting, there is a significant change to the geometric mean cost for APC 5061. As there is a significant change in the payment rate for APC 5061, we had to slightly reduce the OPPS weight scalar and relative payment weights to maintain OPPS budget neutrality. This change results in a slight reduction in payment rates for other OPPS items and services calculated using the weight scalar. This correction will require minor changes to most payment and copayment rates in Addendum C. The updated file is available online on the CMS website at *https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient.*

We inadvertently failed to consider the cost of a device that is an integral part of the kidney histotripsy procedure when we assigned HCPCS code C9790 to APC 1575, which has payment rate of $12,500.50 and a minimum unadjusted copayment of $2,500.10. We failed to include the cost of the device for the kidney histotripsy procedure in the payment rate that we reported for HCPCS code C9790 in the CY 2024 OPPS/ASC final rule with comment period. To correct this error, we are assigning HCPCS code C9790 to the APC with a payment rate that includes the device cost for the kidney histotripsy procedure—APC 1576—with a payment rate of $17,500.50 and a minimum unadjusted copayment of $3,500.10.

d. Errors in Addendum P

Due to the technical correction to apply a trim to lines for the primary codes for two APCs, Hyperbaric Oxygen Therapy (APC 5061) and Ancillary Outpatient Services When Patient Dies (APC 5881), which remove the resulting excluded claims from CY 2024 OPPS ratesetting, there is a significant change to the geometric mean cost for APC 5061. As there is a significant change in the payment rate for APC 5061, we had to slightly reduce the OPPS weight scalar and relative payment weights to maintain OPPS budget neutrality. This change results in a slight reduction in payment rates for other OPPS items and services calculated using the weight scalar. The device offset amounts displayed in Addendum P are calculated by multiplying the OPPS APC payment rate by a procedure's device offset percentage, and therefore the correction to OPPS APC payment rates affects the affects the device offset amounts for any affected APCs. Therefore, we have recalculated the device offset amounts for both device-intensive and non-device-intensive procedures in Addendum P.

To view the corrected CY 2024 OPPS status indicators, APC assignments, relative weights, payment rates, copayment rates, device-intensive status, and short descriptors for Addenda A, B, C, and P that resulted from the technical corrections described in this correcting document, we refer readers to the Addenda and supporting files that are posted on the CMS website at: *https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient/.* Select ''CMS–1786–CN'' from the list of regulations. All corrected Addenda for this correcting document are contained in the zipped folder titled ''2024 OPPS Final Rule Addenda'' at the bottom of the page for CMS–1786–CN.

2. Ambulatory Surgical Center (ASC) Payment System Addenda Summary of Errors

a. Errors in Addendum AA

Due to the technical correction to apply a trim to lines for the primary codes for two APCs, Hyperbaric Oxygen Therapy (APC 5061) and Ancillary Outpatient Services When Patient Dies (APC 5881), which remove the resulting excluded claims from CY 2024 OPPS ratesetting, there is a significant change to the geometric mean cost for APC 5061. As there is a significant change in the payment rate for APC 5061, we had to slightly reduce the OPPS weight scalar and relative payment weights to maintain OPPS budget neutrality. This change results in a slight reduction in payment rates for other OPPS items and services calculated using the weight scalar. The correction to apply the trim to APC 5061 and the resulting change to the OPPS weight scalar, OPPS relative payment weights, and OPPS payment rates necessitate a revision to the CY 2024 ASC weight scalar and ASC payment rates, which results in changes in the columns titled ''Final CY 2024

Payment Weight'' and ''Final CY 2024 Payment Rate'' in Addendum AA to separately paid covered surgical procedures that are not paid at the PFS-equivalent rate.

We inadvertently failed to account for the cost of a device that is an integral part of the kidney histotripsy procedure when establishing a payment rate for HCPCS code C9790 (Histotripsy (*i.e.,* non-thermal ablation via acoustic energy delivery) of malignant renal tissue, including image guidance), which has a payment weight of 127.0479 and a payment rate of $6,798.84. However, we failed to include the cost of the device for the kidney histotripsy procedure in the payment rate that we reported for HCPCS code C9790 in the CY 2024 OPPS/ASC final rule. To correct this error, we are replacing the payment weight of 127.0479 and the payment rate of $6,798.84 with the payment weight of 177.8649 and the payment rate of $9,527.91, respectively, for HCPCS code C9790 in Addendum AA.

We inadvertently omitted CPT code 0810T (Subretinal injection of a pharmacologic agent, including vitrectomy and 1 or more retinotomies) from Addendum AA. As we explained in pages 81617 through 81618 of the CY 2024 OPPS/ASC final rule with comment period, CPT code 0810T is replacing HCPCS code C9770. We are correcting this error in Addendum AA by adding CPT code 0810T (Subretinal injection of a pharmacologic agent, including vitrectomy and 1 or more retinotomies).

We inadvertently created HCPCS code C7561 (Debridement, bone (includes epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed); first 20 sq cm or less with manual preparation and insertion of drug-delivery device(s), deep (*e.g.,* subfascial) to describe the code pair combination of CPT code 11044 (Debridement, bone (includes epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed); first 20 sq cm or less) and CPT code 20700 (Manual preparation and insertion of drug-delivery device(s), deep (*e.g.,* subfascial) (list separately in addition to code for primary procedure). This code pair currently exists as HCPCS code C7500 (Debridement, bone including epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed, first 20 sq cm or less with manual preparation and insertion of deep (*e.g.,* subfacial) drug-delivery device(s)). Because C7500 already describes this code pair, this code pair does not require a new HCPCS code. We are correcting this error in Addenda AA and FF by adding HCPCS code C7500 and removing HCPCS code C7561.

On page 81922 of the CY 2024 OPPS/ASC final rule with comment period, we stated we would finalize a device-intensive assignment with the default device offset percentage of 31 percent and assign a payment indicator of ''J8'' to HCPCS code C9734 (Focused ultrasound ablation/therapeutic intervention, other than uterine leiomyomata, with magnetic resonance (mr) guidance) for CY 2024; however, in Addendum AA, we inadvertently assigned a payment indicator of ''G2'' to this code. Therefore, in Addendum AA, in the column titled ''CY 2024 Payment Indicator,'' we are replacing payment indicator ''G2'' with payment indicator ''J8''—Device-intensive procedure; paid at adjusted rate—and are revising the ASC payment weight and payment rate to 152.9811 and $8,186.63, respectively.

On page 81921 of the CY 2024 OPPS/ASC final rule with comment period, we stated we are finalizing our proposed device offset amounts for CPT code 58356, which exceeded our device-intensive threshold of 30 percent and to which we assigned device-intensive status and a payment indicator of ''J8''—Device-intensive procedure; paid at adjusted rate. However, in Addendum AA, we inadvertently assigned a payment indicator of ''G2'' to this code. Therefore, in Addendum AA, we are correcting the payment indicator in the column titled ''CY 2024 Payment Indicator'' to ''J8'' and are revising the payment weight and payment rate to 62.4392 and $3,341.37, respectively.

We inadvertently assigned CPT codes 0266T and 0620T and HCPCS code C9790 a discounting status of ''Y'' (Yes) in the column titled ''Subject to Multiple Procedure Discounting''. Our multiple procedure discounting logic assigns a discounting status of ''N'' (No) to procedures with a status indicator ''S,'' which indicates that the procedure or service is separately paid and is not subject to multiple procedure discounting under the OPPS. We assigned CPT codes 0266T and 0620T and HCPCS code C9790 to status indicator ''S'' in OPPS Addendum B for CY 2024, and therefore, these codes should have a discounting status of ''N'' based on our multiple procedure discounting policy (72 FR 42513 through 42516). Therefore, we are correcting this error by deleting ''Y'' (Yes) and inserting ''N'' (No) in the column titled ''Subject to Multiple Procedure Discounting,'' indicating that the procedure is not subject to multiple procedure discounting, for CPT codes 0266T and 0620T and HCPCS code C9790.

b. Errors in Addendum BB

The correction to apply the trim to APC 5061 and the resulting change to the OPPS weight scalar and OPPS payment rates, necessitate a revision to the CY 2024 ASC weight scalar and ASC payment rates for certain separately paid ancillary procedures that are not paid at the PFS-equivalent rate. The correction to the ASC weight scalar and OPPS payment rates result in changes in the columns titled ''Final CY 2024 Payment Weight'' and ''Final CY 2024 Payment Rate'' in Addendum BB to separately paid ancillary procedures that are not paid at the PFS-equivalent rate.

We inadvertently assigned payment indicator ''J7''—OPPS pass-through device paid separately when provided integral to a surgical procedure on ASC list; payment contractor-priced—to both HCPCS codes C1831 (Interbody cage, anterior, lateral or posterior, personalized (implantable)) and C1604 (Graft, transmural transvenous arterial bypass (implantable), with all delivery system components) as both these devices are approved OPPS pass-through devices for CY 2024. However, these devices are not separately payable under the ASC payment system for CY 2024. Accordingly, we are correcting these errors in Addendum BB by deleting ''J7'' in the column titled ''Final CY 2024 Payment Indicator'' and replacing it with ''N1''—Packaged service/item; no separate payment made for both HCPCS codes C1831 and C1604.

b. Errors in Addendum FF

The correction to apply the trim to APC 5061 and the resulting change to the OPPS weight scalar and OPPS payment rates, necessitate a revision to the CY 2024 ASC weight scalar, ASC relative payment weights, and ASC payment rates and the device offset amounts/device portions for device-intensive procedures because device offset amounts are held at the OPPS rate (*i.e.,* the OPPS payment rate multiplied by the device offset percentage) for device-intensive procedures. Further, the correction to the ASC weight scalar necessitates a correction to ASC payment rates, which requires a correction to the device offset amounts/device portions for non device-intensive procedures because the device offset amounts are held at the ASC rate (*i.e.,* the ASC payment rate multiplied by the device offset percentage) for these procedures.

We inadvertently omitted CPT code 0810T (Subretinal injection of a pharmacologic agent, including

vitrectomy and 1 or more retinotomies) from Addendum FF. As we explained in pages 81617 through 81618 of the CY 2024 OPPS/ASC final rule with comment period, we finalized our proposal to delete HCPCS code C9770 and reassign CPT code 0810T to APC 1563. We are correcting this error by adding CPT code 0810T to Addendum FF.

We inadvertently created HCPCS code C7561 (Debridement, bone (includes epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed); first 20 sq cm or less with manual preparation and insertion of drug-delivery device(s), deep (*e.g.,* subfascial) to describe the code pair combination of CPT code 11044 (Debridement, bone (includes epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed); first 20 sq cm or less) and CPT code 20700 (Manual preparation and insertion of drug-delivery device(s), deep (*e.g.,* subfascial) (list separately in addition to code for primary procedure). This code pair currently exists as HCPCS code C7500 (Debridement, bone including epidermis, dermis, subcutaneous tissue, muscle and/or fascia, if performed, first 20 sq cm or less with manual preparation and insertion of deep (*e.g.,* subfacial) drug-delivery device(s)). Since this code pair currently is already reflected in C7500, this code pair does not require a new HCPCS code. We are correcting this error by deleting HCPCS code C7561 and adding HCPCS code C7500.

On page 81922 of the CY 2024 OPPS/ASC final rule with comment period, we stated we would finalize a device-intensive assignment with the default device offset percentage of 31 percent to HCPCS code C9734 (Focused ultrasound ablation/therapeutic intervention, other than uterine leiomyomata, with magnetic resonance (mr) guidance) for CY 2024; however, we inadvertently assigned a payment indicator of ''G2''—Non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight—to HCPCS code C9734 in Addendum FF. Therefore, we are correcting the payment indicator in the column titled ''Final CY 2024 Payment Indicator'' for C9734 to ''J8''—device-intensive procedure; paid at adjusted rate. We are also correcting the device offset percentage in the column titled ''Final CY 2024 Device Offset Percentage'' to 31 percent, and the device offset amount in the column titled ''Final CY 2024 Device Offset Amount/Device Portion'' to $3,701.33.

We inadvertently provided incorrect device offset amounts for CPT codes 0627T (Percutaneous injection of allogeneic cellular and/or tissue-based product, intervertebral disc, unilateral or bilateral injection, with fluoroscopic guidance, lumbar; first level); 0671T (Insertion of anterior segment aqueous drainage device into the trabecular meshwork, without external reservoir, and without concomitant cataract removal, one or more); 31295 (Nasal/sinus endoscopy, surgical, with dilation (*e.g.,* balloon dilation); maxillary sinus ostium, transnasal or via canine fossa); 58356 (Endometrial cryoablation with ultrasonic guidance, including endometrial curettage, when performed); 66989 (Extracapsular cataract removal with insertion of intraocular lens prosthesis (1-stage procedure), manual or mechanical technique (*e.g.,* irrigation and aspiration or phacoemulsification), complex, requiring devices or techniques not generally used in routine cataract surgery (*e.g.,* iris expansion device, suture support for intraocular lens, or primary posterior capsulorrhexis) or performed on patients in the amblyogenic developmental stage; with insertion of intraocular (*e.g.,* trabecular meshwork, supraciliary, suprachoroidal) anterior segment aqueous drainage device, without extraocular reservoir, internal approach, one or more); and 66991 (Extracapsular cataract removal with insertion of intraocular lens prosthesis (1 stage procedure), manual or mechanical technique (*e.g.,* irrigation and aspiration or phacoemulsification); with insertion of intraocular (*e.g.,* trabecular meshwork, supraciliary, suprachoroidal) anterior segment aqueous drainage device, without extraocular reservoir, internal approach, one or more) and HCPCS codes C9757 (Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and excision of herniated intervertebral disc, and repair of annular defect with implantation of bone anchored annular closure device, including annular defect measurement, alignment and sizing assessment, and image guidance; 1 interspace, lumbar) and C9781 (Arthroscopy, shoulder, surgical; with implantation of subacromial spacer (*e.g.,* balloon), includes debridement (*e.g.,* limited or extensive), subacromial decompression, acromioplasty, and biceps tenodesis when performed).

On page 81921 of the CY 2024 OPPS/ASC final rule with comment period, we stated we are finalizing our proposed device offset percentages for these codes and displayed the final device offset percentages in Addendum FF to CY 2024 OPPS/ASC final rule with comment period. However, the device offset percentages in the addendum do not reflect these finalized device offset amounts. Therefore, we are correcting the device offset percentage in the column titled ''Final CY 2024 Device Offset Percentage,'' and we are correcting the device offset amount in the column titled ''Final CY 2024 Device Offset Amount/Device Portion.'' Further, for CPT code 58356, the corrected device offset percentage is above our device-intensive threshold and we are therefore assigning device-intensive status to CPT code 58356. In the column titled ''CY 2024 Payment Indicator,'' for CPT code 58356, we are replacing payment indicator ''G2'' with payment indicator ''J8''—Device-intensive procedure; paid at adjusted rate.

To view the corrected final CY 2024 ASC payment indicators, payment weights, payment rates, and multiple procedure discounting indicators for Addenda AA, BB, and FF that resulted from these technical corrections, we refer readers to the Addenda and supporting files on the CMS website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html.* Select ''CMS–1786–CN'' from the list of regulations. All corrected ASC addenda for this correcting document are contained in the zipped folder entitled ''Addendum AA, BB, and FF'' at the bottom of the page for CMS–1786–CN.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA

and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support. We believe that this correction does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This correcting document corrects technical and typographical errors in the preamble, addenda, payment rates, and tables included or referenced in the CY 2024 OPPS/ASC final rule with comment period but does not make substantive changes to the policies or payment methodologies that were adopted in the CY 2024 OPPS/ASC final rule with comment period. As a result, this correction is intended to ensure that the information in the CY 2024 OPPS/ASC final rule with comment period accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule with comment period or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2024 OPPS/ASC final rule with comment period reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2024 OPPS/ASC final rule with comment period accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and delayed effective date requirements.

Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this final rule correction because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2024 OPPS/ASC final rule with comment period accurately reflects our policies.

IV. Correction of Errors

In FR Doc. 2023–24293 of November 22, 2023 (88 FR 81540), we are making the following corrections:

1. On page 81545, third column, first partial bulleted paragraph, lines 44 and 45, the phrase ''(5) a requirement that hospitals to include a .txt file'' is corrected to read ''(5) a requirement that hospitals include a .txt file''.

2. On page 81546,

a. Second column, last partial paragraph, line 12, the figure ''9.2'' is corrected to read ''9.1''.

b. Third column, first full paragraph, line 4, the figure ''0.0'' is corrected to read ''0.1''.

3. On page 81547, first column, the paragraph under ''f. Impacts of Hospital Price Transparency'' is corrected in its entirety to read, ''The policies we are finalizing to enhance automated access to hospital MRFs and aggregation and use of MRF data are estimated to increase burden on hospitals, including a one-time mean of $10,587.10 per hospital, and a total national cost of $75,147,236 ($10,587.10 × 7,098). The cost estimate reflects estimated costs ranging from $4,833 and $15,881 per hospital, and a total national cost ranging from $34,305,344 to $112,720,854. As discussed in detail in section XXVI of this final rule with comment period, we believe that the benefits to the public (and to hospitals themselves) outweigh the burden imposed on hospitals.''.

4. On page 81578, first column, first full paragraph, line 5, the figure ''1.4429'' is corrected to read ''1.4414''.

5. On page 81592, third column,

a. Last paragraph under the heading ''Step 7'',

(1) Line 17, the figure ''$671.05'' is corrected to read ''$670.36''.

(2) Line 21, the figure $658.03''is corrected to read ''$657.36''.

b. Last paragraph,

(1) Line 3, the figure ''$402.63'' is corrected to read ''$402.22''.

(2) Line 4, the figure ''$671.05'' is corrected to read ''$670.36''.

(3) Line 6, the figure ''$394.82'' is corrected to read ''$394.42''.

(4) Line 7, the figure ''$658.03'' is corrected to read ''$657.36''.

6. On page 81593,

a. First column, second paragraph, line 4, the equation ''$546.05 ($402.63 *1.3562)'' is corrected to read ''$545.49 ($402.22 * 1.3562)''.

b. Second column,

(1) First partial paragraph, line 1, the figures ''$535.45 ($394.82'' are corrected to read ''$534.91 ($394.42''.

(2) First full paragraph,

(a) Line 3, the figure ''$268.42'' is corrected to read ''$268.14''.

(b) Line 4, the figure ''$671.05'' is corrected to read ''$670.36''.

(c) Line 6, the figure ''$263.21'' is corrected to read ''$262.94''.

(d) Line 7, the figure ''$658.03'' is corrected to read ''$657.36''.

c. Third column, first full paragraph,

(1) Line 4, the figures ''$814.47 ($546.05'' are corrected to read ''$813.63 ($545.49''.

(2) Line 5, the figure ''$268.42'' is corrected to read ''$268.14''.

(3) Line 7, the figures ''$798.66 ($535.45'' are corrected to read $797.85 ($534.91''.

(4) Line 8, the figure ''$263.21'' is corrected to read ''$262.94''.

(d) The table titled ''Table 7: Final Full National Unadjusted Payment Rate and Final Reduced National Adjusted Payment Rate,'' which appears near the top of the page, is corrected to read as follows:

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TABLE 7: FINAL FULL NATIONAL UNADJUSTED PAYMENT RATE AND FINAL REDUCED NATIONAL UNADJUSTED PAYMENT RATE

Final Full national unadjusted payment rate	Final Reduced national adjusted payment rate
$813.63	$797.85

7. On page 81595, third column, second full paragraph,

a. Line 5, the figure ''$134.21'' is corrected to read ''$134.08''.

b. Line 8, the figure ''$671.05'' is corrected to read ''$670.36''.

8. On page 81669, third column, first full paragraph, line 7, before the sentence that reads ''In addition, we did not receive any comments on our proposed APC assignment for CPT code 93296.'', add the following paragraph: ''Additionally, as noted by the commenter, CPT codes 93297 and 93298 have been assigned to direct practice inputs under the PFS for 2024. However, while not mentioned by the commenter, these codes have also been designated with a global, technical, and professional indicators under the PFS for 2024. As stated in the 2024 PFS final rule (88 FR 78914), CPT code 93297 and 93298 were previously billed under HCPCS code G2066. We note that under the OPPS, HCPCS code G2066 was assigned to status indicator ''Q1'' (STV-Packaged Codes) and APC 5741 (Level 1 Electronic Analysis of Devices). Since G2066 was the code previously reported for CPT codes 93297 and 93298, we are assigning these codes to separately payable status under the OPPS for CY 2024. Specifically, we are assigning CPT codes 93297 and 93298 to ''Q1'' and APC 5741 effective January 1, 2024.''.

9. On page 81801, in the table titled ''Table 95: Skin Substitute Assignments to High-Cost and Low-Cost Groups for CY 2024, in the row for HCPCS code Q4282 in the columns titled ''CY 2023 High/Low Cost Assignment'' and ''CY 2024 High/Low Cost Assignment'' the entries ''Low'' are corrected to read ''High''.

10. On page 81850, third column, first partial paragraph, lines 18 through 31, that reads ''Currently, periodic assessments are allowed to be furnished via audio-only telecommunication through CY 2023, and finalized in the CY 2024 PFS final rule (87 FR 69404; November 18, 2023) so that these services may be furnished audio-only through the end of CY 2024, to the extent that use of audio-only communications technology is permitted under the applicable SAMHSA and DEA requirements at the time the service is furnished, and all other applicable requirements are met.'' are corrected to read ''Currently, periodic assessments are allowed to be furnished via audio-only telecommunication through CY 2023, and in the CY 2024 PFS final rule (88 FR 79089 through 79093), we finalized that periodic assessments may be furnished audio-only through the end of CY 2024, to the extent that use of audio-only communications technology is permitted under the applicable SAMHSA and DEA requirements at the time the service is furnished, and all other applicable requirements are met.''.

11. On page 81854, second column, first partial paragraph, line 30, the figure ''$778.20'' is corrected to read ''$777.39.''

12. On page 81855, second column,

a. Second full paragraph,

(1) Line 31, the figure ''$259.40'' is corrected to read ''$259.13''.

(2) Line 35, the figure ''$778.20'' is corrected to read ''$777.39''.

b. In footnote 188, line 6, the figure ''$259.40'' is corrected to read ''$259.13''.

13. On page 81958,

a. Second column, last partial paragraph, line 7, the figure ''0.8881'' is corrected to read ''0.889''.

b. Third column, first full paragraph, line 8, the figure ''0.8881'' is corrected to read ''0.889''.

14. On page 81971, first column, first partial paragraph,

a. Line 20, the figure ''3636'' is corrected to read ''1536''.

b. Lines 20 through 21, the text ''July 26, 2022. The measure steward (CDC) is pursuing endorsement for the modified version of this measure.'' is corrected to read ''January 31, 2012. This measure's endorsement was removed in 2018.''.

15. On page 81993, in the table titled ''Table 128: Finalized Hospital OQR Program Measure Set for the CY 2026 Payment Determination'',

a. Row 9, column 2, the text ''Cataracts Visual Function (Previously referred to as Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery) **'' is corrected to read ''Cataracts Visual Function (Previously referred to as Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery)†**''.

b. Row 18, the text ''COVID–19 Vaccination Coverage Among Health Care Personnel ****'' is corrected to read ''COVID–19 Vaccination Coverage Among Health Care Personnel ††****'',

c. Adding the following table note ''†† This CBE endorsement number was assigned to the original version of the COVID–19 Vaccination Coverage Among Health Care Personnel measure and not the finalized modification of the measure we are finalizing in this rule.'' after the first table note (†We note that CBE endorsement for this measure was removed.) and before the second table note ''* In this final rule, we are finalizing our proposal to modify the Colonoscopy Follow-Up Interval measure beginning with the CY 2024 reporting period/CY 2026 payment determination.''.

16. On page 81994, the table titled ''Table 129: Finalized Hospital OQR Program Measure Set for the CY 2027 Payment Determination and Subsequent Years'', is corrected to read as follows:

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TABLE 129: FINALIZED HOSPITAL OQR PROGRAM MEASURE SET FOR THE CY 2027 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

CBE #	Measure Name
0514	MRI Lumbar Spine for Low Back Pain†
None	Abdomen CT – Use of Contrast Material
0669	Cardiac Imaging for Preoperative Risk Assessment for Non-Cardiac, Low-Risk Surgery
0496	Median Time for Discharged ED Patients (Previously referred to as Median Time from ED Arrival to ED Departure for Discharged ED Patients)
0499	Left Without Being Seen†
0661	Head CT or MRI Scan Results for Acute Ischemic Stroke or Hemorrhagic Stroke who Received Head CT or MRI Scan Interpretation Within 45 minutes of ED Arrival
0658	Colonoscopy Follow-Up Interval (Previously referred to as Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients)
1536	Cataracts Visual Function (Previously referred to as Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery) †*
2539	Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy
3490	Admissions and Emergency Department (ED) Visits for Patients Receiving Outpatient Chemotherapy
2687	Hospital Visits after Hospital Outpatient Surgery
None	OAS CAHPS – About Facilities and Staff
None	OAS CAHPS – Communication About Procedure
None	OAS CAHPS – Preparation for Discharge and Recovery
None	OAS CAHPS – Overall Rating of Facility
None	OAS CAHPS – Recommendation of Facility
3636	COVID–19 Vaccination Coverage Among Health Care Personnel ††
None	Breast Cancer Screening Recall Rates
None	ST-Segment Elevation Myocardial Infarction (STEMI) eCQM
None	Risk-Standardized Patient-Reported Outcome-Based Performance Measure (PRO–PM) Following Elective Primary Total Hip Arthroplasty (THA) and/or Total Knee Arthroplasty (TKA) in the HOPD Setting (THA/TKA PRO–PM)**
3663e	Excessive Radiation eCQM (Previously referred to as Excessive Radiation Dose or Inadequate Image Quality for Diagnostic Computed Tomography (CT) in Adults eCQM)***

† We note that CBE endorsement of this measure was removed.

†† This CBE endorsement number was assigned to the original version of the COVID-19 Vaccination Coverage Among Health Care Personnel measure and not the finalized modification of the measure.

* In the CY 2023 OPPS/ASC final rule with comment period (87 FR 72097 through 72099), we finalized keeping data collection and submission voluntary for this measure for the CY 2025 reporting period and subsequent years.

** In this final rule, we are finalizing our proposal to adopt the THA/TKA PRO–PM beginning with the voluntary CY 2025 reporting period and with delayed implementation of mandatory reporting beginning

*** In this final rule, we are finalizing our proposal to adopt the Excessive Radiation eCQM beginning with the voluntary CY 2025 reporting period and with delayed implementation of mandatory reporting beginning with the CY 2027 reporting period/CY 2029 payment determination.

17. On page 82014, second column, first partial paragraph, lines 1 and 2, the citation ''(88 FR 49774 through 49776)'' is corrected to read ''(88 FR 49805 through 49807)''.

18. On page 82031, first partial footnoted paragraph (footnote 629), ''Centers for Medicare and Medicaid Services Measures Inventory Tool. (n.d.). Retrieved March 28, 2023, from *https://cmit.cms.gov/cmit/#/MeasureView?variantId=11547&sectionNumber=1*'' is corrected to read: ''Centers for Medicare and Medicaid Services Measures Inventory Tool. (n.d.). Retrieved November 30, 2023, from *https://cmit.cms.gov/cmit/#/MeasureView?variantId=11625&sectionNumber=1*''.

19. On page 82037, in the table titled ''Table 139: Finalized ASCQR Program Measures Set for the CY 2024 Reporting Period/CY 2026 Payment Determination'',

a. The entry for row 14 is corrected to read as follows:

ASC #	CBE #	Measure Name
		* * * * * * *
ASC-20	3636††	COVID–19 Vaccination Coverage Among Health Care Personnel**

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b. Add the following table note ''†† This CBE endorsement number was assigned to the original version of the COVID–19 Vaccination Coverage Among Health Care Personnel measure and not the modification of the measure we are finalizing in this rule.'' after the first table note († CBE endorsement was removed.) and before the second table note (* In the CY 2023 OPPS/ASC final rule with comment period (87 FR 72118 through 72120), we finalized to keep data collection and submission voluntary for this measure for the CY 2025 reporting period and subsequent years. In this final rule, we are finalizing our proposal to standardize the surveys offered to patients pre- and post-surgery beginning with the CY 2024 reporting period/CY 2026 payment determination.).

20. On page 82038, in the table titled ''Table 140: Finalized ASCQR Program Measure Set for the CY 2025 Reporting Period/CY 2027 Payment Determination'',

a. The entries for rows 20 and 21 are corrected to read as follows:

ASC #	CBE #	Measure Name
	* * * * * * *	
ASC-20	3636††	COVID–19 Vaccination Coverage Among Health Care Personnel
ASC-21	None	Risk-Standardized Patient-Reported Outcome-Based Performance Measure (PRO–PM) Following Elective Primary Total Hip Arthroplasty (THA) and/or Total Knee Arthroplasty (TKA) in the ASC Setting (THA/TKA PRO–PM)***

b. Add the following table note ''†† This CBE endorsement number was assigned to the original version of the COVID–19 Vaccination Coverage Among Health Care Personnel measure and not the modification of the measure we are finalizing in this rule.'' after the first table note († CBE endorsement was removed.) and before the second table note (* In the CY 2023 OPPS/ASC final rule with comment period (87 FR 72118 through 72120), we finalized to keep data collection and submission voluntary for this measure for the CY 2025 reporting period and subsequent years.).

21. On page 82072,

a. First column, first full paragraph,

(1) Lines 3 and 4, the phrase ''opportunity to review their data before the information is published'' is corrected to read ''opportunity to preview their data before the information is published''.

(2) Lines 5 and 6, the phrase ''30-day review and corrections period (the preview process).'' is corrected to read ''30-day preview period.''.

(3) Lines 22 through 24, the language ''This preview process would align with that of the Hospital OQR Program (81 FR 79791).'' is corrected to read ''This preview period policy would align with that of the Hospital OQR Program (81 FR 79791).''.

b. Third column, line 32 at the end of the second full paragraph, ending with the phrase ''will be collected quarterly.'', add the following paragraph: ''After consideration of the public comments we received, we are finalizing our policies as proposed related to public reporting of quality data generally under the REHQR Program and codifying these policies at § 419.95(f).''.

22. On page 82073, first column, line 2 at the end of the fourth full paragraph, ending with ''Response: We thank the commenter for their support.'', add the following paragraph: ''After consideration of the public comments we received, we are finalizing our policies as proposed related to public reporting of claims-based measure data under the REHQR Program.''.

23. On page 82074, first column, line 42 at the end of the first full paragraph, ending with ''transfer to more appropriate care settings.'', add the following paragraph: ''After consideration of the public comments we received, we are finalizing our policies as proposed related to public reporting of the Median Time from ED Arrival to ED Departure for Discharged ED Patients measure under the REHQR Program. Specifically, the following measure strata will be made publicly available: (1) Overall Rate; (2) Reported Measure; (3) Psychiatric/Mental Health Patients; and (4) Transfer Patients.''.

24. On page 82081, third column, first full paragraph,

a. Lines 32 through 33, the phrase ''Consolidation Appropriations Act of 2021'' is corrected to read ''Consolidated Appropriations Act, 2021''.

b. Lines 37 and 38, the phrase ''CY 2024 OPPS/ASC PPS proposed rule'' is corrected to read ''CY 2024 OPPS/ASC proposed rule''.

25. On page 82082, third column, last paragraph, line 35, the phrase ''hospitals to include'' is corrected to read ''hospitals include''.

26. On page 82084, second column, under the heading ''2. Requirement That Hospitals Affirm the Accuracy and Completeness of Their Standard Charge Information Displayed in the MRF'', line 29, the phrase ''the MRF count not be certain'' is corrected to read ''the MRF cannot be certain''.

27. On page 82085, first column, second full paragraph, lines 34 and 35, the phrase ''42 CFR 457.945), finally, a hospital'' is corrected to read ''42 CFR 457.945). Finally, a hospital''.

28. On page 82088, third column, first footnoted paragraph (footnote 779), line 9, the phrase ''identifier779 or employer'' is corrected to read ''identifier or employer''.

29. On page 82097,

a. Second column, first partial paragraph, line 6, the phrase ''hospitals provide'' is corrected to read ''hospitals to provide''.

b. Third column, first partial paragraph,

(1) Line 9, the phrase ''hospitals provide'' is corrected to read ''hospitals to provide''.

(2) Line 25, the phrase ''critical the allowed amount'' is corrected to read ''critical the algorithm''.

30. On page 82099, second column, first footnoted paragraph (footnote 790), add the following link to the end: *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2757483*.

31. On page 82113, second column, last partial paragraph, line 14, the phrase ''a link includen the footer'' is corrected to read ''a link in the footer''.

32. On page 82118, third column, first footnoted paragraph (footnote 802), add the following link to the end: *https://up-j-gemgem.ubiquityjournal.website/articles/10.5334/egems.200*.

33. On page 82120, first column, first full paragraph, line 14, the phrase ''CMS publicize when'' is corrected to read ''CMS should publicize when''.

34. On page 82142, third column, first full paragraph, lines 16 through 46, the text ''We found that there were 2,381 THA/TKA ASC claims in CY 2022 with

an average of 58 Medicare claims per ASC for 41 ASCs. Thus, we estimate that approximately 58 THA/TKA procedures will occur in each ASC each year, and that many patients could complete both the pre-operative and post-operative questionnaires. However, from our experience with using this measure in the Comprehensive Joint Replacement model, we are also aware that not all patients who complete the pre-operative questionnaire will complete the postoperative questionnaire. For the voluntary CYs 2025, 2026, and 2027 reporting periods, we assume 609 patients will complete the survey (58 patients × 0.50 × 21 ASCs) for a total of 74 hours annually (609 respondents × 0.120833 hours) at a cost of $1,524 (74 hours × $20.71) across all ASCs that perform these procedures. Beginning with mandatory reporting in the CY 2028 reporting period/CY 2031 payment determination, we estimate a total of 288 hours (2,381 patients × 0.120833 hours) at a cost of $5,958 (288 hours × $20.71) across all ASCs performing these procedures.'' is corrected to read ''We found that there were 881 ASCs which had an average of 48 THA/TKA paid Medicare FFS claims in CY 2022. Thus, we estimate that approximately 42,288 THA/TKA procedures will occur in ASCs each year, and that many patients could complete both the pre-operative and post-operative questionnaires. However, from our experience with using this measure in the Comprehensive Joint Replacement model, we are also aware that not all patients who complete the pre-operative questionnaire will complete the post-operative questionnaire. For the voluntary CYs 2025 through 2027 reporting periods, we assume 10,584 procedures of which patients can complete a survey (42,288 procedures × 0.50 survey completion rate × 50 percent ASC participation rate) for a total of 1,279 hours annually (10,584 possible surveys × 0.120833 hours per survey) at a cost of $26,486 (1,279 hours × $20.71) each year. Beginning with mandatory reporting in the CY 2028 reporting period/CY 2031 payment determination, we assume 21,144 procedures of which patients can complete a survey (42,288 procedures × 0.50 survey completion rate × 100 percent ASC participation rate) for a total of 2,555 hours annually (21,144 possible surveys × 0.120833 hours per survey) at a cost of $52,912 (2,555 hours × $20.71).''.

35. On page 82143,

a. First column, first partial paragraph,

(1) Lines 18 and 19, the figures ''4 hours (0.167 hours × 21 ASCs)'' is corrected to read ''74 hours (0.167 hours × 441 ASCs)''.

(2) Lines 19 and 20, the figures ''$182 (4 hours × $52.12)'' is corrected to read ''$3,831'' (74 hours × $52.12)''.

(3) Line 22, the figure ''7'' is corrected to read ''147''.

b. Second column, first partial paragraph,

(1) Line 1, the figures ''(0.33 hours × 21 ASCs)'' are corrected to read ''(0.33 hours × 441 ASCs)''.

(2) Line 2, the figures ''$365 (7 hours'' are corrected to read ''$7,662 (147 hours''.

(3) Line 4, the figure ''10'' is corrected to read ''220''.

(4) Line 5, the figure ''21'' is corrected to read ''441''.

(5) Line 6, the phrase ''41 ASCs)] at a cost of $539 (10'' is corrected to read ''881 ASCs)] at a cost of $11,484 (220''.

(6) Line 9, the figure ''14'' is corrected to read ''294''.

(7) Line 10, the phrase ''41 ASCs) at a cost of $712 (14'' is corrected to read ''881 ASCs) at a cost of $15,306 (294 hours''.

c. Third column, first partial paragraph, line 4, the text ''increase of 302 hours at a cost of $6,670'' is corrected to read ''increase of 2,849 hours at a cost of $68,218''.

d. The table titled ''Table 158: ''Summary of ASCQ Program Information Collection Burden Change for the CY 2025 Reporting Period/CY 2027 Payment Determination'' is corrected to read as follows:

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TABLE 158: SUMMARY OF ASCQR PROGRAM INFORMATION COLLECTION BURDEN CHANGE FOR THE CY 2025 REPORTING PERIOD/CY 2027 PAYMENT DETERMINATION

	Annual Recordkeeping and Reporting Requirements Under OMB Control Number 0938-1270 for the CY 2027 Payment Determination							
Activity	**Estimated time per record (minutes)**	**Number reporting quarters per year**	**Number of ASCs reporting**	**Average number records per ASC per quarter**	**Annual burden (hours) per ASC**	**Finalized annual burden (hours) across ASCs**	**Previously finalized annual burden (hours) across ASCs**	**Net difference in annual burden hours**
Add THA/TKA PRO-PM Measure (Survey Completion)	3.625	2	441	24	2.9	1,279	N/A	+1,279
	Total Change in Information Collection Burden Hours: +1,279							
	Total Cost Estimate: Updated Hourly Wage (Varies) x Change in Burden Hours (+1,279) = **$26,486**							

36. On page 82144, the table titled ''Table 159: ''Summary of ASCQR Program Information Collection Burden Change for the CY 2026 Reporting Period/CY 2028 Payment Determination'' is corrected to read as follows:

TABLE 159: SUMMARY OF ASCQR PROGRAM INFORMATION COLLECTION BURDEN CHANGE FOR THE CY 2026 REPORTING PERIOD/CY 2028 PAYMENT DETERMINATION

	Annual Recordkeeping and Reporting Requirements Under OMB Control Number 0938-1270 for the CY 2028 Payment Determinations							
Activity	**Estimated time per record (minutes)**	**Number reporting quarters per year**	**Number of OPPS ASCs reporting**	**Average number records per ASC per quarter**	**Annual burden (hours) per ASC**	**Finalized annual burden (hours) across ASCs**	**Previously finalized annual burden (hours) across ASCs**	**Net difference in annual burden hours**
Add THA/TKA PRO-PM Measure (Survey Completion)	3.625	2	441	24	2.9	1,279	N/A	+1,279
Add THA/TKA PRO-PM Measure (Data Submission)	10	1	441	1	0.167	74	N/A	+74
	Total Change in Information Collection Burden Hours*: +1,353							
	Total Cost Estimate: Updated Hourly Wage (Varies) x Change in Burden Hours (+1,353) = **$30,317**							

*Total varies from sum of individual information collections due to rounding

37. On page 82145, the table titled ''Table 160: ''Summary of ASCQR Program Information Collection Burden Change for the CY 2027 Reporting Period/CY 2029 Payment Determination'' is corrected to read as follows:

TABLE 160: SUMMARY OF ASCQR PROGRAM INFORMATION COLLECTION BURDEN CHANGE FOR THE CY 2027 REPORTING PERIOD/CY 2029 PAYMENT DETERMINATION

	Annual Recordkeeping and Reporting Requirements Under OMB Control Number 0938-1270 for the CY 2029 Payment Determination							
Activity	**Estimated time per record (minutes)**	**Number reporting quarters per year**	**Number of OPPS ASCs reporting**	**Average number records per ASC per quarter**	**Annual burden (hours) per ASC**	**Finalized annual burden (hours) across ASCs**	**Previously finalized annual burden (hours) across ASCs**	**Net difference in annual burden hours**
Add THA/TKA PRO-PM Measure (Survey Completion)	3.625	2	441	24	2.9	1,279	N/A	+1,279
Add THA/TKA PRO-PM Measure (Data Submission)	10	2	441	1	0.33	147	N/A	+147
	Total Change in Information Collection Burden Hours: +1,426							
	Total Cost Estimate: Updated Hourly Wage (Varies) x Change in Burden Hours (+1,426) = **$34,148**							

38. On page 82146, the table titled ''Table 161: ''Summary of ASCQR Program Information Collection Burden Change for the CY 2028 Reporting Period/CY 2030 Payment Determination'' is corrected to read as follows:

TABLE 161: SUMMARY OF ASCQR PROGRAM INFORMATION COLLECTION BURDEN CHANGE FOR THE CY 2028 REPORTING PERIOD/CY 2030 PAYMENT DETERMINATION

	Annual Recordkeeping and Reporting Requirements Under OMB Control Number 0938-1270 for the CY 2030 Payment Determination							
Activity	**Estimated time per record (minutes)**	**Number reporting quarters per year**	**Number of OPPS ASCs reporting**	**Average number records per ASC per quarter**	**Annual burden (hours) per ASC**	**Finalized annual burden (hours) across ASCs**	**Previously finalized annual burden (hours) across ASCs**	**Net difference in annual burden hours**
Add THA/TKA PRO-PM Measure (Survey Completion)	3.625	2	881	24	2.9	2,555	N/A	+2,555
Add THA/TKA PRO-PM Measure (Data Submission)	10	2	441	1	0.33	147	N/A	+147
	Total Change in Information Collection Burden Hours: +2,702							
	Total Cost Estimate: Updated Hourly Wage (Varies) x Change in Burden Hours (+2,702) = **$60,574**							

39. On page 82147, the table titled ''Table 162: ''Summary of ASCQR Program Information Collection Burden Change for the CY 2029 Reporting Period/CY 2031 Payment Determination'' is corrected to read as follows:

TABLE 162: SUMMARY OF ASCQR PROGRAM INFORMATION COLLECTION BURDEN CHANGE FOR THE CY 2029 REPORTING PERIOD/CY 2031 PAYMENT DETERMINATION

	Annual Recordkeeping and Reporting Requirements Under OMB Control Number 0938-1270 for the CY 2031 Payment Determination							
Activity	**Estimated time per record (minutes)**	**Number reporting quarters per year**	**Number of OPPS ASCs reporting**	**Average number records per ASC per quarter**	**Annual burden (hours) per ASC**	**Finalized annual burden (hours) across ASCs**	**Previously finalized annual burden (hours) across ASCs**	**Net difference in annual burden hours**
Add THA/TKA PRO-PM Measure (Survey Completion)	3.625	2	881	24	2.9	2,555	N/A	+2,555
Add THA/TKA PRO-PM Measure (Voluntary Data Submission)	10	1	441	1	0.167	74	N/A	+74
Add THA/TKA PRO-PM Measure (Mandatory Data Submission)	10	1	881	1	0.167	147	N/A	+147
	Total Change in Information Collection Burden Hours*: +2,776							
	Total Cost Estimate: Updated Hourly Wage (Varies) x Change in Burden Hours (+2,776) = **$64,396**							

*Total varies from sum of individual information collections due to rounding

40. On page 82148, the table titled ''Table 163: ''Summary of ASCQR Program Information Collection Burden Change for the CY 2030 Reporting Period/CY 2032 Payment Determination'' is corrected to read as follows:

TABLE 163: SUMMARY OF ASCQR PROGRAM INFORMATION COLLECTION BURDEN CHANGE FOR THE CY 2030 REPORTING PERIOD/CY 2032 PAYMENT DETERMINATION

	Annual Recordkeeping and Reporting Requirements Under OMB Control Number 0938-1270 for the CY 2032 Payment Determination							
Activity	**Estimated time per record (minutes)**	**Number reporting quarters per year**	**Number of OPPS ASCs reporting**	**Average number records per ASC per quarter**	**Annual burden (hours) per ASC**	**Finalized annual burden (hours) across ASCs**	**Previously finalized annual burden (hours) across ASCs**	**Net difference in annual burden hours**
Add THA/TKA PRO-PM Measure (Survey Completion)	3.625	2	881	24	2.9	2,555	N/A	+2,555
Add THA/TKA PRO-PM Measure (Data Submission)	10	2	881	1	0.33	294	N/A	+294
	Total Change in Information Collection Burden Hours: +2,849							
	Total Cost Estimate: Updated Hourly Wage (Varies) x Change in Burden Hours (+2,849) = **$68,218**							

41. On page 82156, second column, first full paragraph,

a. Line 10, the figure ''0.0'' is corrected to read ''0.1''.

b. Line 11, the figure ''0.4'' is corrected to read ''0.5''.

42. On page 82157,

a. First column, second partial paragraph, line 8, the figure ''2.8'' is corrected to read with ''3.1''.

b. Third column,

(1) First partial paragraph, line 13, the figure ''9.2'' is corrected to read ''9.1''.

(2) First full paragraph, line 10, the figure ''10'' is corrected to read ''9.9''.

43. On page 82158, the table titled ''Table 168: Estimated Impact of the Final CY 2024 Changes for the Hospital Outpatient Prospective Payment System'' is corrected to read as follows:

TABLE 168: ESTIMATED IMPACT OF THE FINAL CY 2024 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

		(1)	(2)	(3)	(4)	(5)
		Number of Hospitals	**APC Recalibration (all changes)**	**New Wage Index and Provider Adjustments**	**All Budget Neutral Changes (combined cols 2 and 3) with Market Basket Update**	**All Changes**
ALL PROVIDERS *		3,611	0.0	0.1	3.2	3.2
ALL HOSPITALS		3,511	0.1	0.2	3.4	3.3
	(excludes hospitals held harmless and CMHCs)					
URBAN HOSPITALS		2,801	0.1	0.1	3.2	3.2
	LARGE URBAN	1,452	0.0	-0.1	3.0	3.1
	(GT 1 MILL.)					
	OTHER URBAN	1,349	0.1	0.3	3.4	3.2
	(LE 1 MILL.)					
RURAL HOSPITALS		710	0.3	1.2	4.6	4.2
	SOLE COMMUNITY	373	0.1	1.5	4.8	4.3
	OTHER RURAL	337	0.5	0.6	4.3	4.2
BEDS (URBAN)						
	0 – 99 BEDS	979	0.1	0.1	3.3	3.1
	100-199 BEDS	780	0.5	0.1	3.7	3.6
	200-299 BEDS	418	0.3	0.3	3.7	3.6
	300-499 BEDS	391	0.2	0.7	4.0	3.8
	500 + BEDS	233	-0.5	-0.5	2.1	2.3
BEDS (RURAL)						
	0 – 49 BEDS	347	0.4	0.9	4.4	4.1
	50- 100 BEDS	207	0.2	2.1	5.4	5.0
	101- 149 BEDS	83	0.3	0.7	4.1	3.4
	150- 199 BEDS	42	0.4	1.0	4.5	4.0
	200 + BEDS	31	0.2	0.5	3.9	3.9
REGION (URBAN)						
	NEW ENGLAND	131	-0.3	-2.1	0.7	0.8

		(1)	(2)	(3)	(4)	(5)
		Number of Hospitals	**APC Recalibration (all changes)**	**New Wage Index and Provider Adjustments**	**All Budget Neutral Changes (combined cols 2 and 3) with Market Basket Update**	**All Changes**
	MIDDLE ATLANTIC	307	-0.2	0.9	3.8	3.9
	SOUTH ATLANTIC	464	0.1	0.1	3.4	3.4
	EAST NORTH CENT.	423	0.0	-1.3	1.7	1.8
	EAST SOUTH CENT.	163	-0.2	-0.6	2.3	2.3
	WEST NORTH CENT.	185	-0.1	-0.1	3.0	1.8
	WEST SOUTH CENT.	470	0.6	-0.8	2.9	2.9
	MOUNTAIN	216	0.1	0.3	3.5	3.3
	PACIFIC	392	0.2	2.6	6.0	6.0
	PUERTO RICO	50	1.1	-0.9	3.3	3.2
REGION (RURAL)						
	NEW ENGLAND	19	-0.2	-1.1	1.7	1.9
	MIDDLE ATLANTIC	47	-0.2	7.9	11.1	10.9
	SOUTH ATLANTIC	106	0.4	0.4	3.9	3.9
	EAST NORTH CENT.	112	0.2	0.2	3.5	3.4
	EAST SOUTH CENT.	139	0.9	-0.2	3.9	3.8
	WEST NORTH CENT.	84	-0.1	1.3	4.4	3.3
	WEST SOUTH CENT.	133	1.2	-0.1	4.3	4.2
	MOUNTAIN	46	-0.2	1.6	4.5	2.4
	PACIFIC	24	0.0	4.1	7.3	7.3
TEACHING STATUS						
	NON-TEACHING	2,204	0.4	0.5	4.1	3.9
	MINOR	874	0.3	0.4	3.8	3.5
	MAJOR	433	-0.5	-0.4	2.2	2.4
DSH PATIENT PERCENT						
	0	9	-2.4	-1.4	-0.7	1.3
	GT 0 – 0.10	242	-0.1	0.1	3.1	2.9
	0.10 – 0.16	245	0.4	-0.2	3.4	3.2
	0.16 – 0.23	545	0.4	0.0	3.5	3.4
	0.23 - 0.35	1,144	0.1	0.1	3.3	3.1
	GE 0.35	878	-0.2	0.5	3.4	3.5
	DSH NOT AVAILABLE **	448	4.0	1.5	8.9	8.9

		(1)	(2)	(3)	(4)	(5)
		Number of Hospitals	**APC Recalibration (all changes)**	**New Wage Index and Provider Adjustments**	**All Budget Neutral Changes (combined cols 2 and 3) with Market Basket Update**	**All Changes**
URBAN TEACHING/DSH						
	TEACHING & DSH	1,163	-0.1	-0.1	2.9	2.9
	NO TEACHING/DSH	1,181	0.4	0.4	3.9	3.8
	NO TEACHING/NO DSH	9	-2.4	-1.4	-0.7	1.3
	DSH NOT AVAILABLE2	448	4.0	1.5	8.9	8.9
TYPE OF OWNERSHIP						
	VOLUNTARY	1,991	0.0	0.2	3.3	3.2
	PROPRIETARY	1,077	1.1	0.5	4.8	4.6
	GOVERNMENT	443	-0.3	-0.1	2.7	2.8
CMHCs		32	6.6	0.0	9.9	9.1

Column (1) shows total hospitals and/or CMHCs.

Column (2) includes all final CY 2024 OPPS policies and compares those to the CY 2023 OPPS.

Column (3) shows the budget neutral impact of updating the wage index by applying the final FY 2024 hospital inpatient wage index. The final rural SCH adjustment would continue our current policy of 7.1 percent so the budget neutrality factor is 1. The final budget neutrality adjustment for the cancer hospital adjustment is 1.0005 because the final CY 2024 target payment-to-cost ratio is less than the CY 2023 PCR target.

Column (4) shows the impact of all budget neutrality adjustments and the addition of the final 3.1 percent OPD fee schedule update factor (3.3 percent inpatient PPS (IPPS) hospital market basket percentage increase reduced by 0.2 percentage point for the productivity adjustment).

Column (5) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate and adding estimated outlier payments. Note that previous years included the frontier adjustment in this column, but we have the frontier adjustment to Column 3 in this table.

These 3,611 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.

** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

44. On page 82162,

a. Second column, first full paragraph, line 24, the figure ''$778.20'' is corrected to read ''$777.39''.

b. Third column, first partial paragraph, line 2, the figure ''$40,466'' is corrected to read ''$40,424''.

c. Third column, under ''2. Estimated Effects of CY 2024 ASC

Payment System Changes'', first paragraph, line 10, the figure ''0.8881'' is corrected to read ''0.889''.

45. On page 82168, second column, first partial paragraph, line 7, the phrase ''302 hours at a cost of $6,670'' is corrected to read ''2,849 hours at a cost of $68,218''.

46. On page 82171, third column, in footnote 858 the link *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2800088* is corrected to read ''*https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2800083*''.

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

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BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 101

RIN 0908–AA00

Health Resources Priorities and Allocations System (HRPAS)

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is issuing a final rule establishing standards and

procedures by which it may require acceptance and priority performance of certain contracts or orders to promote the national defense over other contracts or orders with respect to health resources. This final rule also sets new standards and procedures by which HHS may allocate materials, services, and facilities to promote the national defense. This rule finalizes the regulations as proposed in the Notice of Proposed Rule Making (NPRM) of August 16, 2023, with minor technical edits based on comments received.

DATES: This rule is effective March 11, 2024.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, telephone at (202) 260–0365 or via email at *aspr.dpa@hhs.gov.*

SUPPLEMENTARY INFORMATION: This final rule implements HHS' administration of priorities and allocations actions with respect to health resources and establishes the Health Resources Priorities and Allocations System (HRPAS). The HRPAS covers health resources pursuant to the authority under section 101(a) of the Defense Production Act (DPA) of 1950 as delegated to the Secretary of HHS (Secretary) by Executive Order (E.O.) 13603. On September 26, 2022, the Secretary delegated to the Assistant Secretary for Preparedness and Response (the ASPR) within the Administration for Strategic Preparedness and Response (ASPR), the authority under section 201 of E.O. 13603 to exercise priorities authority under section 101 of the DPA. This delegation authorized the ASPR, on behalf of the Secretary, to approve DO—[–[M1–M9] priority rating requests for health resources that promote the national defense. This delegation excludes the authority to approve all priorities provisions for health resources that require DX—[–[M1–M9] priority ratings. The Secretary retains all other authorities delegated by the President in E.O. 13603.

The HRPAS has two principal components: priorities and allocations. Under the priorities' component, the Secretary is authorized to place priority ratings on contracts or orders for health resources to support programs which have been determined by the Department of Defense, Department of Energy, or Department of Homeland Security as necessary or appropriate to promote the national defense in accordance with section 202 of E.O. 13603. Through the HRPAS rule, HHS may also respond to requests to place priority ratings on contracts or orders (requiring priority performance of contracts or orders) for health resources, as specified in the DPA, if the necessity arises. Under the priorities' component, certain contracts or orders between the government and private parties or between private parties for the production or delivery of health resources are required to be prioritized over other contracts or orders to facilitate expedited production or delivery in promotion of the U.S. national defense. The Secretary retains the authority for allocations. Under the allocations' component, materials, services, and facilities may be allocated to promote the national defense. Such requests must be determined as necessary or appropriate to promote the national defense in accordance with section 202 of E.O. 13603. For both components, the term ''national defense'' is defined in section 801(j) of E.O. 13603 as ''programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity.'' The term also includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and critical infrastructure protection and restoration. See E.O. 13603, section 801(j). Other authorities delegated to the Secretary in E.O. 13603, but not covered by this regulation may be re-delegated by the Secretary.

I. Background

HHS published an interim final rule in the **Federal Register** at 80 FR 42408 on July 17, 2015, to comply with the Part II—Priorities and Allocations, Sec 201(b) of E.O. 13603, dated March 16, 2012, and section 101(d) of the DPA, 50 U.S.C. 4511(d), and received no public comments. Based on the signficant amount of time between the publication of the interim final rule in 2015, HHS published, on August 16, 2023, a NPRM in the **Federal Register** at 88 FR 55613 to allow for comments based on HHS utilizing DPA authorities and the HRPAS to respond to COVID–19 Public Health Emergency (PHE) from 2020 to 2023 and the infant formula shortage in 2022.

II. Discussion and Analysis

HRPAS is a program established in accordance with the DPA and E.O. 13603 that supports national defense needs (for health resources), including emergency preparedness initiatives, by addressing essential civilian needs through the placing of priority ratings on contracts and orders for items and services or allocating resources, as necessary. Although a specific Presidential disaster declaration is not required, the ability to prioritize or allocate items or services requires a determination be made in accordance with section 202 of E.O. 13603, (except as provided in section 201(e) for use of the allocations authority) that the program or programs are necessary or appropriate to promote national defense, including emergency preparedness. The HRPAS outlines several conditions that must be met in order for HHS to undertake an allocation order, which include a finding, when necessary, under section 101(b) of the DPA that such a material is a scarce and critical material essential to the national defense and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship. The President must approve the finding, in accordance with section 201(e) of E.O. 13603, before the Secretary may use the allocation authority. Under section 702(14) of the DPA (50 U.S.C. 4552(14)), the term ''national defense'' includes emergency preparedness activities conducted pursuant to the Stafford Act, and critical infrastructure protection and restoration. Authority for priorities and allocations is specified in the DPA and further defined in E.O. 13603, ''National Defense Resources Preparedness,'' dated March 16, 2012. E.O. 13603 replaced E.O. 12919 and further defined jurisdictional areas and national defense preparedness roles and responsibilities for specific agencies. E.O. 13603 did not change the intent of the DPA as it applies to HHS' functions in national defense, including emergency preparedness.

Jurisdiction

E.O. 13603 authorizes jurisdictional areas for each agency delegated title I authority under the DPA that is involved in national defense, including emergency preparedness. HHS has jurisdiction for items that fall under the category of health resources which is defined in E.O. 13603 as ''drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate, or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.'' HHS cannot use its DPA authority for items or services not in its jurisdiction. Those entities in need of items or services that do not fall under the jurisdiction of HHS

should request priorities assistance from the applicable resource department. HHS will direct the requesters to the appropriate resource agency if the request comes to HHS. HHS intends to work with other resource agencies to address instances where HHS does not have jurisdiction—or where jurisdiction may be overlapping or ambiguous—for items necessary to complete the order. HHS intends to work with the other resource agencies to request prioritization of contracts or orders for other items or services necessary for use in support of programs approved for use by HHS (see next section).

HRPAS Approved Programs

On November 2, 2023, the Department of Homeland Security approved four programs to be eligible for priorities and allocations support in accordance with Section 202 of Executive Order 13603. These programs are listed in Appendix 1.

III. DPA Priorities and Allocations System Authority

The Defense Production Act Reauthorization (DPAR) of 2009 required that HHS, and all other agencies that previously have been delegated priorities and allocations authority under E.O. 13603, publish regulations providing standards and procedures for prioritization of contracts and orders and for allocation of materials, services, and facilities to promote the national defense under both emergency and nonemergency conditions. HHS' regulation, along with regulations promulgated by other agencies, are part of the Federal Priorities and Allocations System (FPAS).

On October 1, 2018, Congress amended the DPA through the John S. McCain National Defense Authorization Act (Pub. L. 115–232) which extended non-permanent provisions through September 30, 2025. Section 101(d) of the DPA, as amended, directs all agencies to which the President has delegated priorities and allocations authority under E.O. 13603 to publish final rules establishing standards and procedures by which that authority will be used to promote the national defense in both emergency and non-emergency situations. The DPAR also required all such agencies to consult with the heads of other Federal agencies as appropriate and to the extent practicable to develop a consistent and unified FPAS. This rulemaking is one of several rules published to implement section 101 of the DPA. The rules of the agencies with such authorities, which are the Departments of Commerce, Energy, Transportation, Health and Human Services, Homeland Security, Defense, and Agriculture, comprise the FPAS. HHS is publishing this NPRM rule in compliance with section 101(d) of the DPA. HHS' HRPAS provisions are consistent with the FPAS regulations issued by other agencies to the extent practicable.

The HRPAS, as part of the FPAS, has two principal components: priorities and allocations. Under the priorities component, contracts and orders between the government and private parties or between private parties for the production or delivery of health resources are required to be given priority over other contracts to facilitate expedited production and delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term ''national defense'' is defined broadly and includes emergency preparedness activities conducted pursuant to title VI of the Stafford Act and critical infrastructure protection and restoration priorities authorities. Priorities, allocations, and other authorities delegated to the Secretary in E.O. 13603, but not covered by this regulation may be re-delegated by the Secretary. The Secretary delegated the authority for DO priority ratings to the ASPR. The Secretary retains the authority for DX priority ratings and for allocations.

IV. Summary of Significant Changes From the 2015 Interim Final Rule to the 2023 NPRM

a. HHS' interim final rule had a 60-day comment period that ended on September 15, 2015. HHS received no comments on the interim Final Rule. HHS has made minor revisions to its interim final rule based on the use of these authorities to response to the COVID–19 PHE, the infant formula shortage, and deliberations with interagency partners. These changes were reflected in the NPRM (88 FR 55613: 08/16/2023).

(1) Section 101.1, Purpose, was revised to add livestock resources, veterinary resources, and plant health resources.

(2) Section 101.20, Definitions, was revised to include a new definition of priority rating and program identification symbol and add a definition of ''working day.''

(3) Section 101.30, Delegation of Authority, was revised to include the delegation of DO priority rating authority of the DPA, and section 201 of E.O. 13603, from the Secretary of HHS to the Assistant Secretary for Preparedness and Response (the ASPR).

(4) Section 101.63, Letters and Memoranda of Understanding was revised to delete references to Memoranda.

b. Analysis of Other Technical Edits: Several editorial changes were made to the rule and are summarized below.

(1) Placement of Rated Orders

(a) Section 101.33. The acceptance and rejection times for rated orders are revised. The preamble section of the interim final rule was inconsistent with the provisions in §§ 101.32 and 101.33 with respect to the time limits for acceptance and rejection of rated orders. Most rated orders will continue to require acceptance or rejection within 10 or 15 working days depending on the type of rating. Rated orders placed in support of emergency preparedness requirements may require acceptance or rejection within a shorter timeframe that is specified in the rated order. The minimum times for acceptance or rejection that such orders may specify are six business (6) hours for emergencies that have occurred, or 12 business hours if needed to prepare for an imminent hazard. Also, ''time limit in'' has been changed to ''minimum times,'' which is the correct terminology.

(b) Section 101.33(d)(2). Customer notification requirements require persons who have accepted a rated order to give notice if performance will be delayed. The time limit to provide written confirmation of a verbal notice is five (working) days; the time limit is revised to one (1) working day to provide written confirmation of a verbal notice. HHS believes that the nature of rated orders supporting national defense requirements justifies expeditious communications and that once a verbal notice of delayed performance has been given, putting that notice into writing should not take more than one working day.

(2) Allocation Actions

Sections 101.51 and 101.51(a) are revised to conform with language in the other FPAS regulations and comply with the requirement in section 101(d)(2) of the DPA for the regulations to be consistent and unified.

Section 101.53 is revised 101.53 to change ''is requiring'' to ''as established.'' The rationale for this change is that ''is requiring'' implies that the allocations process is a constant obligation.

(3) Elements of an Allocation Order

(a). Section 101.54(c) is revised to include a new element to be included in an allocation order that gives constructive notice through publication in the **Federal Register**.

(4) Official Actions

(a) Section 101.63. ''Memorandums of Understanding'' (MOUs) are universally known in the Federal Government as an agreement between agencies/parties, sometimes completed under the Economy Act, and the use of MOUs in implementing priorities authorities could cause confusion. Therefore, the terms ''Memorandum of Understanding'' or ''Memoranda of Understanding'' in § 101.63 and other sections in the interim rule are deleted.

(b) Section 101.1 Purpose

Section 101.1 revises the sentence regarding guidance and procedures for use of DPA authorities to include livestock, veterinary resources, plant health resources, and all forms of energy. In addition, HHS deleted reference to 32 CFR part 555, referring to priorities and allocations for water resources.

(c) Section 101.3 Program Eligibility

Section 101.3 is revised to delete ''deployment and sustainment of military forces,'' to track with section 702(14) of the DPA.

(d) Section 101.20 Definitions

(1) Revise definition of ''National defense'' to delete ''health'' and add ''energy'' to track definition of ''national defense'' in section 702(14) of the DPA.

(2) Delete sentence stating, ''Natural resources such as oil and gas,'' from the definition of ''Materials.''

(3) Revise the definition of ''person.''

(4) Revise the definition of ''priority rating.''

(5) Add a definition for ''Working day.''

e. Section 101.30 Delegations of Authority

Revised to change ''priority rating activities'' to ''priorities authorities'' to track E.O. 13603.

f. Section 101.31 Priority Ratings

(1) Paragraph (a)(1), Levels of priority is revised to change ''Federal'' to ''Health Resources'' because agency regulations establish priority levels.

g. Section 101.32 Elements of a Rated Order

(2) Paragraph (d)(2)(i). The preamble discussion of § 101.33 is revised to correct the 2-day time frame for acceptance or rejection of rated orders for emergency preparedness to be consistent with §§ 101.32 and 101.33.

h. Section 101.33 Acceptance and Rejection of Rated Orders

Paragraph (e). The discussion of § 101.33 of the preamble of the interim final rule is inconsistent with the 2-working daytime frame for acceptance or rejection of rated orders in § 101.33. The preamble is revised to correct this inconsistency.

i. Section 101.37 Use of Rated Orders

(1) Paragraph (a)(4) ''Facilities needed to produce rated orders, and'' is deleted because ''facilities'' are considered an industrial resource and not eligible for priorities and allocations under the HHS-administered HRPAS regulation.

j. Section 101.38 Limitations on Placing Rated Orders

(1) Paragraph (b)(1). Revising paragraph (b)(1) to insert ''livestock resources, veterinary resources, and plant health resources,'' to track E.O. 13603.

(2) Paragraph (b)(2). Revising paragraph (b)(2) to add ''All forms of energy'' in lieu of ''Energy supplies,'' to track E.O. 13603.

(3) Paragraph (b)(5). (3) Paragraph (b)(5). Adding a paragraph clarifying Department of Commerce's resource jurisdiction over ''industrial resources.''

(4) Paragraph (b)(6). Changing former paragraph (b)(5) (now paragraph (b)(6)) to clarify that HRPAS priorities and allocations authority may not be applied to communication services as the ''resource judication.''

k. Section 101.40 General Provisions

Paragraph (a). Revised the introductory sentence of paragraph (a). The rationale for this change is once a rating is authorized, in most instances, no further action is required by HHS.

l. Section 101.60 General Provisions

Paragraph (b). Revising paragraph (b) to replace ''Memoranda'' of Understanding with ''Letters.''

m. Section 101.62 Directives

Paragraph (d). Deleting paragraph (d) relating to an Allocation Directive, as it was deleted in the Department of Commerce's final rule.

n. Section 101.63 Letters and Memoranda of Understanding

Revising § 101.63 to delete ''and Memoranda'' in paragraphs (a) and (b).

o. Section 101.74 Violations, Penalties, and Remedies

Paragraph (a). Deleted language specific to the Selective Service Act and related statutes because HHS has not been delegated authority under the Selective Service Act, and the sentence, as well as the reference to the Selective Service Act earlier in this paragraph, have been deleted.

p. Appendix 1 includes four approved programs that are eligible for priorities and allocations support in accordance with Section 202 of Executive Order 13603. These programs are listed in Appendix 1.

V. Summary of Public Comments to the HRPAS NPRM

Based on the signficant amount of time since the publication of the interim final rule in 2015, HHS published, on August 16, 2023, a NPRM in the **Federal Register** (88 FR 55613) to allow for comments based on HHS utilizing DPA and HRPAS authorities in response to COVID–19 and the infant formula shortage in 2022. The comment period for the NPRM closed on September 15, 2023. During the 30-day comment period, HHS received two comments on the HRPAS NPRM. One comment, from a private citizen, was generally supportive of the regulation and primarily requested clarification and identified minor technical errors that have been addressed in this final rule. The second comment was from a coalition advocating on behalf of their stakeholders. This second comment was not specific to the HRPAS or DPA authorities and no edits were required to the HRPAS final rule.

HHS considered all comments received on the NPRM and, based on the comments received, HHS has made minor technical changes from the NPRM (88 FR 55613) to include the following revisions in this final rule:

- In IV of the Preamble, § 101.54(e) is revised to reference § 101.54(c)
- In IV of the Preamble, ''State, local, or Tribal governments'' is revised to reference ''State, Local, Tribal, or Territorial governments.''
- In IV of the Preamble, ''commodities of products'' is revised to read ''commodities or products'' and § 101.20 was revised, consistent with this change.
- Section 101.32(a)(4) is revised to reference § 101.32(a)(4)(a) and (b).
- Section 101.33(c) is revised to reference § 101.32(a)(4)(b).
- Section 101.37(d)(1)(ii) is revised to reference § 101.32(a)(4).

• Section 101.43 is revised to delete reference to ''the Department of Commerce for industrial resources.''

VI. Regulatory Analysis

A. Review Under E.O. 12866, E.O. 13563, and E.O. 14094

(1) Executive Orders 12866 (''Regulatory Planning and Review''), 13563 (''Improving Regulation and Regulatory Review''), and 14094 (''Modernizing Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Under E.O. 12866, ''significant'' regulatory actions are subject to review by OMB. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review). This final rule has been drafted and reviewed in accordance with these Executive Orders. This rule has been designated a ''significant regulatory action'' by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs, under section 3(f) of E.O. 12866.

(2) This final rule adopts the interim final rule (IFR) that established standards and procedures by which HHS may require certain contracts or orders that promote the national defense be given priority over other contracts or orders and setting new standards and procedures by which HHS may allocate materials, services, and facilities to promote the national defense under emergency and non-emergency conditions pursuant to section 101 of the DPA of 1950, as amended. Accordingly, relative to a post-IFR baseline, this final rule has limited economic impact.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. HHS reviewed this final rule under the provisions of the Regulatory Flexibility Act and has determined that this rulemaking, if promulgated, will not have a significant impact on a substantial number of small entities.

(1) Number of Small Entities

(a) Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (January 2022 Edition), has a maximum annual revenue of $33.5 million and a maximum of 1,500 employees (for some business categories, these numbers are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

(b) This rulemaking sets criteria under which HHS (or agencies to which HHS delegates HHS' DPA authority to issue rated orders) will authorize prioritization of certain contracts or orders for health resources as well as criteria under which HHS will issue orders allocating materials, services, and facilities. Because the rulemaking affects specific commercial transactions, HHS believes that small non-profit organizations and small governmental jurisdictions are unlikely to be directly affected by this rulemaking.

(c) Prior to the COVID–19 PHE, HHS had minimally exercised its prioritization authority for contracts and orders and had not exercised its allocation authorities. To date, HHS has exercised title I priorities authorities approximately 70 times in responding to the COVID–19 PHE to prioritize contracts thus ensuring rapid industrial mobilization for critical health resources (*e.g.,* N95 facemasks, vaccines, therapeutics, and diagnostics) to meet urgent emergency preparedness and response requirements. In response to the initial wave of the COVID–19 pandemic, HHS leveraged its allocations authority, in conjunction with a DX rated order, to re-distribute N–95 facemasks that were seized by the U.S. Customs and Border Protection. Several health resource materials have been identified as essential in responding to the COVID–19 pandemic and these items, such as personal protective equipment (PPE), ventilators, medical countermeasures, and ancillary supplies are in high demand. Therefore, a priority rating was necessary to provide the quantities of these health resources within a specified timeframe to respond to the COVID–19 pandemic. Additionally, in response to the infant formula shortage, HHS issued three priority rated orders to help ensure timely delivery of key ingredients to infant formula manufacturers.

(2) Impact

(a) The final rule has two principal components: prioritization and allocation. Under prioritization, HHS, or its Delegate Agency, designates certain orders as one of two possible priority levels. Once so designated, such orders are referred to as ''rated orders.'' The recipient of a rated order must give it priority over an unrated order or an order with a lower priority rating as necessary to meet the delivery requirement of the rated order. A recipient of a rated order must place orders at the same priority level with suppliers and subcontractors for supplies and services necessary to fulfill the recipient's rated order. The suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rulemaking does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rulemaking provides protection against claims for actions taken in, or inactions required for, compliance with the rulemaking.

(b) Although rated orders could require a firm to fill one order prior to filling another, they will not necessarily require a reduction in the total volume of orders. The regulations also do not require the recipient of a rated order to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be mutually offsetting, resulting in no net economic impact.

(c) Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that HHS might take are as follows:

1. *Set-aside:* an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of receipt of rated orders.

2. *Directive:* an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. A directive can require a person to stop or reduce production of an item; prohibit the use of selected materials, services, or

facilities; or divert the use of materials, services, or facilities from one purpose to another.

3. *Allotment:* an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

(d) In response to the COVID–19 PHE, HHS leveraged its allocations authority, in conjunction with a DX rated order to re-distribute N–95 facemasks that were seized by the U.S. Customs and Border Protection. As required by section 101(a)(2) of the DPA and by section 201(a)(3) of E.O. 13603, HHS may implement allocations only if the materials, services, and facilities are deemed necessary or appropriate to promote the national defense. ''National defense'' covers programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any related activity. Such terms include emergency preparedness activities conducted pursuant to title VI of the Stafford Act and critical infrastructure protection and restoration.

(e) Any allocation actions taken by HHS must assure that small business concerns shall be accorded, to the extent practicable, a fair share of the materials or services covered by the allocation action, in proportion to the share received by small business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns. 50 U.S.C. 4551(e).

Conclusion

(f) Although HHS cannot precisely determine the number of small entities that will be affected by this rulemaking, HHS believes that the overall impact on such entities will not be significant. In most instances, rated contracts or orders will be fulfilled in addition to other (unrated) contracts or orders and, in some instances might actually increase the total amount of business of the firm that receives a rated contract or order.

(g) Because allocations can be imposed only after a finding required under section 101(b) of the DPA, and approved by the President in accordance with section 201(e) of E.O. 13603, that such material is a scarce and critical material essential to the national defense and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship, and because HHS has only used its allocations authority one time in response to the initial wave of COVID–19, one can expect allocations will be ordered only in rare and unique circumstances. Any allocation actions would also have to comply with section 701(e) of DPA (50 U.S.C. 4551(e)), which provides that small business concerns be accorded, to the extent practicable, a fair share of the material, including services, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns.

Therefore, HHS believes that the requirement for a finding under section 101(b) of the DPA, and approved by the President in accordance with section 201(e) of E.O. 13603, that such a material is a scarce and critical material essential to the national defense and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship and the provisions of section 701 of the DPA indicate that any impact on small business will not be significant.

(h) For the reasons set forth above, the Secretary of HHS certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and it displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

In accordance with the PRA, the Department has submitted one new Information Collection Request (ICR) to OMB in concert with the publishing of this final rule.

D. Review Under E.O. 13132

HHS reviewed this proposed rule pursuant to E.O. 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. HHS determined that the rulemaking 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.

E. Review Under Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, Local, Tribal, or Territorial governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any one year for State, Local, Tribal, or Territorial governments, in the aggregate, or to the private sector. This rule contains no Federal mandates as defined by title II of UMRA for State, Local, Tribal, or Territorial governments or for the private sector; therefore, this rule is not subject to the requirements of sections 202 and 205 of Unfunded Mandate Reform Act.

F. Approval of the Office of the Secretary

The Secretary of Health and Human Services has approved publication of this final rule.

List of Subjects in 45 CFR Part 101

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

■ For the reasons stated in the preamble, HHS is revising part 101 of title 45 of the Code of Federal Regulations as follows:

PART 101—HEALTH RESOURCES PRIORITIES AND ALLOCATIONS SYSTEM (HRPAS)

Sec.

Authority: Defense Production Act of 1950, as amended (50 U.S.C. 4501, *et seq.*), and Executive Order 13603 (77 FR 16651, 3 CFR, March 16, 2012).

Subpart A—General

§ 101.1 Purpose.

This part provides guidance and procedures for use of Defense Production Act (DPA) of 1950 section 101 priorities and allocations authority with respect to health resources necessary or appropriate to promote the national defense. The guidance and procedures in this part are consistent with the guidance and procedures provided in other regulations that form the Federal Priorities and Allocations System (FPAS). Guidance and procedures for use of the DPA priorities and allocations authority with respect to other types of resources are provided for: food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer in 7 CFR part 789; all forms of energy in 10 CFR part 217; all forms of civil transportation in 49 CFR part 33; and all other materials, services, and facilities, including construction materials in 15 CFR part 700.

§ 101.2 Priorities and allocations authority.

(a) Section 201 of Executive Order (E.O.) 13603, delegates the President's priorities and allocations authority under section 101 of the DPA. Section 101 of the DPA provides the President with authority to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense to a number of agencies. Section 201 of E.O. 13603 delegates the President's authority to specific agencies as follows:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) Section 202 of E.O. 13603 states that the authority delegated in section 201, except as provided in section 201(e) of E.O. 13603, may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(1) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by the Department of Defense, space, and directly related activities.

(2) By the Secretary of Energy with respect to energy production and construction, distribution, and use, and directly related activities; and

(3) By the Secretary of Homeland Security with respect to all other national defense programs, including civil defense and continuity of Government.

(c) Section 201(e) of E.O. 13603 provides that each department that is delegated allocations authority under section 201(a) of E.O. 13603 may use this authority with respect to control of the general distribution of any material (including applicable services) in the civilian market only after:

(1) Making the finding required under section 101(b) of the DPA; and

(2) The finding has been approved by the President.

§ 101.3 Program eligibility.

Certain programs to promote the national defense are approved for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), and critical infrastructure protection and restoration.

Subpart B—Definitions

§ 101.20 Definitions.

The following definitions pertain to all sections of this part:

Allocation means the control of the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allocation order means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or

appropriate to promote the national defense.

Allotment means an official action that specifies the maximum quantity or use of a material, service, or facility authorized for a specific use to promote the national defense.

Approved program means a program determined by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security to be necessary or appropriate to promote the national defense, under the authority of the Defense Production Act and in accordance with section 202 of E.O. 13603.

Construction means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Defense Production Act or *DPA* means the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*).

Delegate agency means a Federal Government agency authorized by delegation from the Department of Health and Human Services (HHS) to place priority ratings on contracts or orders needed to support approved programs.

Directive means an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

Emergency preparedness means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. ''Emergency Preparedness'' includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for firefighting; rescue; emergency medical, health and sanitation services; monitoring for specific dangers of special weapons; unexploded bomb reconnaissance; essential debris clearance; emergency welfare measures; and immediately essential emergency repair or restoration of damaged vital facilities).

Facilities includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

Farm equipment means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

Fertilizer means any product or combination of products that contain one or more of the elements nitrogen, phosphorous, and potassium for use as a plant nutrient.

Food resources means all commodities and products, (simple, mixed, or compound), or complements to such commodities or products, that are capable of being ingested by other human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. ''Food resources'' also means potable water packaged in commercially marketable containers, all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agriculture product.

Food resource facilities means plants, machinery, vehicles (including on farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

Hazard means an emergency or disaster resulting from:

(1) A natural disaster; or

(2) An accidental or man-caused event.

Health resources means drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate, or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

Homeland Security includes efforts—

(1) To prevent terrorist attacks within the United States;

(2) To reduce the vulnerability of the United States to terrorism;

(3) To minimize damage from a terrorist attack in the United States; and

(4) To recover from a terrorist attack in the United States.

Industrial resource means all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under E.O. 13603. The term ''Industrial resource'' does not include food resources, food resource facilities, livestock resources, veterinary resources, and the domestic distribution of farm equipment and commercial fertilizer; all forms of energy; health resources; all forms of civil transportation; and water resources.

Item means any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and Repair and/or Operating Supplies (*MRO*) includes the following—

(1) ''*Maintenance*'' is the upkeep necessary to continue any plant, facility, or equipment in working condition;

(2) ''*Repair*'' is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts;

(3) ''*Operating Supplies*'' are any resources carried as operating supplies according to a person's established accounting practice. ''Operating Supplies'' may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals, and other expendable items; and

(4) *MRO* does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another

person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

Materials includes—

(1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

National defense means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) and critical infrastructure protection and restoration.

Official action means an action taken by HHS under the authority of the DPA, E.O. 13603, and this part or another regulation under the FPAS. Such actions include the issuance of Rating Authorizations, Directives, Set Asides, Allotments, Letters of Understanding, and Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

Person includes any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any State or local government or agency thereof; and for purposes of administration of this part, includes the Federal Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part.

Priority rating is an identifying code assigned by HHS, a Delegate Agency or authorized person placed on all rated orders for health resources and consisting of the rating symbol and program identification symbol.

Program Identification Symbols is an abbreviation used to indicate which approved program is supported by a rated order.

Rated order means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

Resource department means any agency delegated priorities and allocations authority as specified in § 101.2.

Secretary means the Secretary of HHS.

Services includes any effort that is needed for or incidental to—

(1) The development, production, processing, distribution, delivery, or use of a health resource.

(2) The construction of facilities.

(3) Other national defense programs and activities.

Set-aside means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Stafford Act means title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

Water resources means all usable water, from all sources, within the jurisdiction of the United States, that can be managed, controlled, and allocated to meet emergency requirements, except ''water resources'' do not include usable water that qualifies as ''food resources''.

Working day means any day that the recipient of an order is open for business.

Subpart C—Placement of Rated Orders

§ 101.30 Delegations of authority.

(a) The priorities and allocations authorities of the President under section 101 of the DPA with respect to health resources have been delegated to the Secretary under E.O. 13603. The Secretary may re-delegate the Secretary's priorities authorities under the DPA to authorize a Delegate Agency to assign priority ratings to orders for health resources needed for use in approved programs.

(b) Pursuant to 87 FR 58363 published in the **Federal Register** on September 26, 2022, the Secretary delegated to the Assistant Secretary for Preparedness and Response (the ASPR) within the Administration for Strategic Preparedness and Response (ASPR), the authority under section 201 of E.O. 13603 to exercise priorities authority under section 101 of the DPA. This delegation authorized the ASPR, on behalf of the Secretary, to approve DO—[–[M1–M9] priority rating requests for health resources that promote the national defense, though this delegation excludes the authority to approve all priorities provisions for health resources that require DX—[–[M1–M9] priority ratings.

§ 101.31 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority established by the HRPAS, identified by the rating symbols ''DO'' and ''DX''.

(2) All DO rated orders have equal priority with each other and take precedence over unrated orders. All DX rated orders have equal priority with each other and take precedence over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 101.34(c).

(3) In addition, a Directive regarding priority treatment for a given item issued by HHS for that item takes precedence over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 101.62.)

(b) *Priority ratings.* A priority rating is an identifying code assigned by a Delegate Agency or authorized person placed on all rated orders for health resources. It consists of the rating symbol and the program identification symbol.

§ 101.32 Elements of a rated order.

(a) Each rated order must include:

(1) The appropriate priority rating (*e.g.,* DO–[M1–M9 or DX—[–[M1–M9];

(2) A required delivery date or dates. The words ''immediately'' or ''as soon as possible'' do not constitute a delivery date. A ''requirements contract,'' ''basic ordering agreement,'' ''prime vendor contract,'' or similar procurement document bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items or service from time-to-time or within a stated period against specific purchase orders, such as ''calls,'' ''requisitions,'' and ''delivery orders.'' These purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(4) A statement that reads in substance:

(b) This is a rated order certified for national defense use, and you are required to follow all the provisions of the Health Resources Priorities and Allocations System regulation at 45 CFR part 101.

(c) Additional element required for certain emergency preparedness rated orders. If the rated order is placed in support of emergency preparedness requirements and expedited action is necessary and appropriate to meet these requirements, the following statement must be included in the order: ''This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within [Insert a time limit no less than the minimum applicable time limit specified in § 101.33(e)].''

§ 101.33 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by HHS for a rated order involving health resources:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all of the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by HHS for a rated order involving health resources, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not capable of being performed;

(3) If the order is for an item or service produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items or provided similar services, the supplier is obligated to accept rated orders up to that quantity or portion of production or service, whichever is greater, sold or provided within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the HHS issued under the authority of the DPA or another relevant statute.

(d) *Customer notification requirements.* (1) Except as provided in paragraph (e) of this section, a person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO-rated order and within ten (10) working days after receipt of a DX-rated order. If the order is rejected, the person must give reasons in writing or electronically for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written (hard copy) or electronic confirmation must be provided within one (1) working day of the verbal notice.

(e) *Exception for emergency response conditions.* If the rated order is placed for the purpose of emergency preparedness, and expedited action is necessary or appropriate to meet these requirements and the order includes the statement as set forth in § 101.32(a)(4)(b), a person must accept or reject a rated order and transmit the acceptance or rejection in writing or in an electronic format within the time frame specified in the rated order (usually within two working days after receipt of the order). The minimum times for acceptance or rejection that such orders may specify are six (6) hours after receipt if the order is issued by an authorized person in response to a hazard that has occurred; or twelve (12) hours after receipt if the order is issued by an authorized person to prepare for an imminent hazard.

§ 101.34 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items or services, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary, to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery or services being performed against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders. (Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order. However, if business operations cannot be altered to meet both the June 2 and July 15 delivery dates, then the DX rated order must be given priority over the DO rated order.)

(c)(1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give precedence to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting orders are scheduled to be delivered or performed on the same day, the person shall give precedence to those orders that have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in §§ 101.40 through 101.44. If the person's customer objects to the rescheduling of delivery

or performance of a rated order, the customer should promptly seek special priorities assistance as provided in §§ 101.40 through 101.44. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 101.33(d)(2).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 101.37(b).

§ 101.35 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items or services needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by HHS.

(b) The priority rating must be included on each successive order placed to obtain items or services needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 101.36 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or canceled by:

(1) An official action of HHS; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended to make it a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 101.33.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design (prior to the start of production); or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items or services to fill a rated order, any rated orders placed with suppliers for the items or services, or the priority rating on those orders, must be canceled.

(f) When a priority rating is added to an unrated order, or is changed or canceled, all suppliers must be promptly notified in writing.

§ 101.37 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed or converted into scrap or by-products in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders;

(4) MRO needed to produce the finished items to fill rated orders.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined.

(c) A person may combine DX and DO rated orders from one customer or several customers if the items or services covered by each level of priority are identified separately and clearly.

(d) Combining rated and unrated orders.

(1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 101.32, are included on the order with the statement required in § 101.32(a)(4) modified to read in substance: ''This purchase order contains rated order quantities certified for national defense use, and you are required to follow all applicable provisions of the Health Resources Priorities and Allocations System regulations at 45 CFR part 101 only as it pertains to the rated quantities''.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 101.33 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to require preferential treatment for the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 101.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than one-half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (see 48 CFR 2.101) or in other authorized acquisition regulatory or management systems) whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 101.38 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order pursuant to this part unless the person in receipt of the rated order has been explicitly authorized to do so by HHS or a Delegate Agency or is otherwise permitted to do so by this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item or services than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items or services in advance of the receipt of a rated order, except as specifically authorized by HHS (see § 101.41(c) for information on obtaining authorization for a priority rating in advance of a rated order);

(iv) Items that are not needed to fill a rated order, except as specifically authorized by HHS, or as otherwise permitted by this part; or

(v) Any of the following items unless specific priority rating authority has been obtained from HHS, a Delegate Agency, or the Department of Commerce, as appropriate:

(A) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a

construction project covered by a rated order; or

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see § 101.41.]

(C) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons unless such development or production has been authorized by the President or the Secretary of Defense. This provision does not however prohibit the use of the priority and allocations authority to acquire or produce qualified countermeasures that are necessary to treat, identify, or prevent harm from any biological or chemical agent that may pose a public health threat affecting national security.

(b) *Jurisdictional limitations.* Unless authorized by the resource agency with jurisdiction, the provisions of this part are not applicable to the following resources:

(1) Food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer (Resource agency with jurisdiction—Department of Agriculture);

(2) All forms of energy (Resource agency with jurisdiction—Department of Energy);

(3) All forms of civil transportation (Resource agency with jurisdiction—Department of Transportation);

(4) Water resources (Resource agency with jurisdiction—Department of Defense/U.S. Army Corps of Engineers);

(5) All materials, services, and facilities, including construction materials (industrial resources) for which the authority has not been delegated to other agencies under E.O. 13603 (Resource agency with jurisdiction—Department of Commerce);

(6) The priorities and allocations authority of this part may not be applied to communications services (Resource agency with jurisdiction—National Communications System under E.O. 13618 of July 6, 2012).

Subpart D—Special Priorities Assistance

§ 101.40 General provisions.

(a) Once a priority rating has been authorized pursuant to this part, further action by HHS is generally not needed. However, from time-to-time, production or delivery problems will arise in connection with rated orders for health resources as covered under this part. In this event, a person should immediately contact ASPR for guidance, as specified in § 101.93. ASPR serves as the lead policy office for emergency preparedness and response operations on behalf of HHS and manages the Department's delegated DPA authorities. If ASPR is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, ASPR may forward the request to another agency with resource jurisdiction, such as the Department of Commerce, as appropriate, for action. Special priorities assistance is provided to alleviate problems that do arise.

(b) Special priorities assistance is available for any reason consistent with this part. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

§ 101.41 Requests for priority rating authority.

(a) *Rating authority for items or services not normally rated.* If a rated order is likely to be delayed because a person is unable to obtain items or services not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items or services.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must be submitted to the U.S. Department of Commerce on Form BIS–999.

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases, and upon specific request HHS may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance-rating authority must obtain sponsorship of the request from HHS or the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders in the event the rated prime contract is not issued.

(2) The person must state the following in the request: It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from the Department of Health and Human Services (HHS) and our use of that priority rating with our suppliers in no way commits HHS or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, HHS will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The time period for which the rating is being requested;

(4) HHS may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 101.42 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this part, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item or service needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 101.43 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.,* the request has been submitted promptly and enough time exists for HHS, or the Delegate Agency to affect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 101.44 Instances where assistance may not be provided.

Special priorities assistance is provided at the discretion of HHS or the Delegate Agency when it is determined that such assistance is warranted to meet the objectives of this part. Examples where assistance may not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

Subpart E—Allocation Actions

§ 101.50 Policy.

(a) Allocation orders will:

(1) Only be used when there is insufficient supply of a material, service, or facility to satisfy national defense supply requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

§ 101.51 General procedures.

Before the Department of Health and Human Services uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination made in accordance with section 202 of Executive Order 13603, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense.

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

(e) A list of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (*i.e.,* anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

§ 101.52 Controlling the general distribution of a material in the civilian market.

No allocation action taken by HHS may be used to control the general distribution of a material in the civilian market, unless the Secretary has:

(a) Made a written finding that:

(1) Such material is a scarce and critical material essential to the national defense, and

(2) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship;

(b) Submitted the finding for the President's approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism; and

(c) The President has approved the finding.

§ 101.53 Types of allocation orders.

There are three types of allocation orders available for communicating allocation actions.

(a) *Set-aside.* An official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

(b) *Directive.* An official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. A directive can require a person to: Stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another; and

(c) *Allotment.* An official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

§ 101.54 Elements of an allocation order.

Allocation orders may be issued directly to the affected persons or by constructive notice through publication in the **Federal Register**. This section describes the elements that each order must include.

(a) Each allocation order must include:

(1) A detailed description of the required allocation action(s), including its relationship to any received DX rated orders, DO rated orders, and unrated orders;

(2) Specific start and end calendar dates for each required allocation action;

(3) The written signature on a manually placed order or the digital signature on an electronically placed order of the Secretary of HHS.

(b)(1) Elements to be included in orders issued directly to affected persons:

(2) A statement that reads in substance: ''This is an allocation order certified for national defense use. [Insert the name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Health Resources Priorities and Allocations System regulation (45 CFR part 101);

(c)(1) Elements to be included in an allocation order that gives constructive notice through publication in the **Federal Register***:*

(2) A statement that reads in substance: ''This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Health Resources Priorities and Allocations System regulation (45 CFR part 101).

§ 101.55 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section (see paragraph (c) of this section), a person shall accept and comply with every allocation order received.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person's terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the ASPR, as specified in § 101.93, immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, then written or electronic confirmation must be provided within one (1) working day. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by HHS that the order has been changed or cancelled.

§ 101.56 Changes or cancellations of an allocation order.

An allocation order may be changed or canceled by an official action of HHS. Notice of such changes or cancellations may be provided directly to persons to whom the order being cancelled or modified applies or constructive notice may be provided by publication in the **Federal Register**.

Subpart F—Official Actions

§ 101.60 General provisions.

(a) HHS may take specific official actions to implement the provisions of this part.

(b) These official actions include, but are not limited to, Rating Authorizations, Directives, and Letters of Understanding (See § 101.20.)

§ 101.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item or service not normally ratable under this part; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 101.41.

§ 101.62 Directives.

(a) A Directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) A Directive takes precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§ 101.63 Letters of Understanding.

(a) A Letter of Understanding is an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties including HHS, the Department of Commerce (if applicable), a Delegate Agency (if applicable), the supplier, and the customer.

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this part. Rather, Letters of Understanding are used to confirm production or shipping schedules that do not require modifications to other rated orders.

Subpart G—Compliance

§ 101.70 General provisions.

(a) HHS may take specific official actions for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or an official action. Such actions include Administrative Subpoenas, Demands for Information, and Inspection Authorizations.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of the provisions of title I or section 705 of the DPA and other applicable statutes, this part, or an official action of HHS is a criminal act, punishable as provided in the DPA and other applicable statutes, and as set forth in § 101.74.

§ 101.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings, and information to ensure that the provisions of the DPA and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit or investigation, HHS shall:

(1) Define the scope and purpose in the official action given to the person under investigation; and

(2) Have ascertained that the information sought, or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, HHS may issue the following documents that constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by HHS to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the DPA and other applicable statutes, this part, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demands for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of HHS any information necessary or appropriate to the enforcement or the administration of the DPA and other applicable statutes, this part, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of HHS to interview the person's employees or agents, to inspect books, records, documents, other writings, and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the DPA and related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings, and information will not be required at any place other than where they are usually kept, if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of HHS is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a duly authorized representative of HHS may enter into a stipulation with a person as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization shall include the name, title, or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records,

documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail-Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years old at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

§ 101.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of HHS to have access to any premises or to the source of information necessary to the administration or the enforcement of the DPA and other applicable statutes, this part, or official actions, HHS, through its authorized representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including ex parte application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Secretary there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

§ 101.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, HHS may inform the person in writing of HHS' position regarding that person's non-compliance with the requirements of the DPA and other applicable statutes, this part, or an official action.

(b) In cases where HHS determines that failure to comply with the provisions of the DPA and other applicable statutes, this part, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the DPA and other applicable statutes, this part, or an official action.

§ 101.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of the DPA, and related statutes (when applicable), this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalties provided by the DPA are a $10,000 fine, or one year in prison, or both.

(b) The Government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the DPA, this part, or an official action.

(c) In order to secure the effective enforcement of the DPA and other applicable statutes, this part, and official actions, the following are prohibited:

(1) No person may solicit, influence, or permit another person to perform any act prohibited by, or to omit any act required by, the DPA and other applicable statutes, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the DPA and other applicable statutes, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the DPA and other applicable statutes, this part, or an official action. In such instances, the person must immediately notify HHS that, in accordance with this provision, delivery has not been made.

§ 101.75 Compliance conflicts.

If compliance with any provision of the DPA and other applicable statutes, this part, or an official action would prevent a person from filling a rated order or from complying with another provision of the DPA and other applicable statutes, this part, or an official action, the person must immediately notify HHS, as specified in § 101.93, for resolution of the conflict.

Subpart H—Adjustments, Exceptions, and Appeals

§ 101.80 Adjustments or exceptions.

(a) A person may submit a request to HHS for an adjustment or exception on the ground that:

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequences of following a provision of this part or an official action are contrary to the intent of the DPA and other applicable statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the request is being considered unless such interim relief is granted in writing by the Secretary or the Secretary's designated representative.

(d) A decision of the Secretary or the Secretary's designated representative under this section may be appealed to the Secretary. (For information on the appeal procedure, see § 101.81.)

§ 101.81 Appeals.

(a) Any person whose request for adjustment or exception was denied by the Secretary or the Secretary's designated representative under § 101.80, may appeal to the Secretary who, through the Secretary's designated representative, shall review and reconsider the denial.

(b)(1) Except as provided in paragraph (b)(2) of this section, an appeal must be received by the Secretary no later than 45 business days after receipt of a written notice of denial. After this 45-business day period, an appeal may be accepted at the discretion of the Secretary.

(2) For requests for adjustment or exception involving rated orders placed for the purpose of emergency

preparedness (see § 101.33(e)), an appeal must be received by the Secretary, no later than 15 business days after receipt of a written notice of denial. Contract performance under the order shall not be stayed pending resolution of the appeal.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Secretary or the Secretary's designated representative.

(e) When a hearing is granted, the Secretary may designate an HHS employee to act as the Secretary's representative and hearing officer to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Secretary may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to HHS or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the appeal is being considered unless such relief is granted in writing by the Secretary.

Subpart I—Miscellaneous Provisions

§ 101.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§ 101.91 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this part or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this part or any official action. However, this part does not specify any method or system to be used.

(c) Records required to be maintained by this part must be made available for examination on demand by duly authorized representatives of HHS as provided in § 101.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to HHS that may be required for the administration of the DPA and other applicable statutes, and this part.

(e) DPA section 705(d), as implemented by E.O. 13603, provides that information obtained under this section which the Secretary deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the Secretary determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to HHS in connection with the enforcement or administration of the DPA, this part, or an official action, is deemed to be confidential under DPA section 705(d) and shall be handled in accordance with applicable Federal law.

§ 101.92 Applicability of this part and official actions.

(a) This part and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This part and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This part shall not be construed to affect any administrative actions taken by HHS, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules, or delegations of authority previously issued by HHS pursuant to authority granted to HHS, by the President under the DPA and E.O. 13603. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

§ 101.93 Communications.

All communications concerning this part, including requests for copies of the part and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Administration for Strategic Preparedness and Response, U.S. Department of Health and Human Services, Washington, DC 20201. Ref: HRPAS, or email *aspr.dpa@hhs.gov*.

Appendix 1 to Part 101

Program identification symbol	Approved program	Agency
M1	Emergency Support Function 8 Public Health and Medical Services.	Department of Health and Human Services.
M2	Strategic National Stockpile	Department of Health and Human Services.
M3	Biodefense and Related Medical Countermeasures	Department of Health and Human Services.
M4	ASPR Critical Infrastructure Protection Program	Department of Health and Human Services.

Dated: January 26, 2024.

Xavier Becerra,

Secretary, U.S. Department of Health, and Human Services.

[FR Doc. 2024–01947 Filed 2–8–24; 8:45 am]

BILLING CODE 4150–37–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135–AA33

Civil Penalties Adjustment for 2024

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties (CMPs) that may be imposed for violations of the Program Fraud Civil Remedies Act (PFCRA) and the NEA's Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. This final rule provides the 2024 annual inflation adjustments to the initial ''catch-up'' adjustments made on June 15, 2017, and reflects all other inflation adjustments made in the interim.

DATES: This rule is effective February 9, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel Fishman, Assistant General Counsel, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202–682–5418.

SUPPLEMENTARY INFORMATION:

1. Background

On December 12, 2017 the NEA issued a final rule entitled ''Federal Civil Penalties Adjustments'' [1] which finalized the NEA's June 15, 2017 interim final rule entitled ''Implementing the Federal Civil Penalties Adjustment Act Improvements Act'',[2] implementing the 2015 Act (section 701 of Pub. L. 114–74), which amended the Inflation Adjustment Act (28 U.S.C. 2461 note) requiring catch-up and annual adjustments to the NEA's CMPs. The 2015 Act requires agencies make annual adjustments to its CMPs for inflation.

A CMP is defined in the Inflation Adjustment Act as any penalty, fine, or other 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.

These annual inflation adjustments are based on the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, relative to the October CPI–U in the year of the previous adjustment. The formula for the amount of a CMP inflation adjustment is prescribed by law, as explained in OMB Memorandum M–16–06 (February 24, 2016), and therefore the amount of the adjustment is not subject to the exercise of discretion by the Chairman of the National Endowment for the Arts (Chairman).

The Office of Management and Budget has issued guidance on implementing and calculating the 2024 adjustment under the 2015 Act.[3] Per this guidance, the CPI–U adjustment multiplier for this annual adjustment is 1.03241. In its prior rules, the NEA identified two CMPs, which require adjustment: the penalty for false statements under the PFCRA and the penalty for violations of the NEA's Restrictions on Lobbying. With this rule, the NEA is adjusting the amount of those CMPs accordingly.

2. Dates of Applicability

The inflation adjustments contained in this rule shall apply to any violations assessed after January 15, 2024.

3. Adjustments

Two CMPs in NEA regulations require adjustment in accordance with the 2015 Act: (1) the penalty associated with the Program Fraud Civil Remedies Act (45 CFR 1149.9) and (2) the penalty associated with Restrictions on Lobbying (45 CFR 1158.400; 45 CFR part 1158, app. A).

A. Adjustments to Penalties Under the NEA's Program Fraud Civil Remedies Act Regulations

The current maximum penalty under the PFCRA for false claims and statements is currently set at $13,507. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to the nearest dollar. Between October 2022 and October 2023, the CPI–U increased by a multiplier of 103.241%. Therefore, the new post-adjustment maximum penalty under the PFCRA for false statements is $13,507 × 1.03241 = $13,944.76 which rounds to $13,945. Therefore, the maximum penalty under the PFCRA for false claims and statements will be $13,945.

B. Adjustments to Penalties Under the NEA's Restrictions on Lobbying Regulations

The penalty for violations of the Restrictions on Lobbying is currently set at a range of a minimum of $23,714 and a maximum of $237,268. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to the nearest dollar. Between October 2022 and October 2023, the CPI–U increased by a multiplier of 103.241%. Therefore, the new post-adjustment minimum penalty under the Restrictions on Lobbying is $23,714 × 1.03241 = $24,482.57074, which rounds to $24,483 and the maximum penalty under the Restrictions on Lobbying is $237,268 × 1.03241 = $244,957.86, which rounds to $244,958. Therefore, the range of penalties under the law on the Restrictions on Lobbying shall be between $24,483 and $244,958.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act requires agencies to provide an opportunity for notice and comment on rulemaking and also requires agencies to delay a rule's effective date for 30 days following the date of publication in the **Federal Register** unless an agency finds good cause to forgo these requirements. However, section 4(b)(2) of the 2015 Act requires agencies to adjust civil monetary penalties notwithstanding section 553 of the Administrative Procedure Act (APA) and publish annual inflation adjustments in the **Federal Register**. ''This means that the public procedure the APA generally requires . . . is not required for agencies to issue regulations implementing the annual adjustment.'' OMB Memorandum M–18–03.

Even if the 2015 Act did not except this final rule from section 553 of the APA, the NEA has good cause to dispense with notice and comment. Section 553(b)(B), authorizes agencies to

[1] 82 FR 58348.

[2] 82 FR 27431.

[3] OMB Memorandum M–24–07 (December 19, 2023).

dispense with notice and comment procedures for rulemaking if the agency finds good cause that notice and comment are impracticable, unnecessary, or contrary to public interest. The annual adjustments to civil penalties for inflation and the method of calculating those adjustments are established by section 5 of the 2015 Act, as amended, leaving no discretion for the NEA. Accordingly, public comment would be impracticable because the NEA would be unable to consider such comments in the rulemaking process.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only ''significant'' proposed and final rules are subject to review under this Executive Order. ''Significant,'' as used in E.O. 12866, means ''economically significant.'' It refers to rules with (1) an impact on the economy of $100 million; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change and OMB has not reviewed this final rule under E.O. 12866. The NEA has made the assessments required by E.O. 12866 and determined that this final rule: (1) will not have an effect of $100 million or more on the economy; (2) will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (5) does not raise novel legal or policy issues.

Federalism (Executive Order 13132)

This final rule does not have federalism implications, as set forth in E.O. 13132. As used in this order, federalism implications mean ''substantial direct effects on the States, on the relationship between the [N]ational [G]overnment and the States, or on the distribution of power and responsibilities among the various levels of government.'' The NEA has determined that this final rule will not have federalism implications within the meaning of E.O. 13132.

Civil Justice Reform (Executive Order 12988)

This final rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Indian Tribal Governments (Executive Order 13175)

Under the criteria in E.O. 13175, the NEA has evaluated this final rule and determined that it would have no potential effects on Federally recognized Indian Tribes.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This final rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This final rule will not impose any ''information collection'' requirements under the Paperwork Reduction Act. Under the Act, information collection means the obtaining or disclosure of facts or opinions by or for an agency by 10 or more nonfederal persons.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104–4)

This final rule does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

The final rule will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996 (Sec. 804, Pub. L. 104–121)

This final rule would not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible website. All information about the NEA required to be published in the **Federal Register** may be accessed at *https://www.arts.gov.* This Act also requires agencies to accept public comments on their rules ''by electronic means.'' See heading ''Public Participation'' for directions on electronic submission of public comments on this final rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The website *https://www.regulations.gov* contains electronic dockets for the NEA's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term ''plain writing'' means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this final rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this final rule on the Federal Plain Language Guidelines.

Public Participation (Executive Order 13563)

The NEA encourages public participation by ensuring its documentation is understandable by the general public, and has written this final rule in compliance with Executive Order 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility.

List of Subjects in 45 CFR Parts 1149 and 1158

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Lobbying, Penalties.

For the reasons stated in the preamble, the NEA amends 45 CFR chapter XI, subchapter B, as follows:

PART 1149—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 1. The authority citation for part 1149 continues to read as follows:

Authority: 5 U.S.C. App. 8G(a)(2); 20 U.S.C. 959; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

§ 1149.9 [Amended]

■ 2. In § 1149.9 amend paragraph (a)(1) b removing the amount ''$13,507'' and adding in its place the amount ''$13,945''.

PART 1158—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1158 continues to read as follows:

Authority: 20 U.S.C. 959; 28 U.S.C. 2461; 31 U.S.C. 1352.

§ 1158.400 [Amended]

■ 4. In § 1158.400 amend paragraphs (a), (b), and (e) by:
■ a. Removing the amount ''$23,714'' and adding in its place the amount ''$24,483'' wherever it appears; and
■ b. Removing the amount ''$237,268'' and adding in its place the amount ''$244,958'' wherever it appears.

Appendix A to Part 1158 [Amended]

■ 5. Amend appendix A to part 1158 by:
■ a. Removing the amount ''$23,714'' and adding in its place the amount ''$24,483'' wherever it appears.
■ b. Removing the amount ''$237,268'' and adding in its place the amount ''$244,958'' wherever it appears.

Dated: January 10, 2024.

Daniel Beattie,

Director of Guidelines and Panel Operations.

[FR Doc. 2024–00662 Filed 2–8–24; 8:45 am]

BILLING CODE 7537–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2023–0438]

RIN 1625–AC89

Great Lakes Pilotage Rates—2024 Annual Review

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In accordance with the statutory provisions enacted by the Great Lakes Pilotage Act of 1960, the Coast Guard is issuing new pilotage rates for the 2024 shipping season. This rule adjusts the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. These changes, when combined, result in a 7-percent net increase in pilotage costs compared to the 2023 season.

DATES: This final rule is effective March 11, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type USCG–2023–0438 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Brian Rogers, Commandant, Office of Waterways and Ocean Policy—Great Lakes Pilotage Division (CG–WWM–2), Coast Guard; telephone 410–360–9260, email *Brian.Rogers@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

2023 final rule Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology final rule
AMO American Maritime Officers Union
APA American Pilots' Association
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
Director U.S. Coast Guard's Director of the Great Lakes Pilotage
ECI Employment Cost Index
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPAC Great Lakes Pilotage Advisory Committee
GLPMS Great Lakes Pilotage Management System

LPA Lakes Pilots Association
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
§ Section
SBA Small Business Administration
SLSPA Saint Lawrence Seaway Pilotage Association
U.S.C. United States Code
WGLPA Western Great Lakes Pilots Association

II. Executive Summary

In accordance with Title 46 of the United States Code (U.S.C.), Chapter 93,[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway—including setting the rates for pilotage services and adjusting them on an annual basis for the upcoming shipping season. The shipping season begins when the locks open in the St. Lawrence Seaway, which allows traffic access to and from the Atlantic Ocean. The opening of the locks varies annually, depending on waterway conditions, but is generally in March or April. The rates, which for the 2024 season range from $430 to $927 per pilot hour (depending on which of the specific 6 areas pilotage service is provided), are paid by shippers to the pilot associations. The three pilot associations, which are the exclusive U.S. source of registered pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate apprentice and registered pilots, acquire and implement technological advances, train new personnel, and provide for continuing professional development. These rates are the foundation for safe, efficient, and reliable pilotage service to facilitate maritime commerce, protect the marine environment, and comply with National Transportation Safety Board recommendations regarding staffing and pilot fatigue.

In accordance with statutory and regulatory requirements, the Coast Guard employs the ratemaking methodology introduced in 2016 [2] and last updated in 2022.[3] Our ratemaking methodology calculates the revenue needed for each pilotage association (operating expenses, compensation for the number of pilots, and anticipated inflation), and then divides that amount by the expected demand for pilotage services over the course of the coming year to produce an hourly rate. This is a 10-step methodology to calculate rates, which is explained in detail in section VI., Summary of the Ratemaking Methodology, in the preamble to this rule.

In this final rule, we conduct our annual review and interim adjustment to the base pilotage rates for 2024. The Coast Guard last conducted a full ratemaking in 2023, with the ''Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology'' final rule (hereafter the ''2023 final rule'') (88 FR 12226, published February 27, 2023).[4] Per title 46 of the Code of Federal Regulations (CFR), section 404.100(b), via this final rule, the Coast Guard's Director of the Great Lakes Pilotage (''the Director'') establishes base pilotage rates by an interim ratemaking pursuant to §§ 404.101 through 404.110.

The Coast Guard sets base rates to meet the goal of promoting safe, efficient, and reliable pilotage service on the Great Lakes by generating sufficient revenue for each pilotage association to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide appropriate funds to use for improvements. A 10-year average is used when calculating traffic to smooth out anomalies caused by unexpected events, such as those caused by the COVID–19 pandemic. The Coast Guard estimates that this rule will result in $2,621,471 of additional costs. This represents an increase in revenue needed for target pilot compensation, an increase in revenue needed for the total apprentice pilot wage benchmark, an increase in the revenue needed for adjusted operating expenses, and an increase in the revenue needed for the working capital fund.

Based on the ratemaking model discussed in this final rule, the Coast Guard is establishing the rates shown in table 1.

TABLE 1—CURRENT AND 2024 PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2023 pilotage rate	Final 2024 pilotage rate
District One: Designated	St. Lawrence River	$876	$927
District One: Undesignated	Lake Ontario	586	608
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	601	667
District Two: Undesignated	Lake Erie	704	597
District Three: Designated	St. Mary's River	834	836
District Three: Undesignated	Lakes Huron, Michigan, and Superior	410	430

This rule affects 58 U.S. Registered pilots, 6 apprentice pilots, 3 pilot associations, and the owners and operators of an average of 296 oceangoing vessels that transit the Great Lakes annually. This rule will not affect the Coast Guard's budget or increase Federal spending. The estimated overall annual regulatory economic impact of this rate change is a net increase of $2,621,471 in estimated payments made by shippers during the 2024 shipping season. This rule establishes the 2024 yearly target compensation for pilots on the Great Lakes at $440,658 per pilot (a $16,260 increase, or 3.83 percent, over their 2023 target compensation). Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section X., Regulatory Analyses, in this preamble provides the regulatory impact analyses of this rule.

III. Basis and Purpose

The legal basis of this rulemaking is 46 U.S.C. Chapter 93,[5] which requires foreign merchant vessels and United States vessels operating ''on register'' (meaning United States vessels engaged in foreign trade) to use United States or Canadian pilots while transiting the United States waters of the St. Lawrence Seaway and the Great Lakes system.[6] For U.S. Great Lakes pilots, the statute requires the Secretary to ''prescribe by

[1] 46 U.S.C. 9301–9308.
[2] 81 FR 11908, March 7, 2016.
[3] 87 FR 18488. March 30, 2022.
[4] *https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03212.pdf.* (Last accessed 5/12/2023.)
[5] 46 U.S.C. 9301–9308.
[6] 46 U.S.C. 9302(a)(1).

regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' [7] The statute requires that rates be established or reviewed and adjusted each year, no later than March 1.[8] The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted.[9] The Secretary's duties and authority under 46 U.S.C. Chapter 93 have generally been delegated to the Coast Guard.[10]

Each pilot association is an independent business and is the sole provider of pilotage services in its district of operation. Each pilot association is responsible for funding its own operating expenses, maintaining infrastructure, compensating pilots and apprentice pilots,[11] acquiring and implementing technological advances, and training personnel and partners.

The Coast Guard uses a 10-step ratemaking methodology to derive a pilotage rate, based on the estimated amount of traffic, which covers these expenses.[12] The methodology is designed to measure how much revenue each pilotage association would need to cover expenses and to provide compensation to registered pilots. Since the Coast Guard cannot guarantee demand for pilotage services, target pilot compensation for registered pilots is a goal. The actual demand for service dictates the actual compensation for the registered pilots. We then divide that amount by the historic 10-year average for pilotage demand. We recognize that, in years where traffic is above average, pilot associations will accrue more revenue than projected while, in years where traffic is below average, they will take in less. We believe that, over the long term, however, this system ensures that infrastructure will be maintained, and that pilots will receive adequate compensation and work a reasonable number of hours, with adequate rest between assignments, to ensure retention of highly trained personnel.

The purpose of this rule is to issue new pilotage rates for the 2024 shipping season. The Coast Guard believes that the new rates will continue to promote our goal, as outlined in 46 CFR 404.1, of promoting safe, efficient, and reliable pilotage service to facilitate commerce and protect the marine environment in the Great Lakes by generating sufficient revenue for each pilotage association to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide appropriate funds to use for improvements.

IV. Background

Pursuant to 46 U.S.C. 9303, the Coast Guard regulates shipping practices and rates on the Great Lakes. Under Coast Guard regulations, all vessels engaged in foreign trade (often referred to as ''salties'') are required to engage United States or Canadian pilots during their transit through the regulated waters.[13] United States and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not affected.[14] Generally, vessels are assigned a United States or Canadian pilot, depending on the order in which they transit a particular area of the Great Lakes, and do not choose the pilot they receive. If a vessel is assigned a U.S. pilot, that pilot will be assigned by the pilotage association responsible for the district in which the vessel is operating, and the vessel operator will pay the pilotage association for the pilotage services. The Great Lakes Pilotage Authority (Canadian) (GLPA) establishes the rates for Canadian registered pilots.

The waters of the Great Lakes and the St. Lawrence Seaway subject to U.S. jurisdiction are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Director to operate a pilotage pool. The Saint Lawrence Seaway Pilotage Association (SLSPA) provides pilotage services in District One, which includes all waters of the St. Lawrence River and Lake Ontario subject to U.S. jurisdiction. The Lakes Pilots Association (LPA) provides pilotage services in District Two, which includes all waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River subject to U.S. jurisdiction. Finally, the Western Great Lakes Pilots Association (WGLPA) provides pilotage services in District Three, which includes all waters of the St. Mary's River; Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior subject to U.S. jurisdiction.

Each pilotage district is further divided into ''designated'' and ''undesignated'' areas, depicted in table 2. Designated areas, classified as such by Presidential Proclamation, are waters in which pilots must direct the navigation of vessels at all times.[15] Undesignated areas are open bodies of water not subject to the same pilotage requirements. While working in undesignated areas, pilots must ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' [16] For these reasons, pilotage rates in designated areas can be significantly higher than those in undesignated areas. Table 2 shows the districts and areas of the Great Lakes and St. Lawrence Seaway.

TABLE 2—AREAS OF THE GREAT LAKES AND ST. LAWRENCE SEAWAY

District	Pilotage association	Designation	Area No.[17]	Area name[18]
One	Saint Lawrence Seaway Pilotage Association (SLSPA).	Designated	1	St. Lawrence River.
		Undesignated	2	Lake Ontario.
Two	Lakes Pilots Association (LPA)	Designated	5	Navigable waters from Southeast Shoal to Port Huron, MI.
		Undesignated	4	Lake Erie.

[7] 46 U.S.C. 9303(f).

[8] *Ibid.*

[9] *Ibid.*

[10] Department of Homeland Security (DHS) Delegation No. 00170.1 (II)(92)(f), Revision No. 01.3. The Secretary retains the authority under section 9307 to establish, and appoint members to, a Great Lakes Pilotage Advisory Committee. *https://dhsconnect.dhs.gov/org/comp/mgmt/policies/Delegations/00170.1.pdf.* (Last accessed 11/8/2023.)

[11] Apprentice pilots and applicant pilots are compensated by the pilot association they are training with, which is funded through the pilotage rates. The ratemaking methodology accounts for an apprentice pilot wage benchmark in Step 4 per 46 CFR 404.104(d). The applicant pilot salaries are included in the pilot associations' operating expenses used in Step 1 per 46 CFR 404.101.

[12] 46 CFR part 404.101–404.110. *https://www.ecfr.gov/current/title-46/chapter-III/part-404.* (Last accessed 5/17/23.)

[13] See 46 CFR part 401. *https://www.ecfr.gov/current/title-46/chapter-III/part-401* (Last accessed 5/17/23).

[14] 46 U.S.C. 9302(f). A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes. *https://uscode.house.gov/view.xhtml?req=granuleid:U.S.C.-prelim-title46-section9302&num=0&edition=prelim* (Last accessed 5/17/23).

[15] Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960,* December 22, 1960 (*https://www.archives.gov/federal-register/codification/proclamations/03385.html*) (Last accessed 5/31/23).

[16] 46 U.S.C. 9302(a)(1)(B).

TABLE 2—AREAS OF THE GREAT LAKES AND ST. LAWRENCE SEAWAY—Continued

District	Pilotage association	Designation	Area No.[17]	Area name[18]
Three	Western Great Lakes Pilots Association (WGLPA).	Designated	7	St. Mary's River.
		Undesignated ...	6	Lakes Huron and Michigan.
		Undesignated ...	8	Lake Superior.

Over the past several years, the Coast Guard has adjusted the Great Lakes pilotage ratemaking methodology, per our authority in 46 U.S.C. 9303(f), to conduct annual reviews of base pilotage rates, and to adjust such base rates in each intervening year in consideration of the public interest and the costs of providing the services. The current methodology was finalized in the 2022 final rule.[19] We summarize the current methodology in section VI., Summary of the Ratemaking Methodology.

V. Discussion of Comments and Changes

In response to the notice of proposed rulemaking (NPRM) for this ratemaking (88 FR 55629, August 16, 2023) the Coast Guard received six comment submissions. These submissions include one comment filed jointly by the LPA, the SLSPA, and the WGLPA; one filed jointly by the Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association (collectively, the Coalition); one from the president of the Saint Lawrence Seaway Pilots' Association (SLSPA); one from the president of the LPA; one from the Director of the Port of Monroe; and one from the president of the International Longshoreman Association (ILA).

As each of these commenters touched on numerous issues, for each response below, the Coast Guard notes which commenter raised the specific points addressed. In situations where multiple commenters raised similar issues, the Coast Guard provides one response to those issues.

A. Requests for Additional Pilots

One of the major requests made by the commenters was the addition of more pilots due to the increase in traffic, with several commenters pointing to cruise ship traffic as the driving force in the surge of vessels needing pilotage service. District One stated they estimate a need for three new pilots by 2025, and Districts Two and Three requested one additional pilot each to be added to this rulemaking.

The Coast Guard recognizes District One's need for more pilots going forward, but we believe that this need is addressed by the inclusion of an additional apprentice pilot as proposed in the NPRM. Added to the two existing apprentice pilots that were authorized in the 2023 ratemaking, this inclusion brings the total number of apprentice pilots in District One to three for the 2024 season. These apprentice pilots will be able to accommodate District One's projected need for three additional fully registered pilots for the 2025 season. The Coast Guard will, therefore, keep the pilot numbers for District One the same as they were in the proposed rule.

The LPA, WGLPA, ILA, and Capt. Paul C. Lamarre II all made comments that an additional pilot is needed in both District Two and District Three. After review of the provided documentation, the Coast Guard agrees with these comments. The Coast Guard verified the numbers that LPA provided, which show that another full member pilot is needed to safely provide pilotage service. Based on these comments, our analysis of the increase in demand for pilotage services created by cruise ship traffic,[20] and the unanimous recommendation made by the 2023 Great Lake Pilot Advisory Committee (See transcript, pages 87 and 88), the Coast Guard has added an additional pilot to this year's ratemaking for both Districts Two and Three. For District Two, the Coast Guard reduced the number of apprentice pilots from two to one, since the additional pilot referenced earlier will no longer be an apprentice.

B. Bridge Hour Allocation

Numerous commenters noted discrepancies in the allocation of bridge hours between designated and undesignated waters for all three districts. The error occurs in the ''area'' field of the data extract provided by the associations, where each trip number is only labeled with the area in which the trip started, rather than noting each area that the trip passed through. This error causes miscalculation of the designated and undesignated bridge hours in Step 7 of the ratemaking methodology, and the transits by vessel class in Step 8. The commenters suggested to instead use monthly reports from SeaPro to provide the necessary bridge hour calculations for Step 7 and to use weight factor reports from SeaPro to provide the transits by vessel class for Step 8.

The Coast Guard agrees with these comments and has worked with the pilot associations to correct Steps 7 and 8 using the monthly reports and weight factor reports. The Coast Guard could not verify which trips had been incorrectly attributed to either a designated or undesignated area in the economist extract data set previously provided. The Coast Guard will work with the associations to refine the data extracts provided by the associations to ensure that all fields are correctly specified and interpreted.

The reports used for this final rule are available in the docket. We appreciate the commenters who brought this to our attention and will take measures to ensure this error is corrected in data used in future rulemakings. These corrections are set out in further detail in tables 4 and 5.

C. Methodology

Numerous commenters noted concerns with the methodology by which the Coast Guard calculates this rate. Concerns included that weighting factors should be calculated using bridge hours instead of vessel transits per visit; that the Coast Guard should audit the pilotage program to find operational efficiencies and cost-savings; and that the Coast Guard should conduct an annual look-back at expenses to find cost-savings. These comments are outside the scope of the current rulemaking, which does not modify the ratemaking methodology. The Coast Guard appreciates these comments and encourages the stakeholders to request that they be placed on a future GLPAC agenda for

[17] Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the United States pilotage rate structure.

[18] The areas are listed by name at 46 CFR 401.405. *https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.405* (Last accessed 5/17/23).

[19] 87 FR 18488, March 30, 2022.

[20] At least 76 Great Lakes cruises are listed online as scheduled for the 2024 season. Cruises listed at *vikingcruises.com, hl-cruises.com, pearlseacruises.com,* and *us.ponant.com.* (Last accessed 11/29/2023.)

discussion, or to resubmit them during the next full ratemaking in 2027.

D. Miscellaneous

We received a number of comments that we categorized as ''Miscellaneous'' and are best addressed one by one.

A few commenters urged the Coast Guard to continue having GLPAC meetings in person and in front of a stenographer, while another commenter urged the Coast Guard to investigate a hybrid in-person/virtual set up for future GLPAC meetings. These comments are outside the scope of this rule, but the Coast Guard will continue to engage with stakeholders to determine the best way to hold GLPAC meetings.

One commenter asked the Coast Guard to require an anonymous listing of each pilot's compensation in their annual reports. The Coast Guard disagrees with this recommendation. Compensation of individual pilots is not included in the expense base or methodology, and, therefore, we decline to add a regulatory requirement for pilot associations to publicly report the compensation of individual pilots. The Coast Guard does not use the actual earnings or average earnings; instead, we use target pilot compensation (described in Step 4 of the existing methodology), which the Coast Guard has determined to be reasonable and necessary. Because actual salary values are not used in the ratemaking, the Coast Guard believes that a requirement to report pilot compensation is not in the public interest or necessary to provide for the costs of services. Progress toward pilot retention can be reviewed through pilot turnover and the association's ability to promptly fill pilot vacancies for fully registered pilots and apprentice pilots.

Many commenters took the opportunity to recognize the Director's authority to add up to three additional pilots in each District. We agree with these commenters that the Director does have such authority, and, based on these comments and the unanimous recommendation at the 2023 GLPAC meeting, the Coast Guard has agreed to add one pilot each to Districts Two and Three, and one apprentice pilot to District One.

E. Changes to the Proposed Rule

Table 3 summarizes the changes between the 2024 Ratemaking NPRM and this final rule. This table includes changes from the proposed rule that are not based on comments from the NPRM.

TABLE 3—CHANGES BETWEEN PROPOSED RULE AND FINAL RULE

Change	Reasoning
Revise number of pilots in District Two from 16 to 17 and adjust number of apprentice pilots from 2 to 1. Revise number of pilots in District Three from 22 to 23.	An additional pilot will help Districts Two and Three handle an expected increase in cruise ship traffic in 2024.
Correct traffic data in Steps 7 and 8 for all districts to reflect discrepancy in the assignment of bridge hours and transits by vessel class to designated and undesignated areas.	These corrections will improve the accuracy of our ratemaking as it pertains to designated and undesignated areas.
Update inflation figures: • Updates 2022 Employment Cost Index (ECI) inflation from 4.4%, listed in the NPRM, to 3.9% • Updates 2023 Personal Consumption Expenditures (PCE) inflation from 3.5%, listed in the NPRM, to 3.9%. • Updates 2024 PCE inflation from 2.5%, listed in the NPRM, to 2.6%.	More recent figures were published since the Coast Guard conducted the analysis for the NPRM.
Change average vessel population from 277 to 296. Change average customer count from 40 to 41.	In the 2023 final ratemaking, District Three provided updated traffic data that was used to revise bridge hours and transits by vessel class but was not used to update the Regulatory Flexibility Act analysis. This final rule corrects that oversight. The revised data included additional trips that introduced new vessels and customers to the affected population and relabeled the vessel for trip 26879.

F. Changes to Step 7 Bridge Hours and Step 8 Transits

Table 4 shows the difference between the published figures for bridge hours in Step 7 in the NPRM and the updated figures used for this final rule.

TABLE 4—CHANGES TO STEP 7 BRIDGE HOURS FROM PROPOSED RULE TO FINAL RULE

	Previously published		Updated		Difference	
	Undesignated	Designated	Undesignated	Designated	Undesignated	Designated
District 1						
2021	7,871	6,188	7,893	6,166	22	−22
2022	8,574	6,785	8,356	6,573	−218	−212
District 2						
2021	8,826	3,266	5,290	6,762	−3,536	3,496
2022	12,306	3,975	7,668	8,613	−4,638	4,638
District 3						
2021	18,286	2,516	18,149	2,484	−137	−32

TABLE 4—CHANGES TO STEP 7 BRIDGE HOURS FROM PROPOSED RULE TO FINAL RULE—Continued

Previously published			Updated		Difference	
	Undesignated	Designated	Undesignated	Designated	Undesignated	Designated
2022	23,985	4,424	23,914	3,345	−71	−1,079

Further, the Coast Guard updated the number of transits by vessel class in Step 8, ''Calculate Average Weighting Factors by Area,'' using updated weighting factor reports provided by the associations from SeaPro. Table 5 details the changes by area and vessel class for 2022, which will be used in this final rule; no changes are made to the 2021 figures.

TABLE 5—CHANGES TO STEP 8 FROM PROPOSED RULE TO FINAL RULE

Area/vessel class	Previous	Updated	Difference
	Number of Transits (2022)		
Area 1—Designated			
Class 2	466	482	16
Class 3	104	106	2
Class 4	461	478	17
Area 2—Undesignated			
Class 1	32	41	9
Class 2	358	371	13
Class 3	69	73	4
Class 4	393	401	8
Area 5—Designated			
Class 1	34	117	83
Class 2	184	717	533
Class 3	3	13	10
Class 4	273	1230	957
Area 4—Undesignated			
Class 1	79	121	42
Class 2	275	478	203
Class 3	3	8	5
Class 4	349	642	293
Area 7—Designated			
Class 1	102	104	2
Class 2	176	198	22
Class 4	344	392	48
Area 6—Undesignated			
Class 1	94	162	68
Class 2	278	452	174
Class 4	385	482	97
Area 8—Undesignated			
Class 1	13	12	−1
Class 2	103	95	−8
Class 3	6	5	−1
Class 4	271	306	35

These refinements to the ratemaking continue to promote safe, efficient, and reliable pilotage service on the Great Lakes, and allow each pilotage association to generate sufficient revenue to cover its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and realize an appropriate revenue to use for improvements.

VI. Summary of the Ratemaking Methodology

As stated previously, the ratemaking methodology, outlined in 46 CFR 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic

expected in each district. The first several steps of the methodology establish base pilotage rates. Additional steps to incorporate the weighting factors are necessary to establish the final pilot rates. The result is an hourly rate, determined separately for each of the areas administered by the Coast Guard.

In Step 1, ''Recognize previous operating expenses,'' (§ 404.101), the Director reviews audited operating expenses from each of the three pilotage associations. Operating expenses include all allowable expenses, minus wages and benefits. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and when the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. Therefore, in calculating the 2024 rates in this rule, we begin with the audited expenses from the 2021 shipping season.

While each pilotage association operates in an entire district (including both designated and undesignated areas), the Coast Guard determines costs by area. We allocate certain operating expenses to designated areas and certain operating expenses to undesignated areas. In some cases, we can allocate the costs based on where they are accrued. For example, we can allocate the costs of insurance for apprentice pilots who operate in undesignated areas only. In other situations, such as general legal expenses, expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income forecasted from the respective portions of the district.

In Step 2, ''Project operating expenses, adjusting for inflation or deflation,'' (§ 404.102), the Director develops the 2024 projected operating expenses. To do this, we apply inflation adjustors for 3 years to the operating expense baseline received in Step 1. The inflation factors are from the Bureau of Labor Statistics' (BLS) Consumer Price Index (CPI) for the Midwest Region, or, if not available, the Federal Open Market Committee (FOMC) median economic projections for Personal Consumption Expenditures (PCE) inflation. This step produces the total operating expenses for each area and district.

In Step 3, ''Estimate number of registered pilots and apprentice pilots,'' (§ 404.103), the Director calculates how many registered and apprentice pilots, including apprentice pilots with limited registrations, are needed for each district. To do this, we employ a ''staffing model,'' described in § 401.220, paragraphs (a)(1) through (3), to estimate how many pilots would be needed to handle shipping during the beginning and close of the season. This number provides guidance to the Director in approving an appropriate number of pilots.

For the purpose of the ratemaking calculation, we determine the number of pilots provided by the pilotage associations (see § 404.103) and use that figure to determine how many pilots need to be compensated via the pilotage fees collected.

In the first part of Step 4, ''Determine target pilot compensation benchmark and apprentice pilot wage benchmark,''(§ 404.104(b)), the previous year's target compensation value is first adjusted by actual inflation using the ECI inflation value. If the ECI inflation value is not available, § 404.104(b)(1) and (2) specify the compensation inflation process the Director will use instead.

In the second part of Step 4, (§ 404.104(c)), the Director determines the total compensation figure for each district. To do this, the Director multiplies the compensation benchmark by the number of pilots for each area and district (from Step 3), producing a figure for total pilot compensation.

In Step 5, ''Project working capital fund,'' (§ 404.105), the Director calculates an added value to pay for needed capital improvements and other non-recurring expenses, such as technology investments and infrastructure maintenance. This value is calculated by adding the total operating expenses (derived in Step 2) to the total pilot compensation and the total target apprentice pilot wage (derived in Step 4), then by multiplying that figure by the preceding year's average annual rate of return for new issues of high-grade corporate securities. This figure constitutes the ''working capital fund'' for each area and district.

In Step 6, ''Project needed revenue,'' (§ 404.106), the Director simply adds the totals produced by the preceding steps. The projected operating expense for each area and district (from Step 2) is added to the total pilot compensation, including apprentice pilot wage benchmarks (from Step 4), and the working capital fund contribution (from Step 5). The total figure, calculated separately for each area and district, is the ''needed revenue.''

In Step 7, ''Calculate initial base rates,'' (§ 404.107), the Director calculates an hourly pilotage rate to cover the needed revenue, as calculated in Step 6. This step consists of first calculating the 10-year average of traffic hours for each area. Next, we divide the revenue needed in each area (calculated in Step 6) by the 10-year average of traffic hours to produce an initial base rate.

An additional element, the ''weighting factor,'' is required under § 401.400. Pursuant to that section, ships pay a multiple of the ''base rate'', as calculated in Step 7, by a number ranging from 1.0 (for the smallest ships, or ''Class I'' vessels) to 1.45 (for the largest ships, or ''Class IV'' vessels). This significantly increases the revenue collected, and we need to account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services. We do this in the next step.

In Step 8, ''Calculate average weighting factors by Area,'' (§ 404.108), the Director calculates how much extra revenue, as a percentage of total revenue, has historically been produced by the weighting factors in each area. We do this by using a historical average of the applied weighting factors for each year since 2014 (the first year the current weighting factors were applied).

In Step 9, ''Calculate revised base rates,'' (§ 404.109), the Director modifies the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from Step 7) by the corresponding average weighting factor (from Step 8), to produce a revised rate.

In Step 10, ''Review and finalize rates,'' (§ 404.110), often referred to informally as ''Director's discretion'', the Director reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in 46 U.S.C. 9303(f) and 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested pilots fairly; and providing appropriate revenue for improvements.

After the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. We are not using any surcharges in this final rule. In previous ratemakings, where apprentice pilot wages were not built into the rate, the Coast Guard used surcharges to cover applicant pilot compensation in those years to help with applicant recruitment. In this final rule, we include the applicant trainee compensation in the district's operating expenses used in Step 1. Consistent with the 2021, 2022, and 2023 rulemakings, in this final rule we

continue to believe that the pilot associations are able to plan for the costs associated with hiring applicant pilots to fill pilot vacancies without relying on the Coast Guard to impose surcharges to help with recruiting.

VII. Historic Methodological and Other Changes

The Coast Guard is using the existing ratemaking methodology to establish the base rates in this ratemaking. The Coast Guard is not issuing any methodological or other policy changes to the ratemaking within this final rule.

According to 46 U.S.C. 9303(f), and restated in 46 CFR 404.100(a), the Coast Guard must establish base rates by a full ratemaking at least once every 5 years. The Coast Guard has determined that the current base rates and methodology still adequately adhere to the Coast Guard's goals through rate and compensation stability, while promoting recruitment and retention of qualified U.S.-registered pilots.

The Coast Guard has made several changes to the ratemaking methodology over the last several years in consideration of the public interest and the costs of providing services. The recent changes and their impacts are summarized as follows.

In the 2017 ratemaking, Great Lakes Pilotage Rates—2017 Annual Review (82 FR 41466, published August 31, 2017),[21] the Coast Guard modified the methodology to account for the additional revenue produced by the application of weighting factors. This is discussed in detail in Steps 7 through 9 for each district, in section IX., Discussion of Rate Adjustments, of this preamble.

In the 2018 ratemaking, Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology (83 FR 26162, published June 5, 2018),[22] the Coast Guard adopted a new approach in the methodology for the compensation benchmark, based upon United States mariners, rather than Canadian working pilots.

In the 2020 ratemaking, Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology (85 FR 20088, published April 9, 2020),[23] the Coast Guard revised the methodology to accurately capture all costs and revenues associated with Great Lakes pilotage requirements, and to produce an hourly rate that adequately and accurately compensates pilots and covers expenses.

The 2021 ratemaking, Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology (86 FR 14184, published March 12, 2021),[24] changed the inflation calculation in Step 4, § 404.104(b), for interim ratemakings, so that the previous year's target compensation value is first adjusted by actual inflation value using the ECI. That change ensures that the target pilot compensation reimbursed to the association remains current with inflation and competitive with industry pay increases.

The 2022 ratemaking, Great Lakes Pilotage Rates—2022 Annual Review and Revisions to Methodology (87 FR 18488, published March 30, 2022),[25] implemented an apprentice pilot wage benchmark in Steps 3 and 4 to provide predictability and stability to pilot associations training apprentice pilots. The 2022 final rule also codified rounding up the staffing model's final number to ensure that the ratemaking does not undercount the pilot need presented by the staffing model and association circumstances.

VIII. Individual Target Pilot Compensation Benchmark

The Coast Guard is issuing the target pilot compensation benchmark in this final rule at the target compensation for the ratemaking year 2023, adjusted for inflation. In an interim ratemaking year, the base target pilot compensation is adjusted annually in accordance with § 404.104(b). The Coast Guard arrived at this compensation benchmark as explained in the following paragraphs.

Before 2016, the Coast Guard based the compensation benchmark on data provided by the American Maritime Officers Union (AMOU) regarding its contract for first mates on the Great Lakes. However, in 2016, the AMOU elected to no longer provide this data to the Coast Guard. In the 2016 ratemaking, Great Lakes Pilotage Rates—2016 Annual Review and Changes to Methodology (81 FR 11908, published March 7, 2016),[26] the Coast Guard used the average compensation for a Canadian pilot, plus a 10-percent adjustment. The shipping industry challenged the compensation benchmark, and the court found that the Coast Guard did not adequately support the 10-percent addition to the Canadian GLPA compensation benchmark. *American Great Lakes Ports Association* v. *Zukunft,* 296 F.Supp. 3d 27, 48 (D.D.C. 2017), *aff'd sub nom. American Great Lakes Ports Association* v. *Schultz,* 962 F.3d 510 (D.C. Cir. 2020). The Coast Guard then based the 2018 full ratemaking compensation benchmark on data provided by the AMOU, regarding its contract for first mates on the Great Lakes in the 2011 to 2015 period (83 FR 26162). The 2018 final rule adjusted the AMOU 2015 data for inflation using Federal Open Market FOMC median economic projections for PCE inflation.

In the 2020 interim year ratemaking final rule (85 FR 20088), the Coast Guard established its most recent pilot compensation benchmark. Given the lack of access to AMOU data, the Coast Guard did not rely on the AMOU aggregated wage and benefit information as the basis for the compensation benchmark. Instead, the Coast Guard adopted the 2019 target pilot compensation (with inflation) as our compensation benchmark going forward. The Coast Guard stated in the 2020 final rule that no other United States or Canadian pilot compensation data was appropriate to use as a benchmark at that time, and that the 2020 benchmark will be used for future rates (85 FR 20091). The Director determined that the ratemaking provided adequate compensation for pilots.

Based on our experience over the past four ratemakings (2020–2023), the Director continues to believe that the level of target pilot compensation for those years provided an appropriate level of compensation for U.S.-registered pilots. According to § 404.104(a), the Director may make necessary and reasonable adjustments to the benchmark based on current information. However, current circumstances do not indicate that an adjustment, other than for inflation, is necessary. The Director bases this decision on the fact that there is no indication that registered pilots are resigning due to their compensation, or that this compensation benchmark is causing shortfalls in achieving reliable pilotage service. The Coast Guard also does not believe that the pilot compensation benchmark is too high relative to the expertise required to perform the job. The compensation will continue to be adjusted annually, in accordance with published inflation rates, which will ensure the

[21] *https://www.govinfo.gov/content/pkg/FR-2017-08-31/pdf/2017-18411.pdf* (last accessed 5/12/2023).

[22] *https://www.govinfo.gov/content/pkg/FR-2018-06-05/pdf/2018-11969.pdf* (last accessed 5/12/2023).

[23] *https://www.govinfo.gov/content/pkg/FR-2020-04-09/pdf/2020-06968.pdf* (last accessed 5/12/2023).

[24] *https://www.govinfo.gov/content/pkg/FR-2021-03-12/pdf/2021-05050.pdf* (last accessed 5/12/2023).

[25] *https://www.govinfo.gov/content/pkg/FR-2022-03-30/pdf/2022-06394.pdf* (last accessed 5/12/2023).

[26] *https://www.govinfo.gov/content/pkg/FR-2016-03-07/pdf/2016-04894.pdf* (last accessed 5/12/2023).

compensation remains competitive and current for upcoming years.

Therefore, the Coast Guard does not seek alternative benchmarks for target compensation at this time and, instead, simply adjusts the amount of target pilot compensation for inflation as our target compensation benchmark for 2024, as shown in Step 4. This target compensation benchmark approach has advanced and will continue to advance the Coast Guard's goals through rate and compensation stability while also promoting recruitment and retention of qualified U.S. pilots.

The target compensation for 2024 is $440,658 per registered pilot and $158,637 per apprentice pilot, using the 2023 compensation as a benchmark. We follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark for inflation. We use a two-step process to adjust target pilot compensation for inflation. First, we adjust the 2023 target compensation benchmark of $424,398 by 1.2 percent for an adjusted value of $429,491. This first adjustment accounts for the difference in actual third quarter 2023 ECI inflation, which is 3.9 percent, and the 2023 PCE estimate of 2.7 percent.[27] The second step accounts for projected inflation from 2023 to 2024, which is 2.6 percent.[28] Based on the projected 2024 inflation estimate, the target compensation benchmark for 2024 is $440,658 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $158,637 ($440,658 × 0.36).[29]

IX. Discussion of Rate Adjustments

In this final rule, based on the policy changes described in the previous section, we are issuing new pilotage rates for 2024. We conducted the 2024 ratemaking as an interim ratemaking, as we last did in 2022 (87 FR 18488). Thus, the Coast Guard adjusted the compensation benchmark following the interim ratemaking year procedures under § 404.100(b) rather than the procedures for a full ratemaking year in § 404.100(a).

This section discusses the rate changes using the ratemaking steps provided in 46 CFR part 404. We will detail all 10 steps of the ratemaking procedure for each of the 3 districts to show how we arrive at the new rates.

District One

A. Step 1: Recognize Previous Operating Expenses

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses for the last full year for which figures are available (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2021 expenses and revenues.[30] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District One are shown in table 6.

In the 2021 expenses used as the basis for this final rule, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition of ''apprentice pilot'', which was introduced in the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported from 2021, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and describe the impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2024 ratemaking, as this final rule is based on 2021 operating expenses, when salaries were still an allowable expense. Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District One are shown in table 6.

TABLE 6—2021 RECOGNIZED EXPENSES FOR DISTRICT ONE

District One reported operating expenses for 2021	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Applicant Pilot Compensation			
Salaries	$247,735	$165,157	$412,892
Employee Benefits	10,367	6,911	17,278
Total Applicant Pilot Compensation	258,102	172,068	430,170
Other Applicant Cost			
Applicant Subsistence	1,723	1,148	2,871
Travel	1,832	1,221	3,053
License Insurance	752	502	1,254
Payroll taxes	1,945	1,296	3,241
Other—Pilotage Cost	833	555	1,388
Total Other Applicant Cost	7,085	4,722	11,807

[27] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://beta.bls.gov/dataViewer/view/timeseries/CIU2010000520000A* (Last accessed 11/01/23); and Table 1 Summary of Economic Projections, Median PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf* (Last accessed 05/17/23).

[28] Table 1 Summary of Economic Projections, Median Core PCE Inflation June Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230920.pdf* (Last accessed 09/2023).

[29] For more information on the apprentice pilot wage benchmark, see the Coast Guard's 2022 Annual Review and Revisions to Methodology. 87 FR 18488.

[30] These reports are available in the docket for this final rule.

TABLE 6—2021 RECOGNIZED EXPENSES FOR DISTRICT ONE—Continued

District One reported operating expenses for 2021	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Other Pilotage Cost			
Subsistence	133,993	89,329	223,322
Hotel/Lodging	32,424	21,616	54,040
Travel	453,718	302,478	756,196
License renewal	1,200	800	2,000
Payroll Taxes	198,901	132,601	331,502
License Insurance	53,174	35,450	88,624
Total Other Pilotage Costs	873,410	582,274	1,455,684
Pilot Boat and Dispatch Costs			
Pilot boat expense (Operating)	200,672	133,782	334,454
Dispatch expense	167,291	111,527	278,818
Employee Benefits	50,560	33,707	84,267
Salaries	249,396	166,264	415,660
Payroll taxes	10,269	6,846	17,115
Total Pilot Boat and Dispatch Costs	678,188	452,126	1,130,314
Administrative Expenses			
Legal—general counsel	1,078	719	1,797
Legal—shared counsel (K&L Gates)	4,402	2,935	7,337
Legal—Coast Guard Litigation	14,641	9,760	24,401
Insurance	44,108	29,405	73,513
Employee benefits	4,470	2,980	7,450
Payroll Taxes	42,464	28,310	70,774
Other taxes	79,200	52,800	132,000
Real Estate taxes	22,918	15,278	38,196
Travel	1,568	1,045	2,613
Depreciation	186,517	124,345	310,862
Interest	54,271	36,180	90,451
APA Dues	25,250	16,834	42,084
APA Dues (D1–21–01)	2,971	1,980	4,951
Dues and subscriptions	4,320	2,880	7,200
Utilities	41,343	27,562	68,905
Salaries	73,890	49,260	123,150
Accounting/Professional fees	4,320	2,880	7,200
Pilot Training	4,680	3,120	7,800
Applicant Pilot Training	18,911	12,607	31,518
Other	28,422	18,948	47,370
Total Administrative Expenses	659,744	439,828	1,099,572
Total Operating Expenses (OpEx)	2,476,529	1,651,018	4,127,547

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the recognized 2021 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2022 inflation rate.[31] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2023 and 2024 inflation modification.[32] Based on that information, the calculations for Step 2 are as presented in table 7.

[31] The CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–84=100.'' Series CUUR0200SA0 (Downloaded March 21, 2023). Available at *https://www.bls.gov/cpi/data.htm.,* All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted, 0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data.

[32] The 2023 and 2024 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230920.pdf. We used the Median Core PCE June Projection found in table 1. (*Downloaded September 2023).

TABLE 7—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	$2,476,529	$1,651,018	$4,127,547
2022 Inflation Modification (@8%)	198,122	132,081	330,203
2023 Inflation Modification (@3.9%)	104,311	69,541	173,852
2024 Inflation Modification (@2.6%)	72,253	48,169	120,422
Adjusted 2024 Operating Expenses	2,851,215	1,900,809	4,752,024

* Figures are rounded to the nearest dollar and may not sum to totals.

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, the Coast Guard estimates the number of fully registered pilots in each district. We determine the number of fully registered pilots based on data provided by the SLSPA. Using these numbers, we estimate that there will be 18 registered pilots in 2024 in District One. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, we estimate that there will be three apprentice pilots in 2024 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (82 FR 41466) and rounding introduced in the 2022 ratemaking (87 FR 18488), a certain number of pilots are assigned to designated waters, and a certain number of pilots are assigned to undesignated waters, as shown in table 8. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 8—AUTHORIZED PILOTS FOR DISTRICT ONE

Item	District One
Maximum Number of Pilots (per § 401.220(a)) *	18
2024 Authorized Pilots (total)	18
Pilots Assigned to Designated Areas	10
Pilots Assigned to Undesignated Areas	8
2024 Apprentice Pilots	3

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, we determine the total pilot compensation for each area. Because we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. First, we adjust the 2023 target compensation benchmark of $424,398 by 1.2 percent for a value of $429,491. This accounts for the difference in actual third quarter 2023 ECI inflation, which is 3.9 percent, and the 2023 PCE estimate of 2.7 percent.[33] [34] The second step accounts for projected inflation from 2023 to 2024, which is 2.6 percent.[35] Based on the projected 2024 inflation estimate, the target compensation benchmark for 2024 is $440,658 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $158,637 ($440,658 × 0.36).

In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District One, as shown in table 9. We estimate that the number of apprentice pilots with limited registration needed for District One in the 2024 season will be three. The total target wages for apprentices are allocated with 60 percent for the designated area and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 9—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$440,658	$440,658	$440,658
Number of Pilots	10	8	18
Total Target Pilot Compensation	$4,406,580	$3,525,264	$7,931,844
Target Apprentice Pilot Compensation	$158,637	$158,637	$158,637

[33] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://beta.bls.gov/dataViewer/view/timeseries/CIU2010000520000A*. (Last accessed 11/01/23.)

[34] Table 1 Summary of Economic Projections, Median PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf*. (Last accessed 05/17/23.)

[35] Table 1 Summary of Economic Projections, Median Core PCE Inflation June Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230920.pdf*. (Last accessed 09/2023.)

TABLE 9—TARGET COMPENSATION FOR DISTRICT ONE—Continued

	District One		
	Designated	Undesignated	Total
Number of Apprentice Pilots	.....	.....	3
Total Target Apprentice Pilot Compensation	$285,547	$190,364	$475,911

E. Step 5: Project Working Capital Fund

Next, the Coast Guard calculates the working capital fund revenues needed for each area. We first add the figures for projected operating expenses, total target pilot compensation, and total target apprentice pilot wage for each area, then we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 4.0742 percent rounded.[36] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 10.

TABLE 10—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$2,851,215	$1,900,809	$4,752,024
Total Target Pilot Compensation (Step 4)	4,406,580	3,525,264	7,931,844
Total Target Apprentice Pilot Compensation (Step 4)	285,547	190,364	475,911
Total 2024 Expenses	7,543,342	5,616,437	13,159,779
Working Capital Fund (4.0742%)	307,331	228,825	536,156

F. Step 6: Project Needed Revenue

In this step, we add the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the target total pilot compensation (from Step 4), total target apprentice pilot wage (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 11.

TABLE 11—REVENUE NEEDED FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$2,851,215	$1,900,809	$4,752,024
Total Target Pilot Compensation (Step 4)	4,406,580	3,525,264	7,931,844
Total Target Apprentice Pilot Compensation (Step 4)	285,547	190,364	475,911
Working Capital Fund (Step 5)	307,331	228,825	536,156
Total Revenue Needed	7,850,673	5,845,262	13,695,935

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, we divide that number by the expected number of traffic hours to develop an hourly rate.

Step 7 is a two-part process. The first part is calculating the 10-year traffic average in District One using the total time on task or pilot bridge hours. To calculate the time on task for each district from 2013–2020, the Coast Guard used billing data from SeaPro. The data is pulled from the system filtering by district, year, job status (including only processed jobs), and flagging code (including only U.S. jobs).

Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. For 2021–2022, the Coast Guard used figures provided by the associations through SeaPro monthly reports. Where bridge hour figures did not match between the monthly reports and the weighted factor reports, the Coast Guard opted to use the figures from the monthly report for Step 7. We show these values in table 12.

TABLE 12—TIME ON TASK FOR DISTRICT ONE

[Hours]

	District One	
	Designated	Undesignated
2022	6,573	8,356

[36] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Last accessed 03/21/23.)

TABLE 12—TIME ON TASK FOR DISTRICT ONE—Continued

[Hours]

	District One	
	Designated	Undesignated
2021	6,166	7,893
2020	6,265	7,560
2019	8,232	8,405
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217
2015	5,743	6,667
2014	6,810	6,853
2013	5,864	5,529
Average	6,564	7,460

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for District One in table 13.

TABLE 13—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	District One	
	Designated	Undesignated
Revenue needed (Step 6)	$7,850,673	$5,845,262
Average time on task (hours)	6,564	7,460
Initial rate	$1,196	$784

H. Step 8: Calculate Average Weighting Factors by Area

In this step, the Coast Guard calculates the average weighting factor for each designated and undesignated area by first collecting the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this data, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 to 2021, as shown in tables 14 and 15. Data for 2022 was provided by the associations in a weighting factor report.

TABLE 14—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	41	1	41
Class 1 (2016)	31	1	31
Class 1 (2017)	28	1	28
Class 1 (2018)	54	1	54
Class 1 (2019)	72	1	72
Class 1 (2020)	8	1	8
Class 1 (2021)	10	1	10
Class 1 (2022)	39	1	39
Class 2 (2014)	285	1.15	328
Class 2 (2015)	295	1.15	339
Class 2 (2016)	185	1.15	213
Class 2 (2017)	352	1.15	405
Class 2 (2018)	559	1.15	643
Class 2 (2019)	378	1.15	435
Class 2 (2020)	560	1.15	644
Class 2 (2021)	315	1.15	362
Class 2 (2022)	482	1.15	554
Class 3 (2014)	50	1.3	65
Class 3 (2015)	28	1.3	36
Class 3 (2016)	50	1.3	65
Class 3 (2017)	67	1.3	87
Class 3 (2018)	86	1.3	112
Class 3 (2019)	122	1.3	159
Class 3 (2020)	67	1.3	87
Class 3 (2021)	52	1.3	68
Class 3 (2022)	106	1.3	138
Class 4 (2014)	271	1.45	393
Class 4 (2015)	251	1.45	364

TABLE 14—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 4 (2016)	214	1.45	310
Class 4 (2017)	285	1.45	413
Class 4 (2018)	393	1.45	570
Class 4 (2019)	730	1.45	1059
Class 4 (2020)	427	1.45	619
Class 4 (2021)	407	1.45	590
Class 4 (2022)	478	1.45	693
Total	7,809	.....	10,064
Average weighting factor (weighted transits ÷ number of transits)	.....	1.29	.....

* Figures may not sum due to rounding.

TABLE 15—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	25	1	25
Class 1 (2015)	28	1	28
Class 1 (2016)	18	1	18
Class 1 (2017)	19	1	19
Class 1 (2018)	22	1	22
Class 1 (2019)	30	1	30
Class 1 (2020)	3	1	3
Class 1 (2021)	19	1	19
Class 1 (2022)	41	1	41
Class 2 (2014)	238	1.15	274
Class 2 (2015)	263	1.15	302
Class 2 (2016)	169	1.15	194
Class 2 (2017)	290	1.15	334
Class 2 (2018)	352	1.15	405
Class 2 (2019)	366	1.15	421
Class 2 (2020)	358	1.15	412
Class 2 (2021)	463	1.15	532
Class 2 (2022)	371	1.15	427
Class 3 (2014)	60	1.3	78
Class 3 (2015)	42	1.3	55
Class 3 (2016)	28	1.3	36
Class 3 (2017)	45	1.3	59
Class 3 (2018)	63	1.3	82
Class 3 (2019)	58	1.3	75
Class 3 (2020)	35	1.3	46
Class 3 (2021)	71	1.3	92
Class 3 (2022)	73	1.3	95
Class 4 (2014)	289	1.45	419
Class 4 (2015)	269	1.45	390
Class 4 (2016)	222	1.45	322
Class 4 (2017)	285	1.45	413
Class 4 (2018)	382	1.45	554
Class 4 (2019)	326	1.45	473
Class 4 (2020)	334	1.45	484
Class 4 (2021)	466	1.45	676
Class 4 (2022)	401	1.45	581
Total	6,524	.....	8,435
Average weighting factor (weighted transits/number of transits)	.....	1.29	.....

* Figures may not sum due to rounding.

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that the total cost of pilotage will be equal to the revenue needed, after considering the impact of the weighting factors. To do this, the initial base rates calculated in Step 7 are divided by the average weighting factors calculated in Step 8, as shown in table 16.

TABLE 16—REVISED BASE RATES FOR DISTRICT ONE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (Initial rate ÷ average weighting factor)
District One: Designated	$1,196	1.29	$927
District One: Undesignated	784	1.29	608

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there are enough pilots to handle those heavy traffic periods. The Director also considers whether the rates cover operating expenses and infrastructure costs, including average traffic and weighting factors. Based on the financial information submitted by the pilots, the Director is not establishing any alterations to the rates in this step. We modified § 401.405(a)(1) and (2) to reflect the final rates shown in table 17.

TABLE 17—FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2023 pilotage rate	Final 2024 pilotage rate
District One: Designated	St. Lawrence River	$876	$927
District One: Undesignated	Lake Ontario	586	608

District Two

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2021 expenses and revenues.[37] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs generally accrued by the pilot associations, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

In the 2021 expenses used as the basis for this final rule, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition of ''apprentice pilot'', which was introduced in the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported from 2021, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and describe the impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2024 ratemaking, as this final rule is based on 2021 operating expenses, when salaries were still an allowable expense. Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District Two are shown in table 18.

TABLE 18—2021 RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported operating expenses for 2021	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Applicant Pilot Compensation			
Salaries	$79,538	$119,306	$198,844
Employee Benefits	11,066	16,599	27,665
Total Applicant Pilot Compensation	90,604	135,905	226,509
Other Applicant Cost			
Applicant Subsistence	5,280	7,920	13,200
Hotel/Lodging Costs	2,976	4,464	7,440
Hotel/Lodging Costs (D2–21–01)	(2,976)	(4,464)	(7,440)

[37] These reports are available in the docket for this final rule.

TABLE 18—2021 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported operating expenses for 2021	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Payroll taxes	6,901	10,352	17,253
Total Other Applicant Cost	12,181	18,272	30,453
Other Pilotage Cost			
Subsistence	73,921	110,880	184,800
Hotel/Lodging	62,496	93,744	156,240
Hotel/Lodging (D2–21–01)	(55,307)	(82,960)	(138,267)
Travel	42,625	63,937	106,562
License renewal	1,958	2,938	4,896
Payroll Taxes	87,620	131,430	219,050
License Insurance	9,007	13,510	22,517
Total Other Pilotage Costs	222,320	333,479	555,798
Pilot Boat and Dispatch Costs			
Pilot boat costs	60,067	90,101	150,168
Employee Benefits	80,273	120,410	200,683
Insurance	4,317	6,475	10,792
Salaries	148,260	222,391	370,651
Payroll taxes	13,277	19,915	33,192
Total Pilot and Dispatch Costs	306,194	459,292	765,486
Administrative Expenses			
Legal	2,186	3,278	5,464
Legal—shared counsel (K&L Gates)	7,167	10,751	17,918
Office Rent	27,627	41,440	69,067
Insurance	15,084	22,627	37,711
Employee benefits	35,010	52,516	87,526
Payroll Taxes	5,161	7,741	12,902
Other taxes	55,252	82,879	138,131
Real Estate taxes	7,879	11,819	19,698
Travel	8,688	13,033	21,721
Depreciation	11,121	16,682	27,803
Interest	2	2	4
APA Dues	14,683	22,025	36,708
Dues and subscriptions	505	757	1,262
Utilities	24,356	36,535	60,891
Salaries	48,532	72,797	121,329
Accounting/Professional fees	17,846	26,769	44,615
Pilot Training	23,909	35,864	59,773
Applicant Pilot Training	209	313	522
Other	21,252	31,879	53,131
Total Administrative Expenses	326,469	489,707	816,176
Total Expenses (OPEX + Applicant + Pilot Boats + Admin + Capital)	957,768	1,436,655	2,394,422
Total Operating Expenses (OpEx + Adjustments)	957,768	1,436,655	2,394,422

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the recognized 2021 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2022 inflation rate.[38] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2023 and 2024 inflation modification.[39] Based on that information, the calculations for Step 2 are presented in table 19.

[38] The CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–84=100.'' Series CUUR0200SA0 (Downloaded March 21, 2023). Available at *https://www.bls.gov/cpi/data.htm.,* All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted, 0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data.

[39] The 2023 and 2024 inflation rates are available at Table 1 Summary of Economic Projections, Median Core PCE Inflation June Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230920.pdf.* (Last accessed 12/4/2023).

TABLE 19—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$957,768	$1,436,655	$2,394,422
2022 Inflation Modification (@8%)	$76,621	114,932	191,553
2023 Inflation Modification (@3.9%)	40,341	60,512	100,853
2024 Inflation Modification (@2.6%)	27,943	41,915	69,858
Adjusted 2024 Operating Expenses	1,102,673	1,654,014	2,756,686

* Figures are rounded to the nearest dollar and may not sum to totals.

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, the Coast Guard estimates the number of fully registered pilots in each district. We determine the number of fully registered pilots based on data provided by the LPA. Using these numbers, we estimate that there will be 17 registered pilots in 2024 in District Two, including the additional pilot being granted for 2024. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, we estimate that there will be one apprentice pilot in 2024 in District Two.

Based on the seasonal staffing model discussed in the 2017 ratemaking (82 FR 41466) and rounding introduced in the 2022 ratemaking (87 FR 18488), a certain number of pilots are assigned to designated waters, and a certain number of pilots are assigned to undesignated waters, as shown in table 20. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 20—AUTHORIZED PILOTS FOR DISTRICT TWO

Item	District Two
Maximum Number of Pilots (per § 401.220(a)) *	16
2024 Authorized Pilots (total)	17
Pilots Assigned to Designated Areas	9
Pilots Assigned to Undesignated Areas	8
2024 Apprentice Pilots	1

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, we determine the total pilot compensation for each area. Because we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation.

First, we adjust the 2023 target compensation benchmark of $424,398 by 1.2 percent for a value of $429,491. This accounts for the difference in actual third quarter 2023 ECI inflation, which is 3.9 percent, and the 2023 PCE estimate of 2.7 percent.[40] [41] The second step accounts for projected inflation from 2023 to 2024, which is 2.6 percent.[42] Based on the projected 2024 inflation estimate, the target compensation benchmark for 2024 is $440,658 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $158,637 ($440,658 × 0.36).

In accordance with § 404.104(c), the Coast Guard uses the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Two, as shown in table 21. The Coast Guard estimates that the number of apprentice pilots with limited registration needed for District Two in the 2024 season will be one. The total target wages for apprentices are allocated at 60 percent for the designated area and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 21—TARGET COMPENSATION FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Target Pilot Compensation	$440,658	$440,658	$440,658
Number of Pilots	8	9	17
Total Target Pilot Compensation	3,525,264	3,965,922	7,491,186

[40] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://beta.bls.gov/dataViewer/view/timeseries/CIU2010000520000A.* (Last accessed 11/01/23.)

[41] Table 1 Summary of Economic Projections, Median PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf.* (Last accessed 05/17/23.)

[42] Table 1 Summary of Economic Projections, Median Core PCE Inflation June Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230920.pdf* (Last accessed 12/4/2023).

TABLE 21—TARGET COMPENSATION FOR DISTRICT TWO—Continued

	District Two		
	Undesignated	Designated	Total
Target Apprentice Pilot Compensation	158,637	158,637	158,637
Number of Apprentice Pilots			1
Total Target Apprentice Pilot Compensation	63,455	95,182	158,637

E. Step 5: Project Working Capital Fund

Next, the Coast Guard calculates the working capital fund revenues needed for each area. We first add the figures for projected operating expenses, total target pilot compensation, and total target apprentice pilot wage for each area, and then we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 4.0742 percent, rounded.[43] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 22.

TABLE 22—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,102,673	$1,654,014	$2,756,686
Total Target Pilot Compensation (Step 4)	3,525,264	3,965,922	7,491,186
Total Target Apprentice Pilot Compensation (Step 4)	63,455	95,182	158,637
Total 2024 Expenses	4,691,392	5,715,118	10,406,509
Working Capital Fund (4.0742%)	191,137	232,845	423,982

F. Step 6: Project Needed Revenue

In this step, the Coast Guard adds all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total target pilot compensation (from Step 4), total target apprentice pilot wage (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 23.

TABLE 23—REVENUE NEEDED FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,102,673	$1,654,014	$2,756,686
Total Target Pilot Compensation (Step 4)	3,525,264	3,965,922	7,491,186
Total Target Apprentice Pilot Compensation (Step 4)	63,455	95,182	158,637
Working Capital Fund (Step 5)	191,137	232,845	423,982
Total Revenue Needed	4,882,529	5,947,963	10,830,491

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, the Coast Guard divides that number by the expected number of traffic hours to develop an hourly rate.

Step 7 is a two-part process. In the first part, we calculate the 10-year traffic average in District Two, using the total time on task or pilot bridge hours. To calculate the time on task for each district from 2013–2020, the Coast Guard used billing data from SeaPro. The data is pulled from the system filtering by district, year, job status (including only processed jobs), and flagging code (including only U.S. jobs).

Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. For 2021–2022, the Coast Guard used figures provided by the associations through SeaPro monthly reports. Where bridge hour figures did not match between the monthly reports and the weighted factor reports, the Coast Guard opted to use the figures from the monthly report for Step 7. We show these values in table 24.

[43] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Last accessed 03/21/2023).

TABLE 24—TIME ON TASK FOR DISTRICT TWO

[Hours]

Year	District Two	
	Undesignated	Designated
2022	7,668	8,613
2021	5,290	6,762
2020	6,232	8,401
2019	6,512	7,715
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
2014	7,856	7,001
2013	4,603	4,750
Average	6,241	6,755

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for District Two in table 25.

TABLE 25—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

	Undesignated	Designated
Revenue needed (Step 6)	$4,882,529	$5,947,963
Average time on task (hours)	6,241	6,755
Initial rate	$782	$881

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this data, we calculate the average weighting factor for each area using the data from each vessel transit from 2014–2021, as shown in tables 26 and 27. Data for 2022 was provided by the associations in a weighting factor report.

TABLE 26—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	35	1	35
Class 1 (2016)	32	1	32
Class 1 (2017)	21	1	21
Class 1 (2018)	37	1	37
Class 1 (2019)	54	1	54
Class 1 (2020)	1	1	1
Class 1 (2021)	7	1	7
Class 1 (2022)	121	1	121
Class 2 (2014)	356	1.15	409
Class 2 (2015)	354	1.15	407
Class 2 (2016)	380	1.15	437
Class 2 (2017)	222	1.15	255
Class 2 (2018)	123	1.15	141
Class 2 (2019)	127	1.15	146
Class 2 (2020)	165	1.15	190
Class 2 (2021)	206	1.15	237
Class 2 (2022)	478	1.15	550
Class 3 (2014)	20	1.3	26
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	12
Class 3 (2017)	12	1.3	16
Class 3 (2018)	3	1.3	4
Class 3 (2019)	1	1.3	1
Class 3 (2020)	1	1.3	1
Class 3 (2021)	5	1.3	7
Class 3 (2022)	8	1.3	10
Class 4 (2014)	636	1.45	922
Class 4 (2015)	560	1.45	812

TABLE 26—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 4 (2016)	468	1.45	679
Class 4 (2017)	319	1.45	463
Class 4 (2018)	196	1.45	284
Class 4 (2019)	210	1.45	305
Class 4 (2020)	201	1.45	291
Class 4 (2021)	227	1.45	329
Class 4 (2022)	642	1.45	931
Total	6,268	.....	8,204
Average weighting factor (weighted transits/number of transits)	.....	1.31	.....

* Figures may not sum due to rounding.

TABLE 27—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	20	1	20
Class 1 (2015)	15	1	15
Class 1 (2016)	28	1	28
Class 1 (2017)	15	1	15
Class 1 (2018)	42	1	42
Class 1 (2019)	48	1	48
Class 1 (2020)	7	1	7
Class 1 (2021)	12	1	12
Class 1 (2022)	117	1	117
Class 2 (2014)	237	1.15	273
Class 2 (2015)	217	1.15	250
Class 2 (2016)	224	1.15	258
Class 2 (2017)	127	1.15	146
Class 2 (2018)	153	1.15	176
Class 2 (2019)	281	1.15	323
Class 2 (2020)	342	1.15	393
Class 2 (2021)	240	1.15	276
Class 2 (2022)	717	1.15	825
Class 3 (2014)	8	1.3	10
Class 3 (2015)	8	1.3	10
Class 3 (2016)	4	1.3	5
Class 3 (2017)	4	1.3	5
Class 3 (2018)	14	1.3	18
Class 3 (2019)	1	1.3	1
Class 3 (2020)	5	1.3	7
Class 3 (2021)	2	1.3	3
Class 3 (2022)	13	1.3	17
Class 4 (2014)	359	1.45	521
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407
Class 4 (2017)	185	1.45	268
Class 4 (2018)	379	1.45	550
Class 4 (2019)	403	1.45	584
Class 4 (2020)	405	1.45	587
Class 4 (2021)	268	1.45	389
Class 4 (2022)	1,230	1.45	1,784
Total	6,751	.....	8,882
Average weighting factor (weighted transits/number of transits)	.....	1.32	.....

* Figures may not sum due to rounding.

I. Step 9: Calculate Revised Base Rates

In this step, the Coast Guard revises the base rates, so that the total cost of pilotage will be equal to the revenue needed after considering the impact of the weighting factors. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 28.

TABLE 28—REVISED BASE RATES FOR DISTRICT TWO

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate ÷ average weighting factor)
District Two: Undesignated	$782	1.31	$597
District Two: Designated	881	1.32	667

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there are enough pilots to handle those heavy traffic periods. The Director also considers whether the rates cover operating expenses and infrastructure costs, taking average traffic and weighting factors into consideration. Based on the financial information submitted by the pilots, the Director is not establishing any alterations to the rates in this step. We modify § 401.405(a)(3) and (4) to reflect the final rates shown in table 29.

TABLE 29—FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2023 pilotage rate	Final 2024 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	$601	$667
District Two: Undesignated	Lake Erie	704	597

District Three

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we review the independent accountant's financial reports for each association's 2021 expenses and revenues.[44] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs generally accrued by the pilot associations, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

In the 2021 expenses used as the basis for this final rule, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition of ''apprentice pilot'', which was introduced in the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported in 2021, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and to describe the impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2024 ratemaking, as this final rule is based on 2021 operating expenses, when salaries were still an allowable expense. Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District Three are shown in table 30.

TABLE 30—2021 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported operating expenses for 2021	Undesignated	Designated	Undesignated	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Applicant Cost				
Applicant Salaries	$336,149	$140,111	$176,330	$652,590
Applicant Benefits	58,306	24,303	30,585	113,194
Total Applicant Cost	394,455	164,414	206,915	765,784
Other Pilotage Costs				
Pilot subsistence/travel	149,993	62,519	78,680	291,192
Hotel/Lodging Cost	136,769	57,007	71,744	265,520
Hotel/Lodging Cost (D3–21–03)	(18,162)	(7,570)	(9,527)	(35,260)
Travel	55,936	23,315	29,342	108,592

[44] These reports are available in the docket for this final rule.

TABLE 30—2021 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported operating expenses for 2021	Undesignated	Designated	Undesignated	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
License Insurance—Pilots	881	367	462	1,710
Payroll taxes	.....	.....	.....	.....
Payroll Tax (D3–21–04)	155,779	64,931	81,715	302,425
License Insurance	15,328	6,389	8,040	29,757
Total Other Pilotage Costs	496,524	206,958	260,456	963,938
Pilot Boat and Dispatch Costs				
Pilot boat costs	445,549	185,710	233,716	864,975
Pilot Boat Coast (D2–21–02)	(10,901)	(4,544)	(5,718)	(21,163)
Dispatch costs	38,156	15,904	20,015	74,074
Employee Benefits	1,748	729	917	3,394
Insurance	20,141	8,395	10,565	39,101
Insurance (D3–21–05, D3–21–09)	1,735	723	910	3,369
Salaries	140,294	58,476	73,592	272,363
Payroll taxes	123	51	64	238
Total Pilot boat and dispatch costs	636,845	265,444	334,061	1,236,350
Administrative Cost				
Legal—general counsel	9,560	3,985	5,015	18,560
Legal—shared counsel (K&L Gates)	6,227	2,595	3,266	12,088
Legal—shared counsel (K&L Gates) (D3–21–07)	(1,307)	(545)	(686)	(2,538)
Travel	58,104	24,219	30,479	112,802
Travel (D3–21–03)	(14,093)	(5,874)	(7,393)	(27,360)
Insurance	29,480	12,288	15,464	57,232
Insurance (D3–21–05, D3–21–09)	(5,112)	(2,131)	(2,681)	(9,924)
Employee benefits	126,390	52,681	66,299	245,369
Payroll Tax	54,544	22,735	28,611	105,890
Other taxes	25,489	10,624	13,370	49,483
Other taxes (D3–21–02)	(25,006)	(10,423)	(13,117)	(48,545)
Real Estate Taxes	1,396	582	732	2,710
Depreciation/Auto leasing/Other	112,215	46,772	58,863	217,850
Depreciation/Auto leasing/Other (D3–21–02)	(4,465)	(1,861)	(2,342)	(8,668)
Interest	3,432	1,431	1,800	6,663
APA Dues	25,946	10,814	13,610	50,370
APA Dues (D3–21–08)	(1,297)	(541)	(680)	(2,519)
Dues and subscriptions	4,044	1,685	2,121	7,850
Salaries	63,591	26,506	33,357	123,454
Utilities	41,681	17,373	21,864	80,919
Utilities (D3–21–03)	(34,248)	(14,275)	(17,965)	(66,488)
Accounting/Professional fees	22,765	9,489	11,941	44,195
Pilot Training	44,259	18,448	23,216	85,923
Other expenses	24,741	10,312	12,978	48,032
Total Administrative Expenses	568,336	236,889	298,122	1,103,347
Total Operating Expenses (OpEx)	2,096,160	873,705	1,099,554	4,069,419

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the 2021 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2022 inflation rate.[45] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2023 and 2024 inflation modification.[46] Based on that information, the calculations for Step 2 are as presented in table 31.

[45] The CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–84=100.'' Series CUUR0200SA0 (Downloaded March 21, 2023). Available at *https://www.bls.gov/cpi/data.htm.,* All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted, 0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data.

[46] The 2022 and 2023 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230920.pdf.* We used the Median Core PCE June Projection found in table 1. (Downloaded September 2023).

TABLE 31—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$3,195,714	$873,705	$4,069,419
2022 Inflation Modification (@8%)	255,657	69,896	325,553
2023 Inflation Modification (@3.9%)	134,603	36,800	171,403
2024 Inflation Modification (@2.6%)	93,235	25,490	118,725
Adjusted 2024 Operating Expenses	3,679,209	1,005,891	4,685,100

* Figures are rounded to the nearest dollar and may not sum to totals.

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, the Coast Guard estimates the number of registered pilots in each district. We determine the number of registered pilots based on data provided by the WGLPA. Using these numbers, we estimate that there will be 23 registered pilots in 2024 in District Three, including the additional pilot granted by the Director. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, the Coast Guard estimates that there will be two apprentice pilots in 2024 in District Three. Based on the seasonal staffing model discussed in the 2017 ratemaking (82 FR 41466) and rounding introduced in the 2022 ratemaking (87 FR 18488), a certain number of pilots are assigned to designated waters, and a certain number of pilots are assigned to undesignated waters, as shown in table 32. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 32—AUTHORIZED PILOTS FOR DISTRICT THREE

Item	District Three
Maximum Number of Pilots (per § 401.220(a)) *	22
2024 Authorized Pilots (total)	23
Pilots Assigned to Designated Areas	5
Pilots Assigned to Undesignated Areas	18
2024 Apprentice Pilots	2

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, we determine the total pilot compensation for each area. Because we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. First, we adjust the 2023 target compensation benchmark of $424,398 by 1.2 percent for a value of $429,491. This accounts for the difference in actual third quarter 2023 ECI inflation, which is 3.9 percent, and the 2023 PCE estimate of 2.7 percent.[47] [48] The second step accounts for projected inflation from 2023 to 2024, which is 2.6 percent.[49] Based on the projected 2024 inflation estimate, the target compensation benchmark for 2024 is $440,658 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $158,637 ($440,658 × 0.36).

In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Three, as shown in table 33. We estimate that the number of apprentice pilots with limited registration needed for District Three in the 2024 season will be two. The total target wages for apprentices are allocated with 21 percent for the designated area and 79 percent (52 percent + 27 percent) for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 33—TARGET COMPENSATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Target Pilot Compensation	$440,658	$440,658	$440,658
Number of Pilots	18	5	23
Total Target Pilot Compensation	$7,931,844	$2,203,290	$10,135,134
Target Apprentice Pilot Compensation	$158,637	$158,637	$158,637

[47] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://beta.bls.gov/dataViewer/view/timeseries/CIU2010000520000A.* (Last accessed 11/01/23.)

[48] Table 1 Summary of Economic Projections, Median PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf.* (Last accessed 05/17/23.)

[49] Table 1 Summary of Economic Projections, Median Core PCE Inflation June Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230920.pdf* (Last accessed 12/4/2023).

TABLE 33—TARGET COMPENSATION FOR DISTRICT THREE—Continued

	District Three		
	Undesignated	Designated	Total
Number of Apprentice Pilots	.....	.....	2
Total Target Apprentice Pilot Compensation	$250,646	$66,628	$317,274

E. Step 5: Project Working Capital Fund

Next, the Coast Guard calculates the working capital fund revenues needed for each area. We first add the figures for projected operating expenses, total target pilot compensation, and total target apprentice pilot wage for each area, and then, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 4.0742 percent, rounded.[50] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 34.

TABLE 34—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$3,679,209	$1,005,891	$4,685,100
Total Target Pilot Compensation (Step 4)	7,931,844	2,203,290	10,135,134
Total Target Apprentice Pilot Compensation (Step 4)	250,646	66,628	317,274
Total 2024 Expenses	11,861,699	3,275,809	15,137,508
Working Capital Fund (4.0742%)	483,269	133,463	616,732

F. Step 6: Project Needed Revenue

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total target pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). The calculations are shown in table 35.

TABLE 35—REVENUE NEEDED FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$3,679,209	$1,005,891	$4,685,100
Total Target Pilot Compensation (Step 4)	7,931,844	2,203,290	10,135,134
Total Target Apprentice Pilot Compensation (Step 4)	250,646	66,628	317,274
Working Capital Fund (Step 5)	483,269	133,463	616,732
Total Revenue Needed	12,344,968	3,409,272	15,754,240

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, we divide that number by the expected number of traffic hours to develop an hourly rate.

Step 7 is a two-part process. In the first part, the 10-year traffic average in District Three is calculated using the total time on task or pilot bridge hours. To calculate the time on task for each district from 2013–2020, the Coast Guard used billing data from SeaPro. The data is pulled from the system filtering by district, year, job status (including only processed jobs), and flagging code (including only U.S. jobs).

Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. For 2021–2022, the Coast Guard used figures provided by the associations through SeaPro monthly reports. Where bridge hour figures did not match between the monthly reports and the weighted factor reports, the Coast Guard opted to use the figures from the monthly report for Step 7. We show these values in table 36.

[50] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA.* (Last accessed 03/21/2023.)

TABLE 36—TIME ON TASK FOR DISTRICT THREE

[Hours]

Year	District Three	
	Undesignated	Designated
2022	23,914	3,345
2021	18,149	2,484
2020	23,678	3,520
2019	24,851	3,395
2018	19,967	3,455
2017	20,955	2,997
2016	23,421	2,769
2015	22,824	2,696
2014	25,833	3,835
2013	17,115	2,631
Average	22,071	3,113

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for District Three are set forth in table 37.

TABLE 37—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 6)	$12,344,968	$3,409,272
Average time on task (hours)	22,071	3,113
Initial rate	$559	$1,095

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this data, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 to 2021, as shown in tables 38 and 39. Data for 2022 was provided by the associations in a weighting factor report.

TABLE 38—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 6			
Class 1 (2014)	45	1	45
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148
Class 1 (2018)	103	1	103
Class 1 (2019)	173	1	173
Class 1 (2020)	4	1	4
Class 1 (2021)	8	1	8
Class 1 (2022)	162	1	162
Class 2 (2014)	274	1.15	315
Class 2 (2015)	207	1.15	238
Class 2 (2016)	236	1.15	271
Class 2 (2017)	264	1.15	304
Class 2 (2018)	169	1.15	194
Class 2 (2019)	279	1.15	321
Class 2 (2020)	332	1.15	382
Class 2 (2021)	273	1.15	314
Class 2 (2022)	452	1.15	520
Class 3 (2014)	15	1.3	20
Class 3 (2015)	8	1.3	10
Class 3 (2016)	10	1.3	13
Class 3 (2017)	19	1.3	25
Class 3 (2018)	9	1.3	12
Class 3 (2019)	9	1.3	12
Class 3 (2020)	4	1.3	5
Class 3 (2021)	5	1.3	7
Class 3 (2022)	3	1.3	4
Class 4 (2014)	394	1.45	571

TABLE 38—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 4 (2015)	375	1.45	544
Class 4 (2016)	332	1.45	481
Class 4 (2017)	367	1.45	532
Class 4 (2018)	337	1.45	489
Class 4 (2019)	334	1.45	484
Class 4 (2020)	339	1.45	492
Class 4 (2021)	356	1.45	516
Class 4 (2022)	482	1.45	699
Total for Area 6	6,719	.....	8,609
Area 8			
Class 1 (2014)	3	1	3
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 1 (2019)	0	1	0
Class 1 (2020)	1	1	1
Class 1 (2021)	5	1	5
Class 1 (2022)	12	1	12
Class 2 (2014)	177	1.15	204
Class 2 (2015)	169	1.15	194
Class 2 (2016)	174	1.15	200
Class 2 (2017)	151	1.15	174
Class 2 (2018)	102	1.15	117
Class 2 (2019)	120	1.15	138
Class 2 (2020)	180	1.15	207
Class 2 (2021)	124	1.15	143
Class 2 (2022)	95	1.15	109
Class 3 (2014)	3	1.3	4
Class 3 (2015)	0	1.3	0
Class 3 (2016)	7	1.3	9
Class 3 (2017)	18	1.3	23
Class 3 (2018)	7	1.3	9
Class 3 (2019)	6	1.3	8
Class 3 (2020)	1	1.3	1
Class 3 (2021)	1	1.3	1
Class 3 (2022)	5	1.3	7
Class 4 (2014)	243	1.45	352
Class 4 (2015)	253	1.45	367
Class 4 (2016)	204	1.45	296
Class 4 (2017)	269	1.45	390
Class 4 (2018)	188	1.45	273
Class 4 (2019)	254	1.45	368
Class 4 (2020)	265	1.45	384
Class 4 (2021)	319	1.45	463
Class 4 (2022)	306	1.45	444
Total for Area 8	3,670	.....	4,914
Combined total	10,389	.....	13,522
Average weighting factor (weighted transits/number of transits)	.....	1.30	.....

* Figures may not sum due to rounding.

TABLE 39—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	27	1	27
Class 1 (2015)	23	1	23
Class 1 (2016)	55	1	55
Class 1 (2017)	62	1	62
Class 1 (2018)	47	1	47
Class 1 (2019)	45	1	45
Class 1 (2020)	15	1	15
Class 1 (2021)	15	1	15
Class 1 (2022)	104	1	104
Class 2 (2014)	221	1.15	254
Class 2 (2015)	145	1.15	167

TABLE 39—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 2 (2016)	174	1.15	200
Class 2 (2017)	170	1.15	196
Class 2 (2018)	126	1.15	145
Class 2 (2019)	162	1.15	186
Class 2 (2020)	218	1.15	251
Class 2 (2021)	131	1.15	151
Class 2 (2022)	198	1.15	228
Class 3 (2014)	15	1.3	20
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	8
Class 3 (2017)	14	1.3	18
Class 3 (2018)	6	1.3	8
Class 3 (2019)	3	1.3	4
Class 3 (2020)	1	1.3	1
Class 3 (2021)	2	1.3	3
Class 3 (2022)	5	1.3	7
Class 4 (2014)	321	1.45	465
Class 4 (2015)	245	1.45	355
Class 4 (2016)	191	1.45	277
Class 4 (2017)	234	1.45	339
Class 4 (2018)	225	1.45	326
Class 4 (2019)	308	1.45	447
Class 4 (2020)	336	1.45	487
Class 4 (2021)	258	1.45	374
Class 4 (2022)	392	1.45	568
Total	4,500	.....	5,877
Average weighting factor (weighted transits/number of transits)	.....	1.31	.....

* Figures may not sum due to rounding.

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates, so that the total cost of pilotage will be equal to the revenue needed after considering the impact of the weighting factors. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 40.

TABLE 40—REVISED BASE RATES FOR DISTRICT THREE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate ÷ average weighting factor)
District Three: Undesignated	$559	1.30	$430
District Three: Designated	1,095	1.31	836

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there are enough pilots to handle those heavy traffic periods. The Director also considers whether the rates cover operating expenses and infrastructure costs, taking average traffic and weighting factors into consideration. Based on this information, the Director is not establishing any alterations to the rates in this step. We modified § 401.405(a)(5) and (6) to reflect the rates shown in table 41.

TABLE 41—FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2023 pilotage rate	Final 2024 pilotage rate
District Three: Designated	St. Mary's River	$834	$836
District Three: Undesignated	Lakes Huron, Michigan, and Superior	410	430

X. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by

Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

The purpose of this final rule is to establish new pilotage rates, as 46 U.S.C. 9303(f) requires that rates be established or reviewed and adjusted each year. The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The Coast Guard concluded the last full ratemaking in February of 2023.[51]

For this final rule, the Coast Guard estimates an increase in cost of approximately $2.62 million to industry from 2023 to 2024. This is approximately a 7-percent increase because of the change in revenue needed in 2024 compared to the revenue needed in 2023. See table 42.

TABLE 42—ECONOMIC IMPACTS DUE TO RATE CHANGES

Change	Description	Affected population	Costs	Benefits
Rate changes	In accordance with 46 U.S.C. Chapter 93, the Coast Guard is required to review and adjust pilotage rates annually.	Owners and operators of 296 vessels transiting the Great Lakes system annually, 58 United States Great Lakes pilots, 6 apprentice pilots, and 3 pilotage associations.	Increase of $2,621,471 due to change in revenue needed for 2024 ($40,280,666) from revenue needed for 2023 ($37,659,195) as shown in table 43.	New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. Ensures the association receives sufficient revenues to fund future improvements.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See section III., Basis and Purpose, of this preamble for detailed discussions of the legal basis and purpose for this rulemaking. Based on our annual review for this rulemaking, we are adjusting the pilotage rates for the 2024 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate properly trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The result is an increase in rates for both areas in District One, the designated area for District Two, and both areas in District Three. There is a decrease in rates for the undesignated area in District Two. These changes also lead to a net increase in the cost of service to shippers. The change in per-unit cost to each individual shipper depends on their area of operation.

A detailed discussion of our economic impact analysis follows.

Affected Population

This final rule affects United States Great Lakes pilots and apprentice pilots, the 3 pilot associations, and the owners and operators of 296 oceangoing vessels that transit the Great Lakes annually on average from 2020 to 2022. The Coast Guard estimates that there will be 58 registered pilots and 6 apprentice pilots during the 2024 shipping season, an increase of 2 pilots and decrease of 1 apprentice pilot from the proposed numbers in the NPRM. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (engaged in foreign trade) and the owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels.

The statute applies only to commercial vessels, not to recreational vessels. United States-flagged vessels not operating on register, and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these United States- and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2020 through 2022 from the SeaPro to estimate the average annual number of vessels affected by the rate adjustment. SeaPro tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the ratemaking methodology, we use a 10-year average to estimate the traffic. We used 3 years of the most recent billing data to estimate the affected population. The associations did not provide updated trip-level billing data for 2022, as they did for 2021, to use to update the number of vessels or customers in this final rule, so we used what was provided in the NPRM. We believe that using 3 years of billing data is a better representation of the vessel population

[51] Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology (88 FR 12226), published February 27, 2023.

currently using pilotage services and impacted by this final rule.

We found that 437 unique vessels used pilotage services during the years 2020 through 2022. That is, these vessels had a pilot dispatched to the vessel, and billing information was recorded in SeaPro. Of these vessels, 407 were foreign-flagged vessels, and 30 were U.S.-flagged vessels. As stated previously, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, the Coast Guard took an average of the unique vessels using pilotage services from the years 2020 through 2022 as the best representation of vessels estimated to be affected by the rates in this final rule. From 2020 through 2022, an average of 296 vessels used pilotage services annually.[52] On average, 280 of these vessels were foreign-flagged and 16 were U.S.-flagged vessels that voluntarily opted into the pilotage service (these figures are rounded averages).

Total Cost to Shippers

The rate changes resulting from this adjustment to the rates result in a net increase in the cost of service to shippers. However, the change in per-unit cost to each individual shipper is dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2023 with the total projected revenues to cover costs in 2024. We set pilotage rates so pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they engage a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this final rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in tables 11, 23, and 35 of this preamble). The Coast Guard estimates that, for the 2024 shipping season, the projected revenue needed for all three districts is $40,280,666.

To estimate the change in cost to shippers from this final rule, the Coast Guard compared the 2024 total projected revenues to the 2023 projected revenues. Because we review and prescribe rates for Great Lakes pilotage annually, the effects are estimated as a single-year cost, rather than annualized over a 10-year period. In the 2023 final rule, we estimated the total projected revenue needed for 2023 as 37,659,195.[53] This is the best approximation of 2023 revenues, as, at the time of publication of this final rule, the Coast Guard does not have enough audited data available for the 2023 shipping season to revise these projections. Table 43 shows the revenue projections for 2023 and 2024 and details the additional cost increases to shippers by district as a result of the rate changes in traffic in Districts One, Two, and Three.

TABLE 43—EFFECT OF THE FINAL RULE BY DISTRICT

[U.S. Dollars; Non-discounted]

Area	Revenue needed in 2023	Revenue needed in 2024	Additional costs of this rule
Total, District One	$12,609,601	$13,695,935	$1,086,334
Total, District Two	10,392,542	10,830,491	437,949
Total, District Three	14,657,052	15,754,240	1,097,188
System Total	37,659,195	40,280,666	2,621,471

* All figures are rounded to the nearest dollar and may not sum.

The resulting difference between the projected revenue in 2023 and the projected revenue in 2024 is the annual change in payments from shippers to pilots as a result of the rate changes in this final rule. The effect of the rate changes to shippers varies by area and district. After considering the change in pilotage rates, the rate changes lead to affected shippers operating in District One experiencing an increase in payments of $1,086,334 over the previous year. Affected shippers operating in District Two and District Three experienced an increase in payments of $437,949 and $1,097,188, respectively, when compared with 2023. The overall adjustment in payments increased payments by shippers to $2,621,471 across all three districts (a 7-percent increase when compared with 2023). Again, because the Coast Guard reviews and sets rates for Great Lakes pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 44 shows the difference in revenue by revenue-component from 2023 to 2024 and presents each revenue-component as a percentage of the total revenue needed. In both 2023 and 2024, the largest revenue-component was target pilotage compensation (63 percent of total revenue needed in 2023 and 63 percent of total revenue needed in 2024), followed by operating expenses (32 percent of total revenue needed in 2023 and 30 percent of total revenue needed in 2024). The large increase in the working capital fund, 59 percent from 2023 to 2024, is driven by a large increase in the target rate of return on investment from 2.7033 percent in 2021 to 4.0742 percent in 2022.[54]

[52] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels using pilotage services in any given year.

[53] 88 FR 12226. See table 42. *https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03212.pdf.* (Last accessed 5/17/23.)

[54] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA.* (Last accessed 03/21/2023.)

TABLE 44—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT

Revenue component	Revenue needed in 2023	Percentage of total revenue needed in 2023 (%)	Revenue needed in 2024	Percentage of total revenue needed in 2024	Difference (2024 revenue–2023 revenue)	Percentage change from previous year (%)
Adjusted Operating Expenses	$11,984,950	32	$12,193,810	30	$208,860	2
Total Target Pilot Compensation	23,766,288	63	25,558,164	63	1,791,876	8
Total Target Apprentice Pilot Compensation	916,700	2	951,822	2	35,122	4
Working Capital Fund	991,257	3	1,576,870	4	585,613	59
Total Revenue Needed	37,659,195	100	40,280,666	100	2,621,471	7

* All figures are rounded to the nearest dollar and may not sum.

As stated above, we estimate a total increase in revenue needed by the pilot associations of $2,621,471. This represents an increase in revenue needed for target pilot compensation of $1,791,876, for the total apprentice pilot wage benchmark of $35,122, $208,860 for adjusted operating expenses, and $585,613 for an increase in the revenue needed for the working capital fund.

The change in revenue needed for pilot compensation, $1,791,876, is due to two factors: (1) The changes to adjust 2023 pilotage compensation to account for the difference between actual ECI inflation [55] (3.9 percent) and predicted PCE inflation [56] (2.7 percent) for 2023; and (2) projected inflation of pilotage compensation in Step 2 of the methodology, using predicted inflation through 2024.

The target compensation is $440,658 per pilot in 2024, compared to $424,398 in 2023. The changes to modify the 2023 pilot compensation to account for the difference between predicted and actual inflation increase the 2023 target compensation value by 1.2 percent. As shown in table 45, this inflation adjustment increases total compensation by $5,093 per pilot, and the total revenue needed by $295,381, when accounting for all 58 pilots.

TABLE 45—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

2023 Target Pilot Compensation	$424,398
Adjusted 2023 Compensation ($424,398 × 1.012)	$429,491
Difference between Adjusted Target 2023 Compensation and Target 2023 Compensation ($429,491 − $424,398)	$5,093
Increase in total Revenue for 58 Pilots ($5,093 × 58)	$295,381

* All figures are rounded to the nearest dollar and may not sum.

Similarly, table 46 shows the impact of the difference between predicted and actual inflation on the target apprentice pilot compensation benchmark. The inflation adjustment increases the compensation benchmark by $1,833 per apprentice pilot, and the total revenue needed by $11,000 when accounting for all six apprentice pilots.

TABLE 46—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF APPRENTICE PILOT COMPENSATION CALCULATION IN STEP 4

Target Apprentice Pilot Compensation	$152,783
Adjusted Compensation ($152,783 × 1.012)	$154,617
Difference between Adjusted Target Compensation and Target Compensation ($154,617 − $152,783)	$1,833
Increase in total Revenue for Apprentices ($1,833 × 6)	$11,000

* All figures are rounded to the nearest dollar and may not sum.

As noted earlier, the Coast Guard predicts that 58 pilots will be needed for the 2024 season. This is two more pilots than in the 2023 final rule, which leads to an estimated $871,130 increase in revenue needed for pilot compensation, as shown in table 47.

TABLE 47—CHANGE IN REVENUE RESULTING FROM INCREASE OF TWO PILOTS

2024 Target Compensation	$440,658
Total Number of New Pilots	2
Total Cost of new Pilots ($440,658 × 2)	$881,316
Difference between Adjusted Target 2023 Compensation and Target 2023 Compensation ($429,491 − $424,398)	$5,093
Increase in Revenue for 2 Pilots ($5,093 × 2)	$10,186

[55] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://beta.bls.gov/dataViewer/view/timeseries/CIU2010000520000A.* (Last accessed 08/28/23.)

[56] Table 1 Summary of Economic Projections, Median PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf.* (Last accessed 5/17/23.)

TABLE 47—CHANGE IN REVENUE RESULTING FROM INCREASE OF TWO PILOTS—Continued

Net Increase in total Revenue for 2 Pilots ($881,316 − $10,186)	$871,130

* All figures are rounded to the nearest dollar and may not sum.

Similarly, the Coast Guard predicts that six apprentice pilots will be needed for the 2024 season. This is the same as in the 2023 season, so there is no estimated change in revenue needed for pilot compensation, apart from the change in inflation accounted for in table 48.

Another increase, $647,699, is the result of increasing compensation for the 58 pilots to account for future inflation of 2.6 percent in 2024. This increased total compensation by $11,167 per pilot, as shown in table 48.

TABLE 48—CHANGE IN REVENUE RESULTING FROM INFLATING 2023 COMPENSATION TO 2024

Adjusted 2023 Compensation	$429,491
2024 Target Compensation ($429,491 × 1.026)	$440,658
Difference between Adjusted 2023 Compensation and Target 2024 Compensation ($440,658 − $429,491)	$11,167
Increase in total Revenue for 58 Pilots ($11,167 × 58)	$647,699

* All figures are rounded to the nearest dollar and may not sum.

Similarly, an increase of $24,122 is the result of increasing compensation for the 6 apprentice pilots to account for future inflation of 2.6 percent in 2024. This increased total compensation by $4,020 per apprentice pilot, as shown in table 49.

TABLE 49—CHANGE IN REVENUE RESULTING FROM INFLATING 2023 APPRENTICE PILOT COMPENSATION TO 2024

Adjusted 2023 Compensation	$154,617
2024 Target Compensation ($440,658 × 36%)	$158,637
Difference between Adjusted Compensation and Target Compensation ($158,637 − $154,617)	$4,020
Increase in total Revenue for 6 Apprentices ($4,020 × 6)	$24,122

* All figures are rounded to the nearest dollar and may not sum.

Table 50 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[57]

[57] The 2023 projected revenues are from the Great Lakes Pilotage Rate—2023 Annual Review and Revisions to Methodology final rule (88 FR 12226), tables 10, 22, and 34. The 2024 projected revenues are from tables 11, 23, and 35 of this rule.

TABLE 50—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT AND AREA

	Adjusted operating expenses			Total target pilot compensation			Total target apprentice pilot compensation			Working capital fund			Total revenue needed		
	2023	2024	Percentage change	2023	2024	Percentage change	2023	2024	Percentage change	2023	2024	Percentage change	2023	2024	Percentage change
District One:															
Designated	$2,599,777	$2,851,215	10	$4,243,980	$4,406,580	4	$183,340	$285,547	56	$189,966	$307,331	62	$7,217,063	$7,850,673	8.8
Undesignated	1,733,186	1,900,809	10	3,395,184	3,525,264	4	122,227	190,364	56	141,941	228,825	61	5,392,538	5,845,262	8.4
District Two:															
Undesignated	1,270,338	1,102,673	(13)	4,243,980	3,525,264	(17)	61,113	63,455	4	150,722	191,137	27	5,726,153	4,882,529	(14.7)
Designated	1,905,503	1,654,014	(13)	2,546,388	3,965,922	56	91,670	95,182	4	122,828	232,845	90	4,666,389	5,947,963	27.5
District Three:															
Undesignated	3,515,118	3,679,209	5	7,214,766	7,931,844	10	359,942	250,646	(30)	299,795	483,269	61	11,389,621	12,344,968	8.4
Designated	961,028	1,005,891	5	2,121,990	2,203,290	4	98,408	66,628	(32)	86,005	133,463	55	3,267,430	3,409,272	4.3

*All figures are rounded to the nearest dollar and may not sum.

Benefits

This final rule allows the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses, (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots, and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes also help recruit and retain pilots, which ensures enough pilots are available to meet peak shipping demand, helping to reduce delays caused by pilot shortages.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

For this final rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in SeaPro, and we reviewed business revenue and size data provided by publicly available sources such as ReferenceUSA.[58] As described in section II., Executive Summary, and section X., Regulatory Analyses, of this preamble, we found that 437 unique vessels used pilotage services during the years 2020 through 2022. These vessels are owned by 57 entities, of which 44 are foreign entities that operate primarily outside the United States, and the remaining 13 entities are U.S. entities. We compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold, as defined in the SBA's ''Table of Size Standards'' for small businesses, to determine how many of these companies are considered small entities.[59] Table 51 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA, either number of employees or annual revenue.

TABLE 51—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small entity size standard
238910	Site Preparation Contractors	$19,000,000.
425120	Wholesale Trade Agents And Brokers	125 Employees.
483211	Inland Water Freight Transportation	1,050 Employees.
484230	Specialized Freight (Except Used Goods) Trucking, Long-Distance	$34,000,000.
488330	Navigational Services to Shipping	$47,000,000.
488390	Other Support Activities for Water Transportation	$47,000,000.
523910	Miscellaneous Intermediation	
561510	Travel Agencies	$25,000,000.
561599	All Other Travel Arrangement And Reservation Services	$32,500,000.
713930	Marinas	$11,000,000.
813910	Business Associations	$15,500,000.

Of the 13 U.S. entities, 4 exceed the SBA's small business standards for small entities, and 1 only provided service to a public vessel. To estimate the potential impact on the remaining eight small entities, the Coast Guard used their 2022 invoice data to estimate their pilotage costs in 2024. We first increase their 2022 costs by 16 percent to account for the changes in pilotage rates resulting from the 2023 final rule, then by 7 percent to account for changes resulting from this final rule. Then, we estimated the change in cost to these entities resulting from this final rule by subtracting their estimated 2023 pilotage costs from their estimated 2024 pilotage costs, and found the average costs to small firms is approximately $10,075, with a range of $6,419 to $16,255. We then compared the estimated change in pilotage costs between 2023 and 2024 with each firm's annual revenue. For two entities, the impact of the change in estimated pilotage expenses is above 1 percent of revenues, at 3.27 percent and 4.28 percent.

In addition to the owners and operators discussed previously, three U.S. entities that receive revenue from pilotage services are affected by this final rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. These associations are designated collectively as the Lake Carrier's Association, as well as individually by each separate district association, all with the same NAICS code, ''Business Association'' [60] with a small-entity size standard of $15,500,000 in annual revenue. Based on the reported revenues from audit reports, the associations individually qualify as small entities, but are not considered small by the reported revenue of the Lake Carrier's Association.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated, and are not dominant in their fields, that are impacted by this final rule. We also did not find any small governmental jurisdictions with populations of fewer than 50,000 people that are impacted by this final rule. Based on this analysis, we conclude this final rule does not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact

[58] See *https://resource.referenceusa.com/.* (Last accessed 05/18/2023.)

[59] See *https://www.sba.gov/document/support--table-size-standards.* (Last accessed 5/17/23.) SBA has established a ''Table of Size Standards'' for small businesses that sets small business size standards by NAICS code. ''A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs.''

[60] In previous rulemakings, the associations used a different NAICS code, 483212 Inland Water Passenger Transportation. NAICS code 283212 had a size standard of 500 employees as of the latest SBA small business size table [published March 17, 2023] and, therefore, designated the associations as small entities. The change in NAICS code comes from an update to the association's ReferenceUSA profile in February 2022.

on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the final rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this final rule. 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.

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).

D. Collection of Information

This rule calls for no new collection of information nor does it impact an existing collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has 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. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000).

F. Unfunded Mandates

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

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management 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 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. 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. This rule categorically excluded under paragraphs A3 and L54 of Appendix A,

Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to the promulgation of rules of the following nature: (a) those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) those that interpret or amend an existing regulation without changing its environmental effect; (e) those that provide technical guidance on safety and security matters; and (f) those that provide guidance for the preparation of security plans. Paragraph L54 pertains to regulations which are editorial or procedural.

This rule involves adjusting the pilotage rates for the 2024 shipping season to account for changes in district operating expenses, changes in the number of pilots, and anticipated inflation. This rule is not part of a larger action, and it will not result in significant impacts to the human environment. All changes are consistent with the Coast Guard's maritime safety missions.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes; Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; DHS Delegation No. 00170.1, Revision No. 01.3, paragraphs (II)(92)(a), (d), (e), (f).

■ 2. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

§ 401.405 Pilotage rates and charges.

(a) * * *

(1) The St. Lawrence River is $927;

(2) Lake Ontario is $608;

(3) Lake Erie is $597

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $667;

(5) Lakes Huron, Michigan, and Superior is $430; and

(6) The St. Mary's River is $836.

* * * * *

Dated: January 31, 2024.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2024–02410 Filed 2–8–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240205–0038; RTID 0648–XD564]

Fisheries of the Northeastern United States; Monkfish Fishery; 2024 Monkfish Specifications

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

ACTION: Final rule.

SUMMARY: NMFS is implementing specifications for the 2024 monkfish fishery. This action is necessary to ensure allowable monkfish harvest levels that will prevent overfishing and allow harvesting of optimum yield. This action is intended to establish the allowable 2024 harvest levels, consistent with the Monkfish Fishery Management Plan and previously announced multi-year specifications.

DATES: The final specifications for the 2024 monkfish fishery are effective May 1, 2024, through April 30, 2025.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, (978) 281–9232.

SUPPLEMENTARY INFORMATION: The New England and Mid-Atlantic Fishery Management Councils (together, the Councils) jointly manage the monkfish fishery. The Monkfish Fishery Management Plan includes a specifications process that requires the Councils to recommend quotas on a triennial basis. This action finalizes 2024 specifications approved by the Councils in Framework Adjustment 13 to the Monkfish Fishery Management Plan, which included specifications for fishing years 2023–2025.

On August 11, 2023, NMFS published a final rule approving Framework 13 measures for the 2023 fishing year (88 FR 54495), based on a recent stock assessment update and consistent with the New England Council's Scientific and Statistical Committee recommendations. At that time, NMFS also projected a continuation of those same specifications for 2024 and 2025. The final total allowable landings in both the Northern and Southern Fishery Management Areas for 2024 are summarized in table 1. The 2024 measures are the same as those implemented in 2023.

TABLE 1—MONKFISH SPECIFICATIONS FOR FISHING YEAR 2024

[in metric tons]

Catch limits	Northern area	Southern area
Acceptable Biological Catch	6,224	5,861
Annual Catch Limit	6,224	5,861
Management Uncertainty (3 percent)	187	176
Annual Catch Target (Total Allowable Landings + discards)	6,038	5,685
Expected Discards	729	2,205
Total Allowable Landings	5,309	3,481

NMFS has reviewed the available information on fishing years 2022 and 2023. There have been no annual catch limit overages, nor is there any new biological information that would require altering the projected 2024 specifications. Based on this, we are implementing the fishing year 2024 specifications announced in the Framework 13 final rule. The 2024 specifications will be effective until April 30, 2025.

This final rule makes no modification to other management measures for the monkfish fishery (*e.g.,* trip limits, Days-At-Sea allocations, *etc.*).

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the Monkfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

Pursuant to 5 U.S.C. 553(b)(3)(B), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments because allowing time for notice and comment is unnecessary. The Framework 13 proposed rule provided the public with the opportunity to comment on the 2023–2025 specifications (88 FR 25351, April 26, 2023). Two comments were received on the proposed rule, only one of which specifically addressed the 2023–2025 specifications. This comment supported these specifications. Thus, the proposed and final rules that contained the projected 2023–2025 specifications provided a full opportunity for the public to comment on the substance and process of this action. No circumstances or conditions have changed in the monkfish fishery that would cause new concern or necessitate reopening the comment period and the final 2024 specifications being implemented by this rule are unchanged from those projected in the Framework 13 final rule.

The Chief Counsel for Regulation, Department of Commerce, previously certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the 2023–2025 monkfish specifications would not have a significant economic impact on a substantial number of small entities. Implementing status quo specifications for 2024 will not change the conclusions drawn in that previous certification to the SBA. Because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: February 5, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2024–02677 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 28
Friday, February 9, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0221; Project Identifier AD–2023–01233–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–21–02, which applies to certain Airbus SAS Model A318, A319, A320, A321, A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, A340–600, and A380–800 series airplanes. AD 2021–21–02 requires replacing certain parts manufacturer approval (PMA) Ni-Cd batteries with serviceable Ni-Cd batteries or maintaining the electrical storage capacity of those PMA Ni-Cd batteries during airplane storage or parking. Since the FAA issued AD 2021–21–02, it was determined that the on-wing preservation procedures originally provided in that AD did not ensure the expected preservation of the battery capacity. This proposed AD would add airplanes to the applicability and would require replacing each affected part with a serviceable part before release to service of an airplane after a storage or parking period, as applicable. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 25, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0221; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0221; Project Identifier AD–2023–01233–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–21–02, Amendment 39–21762 (86 FR 62898, November 15, 2021) (AD 2021–21–02), for certain Airbus SAS Model A318, A319, A320, A321, A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, A340–600, and A380–800 series airplanes. AD 2021–21–02 was prompted by a determination that repetitive disconnection and reconnection of certain PMA Ni-Cd batteries during airplane parking or storage could lead to a reduction in capacity of those batteries. AD 2021–21–02 requires replacing certain PMA Ni-Cd batteries with serviceable Ni-Cd batteries or maintaining the electrical storage capacity of those PMA Ni-Cd batteries during airplane storage or parking. The agency issued AD 2021–21–02 to address reduced capacity of certain PMA Ni-Cd batteries, which could lead to reduced battery endurance performance and possibly result in failure to supply the minimum essential electrical power during abnormal or emergency conditions.

The FAA issued AD 2021–21–02 to address PMA Ni-Cd batteries that are similar in design to the type design Ni-Cd batteries identified in FAA AD 2021–20–08, Amendment 39–21746 (86 FR 57025, October 14, 2021) (AD 2021–20–08), which corresponds to European Union Aviation Safety Agency (EASA)

AD 2020–0274, dated December 10, 2020 (EASA AD 2020–0274).

Actions Since AD 2021–21–02 Was Issued

Since the FAA issued AD 2021–21–02, EASA superseded EASA AD 2020–0274, and issued EASA AD 2023–0196, dated November 10, 2023 (EASA AD 2023–0196), to correct an unsafe condition for all:

- Airbus SAS Model A300 B4–2C, B4–102, B4–103, B4–120, B4–203, and B4–220 airplanes;
- Airbus SAS Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes;
- Airbus SAS Model A300 B4–605R and B4–622R airplanes;
- Airbus SAS Model A300 C4–203, C4–620, and C4–605R variant F airplanes;
- Airbus SAS Model A300 F4–203, F4–605R, F4–608ST, and F4–622R airplanes;
- Airbus SAS Model A310–203, –221, –222, –204, –203C, –322, –304, –324, –308, and –325 airplanes;
- Airbus SAS Model A318–111, –112, –121, and –122 airplanes;
- Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes;
- Airbus SAS Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes;
- Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes;
- Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –743L, –841, and –941 airplanes;
- Airbus SAS Model A340–211, –212, –213, –311, –312, –313, –541, –542, –642, and –643 airplanes;
- Airbus SAS Model A350–941 and A350–1041 airplanes; and
- Airbus SAS Model A380–841, –842, and –861 airplanes.

EASA AD 2023–0196 stated that Airbus and the Ni-Cd battery manufacturer determined that the on-wing preservation procedures originally provided in the service information identified in that AD did not ensure the expected preservation of the battery capacity.

The FAA is considering rulemaking to supersede FAA AD 2021–20–08 that corresponds to EASA AD 2023–0196 to address the type design Ni-Cd batteries identified in that EASA AD. The FAA has determined that any PMA part approved for the type design Ni-Cd batteries identified in EASA AD 2023–0196 are also affected by the unsafe condition; therefore, this proposed AD would apply to those PMA Ni-Cd batteries.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2021–21–02. This proposed AD would require replacing each affected part with a serviceable part before release to service of an airplane after a storage or parking period, as applicable. This proposed AD also adds Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); Model A310 series airplanes; and Model A350–941 and –1041 airplanes to the applicability.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,814 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New proposed actions	5 work-hours × $85 per hour = $425	$0	$425	$770,950

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–21–02, Amendment 39–21762 (86 FR 62898, November 15, 2021), and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–0221; Project Identifier AD–2023–01233–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 25, 2024.

(b) Affected ADs

This AD replaces AD 2021–21–02, Amendment 39–21762 (86 FR 62898, November 15, 2021) (AD 2021–21–02).

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (14) of this AD, certificated in any category, equipped with any parts manufacturer approval (PMA) part approved for the type design nickel cadmium (Ni-Cd) batteries having a part number identified in Figure 1 to the introductory text of paragraph (c) of this AD.

Figure 1 to the Introductory Text of Paragraph (c)—Ni-Cd Battery

Airplane Model	Battery Part Number	Time Limits (months)
A318, A319, A320, and A321	2758 or 416526 (equivalent to 285CH)	6
A330 and A340	4059, 405CH, or 505CH	6
A350	505CH2	12
A380	505CH2	12
A300, A300-600, A310, and A300F4-608ST	2520	6

(1) Model A300 B4–2C, B4–102, B4–103, B4–120, B4–203, and B4–220 airplanes.

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

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

(4) Model A300 C4–203, C4–605R variant F, and C4–620 airplanes.

(5) Model A300 F4–203, F4–605R, F4–608ST, and F4–622R airplanes.

(6) Model A310–203, –203C, –204, –221, –222, –304, –308, –322, –324, and –325 airplanes.

(7) Model A318–111, –112, –121, and –122 airplanes.

(8) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(9) Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(10) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(11) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –743L, –841, and –941 airplanes.

(12) Model A340–211, –212, –213, –311, –312, –313, –541, –542, –642, and –643 airplanes.

(13) Model A350–941 and A350–1041 airplanes.

(14) Model A380–841, –842, and –861 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that repetitive disconnection and reconnection of certain Ni-Cd batteries during airplane parking or storage could lead to a reduction in capacity of those batteries. The unsafe condition, if not addressed, could lead to reduced battery endurance performance and possibly result in failure to supply the minimum essential electrical power during abnormal or emergency conditions.

(f) Compliance

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

(g) Definitions

(1) For the purposes of this AD, an ''affected PMA Ni-Cd battery'' is defined as any PMA Ni-Cd battery approved for a Ni-Cd battery identified in Figure 1 to the introductory text of paragraph (c) of this AD, all serial numbers, except those which are a serviceable PMA Ni-Cd battery as defined in paragraph (g)(2) of this AD.

(2) For the purposes of this AD, a ''serviceable PMA Ni-Cd battery'' is defined as a PMA Ni-Cd battery approved for a Ni-Cd battery identified in Figure 1 to the introductory text of paragraph (c) of this AD, all serial numbers, which was fully (re)charged at constant current and, after (re)charging, was not stored on wing during a period exceeding the applicable ''Time Limit'' specified in Figure 1 to the introductory text of paragraph (c) of this AD. Periodical, regular, and overhaul checks of a PMA Ni-Cd battery that include the battery (re)charge at constant current are acceptable methods to demonstrate that the battery was (re)charged.

(3) For the purposes of this AD, a ''serviceable non-PMA Ni-Cd battery'' is defined as a type design Ni-Cd battery having a part number identified in Figure 1 to the introductory text of paragraph (c) of this AD, all serial numbers, which was fully (re)charged at constant current and, after (re)charging, was not stored on wing during a period exceeding the applicable ''Time Limit'' specified in Figure 1 to the introductory text of paragraph (c) of this AD. Periodical, regular, and overhaul checks of a non-PMA Ni-Cd battery that include the battery (re)charge at constant current are acceptable methods to demonstrate that the battery was (re)charged.

(h) Replacement

Before release to service of an airplane after a storage or parking period, as applicable, replace each affected PMA Ni-Cd battery with a serviceable PMA Ni-Cd battery or a serviceable non-PMA Ni-Cd battery.

Note 1 to paragraph (h): Airplanes on which a battery is replaced with a serviceable non-PMA Ni-Cd battery are affected by AD 2021–20–08, Amendment 39–21746 (86 FR 57025, October 14, 2021), which provides requirements for non-PMA Ni-Cd batteries.

(i) Parts Installation Limitation

As of the effective date of this AD, release to service of an airplane is allowed, provided all PMA Ni-Cd batteries approved for a Ni-Cd battery identified in Figure 1 to the introductory text of paragraph (c) of this AD that are installed on that airplane are fully (re)charged at constant current and, after (re)charging, were not stored on wing during a period exceeding the applicable ''Time Limit'' specified in Figure 1 to the introductory text of paragraph (c) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(k) Related Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued on February 1, 2024.

Victor Wicklund,

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

[FR Doc. 2024–02494 Filed 2–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0220; Project Identifier MCAI–2023–00760–T]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to remove Airworthiness Directive (AD) 2023–13–07, which applies to certain Saab AB, Support and Services Model SAAB 340B airplanes. AD 2023–13–07 requires amending the applicable airplane flight manual (AFM) by incorporating a temporary revision (TR) to reduce the maximum take-off weight (MTOW). AD 2023–13–07 is no longer necessary, because of a determination that affected airplanes can be safely operated up to the initially published MTOW. Accordingly, the FAA proposes to remove AD 2023–13–07.

DATES: The FAA must receive comments on this proposed AD by March 25, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0220; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Related Service Information:

- For service information identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0220; Project Identifier MCAI–2023–00760–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–13–07, Amendment 39–22492 (88 FR 43052, July 6, 2023) (AD 2023–13–07), for certain Saab AB, Support and Services Model SAAB 340B airplanes. AD 2023–13–07 was prompted by an MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2023–0121, dated June 13, 2023 (EASA AD 2023–0121) (also referred to as the MCAI), to identify and correct an unsafe condition.

AD 2023–13–07 requires amending the applicable AFM by incorporating a TR to reduce the MTOW. AD 2023–13–07 was prompted by a determination that the affected airplanes must not be operated at a MTOW above 29,000 pounds. The FAA issued AD 2023–13–07 to address the possibility of flight in an uncertified envelope, which could result in reduced structural capability and reduced controllability of the airplane.

Actions Since AD 2023–13–07 Was Issued

Since the FAA issued AD 2023–13–07, EASA issued AD Cancellation Notice 2023–0121–CN, dated December 8, 2023 (EASA AD Cancellation Notice 2023–0121–CN), to cancel EASA AD 2023–0121. EASA AD Cancellation Notice 2023–0121–CN states that since EASA AD 2023–0121 was issued, Saab provided evidence demonstrating that affected airplanes can be operated safely

up to the initially published MTOW of 30,000 pounds.

FAA's Conclusions

Upon further consideration, the FAA has determined that AD 2023–13–07 is no longer necessary. Accordingly, this proposed AD would remove AD 2023–13–07. Removal of AD 2023–13–07 would not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future. This proposed AD would remove all actions of AD 2023–13–07. Therefore, this proposed AD would terminate all requirements of AD 2023–13–07.

Related Costs of Compliance

This proposed AD would add no cost. This proposed AD would remove AD 2023–13–07 from 14 CFR part 39; therefore, operators would no longer be required to show compliance with that AD.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2023–13–07, Amendment 39–22492 (88 FR 43052, July 6, 2023), and

■ b. Adding the following new AD:

Saab AB, Support and Services (formerly known as Saab AB, Saab Aeronautics): Docket No. FAA–2024–0220; Project Identifier MCAI–2023–00760–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 25, 2024.

(b) Affected ADs

This AD replaces AD 2023–13–07, Amendment 39–22492 (88 FR 43052, July 6, 2023) (AD 2023–13–07).

(c) Applicability

This AD applies to Saab AB, Support and Services (formerly known as Saab AB, Saab Aeronautics) Model SAAB 340B airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0121, dated June 13, 2023: airplanes not having SAAB modification 2571 (extended wingtip modification) embodied and having GE Aviation Systems LTD (Dowty Propellers) installed.

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard practices/structures.

(e) Terminating Action

This AD terminates all requirements of AD 2023–13–07.

(f) Related Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

(g) Material Incorporated by Reference

None.

Issued on February 1, 2024.

Victor Wicklund,

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

[FR Doc. 2024–02433 Filed 2–8–24; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter 1461

[Docket No. CPSC–2022–0017]

Notice of Availability of Updated ASTM Standard Under the Portable Fuel Container Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: In August 2023, the U.S. Consumer Product Safety Commission (Commission or CPSC) determined under the Portable Fuel Container Safety Act of 2020 (PFCSA) that ASTM F3429/F3429M–23 is a consumer product safety standard that impedes the propagation of flames into pre-filled portable fuel containers, and therefore incorporated the voluntary standard by reference as a mandatory rule. ASTM has since notified the Commission that it has revised this voluntary standard. CPSC seeks comment on whether the revision meets the PFCSA's requirements for adoption in the mandatory rule.

DATES: Comments must be received by February 23, 2024.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2022–0017, 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. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to *https://www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

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–2022–0017, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Scott Ayers, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2030; email: *sayers@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The PFCSA requires the Commission to promulgate a final rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container. 15 U.S.C. 2056d(b)(1)–(2). However, the Commission is not required to promulgate a final rule for a class of portable fuel containers within the scope of the PFCSA if the Commission determines that:

- there is a voluntary standard for flame mitigation devices for those containers that impedes the propagation of flame into the container;
- the voluntary standard is or will be in effect not later than 18 months after the date of enactment of the PFCSA; and
- the voluntary standard is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of the PFCSA.

15 U.S.C. 2056d(b)(3)(A). After publication of the **Federal Register** notification announcing the Commission's positive determination, the requirements of such a voluntary standard ''shall be treated as a consumer product safety rule.'' 15 U.S.C. 2056d(b)(2)(B) and (b)(4). Under this authority, on January 13, 2023, the Commission published a notification determining that three voluntary standards for portable fuel containers meet the requirements of the PFCSA and would be treated as consumer product safety rules: ASTM F3429/F3429M–20 (pre-filled containers); ASTM F3326–21 (containers sold empty); and section 18 of UL 30:2022 (safety cans). 88 FR 2206.

Portable fuel containers sold pre-filled are within the scope of ASTM F3429/F3429M, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers.* ASTM lists the standard as a dual standard in inch-pound units (F3429 designation) and metric units (F3429M designation). ASTM F3429/F3429M was first published in 2020. ASTM published a revised version of ASTM F3429/F3429M–20 in May 2023, as ASTM F3429/F3429M–23. On August 22, 2023, the Commission determined that the 2023 revisions met the requirements of section 2056d(b)(3)(A) of the PFCSA. Accordingly, ASTM F3429/F3429M–23 is the current mandatory consumer product safety rule for pre-filled-portable fuel containers. On October 31, 2023, the Commission published a direct final rule creating 16 CFR part 1461 for portable fuel containers to incorporate by reference the revised ASTM F3429/F3429M–23, as well as ASTM F3326–21 and section 18 of UL 30:2022.5. 88 FR 74342.

Under section (b)(5) of the PFCSA, if the requirements of a voluntary standard that meet the requirements of section (b)(3) are subsequently revised, the organization that revised the standard shall notify the Commission after the final approval of the revision. 15 U.S.C. 2056d(b)(5). Any such revision to the voluntary standard shall become enforceable as the new consumer product safety rule not later than 180 days after the Commission is notified of a revised voluntary standard that meets the conditions of section (b)(3) (or such later date as the Commission determines appropriate), unless the Commission determines, within 90 days after receiving the notification, that the revised voluntary standard does not meet the requirements described in section (b)(3) of the PFCSA. 15 U.S.C. 2056d(b)(5).

On January 29, 2024, ASTM notified the Commission that it had approved and published ASTM F3429/F3429M–24. CPSC staff is assessing the revised voluntary standard to determine, consistent with section (b)(5) of the PFCSA, whether the revisions in ASTM F3429/F3429M–24 meet the requirements of section (b)(3)(A) of the PFCSA listed above. The Commission invites public comment on that question to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F3429/F3429M–24.[1]

ASTM F3429/F3429M–24 is available for review in several ways. ASTM has provided on its website (at *www.astm.org/CPSC.htm*), at no cost, a read-only copy of ASTM F3429/F3429M–24, including a red-lined version that identifies the changes made to ASTM F3429/F3429M–23. A read-only copy of the existing standard (ASTM F3429/F3429M–23) is available for viewing, at no cost, on the ASTM website at: *www.astm.org/READINGLIBRARY/.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9500; *https://www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479.

Comments must be received by February 23, 2024. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section (b)(5) of the PFCSA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–02562 Filed 2–8–24; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 325 and 330

[Docket ID: COE–2023–0004]

RIN 0710–AB46

Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties

AGENCY: Army Corps of Engineers, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: To demonstrate the greatest possible consistency between the procedures used by the U.S. Army Corps of Engineers (Corps) Regulatory Program to comply with the National

[1] The Commission voted 4–0 to publish this notification.

Historic Preservation Act (NHPA) and its implementing regulations, ''Protection of Historic Properties'' when processing permit applications, the Corps is proposing to amend its Regulatory Program's permitting regulations. The Corps will instead follow the NHPA's implementing regulations, developed and interpreted by the Advisory Council on Historic Preservation (ACHP), relying on the flexibility in those regulations for Federal agency compliance with the steps of review. The Corps will take into account, among other factors, the degree and scope of the Federal involvement in the undertaking and the relationship of Federal actions to the overall proposed activities. Further, the Corps is also proposing to make conforming changes to its nationwide permit program regulations to eliminate references in the regulations.

DATES: Comments must be submitted on or before April 9, 2024.

ADDRESSES: You may submit comments, identified by docket number COE–2023–0004 and/or RIN 0710–AB46, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: historicpropertyreg@usace.army.mil. Include the docket number, COE–2023–0004, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R, 441 G Street NW, Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE–2023–0004. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through *regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disc you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph McMahan, *historicpropertyreg@usace.army.mil,* or 202–236–7547.

SUPPLEMENTARY INFORMATION:

Background

Under section 106 (54 U.S.C. 306108) of the NHPA (54 U.S.C. 300101 *et seq.*), Federal agencies are required to consider the effects on historic properties from the undertakings they carry out, or non-Federal projects that rely on Federal licenses, permits, approvals, funds, or assistance, and to provide the ACHP a reasonable opportunity to comment on those undertakings. This process is set forth within the section 106 implementing regulations (36 CFR part 800). As required by the statute, the ACHP developed and issued the implementing regulations for this section of the NHPA, and as part of its oversight of the section 106 process, provides general guidance as well as specific comments on section 106 reviews for individual undertakings to ensure consistency with the regulations. The Corps Regulatory Program issues permits for certain activities in waters and wetlands subject to its jurisdictional authorities. The procedures which the Corps' Regulatory Program currently uses for complying with section 106 of the NHPA, as set forth in appendix C of the Corps' permitting regulations, were issued as a final rule in 1990 but did not go through separate approval by the ACHP, as required by the NHPA and the section 106 implementing regulations. Since that final rule was issued, the NHPA has been amended several times and the ACHP has also amended the section 106 implementing regulations. The NHPA requires that a Federal agency's procedures for compliance with section 106 be consistent with the section 106 implementing regulations issued by the ACHP, which specify a consultation process for ACHP review and approval of an agency's proposed alternative procedures (36 CFR 800.14).

The Corps Regulatory Program administers three laws: section 404 of the Clean Water Act, sections 9 and 10 of the Rivers and Harbors Act of 1899, and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended. Under section 404 of the Clean Water Act, a permit is required to discharge dredged or fill material into waters of the United States. Under Section 9 of the Rivers and Harbors Act of 1899, a permit is required to construct dams or dikes across navigable waters of the United States. The obstruction or alteration of a navigable water of the United States requires a permit under Section 10 of the Rivers and Harbors Act of 1899. Under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, a permit is required to transport dredged material for disposal into ocean waters.

Section 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to consider the effects on historic properties from the undertakings they carry out or provide a Federal license, permit, approval, funding, or assistance to, and to provide the ACHP a reasonable opportunity to comment on the undertaking. Historic properties are properties that are included in, or eligible for inclusion in, the National Register of Historic Places. The consideration and issuance of a Department of the Army (DA) permit by the Corps Regulatory Program is a Federal action that makes a project, activity, or program, which includes activities that can potentially affect historic properties, subject to review by the Corps under section 106 of the NHPA and its implementing regulations, ''Protection of Historic Properties'' (36 CFR part 800).

Section 211 of the NHPA authorizes the ACHP to promulgate the regulations to govern the implementation of section 106 in its entirety. The regulations thus developed by the ACHP at 36 CFR part 800 define how Federal agencies meet their statutory responsibilities under section 106 the NHPA. Additionally, section 110(a)(2)(E) of the NHPA

requires Federal agency procedures for section 106 of the NHPA to be consistent with the section 106 regulations issued by the ACHP pursuant to section 211 of the Act. Under 36 CFR 800.14, an agency may develop alternate procedures or other program alternatives to implement section 106 and substitute them for 36 CFR part 800 after following a specified consultative process and a consistency determination by ACHP (see 36 CFR 800.14(a)). The ACHP oversees the operation of the section 106 process (36 CFR 800.2(b)). The Army Civil Works programs, other than the Regulatory Program, use the implementing regulations at 36 CFR part 800, for its compliance with section 106 of the NHPA.

Corps Regulatory Program and Appendix C

There are two categories of permits that the Corps Regulatory Program issues under its permitting authorities: individual permits and general permits. Individual permits include standard individual permits and letters of permission. A standard individual permit is an activity-specific permit that is processed through the public interest review procedures, including the issuance of a public notice and receipt of comments, the preparation of activity-specific National Environmental Policy Act documentation (*e.g.,* an environmental assessment or environmental impact statement), and, if the proposed activity involves discharges of dredged or fill material into waters of the United States, an activity-specific Clean Water Act section 404(b)(1) Guidelines analysis to ensure that the discharge of dredged or fill material complies with the environmental criteria in those Guidelines. A letter of permission is an individual permit issued after an abbreviated public interest review procedure and usually involves coordination with Federal and State agencies prior to making a decision on the permit application. Each year, the Corps issues approximately 3,000 individual permits.

General permits include nationwide permits, regional general permits, and programmatic general permits. General permits authorize categories of activities across the country that have no more than minimal individual and cumulative adverse environmental effects. Some general permits require the project proponent to submit a notification to the appropriate Corps district before beginning the authorized activity. Other activities authorized by general permits do not require prior notification to the Corps district, and the project proponent can proceed with the activity as long as they comply with all terms and conditions of the general permit. Each year, the Corps issues approximately 35,000 written general permit verifications, and thousands of other minor activities are authorized by non-reporting general permits that do not require the project proponent to contact the applicable Corps district office before proceeding with the general permit activity. The Corps Nationwide Permits program provides a list of available nationwide general permits as well as anticipated number of times they would be used within a five-year timeframe.[1]

When a Corps district issues a public notice to solicit comments on a proposed activity that requires a standard individual permit, or for a proposal to issue a regional general permit, the public notice includes a statement of the district engineer's current knowledge on historic properties (see 33 CFR 325.3(a)(10)). A copy of the public notice is provided to the State Historic Preservation Officer (SHPO), appropriate State agencies, appropriate Indian Tribes or Tribal representatives, or Native Hawaiian Organizations, concerned Federal agencies, appropriate city and county officials, as well as all parties who have specifically requested copies of public notices (see 33 CFR 325.3(d)(1)). The Corps Regulatory Program's general policies for evaluating permit applications are found at 33 CFR 320.4. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.

The Corps' procedures for the processing of permit applications are provided at 33 CFR part 325. Section 325.1 identifies the information required for permit applications. Section 325.2 describes the standard procedures for processing permit applications, as well as more specific procedures that are needed for various types of regulated activities, such as water quality certification under section 401 of the Clean Water Act, Coastal Zone Management Act consistency determinations, National Historic Preservation Act compliance, and Endangered Species Act compliance. Section 325.2(d) addresses the timing of the processing of permit applications. Section 325.8 discusses which Corps officials have the authority to issue permits under various circumstances. There are also three appendices to 33 CFR part 325, which are the following: appendix A of 33 CFR to part 325 discusses permit form and special conditions; appendix B to part 325 discusses NEPA implementation procedures for the regulatory program; and appendix C to part 325 discusses procedures for the protection of historic properties.

Appendix C to 33 CFR part 325 was intended to provide a set of definitions and procedures to the Corps and the regulated public for the Corps Regulatory Program's compliance with the requirements of section 106 of the NHPA, which requires Federal agencies to consider the effects of undertakings on historic properties and to provide the ACHP with a reasonable opportunity to comment on those undertakings. However, differences between appendix C and the 36 CFR part 800 regulations have in many cases introduced confusion resulting in debate over the extent and appropriateness of the Corps review. The major differences relate to the scope of the effort to identify and address effects to historic properties from undertakings and the nature of consultation with appropriate stakeholders. The section 106 implementing regulations includes a definition of ''undertaking'' and ''area of potential effects'' which establish the basis for the scope of a Federal agency's responsibility to identify and address effects to historic properties. 36 CFR 800.16(y) defines the ''undertaking'' as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval, while the ''area of potential effects'' includes the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such historic properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR 800.16(d)). Paragraph 1(f) of appendix C defines the ''undertaking'' subject to the requirements of section 106 to be the work, structure or discharge that requires a DA permit. Rather than using ''area of potential effects,'' appendix C uses ''permit area'' which includes the areas consisting of jurisdictional waters, including

[1] *https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/,* last accessed January 17, 2023.

wetlands, under the Corps' statutory authorities to regulate that will be directly affected by the proposed activity requiring DA authorization plus any uplands that would be directly affected by the activities requiring DA authorization. The definition of ''permit area'' includes a three-part test to identify activities outside of jurisdictional waters, including wetlands, (*e.g.,* activities in uplands) that would be included with the activities subject to the Corps' permitting authorities and the section 106 process. The definition of ''permit area'' in paragraph 1(g) of appendix C provides three examples to the Corps and the regulated public for applying the concept of ''permit area'' to a number of potential permitting scenarios.

Under the Corps Regulatory Program's appendix C procedures, after the undertaking and permit area are determined, Corps Regulatory Program staff identify historic properties that could potentially be affected by the undertaking and the activities in the permit area. If the Corps district is processing a standard individual permit for the proposed activity requiring DA authorization, the public notice includes a statement regarding the district engineer's current knowledge of the presence or absence of historic properties and the effects of the proposed activity requiring DA authorization on historic properties. Appendix C includes certain coordination procedures and procedures for assessing effects on historic properties, and for providing the ACHP the opportunity to review and comment on undertakings that require DA authorization.

Historical Context

Executive Order 11593, ''Protection and Enhancement of the Cultural Environment,'' which was issued on May 13, 1971 (36 FR 8921), directed Federal agencies, in consultation with the ACHP, to institute procedures to ensure that ''Federal plans and programs contributed to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archeological significance.'' In addition, a Presidential Memorandum on Environmental Quality and Water Resource Management issued on July 12, 1978, directed the ACHP to issue regulations for implementing the NHPA by March 1, 1979. That Presidential Memorandum also directed Federal agencies such as the Corps with consultative responsibilities under the NHPA to publish separate procedures for implementing the section 106 implementing regulations within three months of ACHP's issuance of them. Furthermore, the Presidential Memorandum required Federal agency NHPA procedures to be reviewed by the ACHP, and if those procedures were consistent with the ACHP's regulations, to also be approved within 60 days by the Chairman of the ACHP.

In a final rule published in the **Federal Register** on January 30, 1979 (44 FR 6068), the ACHP amended its NHPA section 106 regulations at 36 CFR part 800. In response to the direction received in the Presidential Memorandum and the ACHP's amended regulations, the Corps drafted a proposed rule to implement NHPA section 106 for the processing of applications for DA permits. The rule would establish appendix C to 33 CFR part 325. The proposed rule for appendix C was published in the **Federal Register** on April 3, 1980 (45 FR 22112) for a 60-day public comment period. In that proposed rule, the Corps Regulatory Program stated that it would be using the proposed appendix C on an interim basis for the processing of applications for DA permits. The Corps Regulatory Program did not issue a final rule in response to the April 3, 1980, proposed rule.

Changes to the proposed appendix C were made in response to direction provided on May 7, 1982, by the Presidential Task Force on Regulatory Relief. The Task Force directed the Army to take steps to reduce or eliminate delays in the processing of DA permit applications, while fulfilling the Corps Regulatory Program's responsibilities under section 106 of the NHPA. The revised proposed rule was intended to give ACHP a reasonable opportunity to comment on permit applications for proposed activities that may affect historic properties, as well as provide SHPOs and the general public opportunities to provide comments on permit applications. The revised proposed rule for appendix C was published in the **Federal Register** on May 4, 1984 (49 FR 19036) for a 60-day public comment period. The Corps Regulatory Program published its final rule for appendix C to 33 CFR part 325 (June 29, 1990, 55 FR 27000) following the Administrative Procedure Act process. Separate ACHP review and approval was not obtained.

The NHPA was amended in 1992, and some of those amendments have direct relevance to the Corps Regulatory Program's processing of applications for DA permits. One amendment stated that properties of traditional and cultural importance to an Indian Tribe or Native Hawaiian Organization may be determined to be eligible for inclusion in the National Register of Historic Places. Another amendment requires Federal agencies, as part of their section 106 responsibilities, to consult with any Indian Tribe or Native Hawaiian Organization that attaches religious and cultural significance to historic properties. The 1992 amendments to the NHPA also included a provision that prohibits Federal agencies from granting a license or assistance to applicants who intend to avoid section 106 requirements by significantly adversely affecting historic properties to which the license or assistance would relate (section 110(k)).

Because the NHPA provides the ACHP the authority to issue regulations for section 106 in its entirety, and because the NHPA requires Federal agency section 106 procedures to be consistent with the section 106 regulations issued by the ACHP, the Corps Regulatory Program did not immediately propose any changes to Appendix C to address the 1992 amendments to the NHPA. The Corps Regulatory Program instead waited for the ACHP to make changes to section 106 implementing regulations to address those amendments to the NHPA. In the May 18, 1999, issue of the **Federal Register** (64 FR 27044), the ACHP published a final rule that amended 36 CFR part 800 to address the 1992 amendments to the NHPA. The ACHP subsequently published a revised final rule in the December 12, 2000 issue of the **Federal Register** (65 FR 77698). That final rule went into effect on January 11, 2001.

In the March 8, 2002, issue of the **Federal Register** (67 FR 10822), the Corps Regulatory Program published a notice to solicit comments on how its section 106 procedures should be revised to address the 1992 amendments to the NHPA and the ACHP's changes to the section 106 implementing regulations at 36 CFR part 800. In this notice, the Corps Regulatory Program also announced that it would be developing interim guidance to address the application of appendix C in consideration of the revised 36 CFR part 800 regulations until the rulemaking process was completed. The notice indicated that after the comment period ended, and the comments were fully considered, the Corps Regulatory Program may develop additional guidance, propose modifications to appendix C, develop programmatic agreements, or create other products to update its section 106 procedures.

On June 24, 2002, the Corps issued the interim guidance mentioned in the

previous paragraph. The 2002 interim guidance was intended to be a temporary measure until appendix C could be revised through Administrative Procedure Act rulemaking process, or through other approaches. The 2002 interim guidance discussed the identification of consulting parties for the section 106 process, consultation with Indian Tribes and Native Hawaiian Organizations, the use of memorandums of agreement to resolve adverse effects to historic properties, and the resolution of NHPA section 110(k) violations.

In 2004, the ACHP issued a final rule that made additional changes to 36 CFR part 800. That final rule was published in the July 6, 2004, issue of the **Federal Register** (69 FR 40544) and it went into effect on August 5, 2004. One change to the section 106 regulation confirmed that the ACHP could not require a Federal agency to change its determinations regarding whether its undertaking affected or adversely affected historic properties. Another modification of the ACHP's section 106 regulations reflected a court finding that section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. The ACHP's 2004 final rule also clarified the time period for objections to a Federal agency's ''no adverse effect'' findings.

In the September 27, 2004, issue of the **Federal Register** (69 FR 57662), the Corps published an advance notice of proposed rulemaking (ANPRM) to obtain public comment on issues related to Corps Regulatory Program's fulfillment of the requirements of NHPA section 106. The Corps solicited comments on how its permit application processing procedures should be revised in response to the 1992 amendments to the NHPA and the ACHP's 2000 and 2004 revisions to the section 106 implementing regulations at 36 CFR part 800. The Corps also asked for suggestions for facilitating government-to-government consultation with American Indian and Alaska Native governments, as well as consultation with SHPOs, Tribal Historic Preservation Officers (THPOs), Native Hawaiian Organizations, interested organizations, the regulated public, and other interested parties during a potential future rulemaking process.

In the 2004 ANPRM, the Corps Regulatory Program also invited comments on specific options for updating the Corps' permit application processing procedures to address the 1992 amendments to the NHPA and the revised 36 CFR part 800. Those options included: (1) revising appendix C to incorporate the current requirements and procedures at 36 CFR part 800; (2) revoking appendix C and using 36 CFR part 800 when reviewing individual permit applications, and utilizing Federal agency program alternatives at 36 CFR 800.14 for general permits; (3) revoking appendix C and using 36 CFR part 800 for all individual permits and general permits; and (4) revoking appendix C and developing non-regulation alternative procedures in accordance with 36 CFR 800.14. The Corps also invited suggestions for other options that were not identified in the ANPRM.

On April 24, 2005, the Corps issued revised interim guidance [2] to address the changes to the section 106 implementing regulations that were finalized in 2000 and 2004. The 2005 revised interim guidance replaced the Corps Regulatory Program's interim guidance that was issued on June 24, 2002.

The Corps Regulatory Program issued additional interim guidance on January 31, 2007,[3] to supplement the interim guidance issued on April 25, 2005. The January 31, 2007, guidance clarified that when evaluating proposed activities that may be eligible for authorization by general permits, the Corps district is responsible for providing the SHPO/THPO with the opportunity to comment on ''no effect'' and ''no adverse effect'' determinations. The January 31, 2007, guidance also provided that Corps districts must complete the section 106 process before making a decision on whether to issue an individual permit or general permit verification.

In the June 3, 2022, issue of the **Federal Register** (87 FR 33756), the Assistant Secretary of the Army (Civil Works) published a notice to announce an effort to modernize the Civil Works program of the Corps through a number of related policy initiatives. In this notice, the Army stated that rulemaking on the Corps' Regulatory Program's procedures for complying with section 106 of the NHPA at 33 CFR part 325 appendix C is a priority policy initiative that would help modernize the Corps Regulatory Program with respect to section 106 of the NHPA. The Army acknowledged there has been longstanding disagreement between the Corps and ACHP regarding differences between the Corps' Regulatory Program appendix C and the regulations promulgated by ACHP governing the section 106 process. These differences have resulted in lengthy and challenging consultations involving, for example, disputes about the scope of the undertaking subject to review, the Corps' ''permit area,'' and the area of potential effects as defined in the section 106 implementing regulations. Further, under the regulations promulgated by ACHP, if an adverse effect cannot be avoided by modifying the undertaking, the resolution of adverse effects can be accomplished via the development of a Memorandum of Agreement or, for certain complex projects or programs, a Programmatic Agreement, while the Corps' regulations allow for resolution through a Memorandum of Agreement or permit conditioning, which is the equivalent of modifying the undertaking to avoid adverse effects. There are also timeline differences between the section 106 regulations and Appendix C, and the latter does not include Tribal or Native Hawaiian Organization consultation requirements. The June 3, 2022, notice also stated that the Corps Regulatory Program's reliance on appendix C and multiple guidance documents can result in inconsistency and confusion among the Federal agencies, the regulated public, SHPOs and THPOs, Tribes, Native Hawaiian Organizations, and others. In addition, Tribal Nations have also stated that the lack of updated and consistent implementing regulations reflecting the current NHPA language for the Corps' Regulatory Program indicates that the Corps is not meeting their statutory and Tribal trust responsibilities.

The Army asked for input in the June 2022 **Federal Register** notice on the best approach to modernizing the Corps Regulatory Program's procedures for the protection of historic properties. More specifically, the Army sought input on whether the Corps Regulatory Program should rely on the section 106 implementing regulations at 36 CFR part 800 promulgated by ACHP and remove appendix C from 33 CFR part 325, and whether any clarifying guidance is needed on the scope of the area of potential effects for the Corps Regulatory Program. The Army also asked whether development of a Program Alternative under 36 CFR 800.14 would provide clear and consistent NHPA section 106 implementation procedures for the Corps Regulatory Program, as well as improved Tribal and Native Hawaiian Organization consultation. Four virtual engagements were held with approximately 300 attendees in total, and the written docket received 127

[2] *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2478* (accessed April 3, 2022).

[3] *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/4042* (accessed April 3, 2022).

written letters on the appendix C topic, including from 29 Tribal Nations. A summary of the comments received from this effort can be found on the Army Civil Works web page.[4] Over 95% of commenters recommended the removal of appendix C from 33 CFR part 325 and the requirement that the Corps follow the section 106 implementing regulations (36 CFR part 800) in order to comply with section 106 of the NHPA. The primary comments received stated: appendix C is not compliant with section 106 of the NHPA and is not consistent with 36 CFR part 800; appendix C is not legally valid due to lack of ACHP approval; there is a lack of consistency across Corps districts in implementing section 106 of the NHPA and between the Regulatory Program and the rest of Corps Civil Works which complies with section 106 of the NHPA through 36 CFR part 800; the definition of undertaking used in appendix C results in an inappropriately narrow scope of review with inappropriate assessment of direct and indirect effects; and that appendix C does not adequately address consultation requirements.

Description of Proposed Action for the Corps Regulatory Program's Adherence to the Section 106 Implementing Regulations at 36 CFR 800

This proposed rule takes the next step in the Assistant Secretary of the Army (Civil Works)'s efforts to modernize the Corps Regulatory Program's procedures for the protection of historic properties pursuant to section 106 of the NHPA. In this proposed rule, the Corps is soliciting public input on removing appendix C from 33 CFR part 325. With appendix C removed from part 325, the Corps would utilize and follow the section 106 implementing regulations at 36 CFR part 800, including its requirements regarding consulting with Tribes and Native Hawaiian Organizations during the section 106 review process. As a supplement, the Corps would also work with the ACHP to draft and disseminate guidance for the Corps' Regulatory Program to include illustrative examples regarding how to apply the 36 CFR part 800 regulations to potential permitting scenarios. This would ensure clarity and consistency for the Corps as well as transparency for the regulated public as to how the Corps Regulatory Program would comply with section 106 of the NHPA through its implementing regulations at 36 CFR 800. In a separate but parallel effort, the Corps would work with the ACHP, Tribal Nations, Native Hawaiian Organizations, SHPOs, THPOs, and other consulting parties to develop an appropriate program alternative under 36 CFR 800.14 to establish a more efficient and effective process for Corps compliance with section 106 for undertakings that rely on authorizations available through the Nationwide Permits program with a target of completion to align with the next issuance cycle for the Nationwide Permits (March 2026).

Under this proposed rule, the Corps Regulatory Program would amend its regulations for the processing of DA permit applications at 33 CFR part 325 by removing appendix C (''Procedures for the Protection of Historic Properties'') from those regulations. If Appendix C is removed from 33 CFR part 325, the Corps Regulatory Program will instead follow the section 106 implementing regulations at 36 CFR part 800 in order to take into account effects on historic properties from undertakings requiring DA authorization, including the processing of individual permit applications and general permit verification requests. To provide clarity regarding the applicable procedures for compliance with section 106 of the NHPA during the processing of applications for DA authorization, the Corps is also proposing to revise paragraph (b)(3) to 33 CFR 325.2, which references proposed activities involving historic properties. The Corps is proposing to modify this paragraph by removing the reference to the ''Corps National Historic Preservation Act implementing regulations.'' The Corps notes that the information provided in a public notice is preliminary information and comments gathered through the public notice process along with other information would be used to inform the section 106 review conducted by the Corps. The information in the public notice is only intended for disclosure and transparency purposes and is not intended to demonstrate or substitute for compliance with section 106. The Corps is proposing to revise section 325.2(b)(3) to state that when reviewing applications for DA permits, the Corps Regulatory Program will follow the section 106 implementing regulations at 36 CFR part 800 to comply with the requirements of section 106 of the NHPA. The Corps is also proposing to make conforming changes to its nationwide permit program regulations at 33 CFR 330.4(g) to remove references to appendix C and cite the regulations at 36 CFR part 800 instead.

Proposed Conforming Changes to the Corps' Nationwide Permit Regulations

The Corps Regulatory Program's regulations for implementing its nationwide general permit program are provided in part 330 of Title 33 of the Code of Federal Regulations. Section 330.4(g) addresses the Nationwide Permit Program's compliance with section 106 of the NHPA. Section 330.4(g) contains references to appendix C to 33 CFR part 325, and the Corps is proposing to amend paragraph (g) by removing the references to appendix C and replacing them with references to the applicable provisions of 36 CFR part 800. The Corps is also proposing to remove the remaining subparagraphs of paragraph (g) in the regulation because they are superseded by the current Nationwide Permits regulation and permits with general conditions issued on January 13, 2021 (86 FR 2744). The Corps would continue to utilize the January 2021 regulation regarding General Condition 18 for historic properties while the Corps and ACHP focus on developing a program alternative regarding the Nationwide Permits compliance with section 106 of the NHPA to align with issuance of the next cycle of Nationwide Permits in 2026. To be clear, once notification occurs under General Condition 18 of the Nationwide Permits, the Corps would then proceed in using 36 CFR part 800 under this proposed rule as Appendix C would be removed from the CFR.

Expected Impact of This Rule

This proposed rule would primarily impact the Corps, applicants for Corps authorizations, Tribal Nations, Native Hawaiian Organizations, Tribal and State Historic Preservation Officers, and the general public, including groups interested in historic and cultural resource preservation. The Corps will be impacted through an implementation change from appendix C to 36 CFR part 800 for implementing section 106 of the NHPA. This will require additional training as the Corps follows a new process for compliance. The remaining impacted groups, including Tribal Nations, will have the benefit of improved clarity and consistency for implementation of section 106 of the NHPA as applied to the Corps' Regulatory Program. This will include consistency within the Corps and consistency with the rest of the Federal government, including the Corps' own Civil Works programs. Note that this proposed change to the regulations cannot modify the Corps' existing statutory authorities.

[4] *https://api.army.mil/e2/c/downloads/2022/12/08/7e19d5a2/modernize-civil-works-frn-comments-on-appendix-c.pdf* (accessed April 19, 2023).

Army considered both a no action alternative as well as an alternative that would revise appendix C. The no action alternative would result in continued use of appendix C, which has not been updated to align with changes in section 106 of the NHPA and its implementing regulations at 36 CFR part 800, and therefore is not a viable alternative. The alternative to revise appendix C would essentially result in the same language found in 36 CFR part 800, rendering the revision inefficient and duplicative.

Invitation for Public Comment

The Corps of Engineers is inviting public comment on all aspects of the proposal to remove appendix C from its regulations for the processing of applications for DA authorization at 33 CFR part 325 and its possible effects. If appendix C is removed, the Corps Regulatory Program would comply with section 106 of the NHPA by following and using the section 106 implementing regulations at 36 CFR part 800 for the processing of those permit applications (supplemented by a guidance document to be developed and disseminated jointly by the Corps and ACHP using existing regulations and ACHP guidance and providing illustrative examples). When a Corps district determines that a type of undertaking requiring DA authorization has the potential to cause effects to historic properties, it would use the section 106 implementing regulations at 36 CFR part 800 during the processing of the permit application. The Corps is also soliciting public comment on the proposal to modify paragraph (b)(3) of CFR 325.2 to identify the section 106 implementing regulations at 36 CFR part 800 as the regulations the Corps Regulatory Program would follow to comply with section 106 of the NHPA. Interested parties are also invited to provide comments on the Corps' proposed conforming changes to its Nationwide Permit regulations at 33 CFR 330.4(g), which addresses the requirements of section 106 of the NHPA for the Nationwide Permit program.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998 (63 FR 31885, June 10, 1998), regarding plain language, this preamble is written using plain language.

Paperwork Reduction Act

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 Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, Application for a Department of Army Permit).

This proposed rule would not impose any additional information collection requirements or require the Corps Regulatory Program to propose changes to its current information collection requirements for activities that require DA authorization.

Executive Orders 12866, 13563, and 14094

This action is a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993), Executive Order 13563 (76 FR 3821, January 21, 2011), and Executive Order 14094 (88 FR 21879, April 11, 2023) that was submitted to the OMB for review. It also followed the principles of section 2 of Executive Order 14094 through early engagement during the Modernize Civil Works effort (Notice of Virtual Public and Tribal Meetings Regarding the Modernization of Army Civil Works Policy Priorities; Establishment of a Public Docket; Request for Input; 87 FR 33756, June 3, 2022). A summary of comments received can be found on the Army Civil Works web page.[5]

Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The proposal to remove Appendix C from the Corps' regulations at 33 CFR part 325 and use the regulations at 36 CFR part 800 during the Corps Regulatory Program's processing of individual permit applications and general permit verification requests does not have federalism implications. We do not believe that the proposed change in the Corps Regulatory Program's procedures for compliance with section 106 of the NHPA will have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposal will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposal.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed removal of appendix C from 33 CFR part 325, the use of the regulations at 36 CFR part 800 to comply with section 106 of the NHPA during the processing of applications for DA authorizations, and the proposed conforming changes to the Corps' nationwide permit program regulations at 33 CFR 330.4(g) on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. The Corps Regulatory Program's proposed procedures for compliance with section 106 of the NHPA would follow the section 106 implementing regulations at 36 CFR part 800. Small entities that need to obtain required DA authorizations through individual permits or general permits would have to support compliance with section 106 of the NHPA through the existing section 106 procedures at 36 CFR part 800. All other Federal agencies, unless they have an approved program alternative, use the 36 CFR 800 regulations and as such the small entities who apply for permits or work with the Federal government would be

[5] *https://api.army.mil/e2/c/downloads/2022/12/08/7e19d5a2/modernize-civil-works-frn-comments-on-appendix-c.pdf,* last accessed on April 19, 2023.

familiar with the procedures outlined in 36 CFR part 800. This familiarity would eliminate confusion and reduce any burdens on the part of the small entities under implementation of any finalized rule. In addition, the rest of the Corps Civil Works programs use the 36 CFR part 800 regulations so any small entity working with the Corps Civil Works programs would also already be familiar with implementation. Following appendix C under its current form can actually cause delays and expenditure of additional resources for small entities when multiple authorizations and Federal agencies are involved in addition to any required Corps Regulatory Program review as the small entity must comply with and understand two sets of implementing regulations. In addition, as appendix C has not been updated to align with changes in the NHPA, this proposed rule is a matter of bringing the Corps Regulatory Program into alignment with the NHPA.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Corps has determined that the proposed removal of appendix C from its permit processing regulations at 33 CFR part 325 and the proposed conforming changes to 33 CFR 330.4(g) do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed rule does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed removal of appendix C from 33 CFR part 325 and the proposed conforming changes to 33 CFR 330.4(g) do not contain regulatory requirements that might significantly or uniquely affect small governments. Therefore, this proposed rule is not subject to the requirements of section 203 of UMRA.

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposal to remove appendix C from 33 CFR part 325 and to make conforming changes to 33 CFR part 330 is not subject to this Executive Order because the proposed rule is not economically significant as defined in Executive Orders 12866 and 14094. In addition, the proposed removal of appendix C from 33 CFR part 325 does not concern an environmental health or safety risk that the Corps has reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (published at 65 FR 67249 on November 9, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' The phrase ''policies that have Tribal implications'' is defined in the Executive Order to include regulations 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.''

This rulemaking action will have Tribal implications. This rulemaking action will have direct effects on Tribal governments, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The 1992 amendments to the NHPA and the current regulations at 36 CFR part 800 require consultation with Indian Tribes when undertakings have the potential to cause effects to historic properties on Tribal lands or to historic properties of religious and cultural significance to Indian Tribes located off Tribal lands. Therefore, revising the Corps Regulatory Program's procedures for the protection of historic properties by removing appendix C to 33 CFR part 325 and using the section 106 implementing regulations at 36 CFR part 800 for the processing of applications for DA permits, will have Tribal implications. In addition, a nationwide rulemaking action on procedures for compliance with section 106 of the NHPA inherently has Tribal implications.

Tribal Nations are encouraged to submit comments on the proposal to remove appendix C from 33 CFR part 325 (''Procedures for the Protection of Historic Properties''), the proposal to modify § 325.2(b)(3), and the proposed conforming changes to section 330.4(g) of the Corps' Nationwide Permit Program regulations. A letter has also been disseminated to all federally recognized Tribes, Alaska Native Corporations, and Native Hawaiian Organizations notifying them of this proposed rule action and offering Nation-to-Nation consultation. In addition, a virtual meeting on this proposed rule action has also been scheduled to solicit input from Tribal Nations, Alaska Native Corporations,

and Native Hawaiian Organizations to provide multiple opportunities for meaningful engagement on this action. Comments are also encouraged from Indigenous peoples and communities who may not be federally recognized.

Environmental Documentation

The Corps has prepared a draft Environmental Assessment (EA) for this proposed rule. The draft EA is available for public comment in the *www.regulations.gov* docket for this proposed rule (docket number COE–2023–0004).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed removal of appendix C from the Corps Regulatory Program's permit processing regulations at 33 CFR part 325 is not a ''major rule'' as defined by 5 U.S.C. 804(2), because it is not likely to result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Orders 12898 and 14096

Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, makes clear that the pursuit of environmental justice is a duty of all executive branch agencies and should be incorporated into their missions. Executive Order 14096 includes a whole-of-government definition of environmental justice.[6] Under Executive Order 14096, agencies must, as appropriate and consistent with applicable law, identify, analyze, and address the disproportionate and adverse human health and environmental effects (including risks) and hazards of rulemaking actions and other Federal activities on communities with environmental justice concerns. Executive Order 14096 supplements the foundational efforts of Executive Order 12898 to address environmental justice.

The proposed removal of appendix C and the use of 36 CFR part 800 to comply with the requirements of section 106 of the NHPA and the proposed additional conforming amendments to the Corps Regulatory Program's regulations is not expected to negatively impact any communities (including to cause any disproportionate adverse impacts).

Executive Order 13211

The proposed removal of appendix C and the use of 36 CFR part 800 to comply with the requirements of section 106 of the NHPA is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Authority

The Corps is issuing this proposed rule under the authority of section 404 of the Clean Water Act (33 U.S.C. 1344), sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*) and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413).

List of Subjects

33 CFR Part 325

Administrative practice and procedure, Dams, Environmental protection, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

33 CFR Part 330

Administrative practice and procedure, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR chapter II as set forth below:

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.;* 33 U.S.C. 1344; 33 U.S.C. 1413.

■ 2. Amend § 325.2 by revising paragraph (b)(3) to read as follows:

§ 325.2 Processing of applications.

* * * * *

(b) * * *

(3) *Historic properties.* Applications will be reviewed for the potential impact of the relevant undertaking on historic properties pursuant to section 106 of the National Historic Preservation Act. The district engineer will include a statement in the public notice of their current knowledge of historic properties based on their initial review of the application (see paragraph (a)(2) of this section). If the district engineer determines that the proposed undertaking is of a type that would not have the potential to cause effects to historic properties, using the assumption that such properties are present, they will include a statement to this effect in the public notice. If the district engineer finds the proposed undertaking is of a type that has the potential to cause effects to historic properties they will continue proceeding in accordance with 36 CFR part 800.

* * * * *

Appendix C to Part 325–[Removed]

■ 3. Remove Appendix C to part 325.

PART 330—NATIONWIDE PERMIT PROGRAM

■ 4. The authority citation for part 330 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.;* 33 U.S.C. 1344; 33 U.S.C. 1413.

■ 5. Amend § 330.4 by revising paragraph (g) to read as follows:

§ 330.4 Conditions, limitations, and restrictions.

* * * * *

(g) *Historic properties.* No activity which has the potential to cause effects to properties listed or properties eligible for listing in the National Register of Historic Places, is authorized until the district engineer has complied with the applicable provisions of 36 CFR part 800.

Approved by:

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2024–02580 Filed 2–8–24; 8:45 am]

BILLING CODE 3720–58–P

[6] See E.O. 14096, Section 2, 88 FR 25,251 (Apr. 26, 2023); *see also* E.O. 12898, 59 FR 7629 (Feb. 16, 1994).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0015; FRL–5948.1–02–OAR]

RIN 2060–AV59

National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action supplements our proposed amendments to the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (Lime Manufacturing NESHAP) published in the **Federal Register** on January 5, 2023. In that action, the Environmental Protection Agency (EPA) proposed hazardous air pollutant (HAP) emissions standards for the following pollutants: hydrogen chloride (HCl), mercury, total hydrocarbon (THC) as a surrogate for organic HAP, and dioxin/furans (D/F). The EPA is proposing revisions to the proposed emission limits for HCl, mercury, organic HAP, and D/F based on additional information gathered since the publication of the January 5, 2023, proposed rule amendments. We solicit comments on all aspects of this proposed action.

DATES: Comments must be received on or before March 11, 2024. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before March 11, 2024.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action contact U.S. EPA, Attn: Mr. Brian Storey, Mail Drop: D143–04, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541–1103 and email address: *storey.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0015. All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0015. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2020–0430. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

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

CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
DB dead burned dolomitic lime
D/F dioxin/furans
DL dolomitic lime
DSI dry sorbent injection
EJ environmental justice
EPA Environmental Protection Agency
ESP electrostatic precipitator
FF fabric filter
FR Federal Register
g/dscm grams of pollutant per dry standard cubic meter of air
HAP hazardous air pollutant(s)
HBEL health-based emission limit
HCl hydrogen chloride
HQ hazard quotient
IQV intra-quarry variability
lb/hr pounds of pollutant per hour
lb/MMton pounds of pollutant per million tons of lime produced at the kiln
lb/tsf pounds of pollutant per ton of stone feed
MACT maximum achievable control technology
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PM particulate matter
ppmvd parts per million by volume, dry
PR preheater rotary kiln
PRA Paperwork Reduction Act
PSH process stone handling
QL quick lime
RDL representative detection level
REL reference exposure limit
RFA Regulatory Flexibility Act
RfC non-cancer reference concentration
RTR residual risk and technology review
SR straight rotary kiln
SSM startup, shutdown, and malfunction
TEF toxicity equivalence factors
THC total hydrocarbons
tpy tons of pollutant per year
UMRA Unfunded Mandates Reform Act
UPL upper predictive limit
VK vertical kiln
VCS voluntary consensus standards

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this supplemental proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that the proposed rule is likely to affect. The standards, if promulgated, will be directly applicable to the affected sources. Federal, State, local, and Tribal government entities would not be affected by this rule. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576; July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030; July 1992), the Lime Manufacturing source category is ''any facility engaged in producing high calcium lime, dolomitic lime, and dead-burned dolomite.'' However, lime manufacturing plants located at pulp and paper mills or at beet sugar factories are not included in the source category (69 FR 394, 397, January 5, 2004).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category and NESHAP	NAICS code [1]
Lime Manufacturing	32741, 33111, 3314, 327125.

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this supplemental proposal at *https://www.epa.gov/stationary-sources-air-pollution/lime-manufacturing-plants-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of this supplemental proposal rule and key technical documents at this same website.

II. Background

A. What is the statutory authority for this action?

On January 5, 2023, the EPA proposed to amend the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (Lime Manufacturing NESHAP), to set emission standards for four previously unregulated pollutants.[1] This supplemental proposal seeks comment on revisions to the proposed emission limits for HCl, mercury, organic HAP, and D/F based on information received from public commenters and other sources of information, including the small business review panel.

In *Louisiana Environmental Action Network* v. *EPA (LEAN),* 955 F.3d 1088 (D.C. Cir. 2020) the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the EPA has an obligation to address unregulated emissions from a source category in the 8-year review. To meet this obligation, the EPA issued the January 5, 2023, proposed rule to address unregulated emissions of HAP from the lime manufacturing source category. The proposed amendments defined the maximum achievable control technology (MACT) standard for hydrogen chloride (HCl), mercury, total hydrocarbon (THC) as a surrogate for organic HAP, and dioxin/furans (D/F) within the lime manufacturing source category pursuant to the Clean Air Act (CAA) sections 112(d)(2) and (3). This proposal supplements the January 5, 2023, proposed rule amendments.

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Lime Manufacturing NESHAP on January 5, 2004 (69 FR 394). The standards are codified at 40 CFR part 63, subpart AAAAA. The lime manufacturing industry consists of facilities that use a lime kiln to produce lime product from limestone by calcination. The source category covered by this MACT standard currently includes 34 facilities.

As promulgated in 2004, the current Lime Manufacturing NESHAP regulates HAP emissions from all new and existing lime manufacturing plants that are major sources, co-located with major sources, or are part of major sources. A lime manufacturing plant is defined as any plant which uses a lime kiln to produce lime product from limestone or other calcareous material by calcination. The NESHAP specifically excludes lime kilns that use only calcium carbonate waste sludge from water softening processes as the feedstock. In addition, lime manufacturing plants located at pulp and paper mills or at beet sugar factories are not subject to the NESHAP. Lime manufacturing operations at pulp and paper mills are subject to the NESHAP for combustion sources at kraft, soda, and sulfite pulp and paper mills.[2] Lime manufacturing operations at beet sugar processing plants are not subject to the Lime Manufacturing NESHAP because beet sugar lime kiln exhaust is typically routed through a series of gas washers to clean the exhaust gas prior to process use. Other lime manufacturing plants that are part of multiple operations, such as (but not limited to) those at steel mills and magnesia production facilities, are subject to the Lime Manufacturing NESHAP.

The current Lime Manufacturing NESHAP defines the affected source as each lime kiln and its associated cooler and each individual processed stone handling (PSH) operations system. The PSH operations system includes all equipment associated with PSH operations beginning at the process stone storage bin(s) or open storage pile(s) and ending where the process stone is fed into the kiln. It includes man-made process stone storage bins (but not open process stone storage piles), conveying system transfer points, bulk loading or unloading systems, screening operations, surge bins, bucket elevators, and belt conveyors.

The current Lime Manufacturing NESHAP established particulate matter (PM) emission limits for lime kilns, coolers, and PSH operations with stacks. The NESHAP also established opacity limits for kilns equipped with electrostatic precipitators (ESP) and fabric filters (FF) and scrubber liquid flow limits for kilns equipped with wet scrubbers. Particulate matter serves as a surrogate for the non-mercury metal HAP. The NESHAP also regulates opacity or visible emissions from most of the PSH operations, with opacity also serving as a surrogate for HAP metals.

The PM emission limit for existing kilns and coolers is 0.12 pounds PM per ton of stone feed (lb/tsf) for kilns using dry air pollution control systems (*e.g.,* dry scrubbers, fabric filters, baghouses) prior to January 5, 2004. Existing kilns that have installed and are operating wet scrubbers prior to January 5, 2004, must meet an emission limit of 0.60 lb/tsf. Kilns which meet the criteria for the 0.60 lb/tsf emission limit must continue to use a wet scrubber for PM emission control in order to be eligible to meet the 0.60 lb/tsf limit. If at any time such a kiln switches to a dry control, it would become subject to the 0.12 lb/tsf emission limit, regardless of the type of control device used in the future. The PM emission limit for all new kilns and lime coolers is 0.10 lb/tsf. As a compliance option, these emission limits (except for the 0.60 lb/tsf limit) may be averaged across kilns and coolers at the lime manufacturing plant. If the lime manufacturing plant has both new and existing kilns and coolers, then the emission limit would be an average of the existing and new kiln PM emissions limits, weighted by the annual actual production rates of the individual kilns, except that no new kiln may exceed the PM emission level of 0.10 lb/tsf. Existing kilns that have installed and are operating wet scrubbers prior to January 5, 2004, and that are required to meet a 0.60 lb/tsf emission limit must meet that limit individually, and they may not be included in any averaging calculations.

Emissions from PSH operations that are vented through a stack are subject to a limit of 0.05 grams PM per dry standard cubic meter (g/dscm) and 7 percent opacity. Stack emissions from PSH operations that are controlled by wet scrubbers are subject to the 0.05 g PM/dscm limit but are not subject to the opacity limit. Fugitive emissions from PSH operations are subject to a 10 percent opacity limit.

For each building enclosing any PSH operation, each of the affected PSH operations in the building must comply individually with the applicable PM and opacity emission limitations. Otherwise, there must be no visible emissions from the building, except from a vent, and the building's vent emissions must not exceed 0.05 g/dscm and 7 percent opacity. For each fabric filter that controls emissions from only an individual, enclosed processed stone storage bin, the opacity must not exceed 7 percent. For each set of multiple processed stone storage bins with combined stack emissions, emissions must not exceed 0.05 g/dscm and 7 percent opacity. The current Lime Manufacturing NESHAP does not allow averaging of PSH operations.

The 2020 amendments finalized the residual risk and technology review (RTR) conducted for the Lime Manufacturing NESHAP. The 2020 RTR found that the Lime Manufacturing NESHAP provided an ample margin of safety to protect public health, more stringent standards were not necessary to prevent an adverse environmental effect, and that there were no developments in practices, processes, or control technologies that would warrant

[1] 88 FR 805 (Jan. 5, 2023).

[2] 66 FR 3180, January 12, 2001.

revisions to the standards. In addition, the 2020 RTR addressed periods of startup, shutdown, and malfunction (SSM) by removing any exemptions during SSM operations. Lastly, the 2020 amendments included provisions requiring electronic reporting.

C. What changes did we propose for the lime manufacturing source category in our January 5, 2023, proposal?

On January 5, 2023, the EPA published a proposal in the **Federal Register** for the Lime Manufacturing NESHAP, 40 CFR part 63, subpart AAAAA to propose setting MACT standards for HCl, mercury, THC as a surrogate for organic HAP, and D/F. Table 2 includes a summary of the MACT standards in the January 5, 2023, proposal.

TABLE 2—SUMMARY OF NEW AND EXISTING SOURCE LIMITS FOR THE LIME MANUFACTURING NESHAP INCLUDED IN THE JANUARY 5, 2023, PROPOSAL

Pollutant [1]	Kiln type [2]	Stone produced [3]	New source limit	Unit of measure	Existing source limit	Unit of measure
HCl	SR	DL, DB	1.6	lb/ton stone produced	2.2	lb/ton stone produced.
	SR	QL	0.021	lb/ton stone produced	0.58	lb/ton stone produced.
	PR	DL, DB	0.39	lb/ton stone produced	0.39	lb/ton stone produced.
	PR	QL	0.015	lb/ton stone produced	0.015	lb/ton stone produced.
	VK	QL	0.021	lb/ton stone produced	0.021	lb/ton stone produced.
Mercury	All	QL, DL	24.9	lb/MMton stone produced	24.9	lb/MMton stone produced.
	All	DB	24.4	lb/MMton stone produced	33.1	lb/MMton stone produced.
THC	All	All	0.86	ppmvd as propane @7 percent O_2	3.47	ppmvd as propane @7 percent O_2.
D/F	All	All	0.028	ng/dscm (TEQ) @7 percent O_2	0.028	ng/dscm (TEQ) @7 percent O_2.

[1] Hydrogen chloride (HCl), total hydrocarbon (THC), dioxin/furans (D/F).
[2] Straight rotary kiln (SR), preheater rotary kiln (PR), vertical kiln (VK).
[3] Dolomitic lime (DL), quick lime (QL), dead burned dolomitic lime (DB).

III. Analytical Results and Proposed Decisions

This section provides a description of this proposal, which supplements the January 5, 2023, proposed amendments, and the EPA's rationale for this supplemental proposal.

A. What revisions are we proposing to the hydrogen chloride emission standards?

As a result of reviewing public comments received on the January 5, 2023, proposed amendments, the EPA was made aware of five instances where kilns were subcategorized as preheater rotary kilns (PR) producing quick lime (QL) but were in fact straight rotary kilns (SR) producing QL. All five kilns identified are located at the Carmeuse Lime and Stone plant in Gary, Indiana. One of these five kilns was in the HCl MACT pool for the PR, QL subcategory, and was included in the Upper Predictive Limit (UPL) calculations. This kiln was moved from this subcategory to the SR, QL subcategory. Removing this kiln from the PR, QL subcategory and adding it to the SR, QL subcategory changed the data used in the UPL calculation and therefore changed the UPL calculation results. Refer to the memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry Supplemental Proposal,'' which is included in the docket for this rulemaking, for a detailed description of the revised calculations.

In addition, in the January 5, 2023, proposal we did not subcategorize vertical kilns by the type of stone produced. We received a comment that the EPA should subcategorize vertical kilns by product, similar to the subcategorization of rotary kilns. (See Docket ID No. EPA–HQ–OAR–20177–0015–0166). In this action we are proposing a vertical kiln (VK): dolomitic lime (DL), dead-burned, dolomitic lime (DB) subcategory as was done with the proposed PR, DL/DB rotary kiln emission limits.

The changes in our proposed HCl emission limits for new and existing sources are include in table 3.

TABLE 3—SUMMARY OF RE-PROPOSED NEW AND EXISTING SOURCE LIMITS FOR HYDROGEN CHLORIDE

Kiln type [1]	Stone produced [2]	New source limit (lb/ton stone produced)	Existing source limit (lb/ton stone produced)
SR	QL	0.015	0.52
SR	DL, DB	1.7	2.3
PR	QL	0.096	0.096
PR	DL, DB	0.39	0.39
VK	QL	0.021	0.021
VK	DL, DB	0.39	0.39

[1] Straight rotary kiln (SR), preheater rotary kiln (PR), vertical kiln (VK).
[2] Dolomitic lime (DL), quick lime (QL), dead burned dolomitic lime (DB).

In the January 5, 2023, proposal the EPA estimated that applying a removal efficiency of dry sorbent injection (DSI) controls using hydrated lime to each kiln in the source category to meet the MACT floor would result in a reduction of HCl emissions from these sources of 1,163 tons per year (tpy). As a result of the changes to these subcategories, explained in this section, the EPA now estimates that applying a removal efficiency of DSI controls to meet the MACT floor would result in a reduction of HCl emissions from these sources of 884 tons of HCl per year.

We conducted a revised beyond-the-floor analysis, where we evaluated whether existing kilns would be able to comply with the proposed new source HCl MACT floor limits. We found that

the estimated reduction in HCl emissions from existing sources complying with a beyond-the-floor HCl limit is 1,453 tpy. The estimated incremental reduction, where we compare the existing source beyond-the-floor limit to the existing source MACT floor limit, is 568 tpy. Refer to the memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry Supplemental Proposal,'' which is included in the docket for this rulemaking, for a detailed description of the revised calculations. Using revised cost calculations (refer to section IV.C. of this preamble) we estimate the total capital investment to be $749,000,000 and total annual costs to be $139,000,000 per year for beyond-the-floor limits. This results in a cost effectiveness of approximately $95,000 per ton of HCl removal. We do not consider these control costs to be reasonable compared to other rules where we have regulated HCl and costs were a consideration.[3] Therefore we are not proposing a beyond-the-floor standard for HCl. Refer to the memorandum, ''Cost Impacts for the Lime Manufacturing Plants Industry Supplemental Proposal'', included in the docket of this rulemaking.

As part of our beyond-the-floor analysis, we typically identify control techniques that have the ability to achieve an emissions limit more stringent than the MACT floor. No techniques were identified that would achieve HAP reductions greater than the new source floors for the HCl subcategories. Therefore, consistent with the January 5, 2023, proposal the EPA is not proposing a beyond-the-floor HCl limit for new sources in this supplemental proposal.

In its report, the Small Business Advocacy Review Panel requested that the EPA consider establishing a health-based emission limit (HBEL) for HCl and asked the EPA to take comment on a potential HBEL standard. For a HAP with an established health threshold, CAA section 112(d)(4) allows the EPA to consider such health thresholds when establishing emission standards under CAA section 112(d). Section 112(d)(4) of the CAA states, ''With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.'' In other words, for HAP with a health threshold, standards may be promulgated under a process different from that otherwise specified in CAA section 112(d), and these standards are referred to as HBEL. Based on the request, the EPA seeks comment on establishing an HBEL under CAA section 112(d)(4) for HCl.

The EPA is mindful that, in *Sierra Club* v. *Environmental Protection Agency,* 895 F.3d 1 (D.C. Cir. 2018), the court remanded the NESHAP for Brick and Structural Clay Products Manufacturing and for Clay Ceramics Manufacturing. The court found that the EPA had not sufficiently supported its determination that HCl is a ''pollutant for which a health threshold has been established''; specifically, the court determined that the rulemaking record did not show that HCl is not a carcinogen. 895 F.3d at 11. The court also stated that the EPA had not sufficiently explained why it had used the EPA inhalation Reference Concentration (RfC) instead of using California's health value in setting the HBEL. Below, the EPA considers the court's points related to the denying the use of an HBEL for HCl as well as an example of how an HBEL may be established for this rulemaking.

With regard to carcinogenicity, it is important to acknowledge that the science and methods of cancer risk assessment have evolved over the 33 years since the CAA amendments were issued. The EPA now recognizes that carcinogens can be either non-threshold or threshold pollutants.[4] Linear non-threshold carcinogens can cause adverse health effects, including cancer, at any level of exposure. In contrast, non-linear threshold carcinogens may pose a cancer risk only above a certain exposure level. Based on the science and methods developed over the last 33 years, and CAA section 112(d)(4)'s focus on a threshold, not cancer risk, we believe that the issue is not whether HCl is a carcinogen but rather whether HCl has a threshold.

An important consideration when determining if a carcinogen has a threshold is whether it is mutagenic. If a pollutant is mutagenic, science supports that any dose may cause cancer; in other words, there is not likely to be a threshold. In the case of HCl, the available evidence does not indicate that HCl has a mutagenic effect. Bacteria that have been exposed to HCl in research studies have not exhibited any mutations.[5] Although studies reported by Morita *et al.* (1989)[6] and Brusick (1986)[7] involving mammalian exposure to HCl have found mutagenicity, researchers have concluded that these effects are an artifact of acidic conditions caused by exceptionally high doses of HCl. Genotoxic or mutagenic effects caused at high doses by changes in pH are not relevant to environmental levels of exposure under normal physiological conditions.

Another important consideration in determining whether a pollutant has a threshold is understanding whether there are alternative mechanisms by which the observed effects could lead to the development of cancer. In an animal study designed to observe cancer outcomes, rats exposed to HCl showed increased cell production and tissue enlargement, known as hyperplasia, in the respiratory tract. However, the rats showed no evidence of HCl-induced tumors or cancer.[8] Hyperplasia may or may not progress to tumor development and cancer over time.[9] However, cancer cannot occur through this mechanism if exposure is below the threshold at which hyperplasia occurs. Continuous exposure to a chemical or its metabolite can cause persistent cell killing which in turn may result in regenerative hyperplasia in the damaged tissue. The EPA's Office of Pesticides recognizes that ''for irreversible tissue alterations to occur in humans, including cancer by this mode of action, a *sufficient exposure* (emphasis added) must be encountered over a prolonged period.'' [10] The EPA's Integrated Risk Information System (IRIS) program has similarly recognized the existence of a threshold of exposure for hyperplasia and resulting cancer outcomes from exposure to chloroform. Chloroform was

[3] See 86 FR 64393, November 18,2021, where we found that $26,000/ton for HCl was not cost effective as a beyond-the-floor option.

[4] U.S. EPA. 2005. Guidelines for Carcinogen Risk Assessment. U.S. Environmental Protection Agency, Washington DC.

[5] International Agency for Research on Cancer (IARC). 1992. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Volume 54: Occupational Exposures to Mists and Vapours from Strong Inorganic Acids; and Other Industrial Chemicals. World Health Organization, Lyon.

[6] Morita T., Watanabe Y., Takeda K., Okumura K. Effects of pH in the in vitro chromosomal aberration test. *Mutat. Res.* 1989;225:55–60.

[7] Brusick D. Genotoxic effects in cultured mammalian cells produced by low pH treatment conditions and increased ion concentrations. *Environ. Mutag.* 1986;8:879–886.

[8] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) on Hydrogen Chloride. National Center for Environmental Assessment, Office of Research and Development, Washington, DC. 1995.

[9] NCI Dictionary of Cancer terms. National Cancer Institute. (n.d.). Retrieved October 30, 2023, from *https://www.cancer.gov/publications/dictionaries/cancer-terms/def/hyperplasia.*

[10] EPA (2018) Chemicals evaluated for carcinogenic potential annual cancer report 2018. U.S. Environmental Protection Agency.

labeled as likely to be carcinogenic to humans under high-exposure conditions that cause hyperplasia. However, the EPA concluded that chloroform is not likely to be carcinogenic to humans under exposure conditions that do not cause hyperplasia.[11]

The EPA derived a reference concentration (RfC) for HCl which identifies a health-based threshold for hyperplasia [12]. This RfC represents an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. An expert review workshop had previously evaluated the evidence available for HCl and for a similar chemical, sulfuric acid, and suggested that no adverse effects from exposure to HCl would be expected in humans at or below 3 mg/m3.[13] The EPA performed an independent evaluation to identify a value expected to be without adverse effects, including in sensitive subgroups. The EPA's dose-response evaluation incorporated a 300-fold factor to account for any residual uncertainty, including the potential for variability in response across the human population. The final RfC derived by the EPA was 0.02 mg/m3.[14] Exposure to HCl in the general population is expected to occur below 3 mg/m3 and 0.02 mg/m3, below which there are no observable adverse health effects. Considering the evidence regarding [15] and the availability of a hyperplasia protective health threshold, the EPA seeks comment on whether it is appropriate to consider HCl a threshold pollutant under CAA section 112(d)(4). The EPA also requests comments on new or additional scientific evidence that will inform the agency whether or not HCl has a threshold.

In its 2018 opinion in *Sierra Club,* the D.C. Circuit also stated that the EPA did not fully explain why the EPA's RfC for HCl, which the Agency has designated as a ''low confidence'' value, was preferable to an alternative value developed by the California EPA, known as the chronic reference exposure level (REL). The EPA had previously explained in its *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry* and *Guidelines for Carcinogenic Risk Assessment* that the Agency derives RfC only when there are enough data to designate a pollutant as having a threshold and there are enough data to set a numerical RfC. Also, after deriving an RfC, the EPA evaluates the data used to derive the RfC and assigns confidence levels of high, medium, or low to each of its reference concentrations based on the completeness of the supporting data base.[16] A ''low confidence'' label in the RfC is applied to a derivation that is based on several data extrapolations and a less complete data base than those with a ''high confidence'' or ''medium confidence'' labels. Therefore, a ''low confidence'' RfC value indicates that it may change if additional supporting data become available. It does not mean that the current available data base is weak or unreliable. In fact, the principal and supporting studies selected to derive the RfC for HCl meet the data base criteria for estimation of an RfC which means that the data base is adequate and acceptable. The California EPA chronic REL for HCl was derived using the same principal and supporting studies. Therefore, the California EPA value reflects the same data base confidence as the EPA RfC.

While the EPA and California EPA values were derived using the same principal study and similar methodologies, there was a significant difference in the derivation of each value, which led to the California EPA value being more stringent. The principal driver for this difference was the California EPA's exclusion of mid-respiratory tract (*i.e.,* trachea) effects from its dosimetry adjustment calculations.[17] By contrast, the EPA incorporated both upper- (*i.e.,* nose, mouth) and mid-respiratory tract effects. California EPA's sole rationale for the exclusion of mid-respiratory tract effects was based on the prediction that humans are expected to be relatively more susceptible in the upper-respiratory tract.

Although the predominant effects of inhaled HCl are expected to occur in the upper respiratory tract, the EPA disagrees with the California EPA's exclusion of mid-respiratory tract effects and believes that California EPA's approach is inconsistent with the EPA's own guidelines for deriving inhalation reference concentrations. The principal study relied upon by the EPA and California EPA reported that rats exposed to HCl developed a higher incidence of hyperplasia in both upper- and mid-respiratory tracts. Furthermore, the EPA guidelines establish that when effects are observed in the mid-respiratory tract, this region should also be considered in the dosimetry adjustment calculations.[18] Therefore, the EPA approach to derive the RfC is more robust because it better represents the observed respiratory effects reported in the scientific literature.

In contemplating whether the EPA could set an HBEL for HCl emissions in the lime manufacturing source category, the EPA reviewed the conclusions on the potential for HCl to cause adverse health effects in the 2020 RTR. The maximum chronic Hazard Quotient (HQ) for HCl was 0.04, and the maximum acute HQ hazard was 0.6 based upon actual emissions. Because the hazards associated with HCl were acceptable with an ample margin of safety in the 2020 RTR, it is possible to contemplate setting an HBEL for this rule. Refer to the November 2023 memorandum ''Risk Approach to Assess a Health-Based Emission Limit for Hydrochloric Acid for the Lime Manufacturing Source Category,'' located in the docket for this rulemaking. The modeling methodology applied for both the 2020 RTR and the 2023 HBEL proposal accounts for aggregate impacts to census blocks for locations that may have multiple lime manufacturing plants within a 50 km domain. The proposed HBEL for HCl is at an emission level that is higher than the modeled actual emissions for the 2020 RTR. An example of what an HBEL for HCl might look like is presented below.

To set an HBEL for HCl, we would establish an emission standard to ensure that levels of HCl remain well below the concentrations at which any impacts would be expected to occur. As an example, an appropriate approach to

[11] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) on Chloroform. National Center for Environmental Assessment, Office of Research and Development, Washington, DC. 2001.

[12] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) on Hydrogen Chloride. National Center for Environmental Assessment, Office of Research and Development, Washington, DC. 1995.

[13] Kamrin, M.A. 1992. Workshop on the health effects of HCl in ambient air. Reg. Pharm. Toxicol.15: 73–82.

[14] Environmental Protection Agency. Integrated Risk Information System (IRIS) on Hydrogen Chloride. National Center for Environmental Assessment, Office of Research and Development, Washington, DC. 1995.

[15] HCl concentrations in the ambient air usually do not exceed 0.01 mg/m3 (IARC, 1992).

[16] U.S. EPA, 1994. *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry* [See section 4.3.9.2. Assignment of Confidence Levels, p. 4–80–82].

[17] OEHHA. (2000). Determination of Noncancer Chronic Reference Exposure Levels. Appendix D.3 Chronic RELs and toxicity summaries using the previous version of the Hot Spots Risk Assessment guidelines (OEHHA 1999). Chronic Toxicity Summary: Hydrogen Chloride.

[18] U.S. EPA, 2009. *STATUS REPORT: Advances in Inhalation Dosimetry of Gases and Vapors with Portal of Entry Effects in the Upper Respiratory Tract.* U.S. Environmental Protection Agency, Washington, DC.

setting a health-based threshold might be to establish a mass-based standard. Such a standard could include both a tons per year limit as well as a pounds per hour limit to ensure protection from both chronic and acute impacts. We have provided an analysis of such a standard in the November 2023 memorandum ''Risk Approach to Assess a Health-Based Emission Limit for Hydrochloric Acid for the Lime Manufacturing Source Category,'' located in the docket for this rulemaking. Based on this analysis, the HBEL would be an emission limit of 300 tpy, not to exceed 685 pounds per hour (lb/hr). We would expect such a limit to ensure that HCl emissions from this source category, while could be higher than in the proposal would remain at levels consistent with a chronic HQ no greater than 0.2 and a maximum acute HQ no greater than 0.6. We request comment on whether such a standard would provide an ample margin of safety and whether additional measures would be needed to do so.

Appropriate monitoring, recordkeeping, and reporting requirements would also be required to ensure compliance with the limit. The EPA is requesting comment on an appropriate structure for incorporating an HBEL in the rule text. Refer to the memorandum, ''Revisions to 40 CFR part 63 Subpart AAAAA to Accommodate a Health-Based Standard'', included in the docket for this rulemaking, for a description of potential revisions to the subpart to include initial compliance, continuous compliance, recordkeeping, and reporting rule language in support of an HBEL.

B. What revisions are we proposing to the mercury emission standards?

Prior to the January 5, 2023, proposed rule, the EPA evaluated the use of an intra-quarry variability (IQV) factor to be applied in the mercury UPL calculations to account for the naturally occurring variability in mercury content of the raw materials. The formation of the rock being mined for raw materials occurred over a large span of geological time. Consistent with the approach followed in the Portland Cement Manufacturing NESHAP, 40 CFR part 63, subpart LLL, and the Brick and Structural Clay Products NESHAP, 40 CFR part 63, subpart JJJJJ, the IQV factor accounts for this variability in the mercury content of the raw material over geological time. However, in the January 5, 2023, proposed rule amendments we did not believe we had sufficient data to apply an IQV factor.

As described in the January 5, 2023, proposal, the EPA was provided data from the quarries of two separate lime manufacturing facilities (Carmeuse Maysville and Graymont Eden quarries). Both facilities were included in the mercury MACT floor calculations. At the first facility, the mercury content of the kiln feed was sampled, and the results tabulated. At the second facility the quarry was sampled, at multiple bore-hole depths, as well as the kiln feed, and the results tabulated.

When developing the January 5, 2023, proposal, the EPA had believed that the kiln feed data was more representative of the mercury content of the raw material, but wrongly assumed this was due to the mined quarry stone first being stored in open storage piles over time, where new stone added to the storage pile was assumed to homogenize with other stone in the storage pile. In the public comments received, industry representatives explained that stone from the quarry is stored in ''short-term'' storage piles,[19] where new stone added does not have time to ''homogenize'' with other stone before being fed into the kiln. It was also noted that quarry samples, as collected in the Graymont bore-hole sample data, represent the intent of the IQV by reporting on the measured variability of the mercury content of the rock over varying depths, representing variations over geologic time. Based on these comments, the EPA reconsidered the suitability of these data to develop an IQV factor.

The EPA considered both the Graymont and Carmeuse quarry data in the IQV factor analysis. Both facilities were part of the MACT floor pool in the QL subcategory. From this analysis a relative standard deviation (RSD) was calculated by dividing the standard deviation by the data average. The RSD was then incorporated into the UPL calculations for new and existing QL sources as part of the ''pooled variance'' factor of the UPL equation. Refer to the memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry Supplemental Proposal,'' which is included in the docket for this rulemaking, for a detailed description of the revised calculations. The application of an IQV factor revised the originally proposed mercury emission limit for new and existing QL sources from 24.9 pounds per million tons of lime produced (rounded to 25 lb/MMton) for both new and existing sources to 27 lb/MMton for new sources, and 34 lb/MMton for existing sources in the QL subcategory.

As part of the evaluation of a mercury standard with the inclusion of an IQV factor, the EPA reconsidered whether a separate subcategory was necessary for kilns producing dead-burned dolomitic lime (DB), as proposed in the January 5, 2023, proposed amendments. To do this, we first developed standards based on no subcategorization and the application of an IQV factor. The result of this analysis was 27 lb Hg/MMton for new sources and 34 lb Hg/MMton for existing sources. These standards were developed based on the kilns that made up the MACT pool. These kilns were producing high calcium quick lime (QL) and dolomitic lime (DL). Based on test data available, the EPA determined that kilns producing DB would be able to comply with this existing source standard after the application of air pollution controls. Based on the test data available, the EPA determined that there was little difference in mercury emissions from SR and PR kilns producing Ql and/or DL. Moreover, we have found that residence time of raw materials in a kiln has little impact on mercury emissions. We are proposing to not create subcategories based on kiln type in setting mercury emission limits.

Our proposed mercury emission limits for new and existing sources, without subcategories, are included in table 4.

TABLE 4—SUMMARY OF RE-PROPOSED NEW AND EXISTING SOURCE LIMITS FOR MERCURY

Kiln type	Stone produced	New source limit (lb/MMton stone produced)	Existing source limit (lb/MMton stone produced)
All	All	27	34

[19] Docket ID No. EPA–HQ–OAR–2017–0015–0166, section X. A.

In the January 5, 2023, proposed amendments the EPA estimated that applying a removal efficiency of activated carbon injection (ACI) controls to the source category to meet the MACT floor would result in a reduction of mercury emissions from these sources of approximately 489 pounds of mercury per year. As a result of this supplemental proposal, and the inclusion of an IQV factor in the UPL calculations for mercury, the EPA estimates that applying ACI controls would result in a reduction of mercury emissions from these sources of 460 pounds of mercury per year.

We conducted a beyond-the-floor analysis, where we evaluated whether existing kilns would be able to comply with the new source mercury MACT floor limits. We found that the estimated reduction in mercury emissions from a beyond-the-floor mercury limit is approximately 490 pounds (0.24 tons) of mercury per year. The estimated incremental reduction, where we compare the existing source beyond-the-floor limit to the existing source MACT floor limit, is 30 pounds (0.01 tons) of mercury per year. We estimate the total capital investment to be $244,000,000 and total annual costs to be $116,000,000 per year for beyond-the-floor limits. This results in a cost effectiveness of approximately $238,000 per pound ($476,000,000 per ton) of mercury removal. We do not consider the control costs to be reasonable compared to other rules where we have regulated mercury and costs are consideration.[20] Therefore we are not proposing a beyond-the-floor standard for mercury. This is a change from that in the January 5, 2023, proposal. Refer to the memorandum, ''Cost Impacts for the Lime Manufacturing Plants Industry Supplemental Proposal'', included in the docket of this rulemaking.

As part of our beyond-the-floor analysis, we typically identify control techniques that have the ability to achieve an emissions limit more stringent than the MACT floor. No techniques were identified that would achieve HAP reductions greater than the new source floors for the mercury. Therefore, consistent with the January 5, 2023, proposal, the EPA is not proposing a beyond-the-floor mercury limit for new sources in this proposed rule. A detailed description of our beyond-the-floor analysis and conclusions is provided in the memorandum, ''Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry Supplemental Proposal'' which is included in the docket for this rulemaking.

C. What revisions are we proposing to the organic HAP emission standards?

The EPA received comments on the January 5, 2023, proposed amendments opposing the use of THC as a surrogate for organic HAP. Commenters representing industry noted that vertical kilns have relatively elevated THC emissions, while organic HAP emissions are relatively low. They note that this is because of the influence of unburned fuel in the kiln exhaust either due to countercurrent flow switching directions in twin-shaft vertical kilns, or incomplete air-fuel mixing in single-shaft vertical kilns.

The EPA re-evaluated the test data of organic HAP emissions and identified eight pollutants from the data that were found to be consistently emitted by the lime manufacturing source category. The list includes both ''high volume'' and ''low volume'' organic HAP. These include the following pollutants: formaldehyde, acetaldehyde, toluene, benzene, xylenes (a mixture of m, o, and p isomers), styrene, ethyl benzene, and naphthalene. The EPA has determined that the emissions data of these eight pollutants best represent the typical organic HAP emissions of the source category. Furthermore, the EPA has determined that controlling the emissions of these eight pollutants from a lime manufacturing facility by use of activated carbon or other means would also control potential emissions of all other organic HAP because the same controls applied to control the eight pollutants would also be effective controls for all organic HAP. For these reasons, the EPA is re-proposing to use an aggregated emission standard of the eight organic HAP identified in the data analysis as a surrogate for total organic HAP instead of the previously proposed THC standard. Commenters requested that the EPA consider a list of 13 pollutants but further review of the data for which the EPA could validate test reports showed that only the eight pollutants listed in this section were found to be emitted consistently.

For each of the eight organic HAP, the EPA calculated the emission limit value equivalent to three times the representative detection level (3xRDL) of the test method. This was then compared to UPL calculations for the eight pollutants. In all cases for both new and existing sources the 3xRDL value, which represents the lowest value that can be accurately measured, was above the calculated UPL. We are accordingly proposing to set the MACT floor at this level. Refer to the memorandum titled, ''Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry Supplemental Proposal'' included in the docket of this rulemaking for a detailed description of the methodology used. Table 5 includes a summary of the 3xRDL values for each organic HAP used to develop the aggregated limit.

TABLE 5—SUMMARY OF 3xRDL VALUES FOR NEW AND EXISTING ORGANIC HAP

Pollutant	RDL (ppmvd @ 7 percent O_2)	3xRDL (ppmvd @ 7 percent O_2)
Formaldehyde	0.14	0.42
Acetaldehyde	0.29	0.87
Toluene	0.014	0.028
Benzene	0.022	0.066
Xylenes (mixture of m, o, and p isomers)	0.023	0.069
Styrene	0.0043	0.013
Ethyl benzene	0.057	0.18
Napthalene	0.0081	0.025
Total	.....	1.7

[20] See 79 FR 75638, December 18, 2014, where the EPA found that a beyond-the-floor option for mercury of $74,000/lb was not cost effective.

Similar to the organic HAP limit in the Portland Cement NESHAP, the EPA is proposing to set the new and existing source organic HAP limit as a sum of the 3xRDL emission limit values for the eight pollutants identified in table 5 (1.7 ppmvd at 7 percent O_2) as a surrogate for total organic HAP. The EPA believes that by controlling the emissions of the eight organic HAP identified in table 5 a source would also control the emissions of any organic HAP potentially emitted by the source. Refer to the memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry Supplemental Proposal,'' which is included in the docket for this rulemaking, for a detailed description of the revised calculations and analyses.

In the January 5, 2023, proposed amendments the EPA proposed a THC emission limit for new and existing sources and estimated that applying ACI controls to the source category to meet the MACT floor would result in a reduction of THC emissions by 566 tons of THC per year from these sources. With the revised proposed limits, the EPA estimates the new and existing source organic HAP limit would result in a reduction of organic HAP emissions by 20 tons of organic HAP per year.

We conducted a beyond-the-floor analysis and found that because we are proposing emission limits for both new and existing sources that are set at 3xRDL of the test method, which is defined as the lowest level where a test method performs with acceptable precision, even if controls were available that had better performance, such performance could not be accurately measured. Therefore, we are not proposing a beyond-the-floor standard for organic HAP for new or existing sources.

D. What revisions are we proposing to the dioxin/furan emission standards?

In the January 5, 2023, proposed amendments, the EPA followed the guidance of the June 5, 2014, memorandum titled, ''Determination of 'non-detect' from EPA Method 29 (multi-metals) and EPA Method 23 (dioxin/furan) test data when evaluating the setting of MACT floors versus establishing work practice standards'' (Docket ID No. EPA–HQ–OAR–2017–0015–0117), which provides guidance on using detection limits as an indicator of the measurable presence of a given pollutant, specifically where multi-component samples, such as with D/F congeners, are the pollutants of concern. Additionally, the EPA used the procedures laid out in the December 13, 2011, memorandum titled ''Data and procedure for handling below detection level data in analyzing various pollutant emissions databases for MACT and RTR emissions limits'' (Docket ID No. EPA–HQ–OAR–2017–0015–0119), which describes the procedure for handling below detection level (BDL) data and developing RDL data when setting MACT emission limits. Similar to organic HAP, and in accordance with these guidance documents, the new and existing UPL for D/F were compared to the emission limit value determined to be equivalent to 3xRDL of the test method, and the 3xRDL value was found to be greater than the UPL. Therefore, the MACT floor limit for D/F was set based on the 3xRDL value of the test method.

Commenters on the January 5, 2023, proposed amendments noted that in setting the 3xRDL value, the EPA set the value based on a sample collection volume of 4 dry standard cubic meters (dscm). Commenters stated that the EPA should have set the 3xRDL value based on a 3 dscm sample collection volume. After further review of the tables in the two guidance memoranda, the EPA agrees that the 3xRDL value should be based on a 3 dscm sample volume. In this action we are correcting the 3xRDL value for new and existing sources based on 3 dscm of sample collection volume as indicated in table 6.

TABLE 6—SUMMARY OF RE-PROPOSED NEW AND EXISTING SOURCE LIMITS FOR DIOXIN/FURANS

Kiln type	Stone produced	New source limit	Unit of measure	Existing source limit	Unit of measure
All	All	0.037	ng/dscm (TEQ) @ 7 percent O_2.	0.037	ng/dscm (TEQ) @ 7 percent O_2.

Applying the limits listed above, the EPA estimates the new and existing source D/F MACT floor limit would result in a reduction of D/F emissions by 9.5×10^{-5} pounds per year (4.7×10^{-8} tons per year).

Similar to the organic HAP limits, we are proposing D/F emission limits for both new and existing sources that are set at 3xRDL of the test method. Because the emission limits could not be set any lower than 3xRDL we did not identify beyond-the-floor options and are proposing MACT floor-based D/F standards for new and existing sources.

The EPA also considered whether it would be appropriate to set a work practice standard for D/F emissions in lieu of a numeric limit. Section 112(h) allows the EPA to set a work practice standard when it is not feasible to prescribe or enforce an emission standard. In this case the provision that could apply would be the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. This situation could occur if a significant majority, but not all, of the emissions data were below the detection limit.

The data for D/F emissions available to the EPA consisted of three tests with three test runs each and five tests where there was only a single test run. Given that the EPA does not consider single-run emission tests to be valid tests for establishing MACT standards, we focused on the three-run emission tests. Two of these three-run tests detected D/F emissions. We note that none of the single-run tests detected D/F emissions, but overall, the EPA is proposing that the data do not support establishing a work practice standard because they do not support a finding that the application of measurement methodology is impracticable.

As a result, we have determined to propose a numeric limit for D/F emissions. However, given the significant number of non-detect emission results, we are specifically requesting comment on the appropriateness of a work practice standard for D/F as well as any additional data that could support such a finding. Commenters supporting a work practice standard should describe how the standard would work, provide supporting data to demonstrate the work practice will control D/F emissions, and address the issue of the limited D/F emission test data available to the EPA.

E. What other actions are we proposing, and what is the rationale for those actions?

The EPA is including definitions of the terms ''new source'' and ''existing source'' as related to the requirements of this supplemental proposal and to clearly indicate that a ''new source'' in reference to the requirements of this supplemental proposal is any applicable source constructed after January 5, 2023, and an ''existing source'' in reference to the requirements of this supplemental proposal is any applicable source constructed before January 5, 2023.

Additionally, the EPA is providing a definition of the term ''stone produced'' used in the units of measure for HCl and mercury emission limits. The limits are in units of mass of pollutant per mass of production, or pounds per ton of stone produced, where ''stone produced'' refers to the production of lime (QL, DL, and/or DB).

F. What revisions are we proposing to the performance testing, monitoring, and recordkeeping and reporting requirements?

We are proposing an emissions averaging compliance alternative that would allow lime manufacturing facilities to demonstrate compliance with the HCl and mercury standards by averaging emissions of each pollutant across existing kilns located at the same facility. Under the emissions averaging compliance alternative, a facility with more than one existing kiln may average emissions across the kilns located at the facility provided that the emissions averaged do not exceed the limits included in table 7.

TABLE 7—EMISSIONS AVERAGING COMPLIANCE ALTERNATIVE FOR HCL AND MERCURY

Pollutant [1]	Kiln type [2]	Stone produced [3]	Emissions averaging alternative limit	Unit of measure
HCl	SR	DL, DB	2.1	lb/ton stone produced.
	SR	QL	0.47	lb/ton stone produced.
	PR	DL, DB	0.36	lb/ton stone produced.
	PR	QL	0.087	lb/ton stone produced.
	VK	DL, DB	0.36	lb/ton stone produced.
	VK	QL	0.019	lb/ton stone produced.
Mercury	All	All	31	lb/MMton stone produced.

[1] Hydrogen chloride (HCl), total hydrocarbon (THC), dioxin/furans (D/F).
[2] Straight rotary kiln (SR), preheater rotary kiln (PR), vertical kiln (VK).
[3] Dolomitic lime (DL), quick lime (QL), dead burned dolomitic lime (DB).

This emission limit reflects a 10 percent adjustment factor to the MACT floor standard; according to our analysis, we expect this emission limit would result in reductions of HCL and mercury greater than those achieved by application of the MACT floor on a unit-by-unit basis.

We are proposing the emissions averaging compliance alternative for existing sources because we expect that it will result in a greater level of emissions reduction than the unit-by-unit MACT floor limits at a lower cost per pound of pollutant removed, while also providing compliance flexibility. The proposed emissions averaging compliance alternative is available only to existing kilns in the same subcategory at lime manufacturing facilities. New or reconstructed sources would be subject to the unit-by-unit MACT floor standards and would be required to comply with those standards on a unit-by-unit basis.

This proposed emissions averaging program would have restrictions. First, emissions averaging would not be allowed between HCL and mercury emissions. Second, emissions averaging would only be permissible among individual existing affected units at a single lime manufacturing plant. Third, emissions averaging would only be permitted among kilns in the same subcategory. Lastly, new affected sources could not use emissions averaging for compliance purposes. Accordingly, we believe that this proposed emissions averaging program is consistent with the CAA.

Emissions averaging also addresses those emission sources exhausting to a common stack. In a ''common stack'' scenario, a group of two or more existing units in the same subcategory that does not receive emissions from units in other subcategories or categories, a facility would treat such averaging group as a single existing unit for purposes of compliance with the requirements of the rule.

We are also proposing to require each facility intending to use this emissions averaging program to develop a emissions averaging plan that identifies: (1) all units in the averaging group; (2) the control technology installed; (3) the process parameter(s) that will be monitored; (4) the specific control technology or pollution prevention measure to be used; (5) the test plan for measuring the HAP being averaged; and (6) the operating parameters to be monitored for each control device.

We are proposing an emissions averaging compliance alternative because we expect that it will provide a more flexible and less costly alternative to controlling HCL and mercury emissions from the source category, and we expect it will result in greater annual reductions of HCL and mercury emissions from the source category than unit-by-unit compliance. We expect that the proposed emissions averaging compliance alternative as described above would not lessen the stringency of the overall MACT floor level of performance and would provide flexibility in compliance, cost, and energy savings to lime manufacturing facilities. We also recognize that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and most importantly, will be no less stringent than unit-by-unit implementation of the MACT floor limits.

Under the proposed emissions averaging compliance alternative, we expect that the 10 percent adjustment factor will ensure that the total quantity of HCl and mercury emitted from a facility's kiln exhaust will not exceed the facility's aggregate HCl emissions if its kilns individually complied with the unit-by-unit MACT floor standards. We expect that the practical outcome of emissions averaging will be emissions reductions equivalent to, or greater than, reductions achieved through

compliance with the MACT floor limits for each discrete kiln on a unit-by-unit basis. Therefore, we expect that our proposed emissions averaging approach will result in the maximum achievable emissions reduction as required by statute. We request comment on allowing sources to comply with the HCL and mercury MACT standards through the proposed emissions averaging compliance alternative. We also request comment on the appropriate adjustment factor to apply under this proposed compliance alternative.

G. What revisions to the compliance dates are we proposing?

Amendments to the Lime Manufacturing NESHAP proposed in this rulemaking for adoption under CAA section 112(d)(2) and (3) are subject to the compliance deadlines outlined in the CAA under section 112(i). For existing sources, CAA section 112(i)(3) requires compliance ''as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard'' subject to certain exemptions further detailed in the statute.[21] To establish a compliance period consistent with the statute, we consider the amount of time needed to plan and construct projects and change operating procedures. As provided in CAA section 112(i), all new affected sources would comply with these provisions by the effective date of the final amendments to the Lime Manufacturing NESHAP or upon startup, whichever is later. The final action is not a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

The EPA projects that many existing sources would need to install add-on controls to comply with the proposed limits. These sources would require time to construct, conduct performance testing, and implement monitoring to comply with the revised provisions. Therefore, we are proposing to allow 3 years from the effective date of the amendments to the NESHAP for existing lime manufacturing sources to come into compliance.

For all affected sources that commence construction or reconstruction on or before January 5, 2023, we are proposing to require compliance with the proposed standards within 3 years after the effective date of the final rule (or upon startup, whichever is later). For all affected sources that commenced construction or reconstruction after January 5, 2023, we are proposing that owners or operators comply with the provisions by the effective date of the final rule (or upon startup, whichever is later).

IV. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected sources?

Currently, 34 major sources subject to the Lime Manufacturing NESHAP are operating in the United States. An affected source under the NESHAP is the owner or operator of a lime manufacturing plant that is a major source, or that is located at, or is a part of, a major source of HAP emissions, unless the lime manufacturing plant is located at a kraft pulp mill, soda pulp mill, sulfite pulp mill, beet sugar manufacturing plant, or only processes sludge containing calcium carbonate from water softening processes. A lime manufacturing plant is an establishment engaged in the manufacture of lime products (calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite) by calcination of limestone, dolomite, shells, or other calcareous substances. A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more, or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year from all emission sources at the plant site.

The Lime Manufacturing NESHAP applies to each existing or new lime kiln and their associated cooler(s). In addition, the NESHAP applies to each PSH operation located at the plant. This includes storage bins, conveying systems and transfer points, bulk loading and unloading operations, screening operations, surge bins, and bucket elevators.

B. What are the air quality impacts?

As with the January 5, 2023, proposed rule, this action proposes standards for HCl, mercury, organic HAP, and D/F that will limit emissions and require, in some cases, the installation of additional controls at lime manufacturing plants at major sources. Compliance with the emission standards set in this proposed rule will result in a combined reduction of total HAP of 905 tons of HAP per year. Specifically, installation of controls will reduce HCl emissions by 884 tpy. The installation of controls will reduce mercury emissions by 457 lbs per year (0.23 tpy). The installation of controls will reduce organic HAP emissions by 20 tpy. Finally, the installation of controls will reduce D/F emissions by 9.5×10^{-5} lbs per year (4.7×10^{-8} tpy).

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. We find that the secondary impacts of this action are minimal. Refer to the ''Lime Impacts Memorandum,'' in the docket for a detailed discussion of the analyses performed on potential secondary impacts. (Docket ID No. EPA–HQ–OAR–2017–0015).

C. What are the cost impacts?

This action proposes emission limits for new and existing sources in the lime manufacturing source category. Although the action contains requirements for new sources, we are not aware of any new sources being constructed now or planned in the next year, and, consequently, we did not estimate any cost impacts for new sources. We estimate the total annualized cost of the proposed rule to existing sources in the lime manufacturing source category to be $174,000,000 per year. The annual costs are expected to be based on operation and maintenance of the added control systems. A memorandum titled ''Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry Supplemental Proposal'' includes details of our cost assessment and is included in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2017–0015).

D. What are the economic impacts?

For the proposed rule, the EPA estimated the cost of installing additional air pollution control devices in order to comply with the proposed emission limits. This includes both the capital costs of the initial installation and subsequent operation and maintenance costs. The assumed equipment life of the recommended controls for this NESHAP is twenty years. To assess the potential economic impacts, the expected annual cost was compared to the total sales revenue for the ultimate owners of affected facilities. For this rule, the expected annual cost is $5,200,0000 (on average) for each facility, with an estimated nationwide annual cost of $174,000,000

[21] *Association of Battery Recyclers* v. *EPA,* 716 F.3d 667, 672 (D.C. Cir. 2013) (''Section 112(i)(3)'s 3-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112]'' (brackets in original)).

per year. The 34 affected facilities are owned by 11 parent companies, and the total costs associated with the proposed amendments are expected to be greater than 1 percent of annual sales revenue per ultimate owner.

The EPA also prepared a small business screening assessment to determine if any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. This analysis is available in the docket for this rulemaking. Because the total costs associated with the proposed amendments are expected to be greater than 1 percent of annual sales revenue per owner in the lime manufacturing source category, there are economic impacts from these proposed amendments on the three affected facilities that are owned by small entities. Refer to section VII.C. of this preamble for a detailed description of the small business outreach and regulatory flexibility analysis performed in conjunction with this proposed rule.

The EPA predicts that the affected sources in the lime manufacturing source category will be able to fully pass on their compliance costs to their customers. International trade of lime products is quite limited and there are no readily available cost-competitive substitutes for lime. Therefore, affected sources are not likely to face competition from foreign lime producers or from substitutes for their product.

Information on our cost impact estimates on the sources in the lime manufacturing source category is available in the document titled, ''Regulatory Impact Analysis for the Supplemental Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants,'' which is included in the docket for this rulemaking.

E. What are the benefits?

The EPA did not monetize the benefits from the estimated emission reductions of HAP associated with this final action. The EPA currently does not have sufficient methods to monetize benefits associated with HAP, HAP reductions, and risk reductions for this rulemaking. However, we estimate that the final rule amendments would reduce emissions by 905 tons per year and thus lower risk of adverse health effects in communities near lime manufacturing plants.

F. What analysis of environmental justice did we conduct?

The results of the demographic analysis performed alongside the January 5, 2023, proposed amendments remain unchanged as a result of this supplemental proposal. For convenience, the demographic analysis is repeated in this preamble for the public's information.

The EPA defines environmental justice (EJ) as ''the just treatment and meaningful involvement of all people regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people (i) are fully protected from disproportionate and adverse human health and environmental effects (including risk) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, grow, worship, and engage in cultural and subsistence practices''.[22] In recognizing that particular communities often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of to advance environmental justice and of protecting communities with from disproportionate adverse public health and environmental effects of air pollution.

To examine the potential for any EJ issues that might be associated with lime manufacturing facilities, we performed a proximity demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 km (~3.1 miles) and 50 km (~31 miles) of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups. In this preamble, we focus on the proximity results for the populations living within 5 km (~3.1 miles) of the facilities. The results of this proximity analysis for populations living within 50 km are included in the document titled ''Analysis of Demographic Factors for Populations Living Near Lime Manufacturing Facilities'', which is available in the docket for this action.

The results (see table 8) show that for populations within 5 km of the 34 Lime Manufacturing facilities, the following demographic groups were above the national average: Hispanic/Latino (37 percent versus 19 percent nationally), linguistically isolated households 21 percent versus 5 percent nationally), people living below the poverty level (27 percent versus 13 percent nationally), people of color (50 percent versus 40 percent nationally, and people without a high school diploma (17 percent versus 12 percent nationally). A summary of the proximity demographic assessment performed for the major source lime manufacturing facilities is included as table 8. The methodology and the results of the demographic analysis are presented in a technical report, *Analysis of Demographic Factors for Populations Living Near Lime Manufacturing Facilities,* available in this docket for this action (Docket ID EPA–HQ–OAR–2017–0015).

TABLE 8—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR MAJOR SOURCE LIME MANUFACTURING FACILITIES

Demographic group	Nationwide	Population within 5 km of facilities
Total Population	328,016,242	473,343.
Race and Ethnicity by Percent		
White	60 percent	50 percent.
Black	12 percent	9 percent.
Native American	0.7 percent	0.9 percent.
Hispanic or Latino (includes white and nonwhite)	19 percent	37 percent.
Other and Multiracial	8 percent	3 percent.

[22] *https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all.*

TABLE 8—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR MAJOR SOURCE LIME MANUFACTURING FACILITIES—Continued

Demographic group	Nationwide	Population within 5 km of facilities
Income by Percent		
Below Poverty Level	13 percent	27 percent.
Above Poverty Level	87 percent	73 percent.
Education by Percent		
Over 25 and without a High School Diploma	12 percent	17 percent.
Over 25 and with a High School Diploma	88 percent	83 percent.
Linguistically Isolated by Percent		
Linguistically Isolated	5 percent	21 percent.

Notes:
• Nationwide population and demographic percentages are based on the Census' 2015–2019 American Community Survey 5-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts within 5 km of all facilities are based on the 2010 Decennial Census block populations.
• Minority population is the total population minus the white population.
• To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, Black, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

The human health risk estimated for this source category for the July 24, 2020, RTR (85 FR 44960) was determined to be acceptable, and the standards were determined to provide an ample margin of safety to protect public health. Specifically, the maximum individual cancer risk was 1-in-1 million for actual emissions (2-in-1 million for allowable emissions) and the noncancer hazard indices for chronic exposure were well below 1 (0.04 for actual emissions, 0.05 for allowable emissions). The noncancer hazard quotient for acute exposure was 0.6, also below 1. The proposed changes to the NESHAP subpart AAAAA will reduce emissions by 905 tons of HAP per year, and therefore, further improve human health exposures for the populations and individuals most exposed to this pollution, including communities with environmental justice concerns . The proposed changes will have beneficial effects on air quality and public health for populations exposed to emissions from lime manufacturing facilities.

G. What analysis of children's environmental health did we conduct?

In the July 24, 2020, final Lime Manufacturing NESHAP RTR (85 FR 44960), the EPA conducted a residual risk assessment and determined that risk from the lime manufacturing source category was acceptable, and the standards provided an ample margin of safety to protect public health. This action proposes first-time emissions standards for HCl, mercury, organic HAP, and D/F. Specifically, compliance with the emission standards set in this proposed rule will result in a combined reduction of total HAP of 905 tons of HAP per year.

This action's health and risk assessments are protective of the most vulnerable populations, including children, due to how we determine exposure and through the health benchmarks that we use. Specifically, the risk assessments we perform assume a lifetime of exposure, in which populations are conservatively presumed to be exposed to airborne concentrations at their residence continuously, 24 hours per day for a 70-year lifetime, including childhood. With regards to children's potentially greater susceptibility to noncancer toxicants, the assessments rely on the EPA's (or comparable) hazard identification and dose-response values that have been developed to be protective for all subgroups of the general population, including children. For more information on the risk assessment methods, see the risk report for the 2020 RTR rule, which is available in the docket (Docket ID No. EPA–HQ–OAR–2017–0015).

V. Request for Comments

We solicit comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the analyses. We are specifically interested in receiving any information regarding developments in practices, processes, and control technologies that reduce HAP emissions. We request comment on the assumptions regarding the costs of capital, work practices, and emissions. We request comment of all aspects of the economic impacts of this proposal.

VI. Submitting Data Corrections

The site-specific emissions data used in setting MACT standards for HCl, mercury, organic HAP, and D/F, as emitted from the lime manufacturing source category, are provided in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2017–0015).

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. For information on how to submit comments, including the submittal of data corrections, refer to the instructions provided in the introduction of this preamble.

VII. Statutory and Executive Order Reviews

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

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

This action is a ''significant regulatory action'' as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, the EPA submitted

this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The EPA prepared an economic analysis of the potential impacts associated with this action. This analysis is included in the document titled, *Regulatory Impact Analysis for the Supplemental Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants* and is also available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2072.10. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing changes to the reporting and recordkeeping requirements for the Lime Manufacturing Plants NESHAP by incorporating the reporting and recordkeeping requirements associated with the new and existing source MACT standards for HCl, mercury, THC, and D/F.

Respondents/affected entities: Owners or operators of lime manufacturing plants that are major sources, or that are located at, or are part of, major sources of HAP emissions, unless the lime manufacturing plant is located at a kraft pulp mill, soda pulp mill, sulfite pulp mill, sugar beet manufacturing plant, or only processes sludge containing calcium carbonate from water softening processes.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart AAAAA).

Estimated number of respondents: On average over the next 3 years, approximately 34 existing major sources will be subject to these standards. It is also estimated that no additional respondent will become subject to the emission standards over the 3-year period.

Frequency of response: The frequency of responses varies depending on the burden item.

Total estimated burden: The average annual burden to industry over the next 3 years from the proposed recordkeeping and reporting requirements is estimated to be 8.392 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting costs for all facilities to comply with all of the requirements in the NESHAP is estimated to be $3,570,000 per year, of which $1,370,000 (first year) is for this rule, and the rest is for other costs related to continued compliance with the current NESHAP requirements including $1,005,000 in annualized capital and operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than April 9, 2024.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 603 of the RFA, the EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The complete IRFA is included as section 6.3 of the document titled, *Regulatory Impact Analysis for the Supplemental Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants,* for review in the docket and is summarized here.

As discussed in section II.A. of this preamble, the statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). The EPA is proposing to revise the Lime Manufacturing NESHAP by establishing new emission standards for this source category, exercising authority under multiple provisions of section 112 of the CAA.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as a small business in the lime manufacturing industry whose parent company has revenues or numbers of employees below the Small Business Administration (SBA) Size Standards for the relevant NAICS code. We have identified 8 different NAICS codes of the parent companies within this source category. A complete list of those NAICS codes and SBA Size Standards is available in section 6.2.1 of the document titled, *Regulatory Impact Analysis for the Supplemental Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants* which is included in the docket for this rulemaking. This supplemental proposal contains provisions that would affect approximately 2 small entities. Under the proposed rule requirements, small entities would be required to comply with the emission standards of four previously unregulated pollutants, which may require the use of new air pollution control devices. Small entities would also need to demonstrate compliance with the emission standards through periodic performance testing. This supplemental proposal includes reporting, recordkeeping, and other administrative requirements. The EPA estimates that the two identified small entities could incur total annual costs associated with the proposal that are at least 3 percent of their annual revenues. Considering the level of total annual costs relative to annual sales for these small entities, the EPA determined that there is potential for the proposed requirements to have a 'Significant Impact on a Substantial Number of Small Entities' (SISNOSE). See section 6.2.2 of the document titled, *Regulatory Impact Analysis for the Supplemental Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants* for more information on the characterization of the impacts to small businesses under the proposed rule.

As required by section 609(b) of the RFA, the EPA also convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives (SERs) that potentially would be subject to the rule's requirements. On August 3, 2023, the EPA's Small Business Advocacy Chairperson convened the Panel, which consisted of the Chairperson, the Director of the Sector Policies and Programs Division within the EPA's Office of Air Quality Planning and Standards, the Administrator of the Office of Information and Regulatory Affairs within OMB, and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Prior to convening the Panel, the EPA conducted outreach and solicited comments from the SERs. After the Panel was convened, the Panel provided

additional information to the SERs and requested their input. The Panel's review identified several significant alternatives for consideration by the Administrator of the EPA which accomplish the stated objectives of the CAA and minimize economic impacts of the proposed rule on small entities.

The SBAR Panel recommended several flexibilities including the consideration of health-based standards for HCl, an IQV for mercury, an aggregated organic HAP emission standard, and work practice standards for D/F. The EPA is including some of these flexibilities as a part of this supplemental proposal and is soliciting comment on others that may be considered for the final rule. The report was finalized and transmitted to the EPA Administrator for consideration. A copy of the full SBAR Panel Report is available in the docket of this rulemaking.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. The EPA does not know of any lime manufacturing facilities owned or operated by Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action proposes emission standards for four previously unregulated pollutants; therefore, the rule proposes health benefits to children by reducing the level of HAP emissions emitted from the lime manufacturing process.

However, the EPA's *Policy on Children's Health* applies to this action. This action is subject to the EPA's Policy on Children's Health [23] because the proposed rule has considerations for human health. Information on how the policy was applied is available in section V.F. ''What analysis of children's environmental health did we conduct'' of this preamble.

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. In this proposed action, the EPA is setting emission standards for previously unregulated pollutant. This does not impact energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted searches for the Lime Manufacturing NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also conducted a review of voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 23, 25A, 29, 30B, 320, and 321. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's referenced method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA referenced methods. The EPA may reconsider determinations of impracticality when additional information is available for any particular VCS.

Two VCS were identified as acceptable alternatives to the EPA test methods for this proposed rule. The VCS ASTM D6784–16, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)'' is an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring mercury. The VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy'' is an acceptable alternative to EPA Method 320 with certain conditions. Detailed information on the VCS search and determination can be found in the memorandum, ''Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Technology Review'', which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0015).

The EPA is incorporating by reference the VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' as an acceptable alternative to EPA Method 320. ASTM D6348–03 (Reapproved 2010) was determined to be equivalent to EPA Method 320 with caveats. ASTM D6348–12e1 is a revised version of ASTM D6348–03 (Reapproved 2010) and includes a new section on accepting the results from the direct measurement of a certified spike gas cylinder, but lacks the caveats placed on the ASTM D6348–03(2010) version. ASTM D6348–12e1 is an extractive FTIR field test method used to quantify gas phase concentrations of multiple analytes from stationary source effluent and is an acceptable alternative to EPA Method 320 at this time with caveats requiring inclusion of selected annexes to the standard as mandatory. When using ASTM D6348–12e1, the following conditions must be met:

- The test plan preparation and implementation in the Annexes to ASTM D6348–03, sections A1 through A8 are mandatory; and
- In ASTM D6348–03, Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5).

[23] *https://www.epa.gov/children/childrens-health-policy-and-plan.*

In order for the test data to be acceptable for a compound, percent R must be 70 percent ≥ R ≤ 130 percent. If the percent R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The percent R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated percent R value for that compound by using the following equation:

Reported Results = ((Measured Concentration in Stack))/(percent R) × 100.

The EPA is incorporating by reference the VCS ASTM D6784–16, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' as an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring elemental, oxidized, particle-bound, and total mercury concentrations ranging from approximately 0.5 to 100 micrograms per normal cubic meter. This test method describes equipment and procedures for obtaining samples from effluent ducts and stacks, equipment and procedures for laboratory analysis, and procedures for calculating results. VCS ASTM D6784–16 allows for additional flexibility in the sampling and analytical procedures for the earlier version of the same standard VCS ASTM D6784–02 (Reapproved 2008).

ASTM D6784–16 and ASTM D6348–12e1 are available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See *https://www.astm.org/*. The standards are available to everyone at a cost determined by ASTM ($82). The costs of obtaining these methods are not a significant financial burden, making the methods reasonably available.

Additionally, the EPA is incorporating by reference EPA/100/R–10/005, ''Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2, 3, 7, 8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds,'' December 2010, which is the source of the toxicity equivalence factors (TEF) for dioxins and furans used in calculating the toxic equivalence quotient of the proposed dioxin and furan standard. This document describes the EPA's updated approach for evaluating the human health risks from exposures to environmental media containing dioxin-like compounds. The EPA recommends that the TEF methodology, a component mixture method, be used to evaluate human health risks posed by these mixtures, using TCDD as the index chemical. The EPA recommends the use of the consensus TEF values for 2,3,7,8-tetrachlorodibenzo-p-dioxin and dioxin-like compounds published in 2005 by the World Health Organization. EPA/100/R–10/005 is available on the EPA website, *https://www.epa.gov/risk/documents-recommended-toxicity-equivalency-factors-human-health-risk-assessments-dioxin-and.*

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice (EJ) concerns. The assessment of populations in close proximity of lime manufacturing facilities shows Hispanic and linguistically isolated groups are higher than the national average (see section V.E. of the preamble). The higher percentages are driven by 4 of the 34 facilities in the source category.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with EJ concerns. The EPA is proposing MACT standards for HCl, mercury, organic HAP, and D/F. The EPA expects that the 4 facilities would have to implement control measures to reduce emissions to comply with the MACT standards and that HAP exposures for the people of color and low-income individuals living near these facilities would decrease.

The EPA will additionally identify and address environmental justice concerns by conducting outreach after signature of this proposed rule. The EPA will address this rule during the monthly Environmental Justice call for communities burdened by disproportionate environmental impacts.

The information supporting these Executive Orders is contained in section V.E. of this preamble.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

[FR Doc. 2024–02299 Filed 2–8–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0069; FRL–10579–12–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (December 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 11, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0069, through 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. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison H. Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov;* or Dan Rosenblatt, Registration Division (RD) (7505T), main telephone number: (202) 566–2875, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information 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/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in the FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov.*

As specified in the FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—Amended Tolerances for Non-Inerts

PP 2E9037. EPA–HQ–OPP–2023–0077. Interregional Research Project #4 (IR–4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by withdrawing the existing tolerance for residues of the insecticide cyclaniliprole, 3-bromo-N-[2-bromo-4-chloro-6-[[(1-cyclopropylethyl)amino] carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on the raw agricultural commodity Vegetable, cucurbit, group 9 at 0.15 parts per million (ppm). *Contact:* RD.

B. New Tolerance Exemptions for Non-Inerts (Except PIPS)

1. *PP 2F9043.* EPA–HQ–OPP–2023–0503. Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the nematicide *Pseudomonas oryzihabitans* strain SYM23945 in or on all food commodities. The petitioner believes no analytical method is needed because genomic analysis and in-depth literature analysis indicate no metabolites of concern are produced. *Contact:* BPPD.

2. *PP 3F9071.* EPA–HQ–OPP–2023–0621. Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide *Bacillus aryabhattai* strain SYM36613 in or on all food commodities. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being proposed. *Contact:* BPPD.

C. New Tolerances for Non-Inerts

1. *PP 2E9037.* EPA–HQ–OPP–2023–0077. IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide cyclaniliprole, 3-bromo-N-[2-bromo-4-chloro-6-[[(1-cyclopropylethyl)amino] carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on the raw agricultural commodity vegetable, cucurbit, group 9 at 0.3 ppm. Adequate analytical methods for determining dodine in/on appropriate raw agricultural commodities and processed commodities have been developed and validated. *Contact:* RD.

2. *PP 2E9039.* EPA–HQ–OPP–2023–0639. Bayer CropScience, AG, 800 N. Lindbergh Blvd. St. Louis, MO 63141, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide and miticide, Spiromesifen, in or on oranges at 0.15 ppm and orange oil at 40 ppm. The High-Performance Liquid Chromatography/mass spectrometry (LC/MS/MS) is used to measure and evaluate the chemical residues of Spiromesifen and residues of the metabolites, Spiromesifen-enol. *Contact:* RD.

3. *PP 3E9052.* EPA–HQ–OPP–2023–0259. IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606,

requests to establish tolerances in 40 CFR 180.622 for residues of the fungicide, ethaboxam, (RS)-N-[cyano(2-thienyl)methyl]-4-ethyl-2-(ethylamino)thiazole-5-carboxamid in or on the raw agricultural commodity: Leaf petiole vegetable subgroup 22B at 0.15 parts per million. An adequate enforcement methodology LC/MS/MS is available to measure and evaluate the residues of ethaboxam to enforce the tolerance expression. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: January 26, 2024.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2024–02805 Filed 2–8–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; Report No. 3209; FR ID 201345]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on January 29, 2024, announcing the dates for filing oppositions and replies to a Petition for Reconsideration of Action in a Rulemaking Proceeding in WC Docket No. 17–84, adopted by the Commission on December 13, 2023. There is an error in the Dates section of this document, incorrectly setting the deadline for replies to oppositions as February 8, 2024 rather than February 23, 2024.

DATES: February 9, 2024.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Michael Ray, Competition Policy Division, Wireline Competition Bureau, at *Michael.Ray@fcc.gov,* 202–418–0357.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 29, 2024, in FR Doc. 2024–01633, on page 5439, in the third column, fourth paragraph from the bottom, correct the ''Dates'' caption to read:

DATES: Oppositions to the Petitions must be filed on or before February 13, 2024. Replies to oppositions must be filed on or before February 23, 2024.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–02624 Filed 2–8–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 240130–0031]

RIN 0648–BM75

Pacific Halibut Fisheries of the West Coast; 2024 Catch Sharing Plan and Recreational Fishery Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve changes to the Pacific Halibut Catch Sharing Plan for the International Pacific Halibut Commission's regulatory Area 2A off Washington, Oregon, and California. In addition, NMFS proposes to implement new management measures for the 2024 recreational fisheries in Area 2A that are not implemented through the International Pacific Halibut Commission (IPHC). These measures include the recreational fishery seasons and subarea allocations for Area 2A. This action would also add a new inseason management provision to transfer anticipated uncaught recreational fishery allocation between states. Additionally, this action proposes to establish a new management line at Point Arena, CA, creating two subareas with separate allocations off California. These actions are intended to conserve Pacific halibut and provide angler opportunity where available.

DATES: Comments on the proposed rule must be received on or before March 11, 2024.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2024–0014, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2024–0014 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jennifer Quan, Regional Administrator, c/o Melissa Mandrup, West Coast Region, NMFS, 501 W Ocean Blvd., Long Beach, CA 90802.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post them for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Docket: This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Pacific Halibut Recreational Fishery website at *https://www.fisheries.noaa.gov/action/2023-pacific-halibut-recreational-fishery* and at the Council's website at *http://www.pcouncil.org.* Other comments received may be accessed through *Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Mandrup, phone: 562–980–3231 or email: *melissa.mandrup@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k, gives the Secretary of Commerce responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act requires that the Secretary of Commerce adopt regulations to carry out the purposes and objectives of the Halibut Convention and Halibut Act (16 U.S.C. 773c). Additionally, as provided in the Halibut Act, the regional fishery management councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing in in U.S. waters that are in addition to, and not in

conflict with, approved International Pacific Halibut Commission (IPHC) regulations (16 U.S.C. 773c(c)).

At its annual meeting January 22–26, 2024, the IPHC recommended an Area 2A catch limit also known as the Fishery Constant Exploitation Yield (FCEY) for 2024. This FCEY is derived from the total constant exploitation yield (TCEY) for Pacific halibut, which includes commercial discards and bycatch estimates calculated using a formula developed by the IPHC. The 2024 TCEY and FCEY for Area 2A will be published as part of a separate rulemaking.

As provided in the Halibut Act at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention. Following acceptance by the Secretary of State, the annual management measures promulgated by the IPHC are published in the **Federal Register** to provide notice of their immediate regulatory effectiveness and to inform persons subject to the regulations of their restrictions and requirements (50 CFR 300.62). Allocations based on IPHC's recommended 2024 Area 2A FCEY will be subject to acceptance by the Secretary of State with concurrence by the Secretary of Commerce and will be included in the final rule.

Since 1988, the Pacific Fishery Management Council (Council) has developed a Catch Sharing Plan that allocates the IPHC regulatory Area 2A Pacific halibut FCEY between treaty tribal and non-tribal harvesters, and among non-tribal commercial and recreational (sport) fisheries. NMFS has implemented at 50 CFR 300.63 *et seq.* certain provisions of the Catch Sharing Plan and implemented annual rules containing annual management measures consistent with the Catch Sharing Plan. In 1995, the Council recommended and NMFS approved a long-term Area 2A Catch Sharing Plan (60 FR 14651, March 20, 1995). NMFS has been approving adjustments to the Area 2A Catch Sharing Plan based on Council recommendations each year to address the changing needs of these fisheries. While the full Catch Sharing Plan is not published in the **Federal Register**, it is made available on the Council website.

This rule proposes to approve the changes the Council recommended at its November 2023 meeting to the Catch Sharing Plan for Area 2A. The recommended changes to the Catch Sharing Plan were developed through the Council's public process over multiple meetings. This rule also proposes to implement recreational Pacific halibut fishery management measures for 2024, which include season opening and closing dates. These management measures are consistent with the recommendations made by the Council in the 2024 Catch Sharing Plan as modified based on its 2023 recommendations and are detailed below.

Proposed Changes to the Area 2A Catch Sharing Plan

Each year at the Council's September meeting, members of the public have an opportunity to propose changes to the Catch Sharing Plan for consideration by the Council. At the September 2023 Council meeting, per the typical annual process, the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), and California Department of Fish and Wildlife (CDFW) proposed changes to the Catch Sharing Plan for the fisheries that occur off of their respective coasts.

At its November 2023 meeting, the Council considered the results of state-sponsored workshops on the proposed changes to the Catch Sharing Plan, along with public input provided at the September and November 2023 Council meetings, and made its recommendations for modifications to the Catch Sharing Plan. NMFS proposes to approve all the Council's recommended changes to the Catch Sharing Plan, which are discussed below.

1. In multiple sections of the Catch Sharing Plan, the Council recommended administrative changes to the management objectives and fishery flexibility language contained in the Catch Sharing Plan. These changes are intended to provide consistency and clarity throughout the document. The Council also recommended changes to section 5.7.5 that would allow incidental retention of Pacific halibut to continue in the salmon troll fishery beyond June 30 without the need for NMFS to specifically notice that continuation, improving efficiency.

2. In section 6.8 of the Catch Sharing Plan, the Council recommended creating a new management provision that would allow NMFS to take inseason action to reallocate or transfer recreational fishery allocation between states if one or more states was projected to not fully attain their recreational fishery allocation for the current season. This new proposed type of inseason action is intended to allow greater utilization of overall Area 2A recreational allocation by providing additional angler opportunity later in the season across a larger portion of the coast.

3. The Council recommended changes to Section 5.6.4 of the Catch Sharing Plan regarding the notice and timing of non-tribal directed commercial fishery sequential season openings. Specifically, NMFS proposes to announce one or two open periods for the non-tribal directed commercial fishery each year, with intervals between open periods anticipated to be 2 to 4 weeks. The intent of this change is to allow more stability and certainty for the fishery participants as the season progresses. Management measures regulating the non-tribal directed commercial fishery are typically established through a separate rulemaking in the spring of each year.

4. In section 6.9.1(d) of the Catch Sharing Plan, the Council recommended that NMFS revise the season structure in the Washington Puget Sound subarea to allow fishing up to 7 days per week in April, May, and June if the Area 2A FCEY is at least 1.3 million pounds (lbs, 589.7 metric tons (mt)); if the Area 2A FCEY is less than 1.3 million lbs (589.7 mt), then seasons may be open up to 5 days per week in April, May and June.

5. In section 6.9.2(d) of the Catch Sharing Plan, the Council recommended that NMFS revise the season structure in the Washington North Coast subarea to allow fishing up to 3 days per week in May if the Area 2A FCEY is at least 1.3 million lbs (589.7 mt); and if the Area 2A FCEY is less than 1.3 million lbs (589.7 mt), then allowing fishing up to 2 days per week.

6. In section 6.9.3(d) of the Catch Sharing Plan, the Council recommended that NMFS revise the season structure in the Washington South Coast subarea to allow fishing up to 3 days per week in May and 8 days in June if sufficient subarea allocation remains after April 30.

7. In section 6.10 of the Catch Sharing Plan, the Council recommended that NMFS revise the season structure in the Columbia River subarea to allow fishing during May and June.

8. In section 6.11(d)(ii) of the Catch Sharing Plan, the Council recommended that NMFS revise the season structure in the Oregon central coast subarea Spring all-depth fishery to allow additional dates to be established every week, as opposed to every other week, except week(s) may be skipped to avoid adverse tidal conditions. The potential additional dates will be identified preseason and may be opened if enough subarea allocation is available to allow for additional fishing days after the spring season.

9. In section 6.12 of the Catch Sharing Plan, the Council recommended that NMFS establish a new management line at Point Arena, California (38°57.5′ N lat.), to create two subareas off California, along with a criteria and management framework for the newly established subarea south of Point Arena, California. The area between the Oregon/California border (42°00.00′ N lat.) and Point Arena would be called the Northern California Coast subarea. The area south of Point Arena would be called the South of Point Arena subarea. Sections 6.12.1 and 6.12.2 of the Catch Sharing Plan were created to describe the management measures for the Northern California Coast subarea and South of Point Arena subarea, respectively. New management measures for the proposed subareas include 500 lbs (0.23 mt) of the California recreational fishery allocation to be assigned to the South of Point Arena subarea, with the remaining California recreational fishery allocation to be assigned to the Northern California Coast subarea. The South of Point Arena subarea will be open from May 1 to December 31 or until the 500 lbs (0.23 mt) have been caught with a one-fish daily bag limit. The Northern California Coast subarea will be open May 1 and closing November 15, or until the allocation has been attained, and a one-fish daily bag limit.

Additional discussion of these changes is included in the materials submitted to the Council at its September and November meetings, available at *https://www.pcouncil.org/council-meetings/previous-meetings/*. A version of the Catch Sharing Plan including these changes can be found at *https://www.pcouncil.org/managed_fishery/pacific-halibut/*.

Proposed 2024 Recreational Fishery Management Measures

As described above, NMFS proposes to implement recreational fishery management measures, including season dates for the 2024 fishery, consistent with the Council's recommendations in the 2024 Catch Sharing Plan. The Catch Sharing Plan includes a framework for setting days open for fishing by subarea; under this framework, each state submits final recommended season dates annually to NMFS during the proposed rule comment period. However, this proposed rule contains preliminary dates based on the Catch Sharing Plan framework and/or recommendations received to date.

After the opportunity for public comment, including comments from WDFW, ODFW, and CDFW after each state has concluded its public meetings gathering input on season dates, NMFS will publish a final rule approving the Catch Sharing Plan and promulgating the annual management measures for the Area 2A recreational fishery, as required by implementing regulations at 50 CFR 300.63(b)(1). If there is any discrepancy between the Catch Sharing Plan and federal regulations, federal regulations take precedence.

2024 Annual Recreational Management Measures

NMFS proposes recreational fishing subareas, allocations, and fishing dates as described below. These provisions may be modified through inseason action consistent with 50 CFR 300.63(c). Inseason actions taken by NMFS will be published in the **Federal Register**. In addition to publication in the **Federal Register**, NMFS will make the public aware of inseason management actions by a telephone hotline, (206) 526–6667 or (800) 662–9825, and fishery bulletins administered through email by NMFS West Coast Region. Since provisions of these regulations may be changed by inseason actions, recreational anglers are encouraged to monitor the telephone hotline and subscribe to receive fishery bulletin emails for current information for the area in which they are fishing. All recreational fishing in Area 2A is managed on a ''port of landing'' basis, whereby any Pacific halibut landed into a port counts toward the allocation for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca

The subarea allocation for landings into ports in Puget Sound and the U.S. waters in the Strait of Juan de Fuca will be provided in the final rule based on the allocation formula in the Catch Sharing Plan.

(a) If the 2024 Area 2A FCEY is 1.3 million lbs (589.7 mt) or greater, NMFS is proposing to open the Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca fishery on April 4 through June 30, 7 days a week. If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. If the 2024 Area 2A FCEY is less than 1.3 million lbs (589.7 mt), then NMFS proposes to open the fishery every Thursday, Friday, Saturday, Sunday, and Monday from April 4 through June 30. If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any inseason action, including closures, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Washington North Coast Subarea

The allocation for landings into ports in the Washington North Coast subarea will be provided in the final rule based on the allocation formula in the Catch Sharing Plan.

(a) If the Area 2A 2024 FCEY is greater than 1.3 million lbs (589.7 mt), NMFS is proposing to open the Washington North Coast fishery:

- every Thursday, Friday, and Saturday from May 2 through May 18;
- Friday, May 24 and Sunday, May 26; and
- every Thursday, Friday, Saturday, and Sunday from May 30 through June 30.

If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any inseason action, including closures, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825. If the 2024 Area 2A FCEY is less than 1.3 million lbs (589.7 mt), then NMFS is proposing to open the fishery:

- every Thursday and Saturday from May 2 through May 20;
- Friday, May 24 and Sunday, May 26;
- and every Thursday, Friday, Saturday, and Sunday from May 30 through June 30.

If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any inseason action, including closures, will be announced in accordance with Federal regulations at 50 CFR 300.63(c)

and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Washington South Coast Subarea

The allocation for landings into ports in the South Coast subarea will be provided in the final rule based on the allocation formula in the Catch Sharing Plan. The South Coast subarea has a primary and a nearshore fishery.

(a) NMFS is proposing to open the Washington South Coast primary fishery every Thursday, Sunday, and Tuesday from May 2 through May 21 and on Thursday, May 23. If sufficient subarea allocation remains, the primary fishery will reopen June 13, 16, 18, 20, 23, 25, 27, and 30 or until there is not sufficient subarea allocation for another full day of fishing. If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any inseason action, including closures, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

When the South Coast subarea primary fishery does not have sufficient allocation to open for at least another full day of fishing, any remaining primary fishery allocation will be used to open a nearshore fishery. The nearshore fishery will open the first Saturday after the closure of the primary fishery and will be open 7 days per week until there is not sufficient nearshore fishery allocation remaining for another full day of fishing, at which point the area will be closed. Any inseason action will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

If the primary fishery is closed prior to September 30 and there is not sufficient allocation remaining for at least a full day of fishing in the nearshore fishery, NMFS may take inseason action to transfer any remaining subarea allocation to another Washington coastal subarea, in accordance with Federal regulations at 50 CFR 300.63(c).

(b) The daily bag limit is one Pacific halibut of any size per person.

Columbia River Subarea

The allocation for landings into ports in the Columbia River subarea will be provided in the final rule based on the allocation formula in the Catch Sharing Plan. The Columbia River subarea has an all-depth fishery and a nearshore fishery.

(a) For the all-depth fishery, NMFS proposes to open the fishery as follows:

- every Thursday, Sunday, and Tuesday from May 2 through May 21;
- Thursday, May 23 and Sunday, May 26; and
- every Thursday, Sunday, and Tuesday from May 30 through June 30.

If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any remaining subarea allocation may be transferred inseason to other Washington or Oregon subareas by NMFS in proportion to the allocation formula in the Catch Sharing Plan, in accordance with Federal regulations at 50 CFR 300.63(c). Any inseason action, including closures and reallocation, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

For the nearshore fishery, NMFS is proposing to open the fishery every Monday, Tuesday, and Wednesday from May 6 through September 30 until there is not sufficient nearshore fishery allocation remaining for another full day of fishing, at which point the area will be closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Oregon Central Coast Subarea

The allocation for landings into ports in the Oregon Central Coast subarea will be provided in the final rule based on the allocation formula in the Catch Sharing Plan. The Oregon Central Coast subarea has a nearshore, a spring all-depth, and a summer all-depth fishery.

(a) The allocation to the nearshore fishery will be provided in the final rule based on the allocation formula in the Catch Sharing Plan. NMFS is proposing to open the nearshore fishery 7 days per week from May 1 through October 31 if the nearshore fishery allocation is 25,000 lbs (11.3 mt) or more or from June 1 through October 31 if the nearshore fishery allocation is less than 25,000 lbs (11.3 mt). The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

The allocation to the spring all-depth fishery will be provided in the final rule based on the allocation formula in the Catch Sharing Plan. If the spring all-depth fishery the allocation is greater than 100,000 lbs (45.4 mt), NMFS is proposing to open the spring all-depth fishery up to 7 days per week from May 1 through July 31. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. If the spring all-depth fishery allocation is 100,000 lbs (45.4 mt) or less, NMFS is proposing to open the fishery every Thursday, Friday and Saturday from May 9 through July. The area will close when there is not sufficient subarea allocation for another full day of fishing. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

The allocation to the summer all-depth fishery will be provided in the final rule based on the allocation formula in the Catch Sharing Plan. If the overall Area 2A allocation is 700,000 lbs (317.5 mt) or greater and the summer all-depth fishery allocation is less than 60,000 lbs (27.2 mt), NMFS is proposing to open the summer all-depth fishery every Friday and Saturday from August 2 through October 31. The area will close when there is not sufficient subarea allocation for another full day of fishing. If the summer all-depth fishery allocation is 60,000 lbs (27.2 mt) or greater, NMFS proposes to open the summer all-depth fishery every other Thursday, Friday, and Saturday from August 1 through October 31. The area will close when the remaining combined spring all-depth fishery and summer all-depth fishery allocations in the Oregon Central Coast subarea is not sufficient for another full day of fishing. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

NMFS may take inseason action to reopen the summer all-depth fishery if sufficient subarea allocation remains for additional fishing days after the first scheduled open period, August 2–3. If, after August 3, 60,000 lbs (27.2 metric tons (mt)) or more remains from the combined nearshore, spring all-depth, and summer all-depth fishery allocations, NMFS may take inseason action to reopen the summer all-depth fishery every Thursday, Friday, and Saturday beginning August 15 and/or

allow fishing up to 7 days a week beginning September 1 through October 31 or until there is not sufficient subarea allocation remaining for another full day of fishing, at which point the fishery will be closed. If, after September 3, 30,000 lbs (13.6 mt) or greater remains from the combined nearshore, spring all-depth, and summer all-depth fishery allocations and the summer all-depth fishery is not already open every Thursday, Friday and Saturday, NMFS may take inseason action to reopen the summer all-depth fishery every Thursday, Friday, and Saturday beginning September 5 through October 31 until there is not sufficient subarea allocation for another full day of fishing, at which point the area will be closed. NMFS will announce when the summer all-depth fishery will reopen and the bag limit in accordance with Federal procedures at 50 CFR 300.63(c) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one Pacific halibut of any size per person. If the Central Oregon Coast subarea allocation (all-depth and nearshore combined) is 200,000 lbs (90.7 mt) or greater, NMFS may take inseason action to set the daily bag limit at two fish per day. NMFS will announce bag limits in accordance with Federal procedures at 50 CFR 300.63(c) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

Southern Oregon Coast Subarea

The allocation for landings into ports in the Southern Oregon subarea will be provided in the final rule based on the allocation formula in the Catch Sharing Plan.

(a) NMFS is proposing to open the fishery May 1 through October 31 or until there is not sufficient subarea allocation for another full day of fishing, at which point the area will be closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one Pacific halibut of any size per person unless otherwise specified through inseason action. NMFS will announce any bag limit changes in accordance with Federal procedures at 50 CFR 300.63(c) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

Northern California Coast Subarea

The Northern California Coast subarea is located south of the OR/CA border (42°00.00′ N lat.) to Point Arena (38°57.5′ N lat.). The allocation for landings into ports in the Northern California Coast subarea will be provided in the final rule based on the allocation formula in the Catch Sharing Plan.

(a) NMFS is proposing to open the fishery May 1 through November 15 or until there is not sufficient subarea allocation for another full day of fishing, at which point the area will be closed. NMFS will announce any closure in accordance with Federal procedures at 50 CFR 300.63(c) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

South of Point Arena Subarea

The South of Point Arena subarea is located south of Point Arena (38°57.5′ N lat.) to the U.S./Mexico border. The allocation for landings into ports in the South of Point Arena subarea will be provided in the final rule based on the allocation formula in the Catch Sharing Plan.

(a) NMFS is proposing to open the fishery May 1 through December 31 or until there is not sufficient subarea allocation for another full day of fishing, at which point the area will be closed. NMFS will announce any closure in accordance with Federal procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Additional Recreational Management Measures

In addition to the state-specific recreational fishing measures described above, NMFS also proposes to create a new management provision that would allow NMFS to take inseason action to reallocate or transfer anticipated uncaught recreational fishery allocation [1] between states for 2024 and beyond. At the June 2023 Council meeting, it was identified that, in recent years, under-attainment of the state recreational fishery allocations has occurred. During the same meeting, the Groundfish Advisory Subpanel and the Salmon Advisory Subpanel supported the development of an inseason management provision that would allow for transfer of the unused recreational fishery allocation between all the states to better utilize the Area 2A FCEY.

While each year NMFS, in working with the Council and states, establishes state-specific season structures and management measures intended to fully attain the state's recreational fishery allocation and management objectives, partial attainment of a state recreational fishery allocation may occur, which contributes to lower attainment of the overall Area 2A FCEY. Certain existing inseason action provisions were intended as tools to achieve full attainment, such as modifying bag limits or the transfer of uncaught allocations within the Washington subareas and from the Columbia River subarea to other Washington and Oregon subareas as specified at 50 CFR 300.63(c)(6). However, under-attainment of the state recreational fishery allocations has still occurred despite these efforts to modify management measures inseason to meet the needs of the fishery.

To address under-attainment of the state recreational fishery allocations, the Council, states, and advisory bodies, through the Council's public process at the September and November 2023 meetings, developed the framework for a new type of inseason action to transfer anticipated uncaught recreational allocation between states for greater utilization of overall Area 2A recreational allocation by providing additional angler opportunity across a larger portion of the coast later in the season. This framework was included in the recommendation to NMFS as part of the 2024 recreational fishery management measures.

Under this proposed inseason action provision, if, through consultation with an applicable state, NMFS determines that a state will be unable or unlikely to attain their originally established recreational allocation for that fishing year, then NMFS may transfer any anticipated uncaught recreational fishery allocation between states. Under such a scenario, NMFS would reallocate the net pounds available equally to each of the other two states. Should one state decline any portion of the additional allocation or NMFS determined that a receiving state would not be able to fully utilize the additional allocation, a portion or the full amount of the anticipated uncaught recreational fishery subarea allocation would go to the remaining state. NMFS will announce any inseason action in accordance with Federal procedures at 50 CFR 300.63(c)(6) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

At the September and November Council meetings CDFW proposed, and Council subsequently recommended to NMFS, to establish a new management line at Point Arena, CA (38°57.5′ N lat.) and create two subareas off California. The area between the OR/CA border (42°00.00′ N lat.) and Point Arena would be called the Northern California

[1] Recreational subarea allocations are in net pounds, the weight of Pacific halibut that is without gill and entrails, head-off, washed and without slime and ice.

Coast subarea. The area south of Point Arena would be called the South of Point Arena subarea. The area represented by the proposed Northern California Coast subarea is where the majority of targeted recreational fishing for Pacific halibut occurs off California. The intent of proposing the new South of Point Arena subarea is to be able to structure management in this area to better accommodate the de minimis retention of Pacific halibut catch that occurs in recreational fisheries not directly targeting Pacific halibut in this area. Additionally, the proposed season structure for the South of Point Arena subarea includes opening May 1 and closing December 31, or until there is not sufficient subarea allocation remaining for another full day of fishing and the area is therefore closed, and a one-fish daily bag and possession limit. This proposed closing date of December 31 is 46 days later in the year than has been past practice and what is proposed to be maintained for the Northern California Coast subarea, May 1 through November 15. NMFS would announce any closure in accordance with notice procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825. The CDFW proposal and Council recommendation also includes a 500 lbs (0.23 mt) subarea allocation for the South of Point Arena subarea to be subtracted from the California recreational fishery allocation, with the remainder of the California recreational fishery allocation to be assigned to the Northern California Coast subarea.

The establishment of these two subareas, including the separate subarea allocations and closure dates, are intended to allow anglers along more of the California coast access to the California recreational allocation while reducing the potential for regulatory discarding. In recent years, the California recreational fishery has closed in late July/early August. During the summer Pacific halibut are known to be encountered in other non-Pacific halibut directed recreational fisheries in the proposed subarea south of Point Arena. Due to the California recreational fishery typically closing in early summer, these encountered fish must be released. By reserving a de minimis allocation to allow for retention in non-Pacific halibut directed recreational fisheries, the proposed subarea south of Point Arena is intended to prevent potential discard while maintaining the conservation of Pacific halibut and providing angler opportunity.

Classification

Under section 773 of the Halibut Act, the Pacific Fishery Management Council may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing by U.S. fishermen in Area 2A that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The proposed rule is consistent with the Council and NMFS's authority under the Halibut Act.

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has determined that charter boats targeting Pacific halibut are all small businesses. Charter fishing operations are classified under NAICS code 487210, with a corresponding Small Business Association size standard of $14 million in annual receipts (13 CFR 121.201).

This proposed rule would revise various recreational fishing management measures, add an inseason mechanism to transfer anticipated uncaught recreational fishery allocation between states, and establish a new management line at Point Arena, CA, creating two subareas with separate allocations within California. This proposed rule would open the recreational fishery with 2024 season dates and subarea allocations impacting charter boats, anglers, and businesses relying on recreational fishing across all of Area 2A. These changes were uncontroversial throughout the Council's public process, and overall participation in the recreational fisheries is not expected to change. There are no large entities involved in the Pacific halibut fisheries off the West Coast. Since this action will only impact recreational charter vessels in Area 2A (no commercial fishing entities are directly affected by this rule), which are small entities, none of these changes will have a disproportionately negative effect on small entities versus large entities. Private vessels used for recreational fishing are not businesses and are therefore not included in the RFA analysis.

In 2023, NMFS issued 136 licenses to the charter boat fleet for Area 2A. Recent information on charter boat activity is not available; however, historically, approximately 60 percent of charter boat license holders have participated in the Pacific halibut recreational fishery. Thus, based on historical information, NMFS assumes a majority of license holders may be affected by these regulations as those vessels operate in Area 2A. The major effect of Pacific halibut management on small entities (*i.e.,* profitability) will be from the catch limit decisions (*i.e.,* FCEYs) made by the IPHC at its annual meeting January 22–26, 2024, a decision independent from this proposed action. This proposed action would implement non-controversial management measures that NMFS believes will provide increased recreational opportunities under the IPHC allocations with minimal positive economic effects. Therefore, the proposed rule is unlikely to affect the profitability of the recreational fishery or the small charter fishing businesses that target Pacific halibut.

For the reasons described above, the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: January 30, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300, subpart E, as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.63 revise paragraphs (c)(5)(iii), (6)(i)(F), (ii)(E) through (G) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(c) * * *

(5) * * *

(iii) *California.* The California recreational fishery is divided into the following subareas:

(A) *Northern California Coast Subarea.* The Northern California Coast subarea is located south of the OR/CA border (42°00.00′ N lat.) to Point Arena (38°57.5′ N lat.).

(B) *South of Point Arena Subarea.* The South of Point Area subarea is located south of Point Arena (38°57.5′ N lat.) to the U.S./Mexico border.

(6) * * *

(i) * * *

(F) If any state is projected to not utilize its respective recreational allocation by the end of the fishing season, NMFS may take inseason action to transfer any projected unused allocation to another state. After a state notifies NMFS of the amount of their recreational subarea allocation in net pounds that is projected to be unused after accounting for state management objectives, NMFS may take inseason action to reallocate the amount of net pounds available equally to the other two states. If a state eligible to receive the additional pounds declines all or part of the additional pounds, or NMFS determines a state is unlikely to use additional allocation, a portion or the full amount of the remainder would go to the other state.

(ii) Inseason management provisions include, but are not limited to, the following:

* * * * *

(E) Modification of state recreational allocation, including a shift in recreational allocation from one state to another;

(F) Modification of subarea allocation; and

(G) Modification of the Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) restrictions off Oregon using YRCA expansions as defined in groundfish regulations at 50 CFR 660.70(g) or (h).

* * * * *

[FR Doc. 2024–02220 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[RTID 0648–XD180]

Pacific Island Fisheries; Standardized Bycatch Reporting Methodologies

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

ACTION: Notice of availability of fishery ecosystem plan amendments; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the five fishery ecosystem plans (FEP) for fisheries in the Pacific Islands Region. If approved, the FEPs would be amended to update data collection mechanisms identified as standardized bycatch reporting methodologies (SBRM) as needed, and revise descriptions of SBRM for consistency with current NMFS regulations. The proposed action considers the best available scientific, commercial, and other information about the fisheries, and supports the long-term sustainability of fishery resources.

DATES: NMFS must receive comments on the proposed amendment by April 9, 2024.

ADDRESSES: You may submit comments on the proposed amendment, identified by NOAA–NMFS–2023–0151, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and type NOAA–NMFS–2023–0151 in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Council and NMFS prepared a draft omnibus amendment that describes changes that would be made to the FEPs. The draft amendment is available from *https://www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, telephone 808–522–8220, fax 808–522–8226, *https://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, Sustainable Fisheries Division, NMFS PIR, 808–725–5176.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage Federal fisheries in the Pacific Islands Region pursuant to the Magnuson-Stevens Fishery and Conservation and Management Act (Magnuson-Stevens Act). Management of these fisheries is organized through five FEPs: the American Samoa Archipelago FEP, the Mariana Archipelago FEP, the Hawaii Archipelago FEP, the Pacific Remote Island Areas (PRIA) FEP, and the Pelagic Fisheries of the Western Pacific Region FEP. NMFS proposes to amend these FEPs.

Section 303(a)(11) of the Magnuson-Stevens Act requires that the FEPs establish a standardized bycatch reporting methodology for each fishery. On January 19, 2017, NMFS published a final rule (82 FR 6317) establishing national guidance regulations at 50 CFR 600.1600 through 600.1610 for compliance with the Magnuson-Stevens Act SBRM requirements. The SBRM final rule requires the Council in coordination with NMFS to review their management plans and make any necessary changes to be consistent with published guidance. The final rule also requires the Council to explain how the SBRMs meet the stated purpose in the rule based on the analysis of four considerations: (1) characteristics of bycatch in the fishery, (2) the feasibility of the reporting methodology, (3) the uncertainty of data resulting from the methodology, and (4) how the data will be used to assess the amount and type of bycatch in the fishery (60 CFR 600.1610(a)).

Current descriptions of SBRM for Pacific Island fisheries were approved in 1999 (64 FR 19067, April 19, 1999) and 2003 (68 FR 46112, August 5, 2003) as part of omnibus bycatch amendments and later incorporated into the five FEPs

in. As such, the descriptions of bycatch characteristics and data collection methods pre-date the 2017 SBRM rule, and do not describe SBRM consistent with current regulations.

The Council completed a consistency review of all five FEPs in 2021, and took final action at their 187th meeting on September 21, 2021, to recommend an omnibus amendment for all FEPs to establish consistency with SBRM regulations, clarify language for SBRM, and explain how the SBRM in each FEP meets the purpose as defined in the 2017 SBRM rule.

The proposed amendment would update data collection mechanisms identified as SBRM as needed, and revise descriptions of SBRM in each FEP for consistency with current regulations. The proposed amendments to the FEPs are administrative in nature and would not change any fishery data collection, recording, or reporting methods or requirements, and would not implement any new regulations. Therefore, the amendments would not affect any fishery in terms of gear used; area fished; seasonality; species caught; level of catch or effort; bycatch of target stocks, non-target stocks, or protected species; or any other aspect of any fishery. Also, the amendments would not add any additional administrative or enforcement requirements. Therefore no effects of the proposed omnibus amendment are expected with respect to the natural environment in the Pacific Islands Region; social, economic, or cultural conditions related to any fishery; or to the administration and enforcement of any fishery.

NMFS must receive comments on the proposed amendment by April 9, 2024, for consideration in the decision to approve, partially approve, or disapprove the amendment.

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

Dated: February 5, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–02642 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 28
Friday, February 9, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Employment Records Collection From Implementing Partners of Contracts in Afghanistan

AGENCY: United States Agency for International Development (USAID).

ACTION: Notice of emergency OMB approval.

SUMMARY: In accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA), USAID is requesting emergency approval from the Office of Management and Budget (OMB) for a new data collection survey on employees of the Implementing Partners of USAID contracts in Afghanistan for the purpose of facilitating the Special Immigrant Visa (SIV) Chief Of Mission (COM) approval process overseen by the Department of State.

DATES: USAID plans to collect this information starting from the second week of February, 2024.

FOR FURTHER INFORMATION CONTACT: Sulieman Hedayat, Management and Program Analyst, U.S. Agency for International Development Afghanistan Partner Relocation Task Force, by email at *afghansiv@usaid.gov* or by phone at 202–712–1914.

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 1320.13, the Agency submitted a request for emergency approval to collect new information on the employment records of full-time Afghan employees from USAID contractors in Afghanistan.

Description of Proposed Use of Information: The information will include employee details such as dates of employment and contract number, which will be used to verify employment as part of the COM approval step of the SIV application process. This information will be collected via email through encrypted Microsoft Excel spreadsheets.

Estimated Time Burden: The total amount of time estimated for this data collection is less than 1,000 hours (considered at 3 hours per partner for an estimated 300 contractors).

Kevin Brownawell,

Executive Director, Afghan Partner Relocation Task Force USAID.

[FR Doc. 2024–02783 Filed 2–8–24; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: Agency for International for Development (USAID).

ACTION: Notice of new privacy act system of records.

SUMMARY: The Agency for International Development (USAID) proposes to establish a new system of records titled, ''USAID–38: Responsibility, Safeguarding, and Compliance Case Management System (RSC CMS)'' subject to the Privacy Act of 1974, as amended. The purpose of publishing this notice is to meet federal requirements and promote consistent maintenance of USAID RSC CMS records. The new system is a dedicated incident and case management system which will contain records that capture reports of misconduct allegations and issues related to USAID programming and supports USAID's ability to monitor and respond to misconduct.

DATES: Submit comments on or before March 11, 2024. This new system of records will be effective upon publication. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments:

Electronic

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Email: Privacy@usaid.gov.*

Paper

- *Fax:* 202–916–4946.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue, NW, Washington, DC 20523, or by phone number at 202–916–4605.

SUPPLEMENTARY INFORMATION: USAID proposes to establish a new System of Records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The new system, Responsibility, Safeguarding, and Compliance Case Management System (RSC CMS), is a dedicated incident and case management system which will contain records that capture reports of misconduct allegations and issues from all partner types, including grantees, contractors, public international organizations, and sub awardees. This collection supports USAID's ability to monitor and respond to allegations of any partners engaging in misconduct and prohibited activities. RSC CMS will provide a coordinated, streamlined, and consistent mechanism for the Agency to receive, track and respond to allegations of misconduct consistent with the statutory authorities for the collection. This system will assist USAID in documenting, recording and responding to safeguarding allegations and managing administrative actions, such as suspension and debarment proceedings, related to misconduct allegations of all types, including fraud, waste, and abuse. The system will also assist USAID in tracking and documenting USAID's assistance appeal resolution process that gives implementing partners the right to appeal an Agreement Officer's final decision.

Dated: November 9, 2023

Mark Joseph Johnson,

Chief Privacy Officer, United States Agency for International Development.

SYSTEM NAME AND NUMBER:

USAID–38, Responsibility, Safeguarding, and Compliance Case Management System (RSC CMS).

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

USAID AWS East for ServiceNow MID Servers (AWS US–EAST–1): 7600 Doane Drive, Manassas VA, 20109); and ServiceNow's data centers (primary in Culpepper, VA and alternate in Miami, FL) for ServiceNow SaaS/PaaS.

SYSTEM MANAGER(S):

Position: Compliance Division Chief.

Office: Bureau for Management/Management Policy, Budget, and Performance/Compliance (M/MPBP/COMP).

Email: disclosures@usaid.gov.

Address: 500 D Street SW, Washington DC, 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Foreign Assistance Act of 1961, as amended. Executive Order 12549, 2 CFR part 180, 2 CFR 200.342 and 700.14, 2 CFR subtitle A, chapter I, parts 175, 180, 182, and 183. 2 CFR subtitle A, chapter I, parts 175, 180, 182, and 183.

PURPOSE(S) OF THE SYSTEM:

Responsibility, Safeguarding, and Compliance Case Management System (RSC CMS) is a comprehensive system which will be used to, record, investigate, track, respond to and report on allegations of misconduct including sexual exploitation and abuse (SEA), trafficking in persons (TIP), and child abuse, exploitation, and neglect (CAEN) allegations that USAID (''Agency'') receives. The RSC CMS is a dedicated incident and case management module to support a coordinated, streamlined, and consistent response to all misconduct allegations and issues from all partner types, including grantees, contractors, public international organizations, and sub awardees. The RSC CMS will contain information needed to track and take administrative actions, such as suspension and debarment, in response to misconduct allegations of all types, including safeguarding violations and allegations of fraud, waste, and abuse. It will also contain information related to USAID's assistance appeal resolution process that gives implementing partners the right to appeal an Agreement Officer's final decision.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

The System of Records covers individuals related to current, former and prospective deal participants (individuals and businesses), applicants, USAID employees, contractors, contractor employees, executives, managers, and personal and professional references associated with the deal applicants and participants; USAID's implementing partners, portfolio companies, service providers, participating United States Government (USG) Agency administrators, and certain other individuals associated, affiliated with or involved with USAID.

CATEGORIES OF RECORDS IN THE SYSTEM

This system consists of records created or compiled during suspension and debarment and other administrative actions, USAID Office of Inspector General referrals, and disclosures of misconduct including sexual exploitation and abuse; child exploitation, abuse and neglect; and trafficking in persons associated with partners supporting USAID programs. These records contain names, position titles, email addresses, physical addresses, email address, system account creation date and time, last login, IP address, and browser type.

RECORD SOURCE CATEGORIES

USAID implementing partners, the USAID Office of Inspector General, media, civil society organizations, witnesses, survivors, and USAID workforce.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside USAID as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To coordinators of the various USAID business development and entrepreneurial events, such as training, outreach, marketing, and matchmaking activities.

(2) To an agency or organization, including the USAID's Office of Inspector General, for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(3) In the event of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or particular program pursuant thereto, to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order involved.

(4) To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information if necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the assignment, detail, or deployment of an employee; the letting of a contract; or the approval of a grant or other benefits.

(5) To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

(6) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(7) To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, *e.g.,* as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

(8) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(9) To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

(10) To appropriate agencies, entities, and persons when (a) USAID suspects or has confirmed that there has been a breach of the System of Records, (b) USAID has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USAID (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist with

USAID's efforts to respond to the suspected or confirmed breach and/or to prevent, minimize, or remedy such harm.

(11) To another Federal agency or Federal entity when USAID determines information from this System of Records is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach; or (b) 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.

(12) To another agency or agent of a Government jurisdiction within or under the control of the U.S., lawfully engaged in national security or homeland defense when disclosure is undertaken for intelligence, counterintelligence activities (as defined by 50 U.S.C. 3003(3)), counterterrorism, homeland security, or related law enforcement purposes, as authorized by U.S. law or Executive Order.

(13) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.'' 5 U.S.C. 552a(b)(9).

(14) To the Department of State and its posts abroad for the purpose of transmission of information between organizational units of the Agency, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All information contained in the System of Record is stored in electronic format. The data is encrypted at rest and in transit using Agency approved FIPS-compliant encryption solutions.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by case identification number or by the name of the individual or organization that is the subject of a disclosure, referral, or administrative action. Users must be properly authenticated in the system to retrieve the data.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and dispositioned in accordance with USAID Automated Directive System, Chapter 502 Records Management policy and the General Records Schedule/USAID Combined Records Disposition Schedules on a retention schedule of five years which are consistent with guidance established by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Technical, administrative, and physical security safeguards are implemented in accordance with the requirements of the Privacy Act, the Federal Information Security Modernization Act (FISMA), and USAID Automated Directive System privacy and security policies and system specific operating procedures. Detailed implementation descriptions are documented in the RSC CMS Privacy Impact Assessment and System Security Plan and include but are not limited to the following security controls to ensure the confidentiality and integrity of the data and records that are stored, processed, and transmitted: user awareness training, rules of behavior, and user agreements; logical and physical access; system and communications protections; identification and authentication; media protection; and audit and accountability controls. User access and roles are explicitly approved and assigned specific permissions to prevent, restrict, or allow individuals with the appropriate clearances and need to know access to the system and/or information only to the degree necessary in the performance of their official associated duties. These controls are monitored and assessed on a continuous basis to ensure the safeguards remain effective throughout the system and data lifecycles.

RECORD ACCESS PROCEDURES:

Under the Privacy Act, individuals may request access to records about themselves. These individuals must be limited to citizens of the United States or aliens lawfully admitted for permanent residence. If a Federal Department or Agency or a person who is not the individual who is the subject of the records, requests access to records about an individual, the written consent of the individual who is the subject of the records is required.

Individuals seeking access to information about themselves contained in this System of Records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, telephone number and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The USAID rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 22 CFR part 212 or may be obtained from the program manager or system owner.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this System of Records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Individuals may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or

commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(2), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. However, USAID may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source.

Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); and (f)(2) through (5). Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3) and (d).

HISTORY:

None.

Celida Ann Malone,

Government Privacy Task Lead.

[FR Doc. 2024–02670 Filed 2–8–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Foods

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on March 21, 2024. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 17th Session of the Codex Committee on Contaminants in Foods (CCCF) of the Codex Alimentarius Commission (CAC). CCCF17 will be held in Panama City, Panama from April 15–19, 2024. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 17th Session of the CCCF and to address items on the agenda.

DATES: The public meeting is scheduled for March 21, 2024, from 1 to 3 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 17th Session of the CCCF will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/it/?meeting=CCCF&session=17.*

Dr. Lauren Posnick Robin, U.S. Delegate to the 17th Session of the CCCF, invites interested U.S. parties to submit their comments electronically to the following email address: Quynh-Anh Nguyen, *quynh-anh.nguyen@fda.hhs.gov.* Emailed comments should state in the title that they relate to activities of the 17th Session of the CCCF.

Registration: Attendees may register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJIsdOmsrjgpGbqn89rYPIXUAWJawQCq39Y.* After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 17th Session of the CCCF, contact U.S. Delegate, Dr. Lauren Posnick Robin, Chief, Plant Products Branch, in the Division of Plant Products and Beverages, Office of Food Safety, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, at *lauren.robin@fda.hhs.gov.* For additional information regarding the public meeting, contact the U.S. Codex Office by email at: *uscodex@usda.gov* or Quynh-Anh Nguyen, *quynh-anh.nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Contaminants in Foods (CCCF) are:

(a) to establish or endorse permitted maximum levels or guidelines levels for contaminants and naturally occurring toxicants in food and feed;

(b) to prepare priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives;

(c) to consider methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed;

(d) to consider and elaborate standards or codes of practice for related subjects; and

(e) to consider other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The Netherlands hosts the CCCF and is co-hosting the 17th Session of the CCCF with Panama. The United States attends the CCCF as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the forthcoming Agenda for the 17th Session of the CCCF will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or its subsidiary bodies
- Matters of interest arising from FAO and WHO (including the Joint FAO/WHO Expert Committee on Food Additives)
- Matters of interest arising from other international organizations
- Maximum levels for lead in certain food categories
- Sampling plans for methylmercury in fish
- Definition for ready-to-eat peanuts for the establishment of a maximum level for total aflatoxins in this product
- Sampling plans for total aflatoxins and ochratoxin A in certain spices
- Code of practice/guidelines for the prevention and reduction of ciguatera poisoning
- Discussion Papers on the following materials:
  - Pyrrolizidine alkaloids
  - Tropane alkaloids
  - Acrylamide in foods
  - Cadmium and lead in quinoa
  - Review of the *Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Peanuts* (CXC 55–2004)
- Review of the *Code of Practice for the Reduction of Aflatoxin B1 in Raw Materials and Supplemental Feedingstuffs for Milk-Producing Animals* (CXC 45–1997)

- Development of a Code of practice for the prevention and reduction of cadmium contamination in foods
- Guidance on data analysis for development of maximum levels and for improved data collection
- Review of Codex standards for contaminants
- Follow-up work to the outcomes of JECFA evaluations and FAO/WHO expert consultations
- Priority list of contaminants for evaluation by JECFA
- Foresight on emerging issues in food and feed safety relevant to contaminants
- Other business and future work

Public Meeting

At the March 21, 2024, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Quynh-Anh Nguyen, at *quynh-anh.nguyen@fda.hhs.gov.* Written comments should state that they relate to activities of the 17th Session of the CCCF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; Fax: (202) 690–7442; Email: *program.intake@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on February 5, 2024.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2024–02657 Filed 2–8–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–23–ELECTRIC–0026]

60-Day Notice of Proposed Information Collection: Accounting Requirements for RUS Electric and Telecommunications Borrowers; OMB Control No.: 0572–0003

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The Rural Utilities Service (RUS) announces its' intention to request a revision of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by April 9, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal at: *https://www.regulations.gov.* To comment, in the ''Search'' box, enter the docket number: ''RUS–23–ELECTRIC–0026.'' You will be taken to the ''Search Results'' page and a link to the Notice. To submit a comment, click on the ''Comments'' button under the Notice document name (this will be under the ''Documents'' tab if not already brought there). When you comment, you must complete all the required information, and include the Agency name and docket number. When done commenting, select the ''Submit Comment'' button at the bottom of the page. Information on commenting is available in the ''Commenter's Checklist'' located at the top of the comment page or by viewing the FAQ tab. All comments submitted, from all sources, will be posted, without change to *https://www.regulations.gov.* Comments containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered. The Agency requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this Notice.

FOR FURTHER INFORMATION CONTACT: Crystal Pemberton, Management Analyst, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 260–8621, Email: *Crystal.Pemberton@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see, 5 CFR 1320.8(d)). This notice identifies the following information collection that RUS is submitting to OMB as a revision to an existing collection with Agency adjustment.

Title: Accounting Requirements for Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Expiration Date of Approval: August 31, 2024.

Type of Request: Revision of a currently approved information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response. The recordkeeping burden for this collection of information is estimated to average 25 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 1,252.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,504 hours.

Estimated Total Annual Burden on Recordkeepers: 31,300 hours.

Abstract: The Rural Utilities Service (RUS) is a credit agency of the USDA which makes direct and guaranteed loans to finance electric and telecommunications facilities in rural areas. Accounting requirements that are unique to RUS borrowers are contained in 7 CFR parts 1767 and 1770 which

establish basic accounting requirements for the recording of financial information that must be available to the management, investors, and lenders of any business enterprise. This collection is primarily a record keeping requirement, although the Agency is requiring borrowers to establish an index of records. The hours of burden to maintain this index are directly related to the portions of the accounting system that are unique to the Agency. There are many important financial considerations for retention and preservation of accounting records. One of the most important considerations to RUS is that documentation be available so that the borrower's records may be audited for proper disbursements of funds.

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 will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Crystal Pemberton, Management Analyst, Rural Development Innovation Center—Regulations Management Division, at (202) 260–8621. Email: *Crystal.Pemberton@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2024–02702 Filed 2–8–24; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement 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 (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Wednesday, February 28, 2024, at 3:30 p.m. Atlantic Time and 2:30 p.m. Eastern Time. The purpose is to continue discussion on their project on the civil rights impacts of the Insular Cases in Puerto Rico.

DATES: February 28, 2024, Wednesday, at 3:30 p.m. Atlantic Time (2:30 p.m. ET).

ADDRESSES: Meeting will be held via Zoom.

Registration Link (Audio/Visual): http://tinyurl.com/yfc4tukr.

Join by Phone (Audio Only): 1–833 435 1820 USA Toll Free; Meeting ID: 160 604 6578#.

FOR FURTHER INFORMATION CONTACT: Email Victoria Moreno, Designated Federal Officer at *vmoreno@usccr.gov,* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting will take place in Spanish with English interpretation. This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Puerto Rico Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

1. Welcome & Roll Call
2. Committee Discussion on Project Regarding the Civil Rights Impacts of the Insular Cases in Puerto Rico
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: February 6, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–02713 Filed 2–8–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Texas Advisory Committee; Update

AGENCY: Commission on Civil Rights.

ACTION: Notice; update Zoom webinar registration links.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of Wednesday, December 27, 2023, concerning various meetings of the Texas Advisory Committee. The document contained outdated registrations links. These are the updated Zoom webinar registration links as follows:

February 15: *https://www.zoomgov.com/s/1612870248*

March 19: *https://www.zoomgov.com/s/1615522515*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, (202) 701–1376, *bpeery@usccr.gov.*

In the **Federal Register** of Wednesday, December 27, 2023, in FR Doc. 2023–28560, on page 89366, first and second columns, all times remain the same 12 p.m.–1 p.m. mountain time.

Dated: February 6, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–02686 Filed 2–8–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a briefing meeting via web conference. The purpose is a public briefing to gather testimony on effects of the Covid–19 Pandemic on K–12 Education in the state.

DATES: Wednesday, March 6, 2024 at 11 a.m. central time.

ADDRESSES: The meeting will be held via Zoom.

March 6th Briefing Meeting:

Registration Link (Audio/Visual): https://www.zoomgov.com/s/1602204952?pwd=aWRUOUFud2VQcG84T3pOYk5abU9ZZz09.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Meeting ID: 160 220 4952.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussions through the above call-in numbers (audio only) or online registration links (audio/visual). An open comment period at each meeting will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and/or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Victoria at *vmoreno@usccr.gov.*

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 meetings. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Panelist Testimony
IV. Public Comment
V. Adjournment

Dated: February 6, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–02691 Filed 2–8–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 2:30 p.m. ET on Monday, March 18, 2024. The purpose of the meeting is to discuss the Committee's project proposal on voting rights in the state.

DATES: Monday, March 18, 2024, from 2:30 p.m.–3:30 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/s/1616259973.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 625 9973.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available. Individuals with disabilities who would like to request additional accommodations should email *lschiller@usccr.gov* at least 10 business days prior to the meeting to make their request.

Members of the public are 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 Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call

II. Committee Discussion

III. Public Comment

IV. Next Steps

V. Adjournment

Dated: February 6, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–02690 Filed 2–8–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss, plan, and vote, as needed, on matters related to follow-up to the Committee's inaugural civil rights report.

DATES: Thursday, Febraury 29, 2024, from 11 a.m.–12:30 p.m. Atlantic time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://bit.ly/481g76n.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 160 253 9119#.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, U.S. Virgin Islands Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion: Inaugural Report
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: February 6, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–02687 Filed 2–8–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Building Permits Survey Program

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 1, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Building Permits Survey Program.

OMB Control Number: 0607–0094.

Form Number(s): C–404, C–411.

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

Number of Respondents: C–404—19,842; C–411—3,150.

Average Hours per Response: C–404—9 minutes; C–411—15 minutes.

Burden Hours: C–404—17,229; C–411—788.

Needs and Uses: The Census Bureau is requesting a revision of the current Office of Management and Budget clearance for the surveys known as the Survey of Residential Building or Zoning Permit Systems (C–411) and the Report of Building or Zoning Permits Issued for New Privately-Owned Housing Units (C–404) also known as BPS. The C–411 and the C–404 are related collections sharing the same universe called the Active Governments File (AGF) universe. The C–411 is utilized to update the permit issuing status of all jurisdictions in the AGF. The C–404 is utilized to collect both monthly and annual data on the totals of new housing unit permits issued. These two surveys, currently cleared separately under control numbers 0607–0350 and 0607–0094, respectively, will therefore be combined under one control number and will be collectively called the Building Permits Survey Program.

The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series have been designated by the Office of Management and Budget as Principal Economic Indicators. These statistics help state and local governments and the federal government, as well as private industry, to analyze this important sector of the economy.

The BPS, and the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC) provide widely used measures of construction activity, including the principal economic indicators, New Residential Construction and New Home Sales. Data from the BPS and SOC are used by the Bureau of Economic Analysis (BEA) in the calculation of estimates of the Residential Fixed Investment portion of the Nation's Gross Domestic Product (GDP). In addition, data from the BPS are used by the Census Bureau in the calculation of annual population estimates; these estimates are widely used by government agencies to allocate

funding and other resources to local governments.

The key estimates from the C–404 are the numbers of new housing units authorized by building permits; data are also collected on the valuation of the housing units. Form C–404 specifically collects information on changes to the geographic coverage of the permit-issuing place, the number and valuation of new residential housing units authorized by building permits, and additional information on residential permits valued at $2 million or more, including, but not limited to, site address and type of building. The form is titled ''Report of Building or Zoning Permits Issued for New Privately-Owned Housing Units''.

Two Principal Economic Indicators are directly dependent on the key estimates from the BPS. For New Residential Construction (which includes Housing Units Authorized by Building Permits, Housing Starts, and Housing Completions), form C–404 is used to collect the estimate for Housing Units Authorized by Building Permits. For New Residential Construction and Sales, the number of housing units authorized by building permits is a key component utilized in the estimation of housing units started, completed, and sold.

Beginning January 2022, the U.S. Census Bureau changed the methodology for the tabulation of the Building Permit Survey. The methodology changed from a representative sample to a cutoff sample based on recent permit activity by jurisdiction. Published data from the survey can be found on the Census Bureau's website at *www.census.gov/permits.*

The Census Bureau primarily collects these data through the Centurion internet Reporting System, by mail using the Form C–404 or by telephone. Some data are also collected via receipt of proprietary electronic files or mailed printouts for jurisdictions who have established reporting arrangements which allow them to submit their responses using their own file format.

The Census Bureau uses Form C–404 to collect data that provides estimates of the number and valuation of new residential housing units authorized by building permits. There are roughly 20,000 permit issuing jurisdictions in the United States. Slightly less than one-half of those permit offices are requested to report monthly. The remaining offices are surveyed annually. We use the data, which is a component of The Conference Board Leading Economic Index, to estimate the number of housing units authorized, started, completed, and sold (single-family only). In addition, the Census Bureau uses the detailed geographic data in the development of annual population estimates; those population estimates are used by government agencies to allocate funding and other resources to local areas, inform policy, and aid in city planning. Policymakers, planners, businesses, and others use the detailed geographic data to monitor growth and plan for local services, and to develop production and marketing plans. The BPS is the only source of statistics on residential construction for states, counties, and smaller geographic areas. Since building permits are public records, we can release data for individual jurisdictions, and annual data are published for every permit-issuing jurisdiction.

The Census Bureau uses Form C–411 to obtain information from state and local building permit officials needed for updating the universe of permit-issuing places, which serves as the sampling frame for the BPS and the SOC. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country.

The questions on Form C–411 pertain to the legal requirements for issuing building or zoning permits in local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued.

One of three variants of Form C–411 is sent to a jurisdiction when the Census Bureau needs to verify whether a new permit system has been established or an existing one has changed. This is based on the length of time since the jurisdiction last verified their permit issuing status, or on information the Census Bureau obtains from a variety of sources including survey respondents, regional planning councils, and data from the Census Bureau's Geography Division on newly incorporated jurisdictions. While the C–411 was previously a mailed paper form, the Census Bureau plans to add this collection to the standard online collection instrument (Centurion) in 2024.

There are three versions of the form:

- C–411(V) for verification of coverage for jurisdictions with existing permit systems,
- C–411(M) for municipalities where a new permit system may have been established,
- C–411(C) for counties where new permit systems may have been established.

Prior to 2022, the universe of permit issuing places was updated every 10 years. In 2012 and every ten years prior, we mailed the survey to approximately 20,000 jurisdictions that were designated in our records as non-permit issuing jurisdictions, or permit issuing jurisdictions that needed verification of coverage. In processing the 2012 survey, it was determined that it was too burdensome to the Census Bureau's staff to process all 20,000 jurisdictions in the same year. As a result, the process was spread out into 5-year intervals, starting with the mailing in 2017. In 2017, we mailed 3,500 priority jurisdictions of the potential 20,000, with the intent of mailing another priority group in 2022 to complete the 10-year collection cycle. The planned 2022 mailing was deferred. Beginning January 2023, we began updating the universe annually and as a result, we can now incorporate more frequent updates to non-permit issuing jurisdictions. Beginning in 2024 we expect to attempt to collect information from 3,150 jurisdictions annually using either the C–411(C) or C–411(M) regarding the existence of new permit-issuing systems, or to resolve coverage questions or issues concerning existing permit-issuing systems using the C–411(V). This will allow us to attempt collection on all 20,000 jurisdictions approximately every seven years, on a rotating basis.

Based on previous collections, we anticipate approximately a 50% response rate to the mailed C–411 forms. This will be supplemented with existing known information from the C–404 monthly and annual collection, individual follow-ups with jurisdictions by email or phone, and publicly available information to maintain coverage for the universe of permit issuing places. We anticipate having accurate and up to date coverage for over 85% of the annually targeted jurisdictions as a result of these combined operations.

Failure to maintain the universe of permit-issuing places would result in deficient samples and inaccurate statistics. This in turn jeopardizes the accuracy of the Census Bureau's construction-related Principal Federal Economic Indicators. These indicators are closely monitored by the Board of Governors of the Federal Reserve System and other economic policy makers because of the sensitivity of the housing industry to changes in interest rates.

Frequency: C–404—Monthly and annually; C–411—Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0094.

Sheleen Dumas,

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

[FR Doc. 2024–02688 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Request for Appointment of a Technical Advisory Committee

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 9, 2024.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov.* Please reference OMB Control Number 0694–0100 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Technical Advisory Committees (TACs) were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The Bureau of Industry and Security provides technical and administrative support for the TACs, such as scheduling a conference room, publishing TAC meeting notices in the **Federal Register**, circulating an agenda, copying documents, etc. The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations.

II. Method of Collection

Supplement No. 2 to Part 730 of the Export Administration Regulations, states that any producers of articles, materials, or supplies, including technology, software, and other information, that are subject to export controls, or are being considered for such controls because of their significance to the national security of the United States, may request (via a letter or an attachment to an email) the Secretary of Commerce to establish a technical advisory committee. Such requests are sent to the Assistant Secretary of Export Administration.

III. Data

OMB Control Number: 0694–0100.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Cost to the Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Section 4812(b)(7) and 4814(b)(1)(B) of the Export Control Reform Act (ECRA).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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

Sheleen Dumas,

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

[FR Doc. 2024–02728 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–919]

Electrolytic Manganese Dioxide From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) continues to determine that the sole respondent under review, Duracell (China) Limited (DCL), is not eligible for a separate rate and is therefore a part of the China-wide entity. The period of review (POR) is

October 1, 2021, through September 30, 2022.

DATES: Applicable February 9, 2024.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Luke Caruso, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–2081, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2023, Commerce published in the **Federal Register** the preliminary results of the 2021–2022 administrative review of the antidumping duty order on electrolytic manganese dioxide from the People's Republic of China (China).[1] We invited interested parties to comment on the *Preliminary Results.* No parties commented on the *Preliminary Results.* Accordingly, the *Preliminary Results* remain unchanged in the final results of this review, and no decision memorandum accompanies this notice.

Scope of the Order [2]

The merchandise covered by the *Order* includes all manganese dioxide (MnO2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to the *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Final Results of Review

Consistent with the *Preliminary Results,* we continue to determine that the sole respondent under review, DCL, did not establish its eligibility for a separate rate and is part of the China-wide entity.

Disclosure

Because Commerce received no comments on the *Preliminary Results,* we have not modified our analysis and no decision memorandum accompanies this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of 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. No earlier than 35 days after the date of publication of this notice in the **Federal Register**, Commerce intends to instruct CBP to liquidate any entries of subject merchandise from DCL that entered the United States during the POR at the China-wide rate (*i.e.,* 149.92 percent). If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice in the **Federal Register** for all shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) for any previously investigated or reviewed Chinese or non-Chinese exporter that has a separate rate, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (2) for all Chinese exporters of subject merchandise that do not have a separate rate, including DCL, the cash deposit rate will be equal to the dumping margin assigned to the China-wide entity, which is 149.92 percent; [3] and (3) for all non-Chinese exporters of subject merchandise that do not have a separate rate, the cash deposit rate will be equal to the dumping margin applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: February 2, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–02708 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 71824 (October 18, 2023) (*Preliminary Results*).

[2] *See Antidumping Duty Order: Electrolytic Manganese Dioxide from the People's Republic of China,* 73 FR 58537 (October 7, 2008) (*Order*).

[3] *See Preliminary Results,* 88 FR at 71825.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–133]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that Zhejiang Xingyi Metal Products Co., Ltd. (ZXM)/Xingyi Metalworking Technology (Zhejiang) Co., Ltd. (XMT) (collectively, ZXM/XMT) and Hangzhou Evernew Machinery & Equipment Company Limited/Zhejiang Yinghong Metalworks Co., Ltd. (Hangzhou Evernew) made sales of certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China) during the period of review (POR), February 11, 2021, through July 31, 2022.

DATES: Applicable February 9, 2024.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen or Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4521 or (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2023, Commerce published the *Preliminary Results* in the **Federal Register**.[1] On December 19, 2023, Commerce extended the deadline of the final results of this administrative review to February 6, 2024 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2).[2] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [4]

The products covered by the *Order* are metal lockers from China. For a complete description of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached as 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 *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding the *Preliminary Results,* we made certain changes to the margin calculations for Hangzhou Evernew and ZXM/XMT.[5]

Rate for Non-Examined Separate Rate Respondents

In the *Preliminary Results,* we determined that three non-individually examined companies are eligible for separate rates in this administrative review.[6] We did not receive any comments or argument since the issuance of the *Preliminary Results* that provide a basis for reconsideration of this determination. Therefore, for these final results, we continue to find that Kunshan Dongchu Precision Machinery Co., Ltd., Tianjin Jia Mei Metal Furniture Ltd., and Zhejiang Focus-On Import & Export Co., Ltd. qualify for a separate rate in this review.

The Act and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which Commerce did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins calculated for individually-examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. Accordingly, for the final results of this review, we are assigning to the non-selected separate rate respondents an estimated weighted-average dumping margin based on the average of Hangzhou Evernew and ZXM/XMT weighted-average dumping margins weighted by their publicly available ranged U.S. sales values.

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period February 11, 2021, through July 31, 2022:

Exporter	Weighted-average dumping margin (percent)
Zhejiang Xingyi Metal Products Co., Ltd./Xingyi Metalworking Technology (Zhejiang) Co., Ltd	59.52
Hangzhou Evernew Machinery & Equipment Company Limited/Zhejiang Yinghong Metalworks Co., Ltd.[7]	190.01
Kunshan Dongchu Precision Machinery Co., Ltd	75.08
Tianjin Jia Mei Metal Furniture Ltd	75.08
Zhejiang Focus-On Import & Export Co., Ltd	75.08

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results to interested parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce 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. Pursuant to 19 CFR 351.212(b)(1), where ZXM/XMT and Hangzhou Evernew reported the entered values of their U.S. sales, we calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Where ZXM/XMT and Hangzhou Evernew did not report entered value, we calculated a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. To determine whether an

[1] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 88 FR 62061 (September 8, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated December 19, 2023.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Metal Lockers and Parts Thereof from the People's Republic of China; 2021–2022,'' dated concurrently with this notice (Issues and Decision Memorandum).

[4] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 46826 (August 20, 2021) (*Order*).

[5] For a full description of these changes, *see* the Issues and Decision Memorandum.

[6] *See Preliminary Results* PDM at the ''Separate Rate Determination'' section for further details.

[7] We preliminarily found that Hangzhou Evernew and its producer, Zhejiang Yinghong Metalworks Co., Ltd., are affiliated, pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(b)(3) and should be treated as a single entity pursuant to 19 CFR 351.401(f)(1) for the purposes of the *Preliminary Results. See Preliminary Results* PDM at the ''Single Entity Analysis'' section for further discussion of the preliminary collapsing determination. We received no comments from interested parties on this preliminary determination; thus, we continue to find these companies should be treated as a single entity for purposes of these final results.

importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also calculated an importer-specific *ad valorem* ratio based on estimated entered values. Where either a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Pursuant to a refinement in our non-market economy practice, for sales that were not reported in the U.S. sales data submitted by ZXM/XMT and Hangzhou Evernew during this review, we will instruct CBP to liquidate entries associated with those sales at the rate for the China-wide entity.[8]

For the respondents which were not selected for individual examination in this administrative review, and which qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin assigned to them for the final results.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on, or after, the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the ''Final Results of Review'' section will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for a previously investigated or reviewed exporter of subject merchandise not listed in the final results of review that has a separate rate, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (3) for all Chinese exporters of subject merchandise that do not have a separate rate, the cash deposit rate will be the cash deposit rate established for the China-wide entity, *i.e.,* 322.25 percent; [9] and (4) for all exporters of subject merchandise that are not located in China and that are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the China exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

As discussed in the *Preliminary Results,* we preliminarily determined that the record no longer supports a finding that ZXM should be collapsed with XMT subsequent to January 13, 2022, as ZXM ceased involvement with the production and/or exportation of subject merchandise prior to the POR, was acquired by an unrelated third-party a month prior, and all indicia of affiliation and/or control between the two companies ceased as of that date.[10] Accordingly, we continue to review the single entity for the February 11, 2021, through January 13, 2022, segment of this review and for the purposes of subsequent assessment. This finding has not changed for the final results as no new evidence to the contrary has been timely placed on the record. Therefore, because XMT remains the only component of the former ZXM/XMT entity involved in the exportation of subject merchandise in the final results, we will assign the cash deposit rate only to XMT as the exporter, and instruct CBP to discontinue the ZXM/XMT combination rate.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as the final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(l) and 777(i)(l) of the Act, 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: February 2, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–02638 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Solicitations of Outside Advisors Information Collection Request (ICR)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011) for a full discussion of this practice.

[9] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Duty Investigation; Notice of Amended Final Determination,* 88 FR 70644 (October 12, 2023).

[10] *See Preliminary Results,* 88 FR at 62063.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 9, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Liz Reinhart, Management Analyst, National Institute of Standards and Technology, at *elizabeth.reinhart@nist.gov* or *PRAcomments@doc.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Cierra Bean, Business Operations Specialist, CHIPS Program Office, at *askchips@chips.gov* or 1–202–815–2677.

SUPPLEMENTARY INFORMATION:

I. Abstract

The CHIPS Incentives Program is authorized by title XCIX—Creating Helpful Incentives to Produce Semiconductors for America of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, referred to as the CHIPS Act or Act), as amended by the CHIPS Act of 2022 (Division A of Pub. L. 117–167). The CHIPS Incentives Program is administered by the CHIPS Program Office (CPO) within the National Institute of Standards and Technology (NIST) of the United States Department of Commerce (Department).

On February 28, 2023, the CHIPS Program Office (CPO) released a notice of funding opportunity (NOFO) to solicit applications for CHIPS Incentives that will support investments in the construction, expansion, and modernization of (a) commercial facilities in the United States for the front- and back-end fabrication of leading-edge, current-generation, and mature-node semiconductors; (b) commercial facilities in the United States for wafer manufacturing; and (c) commercial facilities in the United States for materials used to manufacture semiconductors and semiconductor manufacturing equipment, provided that the capital investment, equals or exceeds $300 million.

As stated on p. 14 of the NOFO, ''[t]he Department will engage outside advisors, consultants, and/or attorneys at the due diligence stage. . . .'' The information request seeks information from potential advisors, consultants, and/or attorneys to determine their qualifications to provide advice on transactions under the NOFO in fields such as construction management, corporate investigations and risk, finance and audits, insurance, market reviews, legal, real estate, and other technical issues.

II. Method of Collection

The CPO intends to collect information from applicants through email, although other methods, *e.g.,* interviews, etc., may also be leveraged.

III. Data

OMB Control Number: 0693–XXXX.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,600 hours.

Estimated Total Annual Cost to Public: $75,750.

Respondent's Obligation: Mandatory to be retained as an outside advisor.

Legal Authority: CHIPS Act of 2022 (Division A of Pub. L. 117–167) (the Act).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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

Sheleen Dumas,

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

[FR Doc. 2024–02011 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Groundfish Trawl Fishery Monitoring and Catch Accounting Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 9, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0619 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection

activities should be directed to Matt Dunlap, Fishery Policy Analyst, West Coast Regional Office, 7600 Sand Point Way NE, Seattle, WA 98115, (206) 526–6119, or *matthew.dunlap@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This submission is a renewal of an existing package. The program was developed through Amendment 20 to the Groundfish Fishery Management Plan (FMP), under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and consists of an individual fishing quota (IFQ) program for the shore based trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). As part of its fishery management responsibilities, the National Marine Fisheries Service (NMFS) collects information to determine the amount and type of catch taken by fishing vessels. This collection supports monitoring requirements including scale test requirements for first receivers in the Pacific Coast groundfish fishery's shore based individual fishery quota (IFQ) program; and mothership and catcher/processors in the at-sea whiting fisheries. The collection also supports permits for businesses that provide certified observer and certified catch monitor services. The respondents are principally shore-based first receivers, catch monitor and observer service providers, mothership processors, and catcher/processors which are companies/partnerships.

II. Method of Collection

This collection utilizes both electronic and paper forms, depending on the specific item. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms. Additionally, this collection utilizes interviews for some information collection and phone calls for transmission of other information.

III. Data

OMB Control Number: 0648–0619.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 150.

Estimated Time Per Response: For 2 existing observer providers: 2 hours for preparation and submission of the annual observer provider permit renewal application. For 1 new observer provider: 10 hours for observer provider permit application preparation and submission. For 1 observer provider: 4 hours for a written response and submission of an appeal if an observer provider permit is denied. For 45 catch monitors: 1 hour for submission of qualifications to work as a catch monitor. For 5 catch monitors: 4 hours for a written response and submission of an appeal if a catch monitor permit is denied. For 16 vessels in the Mothership or Catcher/Processor fleet, 30 minutes or less for satisfying requirements for use of at-sea scales, including daily testing reports (30 minutes), daily catch and cumulative weight reports (10 minutes), audit trail (1 minute), calibration log (2 minutes), and fault log (3 minutes).

Estimated Total Annual Burden Hours: 441 hours (83 hours for observer and catch monitor providers and 358 hours for Motherships or Catcher/Processors).

Estimated Total Annual Cost to Public: $3,678. Annualized capital costs for computer hardware are $3,510. Annualized reporting/recordkeeping costs are $168.

Respondent's Obligation: Mandatory.

Legal Authority: The regulations at §§ 660.140(h), 660.150(j), and 660.160(g), specify observer coverage requirements for trawl vessels and define the responsibilities for observer providers, including reporting requirements. Regulations at § 660.140(i) specify requirements for catch monitor coverage for first receivers. Regulations at § 660.15 specify equipment, performance and technical requirements for scales used to weigh catch at sea.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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

Sheleen Dumas,

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

[FR Doc. 2024–02673 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD633]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Coastal Virginia Offshore Wind Commercial Project Offshore of Virginia

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

ACTION: Notice; issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the Virginia Electric and Power Company, doing business as Dominion Energy Virginia (Dominion Energy), for the taking of marine mammals incidental to the construction of the Coastal Virginia Offshore Wind Commercial (CVOW–C) Project (hereafter known as the ''CVOW–C Project'' or the ''Project'').

DATES: The LOA is effective from February 5, 2024 through February 4, 2029.

ADDRESSES: The LOA and supporting documentation are available online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking; ''other means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of such takings. The MMPA defines ''take'' to mean harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.103). Level A harassment is defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3). Level B harassment is defined as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3). Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I authorize NMFS to propose and, if appropriate, promulgate regulations and issue associated LOA(s). NMFS promulgated regulations on January 23, 2024 (89 FR 4370) for the taking of marine mammals incidental to the construction of the CVOW–C Project offshore of Virginia. The LOA authorizes Dominion Energy and those persons it authorizes or funds to conduct activities on its behalf to take marine mammals incidental to specified activities during the construction of the Project and requires them to implement mitigation, monitoring, and reporting requirements.

Summary of Request

On January 23, 2024, NMFS promulgated a final rule (89 FR 4370) responding to a request from Dominion Energy for authorization to take marine mammals (21 species comprising 22 stocks) by Level B harassment (all 22 stocks) and by Level A harassment (7 stocks) incidental to construction activities occurring in Federal and State waters off of Virginia, specifically within and around the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A 0483 (Lease Area) and along an export cable route to sea-to-shore transition points (collectively referred to as the ''Project Area''), over the course of 5 years (February 5, 2024 through February 4, 2029). The final rule included the following specified activities: the installation of 176 wind turbine generators (WTGs) on monopile foundations (through a maximum of 183 separate piling events) and 3 offshore substations (OSSs) on jacket foundations using pin piles by vibratory and impact pile driving; nearshore cable landfall work comprising of the installation and subsequent removal of nearshore temporary cofferdams by vibratory pile driving and the installation and subsequent removal of temporary goal posts by impact pile driving at the sea-to-shore transition point located at the State Military Reservation in Virginia Beach, Virginia; high-resolution geophysical (HRG) marine site characterization surveys using active acoustic sources; fishery and ecological monitoring surveys; the placement of scour protection; the installation of the export cable route from OSSs to shore-based converter stations and inter-array cables between turbines by trenching, laying, and burial activities; vessel transit within the specified geographical region to transport crew, supplies, and materials; and WTG operation.

Marine mammals exposed to elevated noise levels during foundation impact pile driving may be taken by Level A harassment, and marine mammals exposed to elevated noise levels during impact and vibratory pile driving and HRG site characterization surveys may be taken by Level B harassment. No mortality or serious injury of any marine mammal is anticipated or authorized. The number of takes, by species, authorized may be found in table 1 in the LOA, which is available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Authorization

In accordance with the final rule (89 FR 4370, January 23, 2024; see 50 CFR 217.296), NMFS has issued a LOA to Dominion Energy authorizing the take, by harassment, of marine mammals incidental to specified activities within the specified geographical region. As previously stated, no mortality or serious injury of any marine mammal species is anticipated or authorized. The incidental takes authorized herein are the same as those analyzed and authorized in the final rule (89 FR 4370, January 23, 2024). Takes of marine mammals will be minimized through the following planned mitigation and monitoring measures, as applicable for each specified activity: (1) implementation of spatio-temporal seasonal/time of day work restrictions; (2) use of multiple NMFS-approved Protected Species Observers (PSOs) to visually observe for marine mammals (with any detection within specifically designated zones triggering a delay or shutdown, as applicable); (3) use of NMFS-approved passive acoustic monitoring (PAM) operators to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering a delay or shutdown, as applicable); (4) implementation of clearance and shutdown zones; (5) use of soft-start upon commencement of impact pile driving and ramp-up of acoustic sources during HRG surveys; (6) use of noise attenuation technology during foundation pile driving; (7) use of situational awareness monitoring for marine mammal presence; (8) use of sound field verification monitoring; (9) use of PAM within the vessel transit corridor for Project vessels to travel over 10 knots (11.5 miles per hour); and (10) implementation of several vessel strike avoidance measures to avoid vessel strikes, including but not limited to, vessel separation zones between marine mammals and project vessels. Additionally, NMFS may modify the LOA's mitigation, monitoring, or reporting measures, based on new information. Dominion Energy is also

required to submit reports, as specified in the final rule.

Based on the findings discussed in the preamble of the final rule, NMFS has determined that the take authorized in the LOA is of small numbers, will have a negligible impact on marine mammal stocks, will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses, and the mitigation measures provide a means of affecting the least practicable adverse impact on the affected stocks and their habitat.

Dated: February 6, 2024.

Shannon Bettridge,

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

[FR Doc. 2024–02689 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Tornado Watch/Warning Post-Event Evaluation

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 9, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0797 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Dr. Makenzie Krocak, Research Scientist, NOAA NSSL, 120 David L. Boren Blvd., Norman, OK 73071, 405–325–0805, *makenzie.krocak@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Each year over 1,000 tornadoes affect communities across the United States, yet little is known about how individuals receive, interpret, and respond to information from NOAA relating to this hazard. In fact, only a small sample of tornadoes ever receive study, and most often those are only the most violent tornadoes. No generalizable, or even relatively large-scale information on tornado forecast and warning response after real-world events exists. The NOAA National Weather Service (NWS) and National Severe Storms Laboratory (NSSL) designed the data collection instrument to allow for more routine collection of this information. Respondents include members of the United States public who have been in or near a tornado, received a tornado warning, or were in or near a strong storm that made them concerned about tornadoes. They answer questions about the ways they received, understood, and responded to information about the event, including NWS watch and warning information. This survey is delivered through a web application hosted by NSSL called Tornado Tales, available online at *https://inside.nssl.noaa.gov/tornado-tales/.*

After approval of our initial data collection instrument (that shown on the website), the OU Cooperative Institute for Severe and High-Impact Weather Research and Operations (CIWRO) and NOAA NSSL Behavioral Insights Unit carried out post-event data collections for multiple tornado events, validating the questions and identifying issues for improvement. This fieldwork led to several needed improvements, including the addition of questions about the event more broadly, changing some response types, rephrasing some questions that were interpreted too broadly, and including questions about efficacy and the availability of forecast information to individuals. While the revisions have added questions to the survey, their improved clarity should allow for faster response times per question. We estimate the time to complete the survey is five to ten minutes on average. Subject recruitment will primarily be done by NOAA NSSL and its partners advertising the survey via websites and social media outlets. In addition to these efforts, there is also the possibility that during post-storm damage assessment activities NWS forecasters may direct impacted individuals to the Tornado Tales website.

In addition to the changes to the survey instrument, researchers at NOAA NSSL and at the OU CIWRO Behavioral Insights Unit would like to conduct interviews with emergency managers, broadcast meteorologists, and members of the public after certain tornado events. These more in-depth interviews will collect similar information to the survey instrument from members of the public, broadcast meteorologists, and Emergency Management personnel who recently experienced a tornado event. The interviews will walk respondents through a timeline of events leading up to the tornado event. Researchers will use a skip-logic approach, meaning participants will only answer questions about the time periods relevant to their personal experience. The purpose of these interviews will be to more thoroughly explore how residents, broadcast meteorologists, and Emergency Managers received, understood, and responded to tornado forecasts and warnings. Given the in-person nature of these interviews, we expect them to take between 15 and 30 minutes on average.

II. Method of Collection

The method of data collection currently gathers tornado survivor stories through a web-based interface (*https://inside.nssl.noaa.gov/tornado-tales*). Specific questions in the web-based application are aimed at discovering whether and how information about potential tornado threats was received across time, including tornado watches and warnings, and what action citizens did or did not take as the event unfolded. We use a 'skip-logic' method in the survey so that individuals only answer questions that are relevant to their experiences.

The interviews will be conducted in-person or via video call with individuals who recently experienced a tornado event. Researchers will also use a skip-logic approach during the interviews such that respondents will not be asked questions that are not relevant to their experience (*i.e.,* questions about time periods before respondents received any forecast or warning information). Consent will be obtained to take notes and record the interviews.

III. Data

OMB Control Number: 0648–0797.
Form Number(s): None.

Type of Review: Revision.

Affected Public: Individuals or households.

Estimated Number of Respondents: survey: 1,200, interviews: 50.

Estimated Time per Response: survey: 5–10 minutes, interviews: 15–30 minutes.

Estimated Total Annual Burden Hours: survey: 200 hours, interviews: 25 hours.

Estimated Total Annual Cost to Public: None.

Respondent's Obligation: Voluntary.

Legal Authority:

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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

Sheleen Dumas,

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

[FR Doc. 2024–02658 Filed 2–8–24; 8:45 am]

BILLING CODE 3510–KE–P

COMMISSION OF FINE ARTS

Notice of Meeting

Per 45 CFR 2102.3, the next meeting of the U.S. Commission of Fine Arts is scheduled for February 15, 2024, at 9 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: February 5, 2024, in Washington, DC.

Susan M. Raposa,

Technical Information Specialist.

[FR Doc. 2024–02622 Filed 2–8–24; 8:45 am]

BILLING CODE 6330–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* March 10, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, 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.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7510–01–664–8784—DAYMAX System, 2023 Calendar Pad, Type I

7510–01–664–8815—DAYMAX System, 2023, Calendar Pad, Type II

Designated Source of Supply: Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort Wayne, IN

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):

7520–00–8LP–6520—Pen, Ballpoint, ''Navy'', White

Designated Source of Supply: The Arkansas Lighthouse for the Blind, Little Rock, AR

Contracting Activity: U S FLEET FORCES COMMAND, NORFOLK, VA

Service(s)

Service Type: Tool and MRO Sourcing and Fulfillment Services

Mandatory for: USPFO Connecticut, Army National Guard, National Guard Bureau, 360 Broad Street, Hartford, CT

Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: DEPT OF THE ARMY, W7MZ USPFO ACTIVITY CT ARNG

Service Type: Furniture Design, Configuration and Installation

Mandatory for: U.S. Department of the Interior, OS Office, Herndon Atrium Building, 381 Elden Street, Herndon, VA

Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: DEPARTMENTAL OFFICES, IBC ACQ SVCS DIRECTORATE (00004)

Service Type: Medical Transcription

Mandatory for: Department of the Navy, Naval Medical Center San Diego (NMCSD), 34800 Bob Wilson Drive, San Diego, CA

Designated Source of Supply: Lighthouse for the Blind of Houston, Houston, TX

Contracting Activity: DEPT OF THE NAVY, NAVAL MEDICAL CENTER SAN DIEGO CA

Service Type: Mailroom Operation

Mandatory for: Federal Deposit Insurance Corporation: 1910 Pacific Avenue, Dallas, TX

Designated Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX

Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

Service Type: Mailroom Operation

Mandatory for: Department of Health and Human Services: Program Support Center Headquarters, Dallas, TX

Designated Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX

Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

Service Type: Grounds Maintenance/ Vegetation Control

Mandatory for: US Navy, Housing and Station Areas, Naval Air Station Fallon, 4755 Pasture Road, Fallon, NV

Designated Source of Supply: PRIDE

Industries, Roseville, CA
Contracting Activity: DEPT OF THE NAVY, NAVFAC SOUTHWEST
Service Type: Janitorial/Custodial
Mandatory for: US Navy, Naval and Marine Corps Reserve Center,7117 West Plank Road, Peoria, IL
Designated Source of Supply: Community Workshop and Training Center, Inc., Peoria, IL
Contracting Activity: DEPT OF THE NAVY, NAVAL FAC ENGINEERING CMD MID LANT

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–02692 Filed 2–8–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* March 10, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washinton, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 1/5/2024, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
4730–00–470–6625—Kit, Brass Fittings, 88 Automotive Types, 430 Pieces
Designated Source of Supply: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL
Contracting Activity: DLA LAND AND MARITIME SUPPLIER, COLUMBUS, OH

NSN(s)—Product Name(s):
6515–01–576–8837—Combat Arms Ear Plug, Single Ended, Size Small, BX/50 Pairs
6515–01–576–8861—Combat Arms Ear Plug, Single Ended, Size Medium, BX/50 Pairs
6515–01–576–8869—Combat Arms Ear Plug, Single Ended, Size Large, BX/50 Pairs
6515–00–SAM–0013—Combat Arms Ear Plug, Single Ended, Size Small, PR
6515–00–SAM–0014—Combat Arms Ear Plug, Single Ended, Size Medium, PR
6515–00–SAM–0015—Combat Arms Ear Plug, Single Ended, Size Large, PR
6515–01–686–9817—Combat Arms 4.1 Ear Plug, Single Ended, Size Small, BX/50
6515–01–686–9808—Combat Arms 4.1 Ear Plug, Single Ended Size Medium, BX/50
6515–01–686–9804—Combat Arms 4.1 Ear Plug, Single Ended Size Large, BX/50
Designated Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–02685 Filed 2–8–24; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meetings

The Board of Directors of the Corporation for National and Community Service (operating as AmeriCorps) gives notice of the following meeting:

TIME AND DATE: Friday, March 1, 2024, 2:00 p.m.–3:30 p.m. (ET).

PLACE: AmeriCorps, 250 E Street SW, Washington, DC 20525. For health and safety reasons, this will be a virtual meeting.

- To register for the meeting, please use this link: *https://americorps.zoomgov.com/webinar/register/WN_d5hKOeCqT-2xpGJiPiml3Q.*
- *Webinar ID:* 160 953 1136 Passcode: 834402.
- To participate by phone, call toll free: (833) 568–8864.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

I. Opening Remarks by the Chair
II. CEO Remarks
III. Review of the CEO Letter and Outcome
IV. Oversight, Governance, and Audit Committee Report
V. Actions From the Board
VI. Spotlight: Tribal and Native Grantees
VII. Public Comment
VIII. Chair's Closing Remarks and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or virtually. Submit written comments to *board@americorps.gov* with the subject line: ''Comments for March 1, 2024, AmeriCorps Board Meeting'' no later than 5:00 p.m. (ET) February 23, 2024. Individuals who would like to comment during the meeting will be given instructions for signing up when they join the meeting. Comments should be limited to two minutes.

AmeriCorps provides reasonable accommodation upon request to individuals with disabilities, where needed.

CONTACT PERSON FOR MORE INFORMATION: Heather Leinenbach by telephone: (202) 489–5266 or by email: *board@americorps.gov.*

Fernando Laguarda,

General Counsel.

[FR Doc. 2024–02824 Filed 2–7–24; 4:15 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0200]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Predominantly Black Institutions Formula Grant Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 11, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Shakir Davy, 202–453–7792.

SUPPLEMENTARY INFORMATION: The Department 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: Application for Grants Under the Predominantly Black Institutions Formula Grant Program.

OMB Control Number: 1840–0812.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private sector; State, local, and Tribal government.

Total Estimated Number of Annual Responses: 39.

Total Estimated Number of Annual Burden Hours: 780.

Abstract: The Higher Education Opportunity Act of 2008 amended title III, part A of the Higher Education Act to include section 318—the Predominantly Black Institutions (PBI) Program. The PBI Program makes 5-year grant awards to eligible colleges and universities to plan, develop, undertake and implement programs to enhance the institution's capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institution to serve the academic needs of these students.

Dated: February 6, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–02698 Filed 2–8–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Request for Information Regarding the Manufacturing Capital Connector

AGENCY: Office of Manufacturing and Energy Supply Chains, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The Department of Energy (DOE or the Department)'s Office of Manufacturing and Energy Supply Chains is issuing this RFI to notify parties of its potential interest in initiating a Manufacturing Capital Connector (MCC) to support applicants seeking clean energy manufacturing funding opportunities and/or tax credits. The Department also seeks input from all stakeholders through this RFI to help gauge the interest in and to inform the overall design of the MCC.

DATES: Written comments and information are requested by March 4, 2024.

ADDRESSES: Interested parties may submit comments electronically to *CapitalConnector-RFI@hq.doe.gov* in accordance with the Response Guidelines in section VI of this document.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Rachel Gould, *CapitalConnector-RFI@hq.doe.gov* or (202) 586–6116.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy (DOE)'s Office of Manufacturing and Energy Supply Chains (MESC) is considering establishing a Manufacturing Capital Connector (MCC). The goal of the MCC is to facilitate the commitment of private sector capital necessary to bring important clean energy manufacturing projects to commercial operation. Specifically, the MCC will:

(1) Educate capital providers about DOE's supply chain priority areas and DOE-administered clean energy manufacturing opportunities, such as the Qualifying Advanced Energy Project Credit (48C);

(2) Develop a list of capital providers interested in financing clean energy manufacturing projects and the Best Practices they offer (Best Practices are defined as a private capital provider's proposed minimum level of consistent terms across applications regarding response time, pricing, minimum amount of capital, diligence requests (*i.e.,* all topics covered under Question 14 in the For Potential Capital Providers questions)) and share the list of interested capital providers and their Best Practices on a publicly accessible DOE website; and

(3) If an applicant decides to do so, the applicant may directly share their application information with those capital providers that offer Best Practices they find appealing. DOE is prohibited from providing capital providers with any information about the applicant nor confirmation of whether an organization has applied. Thus, information exchange would be independent of DOE and voluntary.

The notional MCC could be particularly beneficial to applicants for programs like 48C. The 48C program is an investment tax credit (ITC), and as such the IRS will make final allocation decisions, with companies receiving the tax credit only after the project is placed in service and the credit is earned. Therefore, unlike many DOE-administered grant and loan programs,

the applicant must commit all capital upfront for development and construction, with costs offset by the tax credit only after the fact. Given the scale of the 48C program, the Department's broader manufacturing investments, and focus on historical energy communities and disadvantaged communities, the Department of Energy seeks to find ways to facilitate, expedite and streamline the initial non-federal funding required. In summary, the intent of this RFI is to explore a potential pathway to connect private capital to clean energy manufacturing projects as outlined in the three goals above and increase the likelihood that these projects reach completion and reap the financial benefits, including tax credits or grant funding.

II. A Case Study—48C

A. Background

The 48C program was established by the American Recovery and Reinvestment Act of 2009 [1] and expanded with a $10 billion investment under the Inflation Reduction Act of 2022.[2] [3] The Department of the Treasury and the IRS, in partnership with DOE, have announced that approximately $4 billion will be allocated in Round 1, full applications for which were due on December 26, 2023, with the remaining to be announced in at least one more round of applications. The expanded program provides an ITC for up to 30% of the qualified investment for certified projects that meet prevailing wage and apprenticeship requirements. At least forty percent of tax credit allocations must go toward projects in energy communities [4] and, as one of its program policy factors, MESC seeks to support manufacturers of all sizes including small- and medium-sized manufacturers. Although using an MCC participating capital provider would not provide an applicant any preference or advantage over a non-MCC participating capital source, the creation of the MCC facilitates companies in obtaining the 48C tax credit, which may be particularly helpful as those in energy communities and/or small- and medium-sized manufacturers have, historically, had less access to broader financing sources.

The 48C program targets three topic areas:

(1) Clean energy manufacturing and recycling, including renewable energy; electric grid modernization; carbon capture, utilization, or storage; chemical/fuel refining, blending or electrolyzing equipment; energy efficiency; and electric or fuel cell vehicles and associated recharging/refueling infrastructure;

(2) Industrial Greenhouse Gas (GHG) Emissions Reductions (*e.g.,* GHG reductions of an existing facility such as steel, cement, chemicals etc.); and,

(3) Critical material refining, processing, and recycling.

The 48C program competitively selects the most qualified projects from the applicant pool for receipt of the tax credit allocation based on commercial viability, greenhouse gas emissions impacts, workforce and community engagement, and ability to strengthen U.S. supply chains and domestic manufacturing for a net-zero economy.

B. 48C Concept Papers

In August 2023, DOE received concept papers, *i.e.,* high-level application information, from applicants seeking the Round 1 tax credit allocation. DOE provided encourage or discourage letters to applicants who submitted concept papers on November 3, 2023. The submission deadline for full applications was December 26, 2023.

In Round 1, concept papers requesting $42 billion in tax credit allocations were received, of which nearly $11 billion were for projects proposed in 48C energy communities. Together, Round 1 concept papers represented over $142 billion of total investment in potential projects.

III. Manufacturing Capital Connector—General Characteristics

The proposed MCC, as presently conceived, would encourage capital providers to leverage the time-intensive, competitive, and thorough application processes for Federal programs by providing applicants the option to share their application information with participating private sector financing counterparties. Applicants could choose to share their application materials with potential private sector capital providers without DOE serving as an intermediary. DOE cannot directly provide capital providers any information about whether an organization is or is not a 48C program applicant. Applicants would be able to share their materials with the capital providers that offer Best Practices preferred by the applicant that enhance their project's potential for success. Applicants could also choose to share their application materials with capital providers not participating in the MCC. Private capital providers would be able to select the clean energy projects they would like to finance at their discretion and following any additional due diligence steps required by the private capital provider, without DOE involvement.

DOE seeks feedback on the proposal for the structure of the MCC as well as expressions of interest from private sector capital providers potentially interested in joining the MCC. If the proposed MCC moves forward, DOE aims to compile a list of capital providers in March 2024 and outline Best Practices during the second quarter of 2024.

IV. Potential Benefits

For the company applicants participating in MCC, the MCC would strive to (1) improve the timing and magnitude of available capital, (2) reduce the redundancy of work due to the overlap of document requirements between their application and private sector commercial due diligence processes (*e.g.,* financial model, market report), (3) lower the cost of capital, and (4) enable potentially less financially sophisticated and smaller manufacturers better and more affordable access to larger pools of capital with lower transaction costs. Note that federal program applicants that choose to use an MCC participating capital provider would not receive any preference in the application process for doing so over other sources of financing.

For the private sector financing partners, the MCC would (1) facilitate access to an origination stream of mature-technology clean energy projects with a combined enterprise value in the tens of billions, (2) enable a faster due diligence process because of the extensive relevant documentation already generated for an application to Federal programs, and (3) help federal program applicants with de-risked projects that have received or are being evaluated to receive a Federal financial benefit and that align with priority investment areas to connect with potential private sector financing partners.

In making recommendations to the IRS about which 48C projects should receive allocations and in making selections for clean energy

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[1] American Recovery and Reinvestment Act of 2009, Public Law 111–5 (February 17, 2009), *https://www.congress.gov/bill/111th-congress/house-bill/1/text.*

[2] Inflation Reduction Act of 2022, Public Law 117–169 (August 16, 2022), *https://www.congress.gov/bill/117th-congress/house-bill/5376/text.*

[3] *https://www.energy.gov/infrastructure/qualifying-advanced-energy-project-credit-48c-program.*

[4] Project located in a census tract that satisfies the relevant requirements of an energy community and has not received funding in a prior round of 48C: *https://arcgis.netl.doe.gov/portal/apps/experiencebuilder/experience/?id=a44704679a4f44a5aac122324eb00914&page=home.*

manufacturing awards under DOE grants, DOE aims to select the most impactful projects that align with DOE priority areas, considering commercial viability and a full ecosystem that promotes their success. To further this aim, the MCC as described previously could increase the number of selected projects that obtain the financing needed to reach completion and secure the ITC as well as potentially provide a lower cost of capital and ease the financing process for some organizations.

V. Questions for Request for Information

To help inform the interest in and design of the MCC for clean energy manufacturing programs, DOE is seeking public input on the potential structure, benefits, and risks of the proposed MCC from potential capital providers and clean energy manufacturing program applicants or selectees. DOE specifically welcomes comment on the following questions:

For Applicants or Selectees

1. What impediments do you see in DOE providing applicants and the public with information about private sector capital providers interested in financing clean energy projects?

2. Would you be more likely to apply for a grant, tax credit allocation, or other Federal funding, if you knew that a list of private sector financial institutions interested in financing clean energy manufacturing projects would be available on a publicly accessible DOE website?

3. What information would be most helpful to have from interested private sector capital providers?

4. Does the establishment of the MCC potentially increase the speed at which you can develop your project?

5. Do you anticipate your organization would review the list of interested private sector capital providers and/or would your company be likely to share your application materials? Are there any materials typical to a Federal application that an applicant would not be willing to share with private sector capital providers?

6. Do you foresee risks to the involved stakeholders in leveraging already provided application materials with applicants directly sharing information with private sector financing? What are those risks and how could they be mitigated in the creation and operation of the MCC?

7. What Best Practices should private sector capital providers offer in order to participate in the MCC?

8. What types of capital and support from private sector financial institutions does your project need to proceed forward to commercial operations? For example, if your project is seeking the 48C tax credit allocation, would your company need support in monetizing the tax credits?

For Potential Capital Providers

9. Would your institution have interest in participating in the MCC as described in (or similar to) this RFI and have information about your interest available on a publicly accessible DOE website?

10. What is the most effective way DOE could catalyze private sector investment into clean energy projects? Are there alternatives to the MCC that DOE can provide to achieve the same goals? Are there other tenets to the MCC that DOE should try to include?

11. What is the most effective way DOE could educate private capital providers on Federal clean energy programs in order to facilitate private sector investment?

12. Financial institutions interested in financing clean energy projects such as those that apply to 48C need to evaluate projects in a timely manner and commit to deploy capital. What are some Best Practices your institution would be willing to offer in evaluating clean energy manufacturing projects? For instance, would private sector capital providers commit to finance a certain amount ($) or number of projects, respond with a term sheet in a certain number of days, and/or commit to a percentage of viewed opportunities, within a range of parameters (*e.g.,* interest rate, tenor)?

13. Application overview and information sharing (for reference, DOE funding opportunity announcements often require a detailed application narrative, workforce and community benefits plan, data sheet, and appendices that include a financial model, financial statements, and offtake/sales agreements):

a. What information and documentation are most pertinent for a financing institution's decision? Is there further information that your institution may need to make an investment decision?

b. What are industry best practices for protecting applicants' privacy? How can private sector financial institutions seeking to participate in the MCC demonstrate that they have appropriate safeguards in place to prevent the release of confidential business?

14. Questions regarding Capital Provider's Best Practices:

a. Based on the three topic areas noted in the 48C Case Study, is your institution interested in all/most of the three topic areas? If not, please specify topics areas that are not of interest.

b. What part of the capital structure would your institution be interested in participating in (*e.g.,* senior secured, mezzanine, preferred equity, common equity, tax equity (original investment or subsequent transferability), other)? Please outline all structures of interest.

c. What is your typical minimum and maximum investment amount, advance rate, and tenor on an investment in these topic areas?

d. Is there a minimum or maximum number of projects your institution would be interested in financing?

e. How much capital would your financial institution be potentially willing to make available to projects via the MCC?

f. Does your institution require a type of revenue/offtake contract? If so, what kind, what tenor, and for what percentage of the output? Please provide as much detail as possible.

g. What balance sheet metrics (*e.g.,* liquidity, debt-to-equity) does your institution look for in the project and in the Sponsor of a project?

h. What terms (*e.g.,* interest rate, DSCR, tenor, maturity) would your institution potentially be willing to provide as one of the private sector capital providers?

15. What would enable a capital provider to view eligible clean energy manufacturing projects, such as 48C projects, as a portfolio versus one-off projects? Would viewing as a portfolio lower the cost of capital from your institution?

16. What would be the potential sources of your capital? Would your financial institution be using existing funds, or would they raise outside capital?

17. Do you foresee risks to the involved stakeholders in using the MCC to find potential manufacturing projects to finance?

VI. Response Guidelines

Commenters are welcome to comment on any question regardless of status as a potential applicant or private capital provider. Commenters do not need to identify whether they are a previous, current, or potential applicant or private capital provider. RFI responses shall include:

1. RFI title;

2. Name(s), phone number(s), and email address(es) for the principal point(s) of contact;

3. Institution or organization affiliation and postal address; and

4. Clear indication of the specific question(s) to which you are responding.

Responses to this RFI must be submitted electronically to *CapitalConnector-RFI@hq.doe.gov.* with the subject line ''*Manufacturing Capital Connector*'' no later than 5:00 p.m. (ET) on March 4, 2024. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25 MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (*.docx) or Adobe Acrobat (*.pdf) attachment to the email, and *no more than 10 pages in length, 12-point font, 1-inch margins. Only electronic responses will be accepted.*

Responses including confidential business information will be handled per guidance in section VII of this document.

A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. MESC may engage in pre- and post-response conversations with interested parties.

VII. Confidential Business Information

Because information received in response to this RFI may be used to structure future programs and/or otherwise be made available to the public, *respondents are strongly advised NOT to include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential.*

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

If your response contains confidential, proprietary, or privileged information, you must include a cover sheet marked as follows identifying the specific pages containing confidential, proprietary, or privileged information:

Notice of Restriction on Disclosure and Use of Data:

Pages [*list applicable pages*] of this response may contain confidential, proprietary, or privileged information that is exempt from public disclosure. Such information shall be used or disclosed only for the purposes described in this RFI. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

In addition, (1) the header and footer of every page that contains confidential, proprietary, or privileged information must be marked as follows: ''Contains Confidential, Proprietary, or Privileged Information Exempt from Public Disclosure'' and (2) every line and paragraph containing proprietary, privileged, or trade secret information must be clearly marked with [[double brackets]] or highlighting.

Signing Authority

This document of the Department of Energy was signed on February 6, 2024, by Giulia Siccardo, Director, Office of Manufacturing and Energy Supply Chains, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02711 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–465–A]

Application for Renewal of Authorization To Export Electric Energy; Brookfield Renewable Trading and Marketing LP

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Brookfield Renewable Trading and Marketing LP (the Applicant or BRTM) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 11, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On March 26, 2019, DOE issued Order No. EA–465, authorizing BRTM to transmit electric energy from the United States to Canada as a power marketer. On January 11, 2024, BRTM filed an application with DOE (Application or App.) for renewal of their export authority for an additional five-year term. App. at 1.

According to the Application, Brookfield Energy Marketing LLC owns a 0.01 percent general partner interest in BRTM, and Brookfield Power New York Holding Corporation (BPNYHO) owns a 99.99 percent limited partner interest in BRTM. App. at 1. Brookfield Energy Market LLC is a Delaware limited liability company and wholly-owned subsidiary of Brookfield Power US Holding America Company (BPUSHA). *Id.* BPNYHO is a Delaware corporation and a wholly-owned indirect subsidiary of BPUSHA. *Id.*

The Applicant states it does not ''own or control any electric generation, transmission, or distribution facilities in the United States and does not have a franchise or service territory for the transmission, distribution or sale of

electricity.'' App. at 3. However, the Applicant ''operates as a wholesale marketer of electric energy and as electric energy agent to Brookfield Renewable, which owns companies regulated as public utilities under the FPA and companies owning qualifying facilities.'' *Id.* BRTM notes it has ''market-based rate authorization issued by the Federal Energy Regulatory Commission ('FERC') under Section 205 of the FPA.'' *Id.*

The Applicant asserts that it ''does not have a franchised service area and, consequently, has no native load obligations'' and will purchase the electric energy that it exports from electric utilities, qualifying cogeneration facilities, qualifying small power production facilities, Independent System Operators, Regional Transmission Operators, or from other exempt wholesale generators. App. at 6. Therefore, BRTM contends that ''the electric energy that will be sold to BRTM is surplus to the needs of the selling entities'' and ''will not impair the sufficiency of the electric energy supply within the United States.'' *Id.* BRTM also states it will comply with existing industry procedures for obtaining transmission capacity and asserts the proposed transmission would not impede or tend to impede the coordination in the public interest of facilities subject to DOE's jurisdiction. *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning BRTM's Application should be clearly marked with GDO Docket No. EA–465–A. Additional copies are to be provided directly to the Senior Director, Legal, Attn: EMR Legal, Brookfield Renewable Trading and Marketing LP, 200 Liberty Street, 14th Floor, New York, New York 10281, *EMRLegal@brookfieldrenewable.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on January 30, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02678 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–498–A]

Application for Amended Authorization To Export Electric Energy; NRG Business Marketing LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: NRG Business Marketing LLC (the Applicant or NRGBM), formerly known as Direct Energy Business Marketing, LLC (DEBM), has applied for amended authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before February 26, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On March 31, 2023, DEBM applied for authorization to transmit electric energy from the United States to Canada as a power marketer for a term of five years. On September 13, 2023, DOE issued EA–498, granting DEBM its requested permission. *See* EA–498. On December 29, 2023, NRGBM filed an application with DOE (Application or App.) to amend the authorization to reflect DEBM's name change to NRGBM. *See* App. at 1.

The Application states that on July 31, 2023, DEBM changed its name to NRGBM. App. at 1. NRGBM notes that ''[t]his action was solely a name change'' and there were ''no changes to the corporate structure, governance, or ownership of the LLC.'' *Id.* at 2. The Application reflects that the other information concerning the subject exports provided in DEBM's initial application for authorization, approved in EA–497, remains unchanged. *See Id.* at 1–4.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in

accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning NRGBM's Application should be clearly marked with GDO Docket No. EA–498–A. Additional copies are to be provided directly to Ryan Harwell, Manager, Regulatory Licensing & Reporting, NRG Business Marketing LLC, 910 Louisiana Street, Suite B200, Houston, Texas 77002, *ryan.harwell@nrg.com,* and Ryan C. Norfolk, Baker Botts LLP, 700 K Street NW, Washington, DC 20001, *ryan.norfolk@bakerbotts.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on January 30, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02679 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–497–A]

Application for Amended Authorization To Export Electric Energy; NRG Business Marketing LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: NRG Business Marketing LLC (NRGBM or the Applicant), formerly known as Direct Energy Business Marketing, LLC (DEBM), has applied for amended authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before February 26, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On March 31, 2023, DEBM applied for authorization to transmit electric energy from the United States to Mexico as a power marketer for a term of five years. On September 13, 2023, DOE issued EA–497, granting DEBM its requested permission. *See* EA–497. On December 29, 2023, NRGBM filed an application with DOE (Application or App.) to amend the authorization to reflect DEBM's name change to NRGBM. *See* App. at 1.

The Application states that on July 31, 2023, DEBM changed its name to NRGBM. App. at 1. NRGBM notes that ''[t]his action was solely a name change'' and there were ''no changes to the corporate structure, governance, or ownership of the LLC.'' *Id.* at 2. The Application reflects that the other information concerning the subject exports provided in DEBM's initial application for authorization, approved in EA–497, remains unchanged. *See Id.* at 1–4.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning NRGBM's Application should be clearly marked with GDO Docket No. EA–497–A. Additional copies are to be provided directly to Ryan Harwell, Manager, Regulatory Licensing & Reporting, NRG Business Marketing LLC, 910 Louisiana Street, Suite B200, Houston, Texas 77002, *ryan.harwell@nrg.com,* and Ryan C. Norfolk, Baker Botts LLP, 700 K Street NW, Washington, DC 20001, *ryan.norfolk@bakerbotts.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on January 30, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02672 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–507]

Application for Authorization To Export Electric Energy; Second Foundation US Trading, LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Second Foundation US Trading, LLC (the Applicant or SFUST, LLC) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 11, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On January 8, 2024, the Applicant filed an application with DOE (Application or App.) for export authority to transmit electric power across international facilities into Mexico as a power marketer for a term of five-years. App. at 1.

SFUST, LLC is a Delaware limited liability company with its principal place of business in Houston, Texas. App. at 1. The Applicant states it is ''a power marketer engaged in the business of marketing and trading electric energy and other energy related products in the United States.'' *Id.* at 2. According to the Application, SFUST, LLC is solely owned by Second Foundation Holding, a joint-stock company organized under the laws of the Czech Republic. *Id.* The Applicant states it ''is authorized to sell wholesale electric energy, capacity and ancillary services at market-based rates pursuant to authority granted by the Federal Energy Regulatory Commission (FERC) under a wholesale power sales tariff currently on file with FERC in Docket No. ER22–2959–000.'' *Id.*

According to the Application, SFUST, LLC does not ''own any franchised service territory, and does not control any electric generation or transmission facilities in the United States'' and ''has no other affiliates or upstream owners that own any franchised service territory or control any electric generation or transmission facilities in the United States.'' App. at 2. Further, SFUST, LLC notes it ''will purchase surplus electric energy to be exported from a variety of entities within the United States including power marketers, wholesale generators, electric utilities, and federal power marketing agencies.'' *Id.* at 4. The Applicant asserts its proposed exports will be ''surplus to the needs of those entities selling electric power to the Applicant'' and ''will not impair the sufficiency of electric supply within the United States[.]'' *Id.* Further, the Applicant states its exports will be ''transmitted pursuant to arrangements with utilities that own and operate existing transmission facilities and will be consistent with all applicable export limits on transmission facilities,'' and thus the Applicant asserts it ''meets the second statutory criterion of Section 202(e).'' *Id.* at 5.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning SFUST, LLC's Application should be clearly marked with GDO Docket No. EA–507. Additional copies are to be provided directly to Jakub Sedlacek, Chief Operating Officer, Second Foundation US Trading, LLC, 808 Travis St., Suite 1030, Houston, TX 77002, *jakub.sedlacek@second-foundation.com,* and Zori Ferkin, King & Spalding LLP, 1700 Pennsylvania Avenue, Suite 900, Washington, DC 20006, *zferkin@kslaw.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on January 30, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02680 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–506]

Application for Authorization To Export Electric Energy; Second Foundation US Trading, LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Second Foundation US Trading, LLC (the Applicant or SFUST, LLC) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 11, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On January 8, 2024, the Applicant filed an application with DOE (Application or App.) for export authority to transmit electric energy from the United States to Canada for a term of five-years. App. at 1.

SFUST, LLC is a Delaware limited liability company with its principal place of business in Houston, Texas. App. at 1. The Applicant states it is ''a power marketer engaged in the business of marketing and trading electric energy and other energy related products in the United States.'' *Id.* at 2. According to the Application, SFUST, LLC is solely owned by Second Foundation Holding, a joint-stock company organized under the laws of the Czech Republic. *Id.* The Applicant states it ''is authorized to sell wholesale electric energy, capacity and ancillary services at market-based rates pursuant to authority granted by the Federal Energy Regulatory Commission (FERC) under a wholesale power sales tariff currently on file with FERC in Docket No. ER22–2959–000.'' *Id.*

According to the Application, SFUST, LLC does not ''own any franchised service territory, and does not control any electric generation or transmission facilities in the United States'' and ''has no other affiliates or upstream owners that own any franchised service territory or control any electric generation or transmission facilities in the United States.'' App. at 2. Further, SFUST, LLC notes it ''will purchase surplus electric energy to be exported from a variety of entities within the United States including power marketers, wholesale generators, electric utilities, and federal power marketing agencies.'' *Id.* at 4. The Applicant asserts its proposed exports will be ''surplus to the needs of those entities selling electric power to the Applicant'' and ''will not impair the sufficiency of electric supply within the United States[.]'' *Id.* Further, the Applicant states its exports will be ''transmitted pursuant to arrangements with utilities that own and operate existing transmission facilities and will be consistent with all applicable export limits on transmission facilities,'' and thus the Applicant asserts it ''meets the second statutory criterion of Section 202(e).'' *Id.* at 5.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning SFUST, LLC's Application should be clearly marked with GDO Docket No. EA–507. Additional copies are to be provided directly to Jakub Sedlacek, Chief Operating Officer, Second Foundation US Trading, LLC, 808 Travis St., Suite 1030, Houston, TX 77002, *jakub.sedlacek@second-foundation.com,* and Zori Ferkin, King & Spalding LLP, 1700 Pennsylvania Avenue, Suite 900, Washington, DC 20006, *zferkin@kslaw.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on January 30, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02675 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–505]

Application for Authorization To Export Electric Energy; Altop Energy Trading LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Altop Energy Trading LLC (the Applicant) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 11, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On December 28, 2023, the Applicant filed an application with DOE (Application or App.) to transmit electric energy from the United States to Mexico for a term of five-years. App. at 1.

Altop Energy Trading LLC is a Delaware Limited Liability Company with its principal place of business in Houston, Texas. App. at 1. The Applicant is engaged in the trading and marketing of both financial and physical electricity in the wholesale power markets in North America. *Id.* Altop Energy Trading LLC represents that is ''solely owned by Altop Energy Investments LP.'' *Id.* Further, the Applicant states that it has a Market-Based Rate Authorization from FERC. *Id.*

The Applicant states it ''has no obligation to serve native load, does not own or operate any electric distribution or transmission facilities, does not own or operate any natural gas distribution or transmission facilities, and does not own or operate any generation assets.'' App. at 1. The Applicant represents that the ''electric power will either be purchased from the bordering wholesale markets of ERCOT or CAISO, or a variety of third parties such as power marketers, independent power producers, electric utilities, or federal power marketing entities.'' *Id.* at 2. Altop Energy Trading LLC asserts that its proposed exports would ''be surplus to the requirements of the selling entities and the overall electrical system'' and ''will not impair the reliability of the grid.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Altop Energy Trading LLC's Application should be clearly marked with GDO Docket No. EA–505. Additional copies are to be provided directly to Gebre-Egziabher Gebre, Principal, 440 Louisiana Street, Suite 575, Houston, TX 77002, *gebre.gebre@altopenergy.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on January 30, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02674 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed extension of the collection of information for the Cryptocurrency Mining Facilities Survey, as required under the Paperwork Reduction Act of 1995. The original collection was approved by the Office of Management and Budget on January 26, 2024, under the emergency approval provisions of the Paperwork Reduction Act.

DATES: EIA must receive all comments on this proposed information collection no later than April 9, 2024. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Written comments may be sent to Glenn McGrath by email at *Glenn.McGrath@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Glenn McGrath, EI–23, U.S. Energy Information Administration, telephone 1–202–586–4325, email *Glenn.McGrath@eia.gov.* The form and instructions are available at *www.eia.gov/survey/#eia-862.*

SUPPLEMENTARY INFORMATION: Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the

quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1905–0213;

(2) *Information Collection Request Title:* Cryptocurrency Mining Facilities Survey;

(3) *Type of Request:* Three-year extension without change;

(4) *Purpose:* The mining of cryptocurrency is an energy-intensive activity that requires substantial amounts of electricity. Several cryptocurrencies, most notably Bitcoin, use a *proof of work* approach that requires cryptocurrency miners to validate blocks of transactions by solving complex cryptographic puzzles that require significant computational power. Commercial mining facilities typically operate thousands of computers that work to add blocks of virtual currency transactions to a distributed ledger called a blockchain. The computational equipment must be cooled, which further increases the associated electricity consumption. Given its high rate of consumption, companies, organizations and government agencies engaged in the electricity business require detailed information about how much electrical energy is being consumed by cryptocurrency miners and where it is occurring. The U.S. Energy Information Administration (EIA) has engaged in a rigorous evaluation of U.S. cryptocurrency mining activity using publicly available information. EIA estimates cryptocurrency mining activity demands as much as 2.3% of U.S. electricity consumption. Furthermore, there is evidence that this electricity consumption is growing rapidly. The combined effects of increased cryptocurrency mining and stressed electricity systems create heightened uncertainty in electric power markets, which could contribute to public harm during an unexpected event.

On January 26, 2024, the Office of Management and Budget (OMB) granted approval under the emergency approval provisions of the Paperwork Reduction Act (PRA) for EIA to immediately begin collecting monthly information that will inform the public on the impact of recent increases in U.S. commercial cryptocurrency mining activity on both the supply and demand side of the electric power system. The Cryptocurrency Mining Facilities Survey, Form EIA–862, uses facility-level reporting to provide a baseline snapshot of the cryptocurrency mining companies in the sample and their energy use, quantify the rate of change in cryptocurrency mining activity among the companies and their facilities, identify electricity sources supplying U.S. cryptocurrency mining activity, and identify regions in the U.S. with concentrated cryptocurrency mining activity.

Due to the need to begin collecting this information right away, EIA was unable to allow for the time periods normally required for clearance under the PRA. The approval granted by OMB is through July 31, 2024. This approval allows EIA to conduct the Cryptocurrency Mining Facilities Survey for up to 6 months. EIA now seeks to extend clearance for the survey for an additional three years.

(5) *Annual Estimated Number of Respondents:* 82;

(6) *Annual Estimated Number of Total Responses:* 984;

(7) *Annual Estimated Number of Burden Hours:* 492;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $42,981 (492 burden hours times $87.36 per hour). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and maintenance of the information as part of the normal course of business.

Statutory Authority: 15 U.S. C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on February 5, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U. S. Energy Information Administration.

[FR Doc. 2024–02727 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Minor Construction Threshold Increase

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice.

SUMMARY: This notice is being issued under the authority the *Atomic Energy Defense Act* as amended by the *James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.* The Department is adjusting the minor construction threshold to account for inflation. The threshold is being increased from $30 million to $34 million.

DATES: The new minor construction threshold is effective on February 9, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Wilson, Office of Infrastructure, National Nuclear Security Administration, Department of Energy. Telephone: (301) 903–2173, or email: *Thomas.Wilson@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

The *James M. Inhofe National Defense Authorization Act for Fiscal Year 2023* provides the Department of Energy's National Nuclear Security Administration (DOE/NNSA) Administrator with pilot authority to adjust the minor construction threshold to account for inflation at any point until December 1, 2025. Under this authority, the Administrator must submit a report to the congressional defense committees describing the method used to calculate the adjustment, wait a period of 30 days, and then publish the adjusted threshold to the **Federal Register** before it can take effect.

NNSA submitted the required report to the congressional defense committees on January 9, 2024. The 30-day waiting period ended on February 8, 2024. The publication of this notice implements the new minor construction threshold of $34 million.

Signing Authority

This document of Department of Energy was signed February 5, 2024, by Jill Hruby, Under Secretary for Nuclear Security and Administrator, NNSA, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication as an official document of the Department of Energy. This administrative Process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 6, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–02712 Filed 2–8–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Longbow BESS, LLC	EG24–27–000.
Danish Fields Storage, LLC.	EG24–28–000.
Talen Conemaugh LLC	EG24–29–000.
Talen Keystone LLC	EG24–30–000.
Sparta Solar, LLC	EG24–31–000.
Jade Meadow LLC	EG24–32–000.
Pleasant Valley Solar LLC	EG24–33–000.
Flat Ridge 4 Wind, LLC	EG24–34–000.
Flat Ridge 4 Wind Holdings LLC.	EG24–35–000.
Flat Ridge 5 Wind Energy LLC.	EG24–36–000.
Flat Ridge 5 Wind Energy Holdings LLC.	EG24–37–000.
River Fork Solar, LLC	EG24–38–000.
NMRD Data Center II, LLC	EG24–39–000.
NMRD Data Center III, LLC.	EG24–40–000.
True North Solar, LLC	EG24–41–000.
Cutlass Solar II, LLC	EG24–42–000.
Grimes County Solar Project LLC.	EG24–43–000.
Ben Milam Solar 2 LLC	EG24–44–000.
Quartz Solar, LLC	EG24–45–000.
Northern Orchard Solar PV, LLC.	EG24–46–000.
Elkhart County Solar Project, LLC.	EG24–47–000.
Kiowa County Solar Project, LLC.	EG24–48–000.
Martin County Solar Project, LLC.	EG24–49–000.
Martin County II Solar Project, LLC.	EG24–50–000.

Take notice that during the month of January 2024, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2023).

Dated: February 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02721 Filed 2–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10441–019]

City of Aspen, Colorado; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

(February 5, 2024.)

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.*: 10441–019.

c. *Date Filed:* June 30, 2023.

d. *Submitted By:* City of Aspen, Colorado.

e. *Name of Project:* Maroon Creek Hydroelectric Project.

f. *Location:* On Maroon Creek in Pitkin County, Colorado.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Phil Overenyder at City of Aspen at (970) 920–5111; or email at *phil.overeynder@aspen.gov.*.

i. *FERC Contact:* Everard Baker at (202) 502–8554; or email at *everard.baker@ferc.gov.*

j. The City of Aspen filed its request to use the Traditional Licensing Process on June 30, 2023. The City of Aspen provided public notice of its request on July 31, 2023. In a letter dated September 28, 2023, the Director of the Division of Hydropower Licensing approved the City of Aspen'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 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 Colorado State Historic Preservation Officer, as required by section 106, National Historical 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 the City of Aspen as the Commission's non-Federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. The City of Aspen 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 and/or printed 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 10441. Pursuant to 18 CFR 16.20 each application for a subsequent 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 June 30, 2026.

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.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02718 Filed 2–8–24; 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:

Filings Instituting Proceedings

Docket Numbers: PR24–51–000.

Applicants: Black Hills/Kansas Gas Utility Company, LLC.

Description: 284.123 Rate Filing: BHKG Revised Statement of Rates to be effective 2/1/2024.

Filed Date: 2/5/24.

Accession Number: 20240205–5032.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: RP24–388–000.

Applicants: Rockies Express Pipeline LLC.

Description: 4(d) Rate Filing: REX 2024–02–02 Negotiated Rate Agreements to be effective 2/3/2024.

Filed Date: 2/2/24.

Accession Number: 20240202–5117.

Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: RP24–389–000.

Applicants: White River Hub, LLC.

Description: 4(d) Rate Filing: Negotiated Rate Contract REX 7309 to be effective 12/2/2023.

Filed Date: 2/2/24.

Accession Number: 20240202–5175.

Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: RP24–391–000.

Applicants: Sabine Pipe Line LLC.

Description: Compliance filing: Settlement petition filing 2024 to be effective N/A.

Filed Date: 2/2/24.

Accession Number: 20240202–5191.

Comment Date: 5 p.m. ET 2/14/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02722 Filed 2–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2821–014]

City of Portland; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of ILP Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Licensing Process.

b. *Project No.:* 2821–014.

c. *Dated Filed:* December 8, 2023.

d. *Submitted By:* City of Portland, Portland Water Bureau.

e. *Name of Project:* Portland Hydroelectric Project.

f. *Location:* The project is located on the Bull Run River in Clackamas and Multnomah counties, Oregon, approximately 26 miles east of the City of Portland. The project boundary does not include any Federal lands since a land exchange with the U.S. Forest Service was completed in 2022.[1]

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's regulations.

h. *Applicant Contact:* Ms. Shannon Mills, Portland Water Bureau; 1120 SW 5th Avenue, Room 405, Portland, OR 97204; phone: (971) 347–9870.

i. *FERC Contact:* Golbahar Mirhosseini, (202) 502–6820 *golbahar.mirhosseini@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Oregon 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. By letters dated January 2, 2024, and January 17, 2024, we notified the U.S. Fish and Wildlife Service, NOAA Fisheries, and the Oregon State Historic Preservation Officer that we are designating the City of Portland as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act, section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. A copy of the PAD is available for review 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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available via the contact in paragraph h.

You may register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595, or at *OPP@ferc.gov.*

n. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

[1] On November 8, 2023, the City filed an application to amend the current license to revise Federal lands within the project boundary.

The Commission strongly encourages electronic filing. Please file documents using the Commission's eFiling system at *https://ferconline.ferc.gov/FERC Online.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Deputy Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Deputy Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Portland Hydroelectric Project (P–2821–014).

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by April 6, 2024.

o. *Scoping Process:*

In accordance with the National Environmental Policy Act (NEPA), Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document''). The NEPA document will consider both site-specific and cumulative environmental effects, and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an environmental assessment or Environmental Impact Statement.

Scoping Meetings

Commission staff will hold two scoping meetings for the project to receive input on the scope of the NEPA document. An evening meeting will focus on receiving input from the public and a daytime meeting will focus on concerns of resource agencies, Native American tribes, and non-governmental organizations (NGO). We invite all interested agencies, Native American tribes, NGOs, and the public to attend one or both meetings to assist us in identifying the scope of environmental issues that should be analyzed in the NEPA document. The dates and times of the virtual scoping meetings are listed below.

Evening meeting for the general public
Tuesday, February 27, 2024
Starting Time: 6:30 p.m. Pacific Standard Time (PST)
Location: Portland Water Bureau, Interstate Facility Auditorium, 664 N. Tillamook Street, Portland, OR 97227
Phone Number: (971) 347–9870

Daytime meeting for resource agencies, Tribes, and NGOs
Wednesday, February 28, 2024
Starting Time: 10:00 a.m. PST
Location: Portland Building, 1120 SW 5th Avenue, Room 108, Portland, OR 97204
Phone Number: (971) 347–9870

Copies of SD1, outlining the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list and City of Portland's PAD distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph m. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Visit

City of Portland and Commission staff will hold an environmental site visit of the Portland Hydroelectric Project on Tuesday, February 27, 2024, 10 a.m. to 1:30 p.m. PST. You must register in advance if you are interested in attending a site visit. Please contact Ms. Shannon Mills by email at *HydroelectricProject@portlandoregon.gov,* or by phone at 971–347–9870 before Tuesday February 20, 2024, if you plan to attend the environmental site review. Please note that inclement weather may necessitate a virtual tour instead of an in-person site visit.

Meeting Objectives

At the scoping meetings, Commission staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and Tribal permitting and certification processes; and (5) discuss the potential of any Federal or State agency or Native American tribe to act as a cooperating agency for development of an environmental document. Meeting participants should come prepared to discuss their issues and/or concerns. Please review City of Portland's PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item m of this document.

Meeting Procedures

The scoping meetings will be recorded by a court reporter, and all statements will become part of the Commission's public record for the project.

Agencies, Native American Tribes, NGOs, and individuals with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: February 2, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02717 Filed 2–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–46–000.
Applicants: Dogwood Energy LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Dogwood Energy LLC.
Filed Date: 2/1/24.
Accession Number: 20240201–5254.
Comment Date: 5 p.m. ET 2/22/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–101–000.
Applicants: Prescott Wind Energy LLC.
Description: Prescott Wind Energy LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 2/5/24.
Accession Number: 20240205–5026.
Comment Date: 5 p.m. ET 2/26/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2721–018.
Applicants: El Paso Electric Company.
Description: Notice of Non-Material Change in Status of El Paso Electric Company.
Filed Date: 1/31/24.
Accession Number: 20240131–5635.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER10–2984–065.
Applicants: Merrill Lynch Commodities, Inc.
Description: Notice of Change in Status of Merrill Lynch Commodities, Inc., et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5643.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER10–3193–016; ER10–1901–015; ER10–3194–010; ER17–580–006; ER10–3195–011; ER19–2707–006; ER22–2030–003; ER22–2031–004; ER22–2580–003.
Applicants: CPV Three Rivers, LLC, Sonoran West Solar Holdings 2, LLC, Sonoran West Solar Holdings, LLC, Poseidon Wind, LLC, MATEP Limited Partnership, Axium Modesto Solar, LLC, MATEP LLC, Upper Peninsula Power Company, Brooklyn Navy Yard Cogeneration Partners, L.P.
Description: Notice of Non-Material Change in Status of Brooklyn Navy Yard Cogeneration Partners, L.P., et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5640.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER15–2582–015; ER10–1852–089; ER10–1951–064; ER11–4462–088; ER15–2101–016; ER17–838–062; ER21–1880–006; ER23–1862–002.
Applicants: Roundhouse Renewable Energy II, LLC, Niyol Wind, LLC, NextEra Energy Marketing, LLC, Golden West Power Partners, LLC, NEPM II, LLC, NextEra Energy Services Massachusetts, LLC, Florida Power & Light Company, Carousel Wind Farm, LLC.
Description: Notice of Change in Status of Carousel Wind Farm, LLC, et al.
Filed Date: 2/1/24.
Accession Number: 20240201–5253.
Comment Date: 5 p.m. ET 2/22/24.

Docket Numbers: ER17–256–019; ER17–242–018; ER17–243–018; ER17–245–018; ER17–652–018.
Applicants: Lightstone Marketing LLC, Waterford Power, LLC, Lawrenceburg Power, LLC, Gavin Power, LLC, Darby Power, LLC.
Description: Notice of Non-Material Change in Status of Darby Power, LLC, et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5642.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER17–1370–011; ER16–581–012; ER16–2271–011; ER20–2506–002; ER21–1254–005; ER21–2204–005; ER22–1103–002.
Applicants: BRP Capital & Trade LLC, ENGIE Power & Gas LLC, Genbright LLC, Dakota Range III, LLC, ENGIE Resources LLC, ENGIE Portfolio Management, LLC, ENGIE Energy Marketing NA, Inc.
Description: Notice of Change in Status of ENGIE Energy Marketing NA, Inc., et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5644.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER17–1370–012; ER16–581–013; ER16–2271–012; ER19–828–006; ER20–539–006; ER20–1338–005; ER20–2505–004; ER21–1254–006; ER21–2204–006; ER21–2279–003; ER22–1103–003.
Applicants: BRP Capital & Trade LLC, Iron Star Wind Project, LLC, ENGIE Power & Gas LLC, Genbright LLC, Triple H Wind Project, LLC, King Plains Wind Project, LLC, East Fork Wind Project, LLC, Solomon Forks Wind Project, LLC, ENGIE Resources LLC, ENGIE Portfolio Management, LLC, ENGIE Energy Marketing NA, Inc.
Description: Notice of Change in Status of ENGIE Energy Marketing NA, Inc., et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5645.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER19–1280–007; ER10–2405–015; ER10–2407–011; ER10–2424–011; ER10–2425–013; ER13–1816–021; ER17–1316–009; ER18–1186–008; ER23–1582–002; ER23–1583–001; ER23–1584–001.
Applicants: Pearl River Solar Park LLC, Indiana Crossroads Wind Farm II LLC, Crooked Lake Solar, LLC, Turtle Creek Wind Farm LLC, Quilt Block Wind Farm LLC, Sustaining Power Solutions LLC, Pioneer Prairie Wind Farm I, LLC, Rail Splitter Wind Farm, LLC, Lost Lakes Wind Farm LLC, High Prairie Wind Farm II, LLC, Broadlands Wind Farm LLC.
Description: Notice of Change in Status of Broadlands Wind Farm LLC, et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5634.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER19–2901–012; ER10–1852–088; ER10–1951–063; ER10–1966–022; ER11–4462–087; ER12–2225–021; ER12–2226–021; ER14–2138–018; ER17–838–061; ER18–2091–014; ER19–11–012; ER19–2389–012; ER20–1219–009; ER20–1417–010; ER20–1985–009; ER20–1988–010; ER23–489–005; ER23–493–005; ER23–2404–003.
Applicants: Bronco Plains Wind II, LLC, Thunder Wolf Energy Center, LLC, Neptune Energy Center, LLC, Northern Colorado Wind Energy Center II, LLC, Northern Colorado Wind Energy Center, LLC, Roundhouse Renewable Energy, LLC, Peetz Table Wind, LLC, Grazing Yak Solar, LLC, Peetz Logan Interconnect, LLC, Titan Solar, LLC, NextEra Energy Marketing, LLC, Limon Wind III, LLC, Limon Wind, LLC, Limon Wind II, LLC, NEPM II, LLC, Logan Wind Energy LLC, NextEra Energy Services Massachusetts, LLC, Florida Power & Light Company, Bronco Plains Wind, LLC.
Description: Notice of Change in Status of Bronco Plains Wind, LLC, et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5641.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER23–170–001.
Applicants: Idaho Power Company.
Description: Compliance filing: Attachment H–1—Information Filing Template Update to be effective 1/27/2020.
Filed Date: 2/5/24.
Accession Number: 20240205–5130.
Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER23–2107–002; ER10–1852–087; ER10–1951–062; ER11–4462–086; ER17–838–060.
Applicants: NextEra Energy Marketing, LLC, NEPM II, LLC, NextEra Energy Services Massachusetts, LLC, Florida Power & Light Company, Clearwater Wind II, LLC.
Description: Notice of Change in Status of Clearwater Wind II, LLC, et al.
Filed Date: 1/31/24.
Accession Number: 20240131–5639.
Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER23–2842–002.
Applicants: Sunnyside Cogeneration Associates.
Description: Tariff Amendment: Deficiency Ltr Resp to be effective 9/15/2023.
Filed Date: 2/5/24.
Accession Number: 20240205–5132.
Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER23–2915–002; ER10–1899–022; ER10–1852–086; ER10–1951–061; ER11–4462–085; ER13–752–021; ER14–1630–018; ER15–2601–014; ER17–838–059; ER17–1774–012.
Applicants: NextEra Energy Bluff Point, LLC, NextEra Energy Marketing,

LLC, Green Mountain Storage, LLC, Mantua Creek Solar, LLC, Energy Storage Holdings, LLC, NEPM II, LLC, NextEra Energy Services Massachusetts, LLC, Florida Power & Light Company, FPL Energy Illinois Wind, LLC, Chesapeake Solar Project, LLC.

Description: Notice of Change in Status of Chesapeake Solar Project, LLC, et al.

Filed Date: 1/31/24.

Accession Number: 20240131–5637.

Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER24–34–002; ER23–1862–001; ER23–2107–001; ER23–2404–002; ER23–2629–001; ER24–61–001; ER24–359–001; ER24–817–001.

Applicants: Babbitt Ranch Energy Center, LLC, Crow Creek Solar, LLC, Sky Ranch Solar, LLC, High Banks Wind, LLC, Bronco Plains Wind II, LLC, Clearwater Wind II, LLC, Roundhouse Renewable Energy II, LLC, Proxima Solar, LLC.

Description: Notice of Change in Status of Proxima Solar, LLC, et al.

Filed Date: 1/31/24.

Accession Number: 20240131–5638.

Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER24–125–001.

Applicants: ISO New England Inc., New England Power Company.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: NEP; ER24–125 Compliance Filing in Response to December 5 Order to be effective 1/1/2024.

Filed Date: 2/5/24.

Accession Number: 20240205–5029.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER24–594–001.

Applicants: Salka Cabazon Wind LLC.

Description: Notice of Change in Status of Salka Cabazon Wind LLC, et al.

Filed Date: 1/31/24.

Accession Number: 20240131–5636.

Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER24–1006–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2024–02–05_SA 3435 Entergy Mississippi-Wildwood Solar Sub 2nd Rev GIA (J908) to be effective 1/12/2024.

Filed Date: 2/5/24.

Accession Number: 20240205–5097.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER24–1187–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: PJM–NJBPU State Agreement Approach Study Agreement, SA No. 7156 to be effective 1/3/2024.

Filed Date: 2/2/24.

Accession Number: 20240202–5153.

Comment Date: 5 p.m. ET 2/23/24.

Docket Numbers: ER24–1188–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Second Amended WMPA, Service Agreement No. 6023; AE1–109 to be effective 3/4/2024.

Filed Date: 2/2/24.

Accession Number: 20240202–5185.

Comment Date: 5 p.m. ET 2/23/24.

Docket Numbers: ER24–1189–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, Service Agreement No. 7186; AF1–287 to be effective 4/3/2024.

Filed Date: 2/2/24.

Accession Number: 20240202–5192.

Comment Date: 5 p.m. ET 2/23/24.

Docket Numbers: ER24–1190–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Needmore Solar Amended and Restated LGIA Filing to be effective 1/22/2024.

Filed Date: 2/5/24.

Accession Number: 20240205–5101.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER24–1191–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–02–05_Forced-Off Asset Reforms to be effective 6/3/2024.

Filed Date: 2/5/24.

Accession Number: 20240205–5118.

Comment Date: 5 p.m. ET 2/26/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–23–000.

Applicants: MidAmerican Energy Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of MidAmerican Energy Company.

Filed Date: 2/2/24.

Accession Number: 20240202–5230.

Comment Date: 5 p.m. ET 2/23/24.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF24–365–000.

Applicants: Eco Green Generation LLC.

Description: Form 556 of Eco Green Generation LLC [Kalaeloa Clean Energy].

Filed Date: 2/5/24.

Accession Number: 20240205–5018.

Comment Date: 5 p.m. ET 2/26/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: February 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02723 Filed 2–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1183–000]

Fanfare 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 Fanfare 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 February 26, 2024.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02720 Filed 2–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR24–3–000]

QT Fuels Incorporated v. Colonial Pipeline Company; Notice of Complaint

Take notice that on February 1, 2024, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2023), QT Fuels Incorporated filed a complaint against Colonial Pipeline Company (''Colonial'') challenging the justness and reasonableness of the rates charged by Colonial for transportation service pursuant to certain tariffs on file with the Commission.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. eastern time on March 4, 2024.

Dated: February 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02719 Filed 2–8–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–109]

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 January 29, 2024 10 a.m. EST Through February 5, 2024 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://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240016, Final Supplement, FHWA, OR, Earthquake Ready Burnside Bridge, Contact: Thomas Parker 503–316–2549.

EIS No. 20240017, Final, BLM, WY, ADOPTION—Sentinel (GSBD) Deployment and Minuteman III Decommissioning and Disposal, Contact: Dan Brunkhorst 406–538–1981.

The Bureau of Land Management (BLM) has adopted the United States Air Force's Final EIS No. 20230043 filed 03/22/2023 with the Environmental Protection Agency. The BLM was a cooperating agency on this project. Therefore, republication of the document is not necessary under Section 1506.3(b)(2) of the CEQ regulations.

EIS No. 20240018, Final Supplement, USFS, ID, Nez Perce-Clearwater NF Travel Plan and OHV Rule Implementation, Review Period Ends: 03/11/2024, Contact: Zoanne Anderson 360–749–9510.

EIS No. 20240019, Second Final Supplemental, DOE, AR, Long-Term Management and Storage of Elemental Mercury, Review Period Ends: 03/11/2024, Contact: Timothy Herald 240–243–8753.

EIS No. 20240020, Draft Supplement, USFWS, NE, Draft Supplemental Environmental Impact Statement for the Nebraska Public Power District Revised R-Project Habitat Conservation Plan, Comment Period Ends: 04/09/2024, Contact: Jeff Runge 308–382–6468.

EIS No. 20240021, Final, NSA, MD, O'Brien Road Access Modernization, Review Period Ends: 03/11/2024, Contact: Jeffrey Williams 301–688–2970.

EIS No. 20240022, Final, USFS, WY, ADOPTION—Sentinel (GSBD) Deployment and Minuteman III Decommissioning and Disposal, Contact: Vernon E. Koehler 719–252–4778.

The Forest Service (USFS) has adopted the United States Air Force's Final EIS No. 20230043 filed 03/22/2023 with the Environmental Protection Agency. The USFS was a cooperating agency on this project. Therefore, republication of the document is not necessary under Section 1506.3(b)(2) of the CEQ regulations.

EIS No. 20240023, Draft, NMFS, CA, Consideration of Exempted Fishing Permits for Testing Fishing Practices to Target Swordfish and Other Marketable Highly Migratory Species in the United States West Coast Exclusive Economic Zone, Comment Period Ends: 04/09/2024, Contact: Amber Rhodes 202–936–6132.

EIS No. 20240024, Draft Supplement, BR, UT, Glen Canyon Dam Long-Term Experimental and Management Plan, Comment Period Ends: 03/25/2024, Contact: Wayne Pullan 801–524–3600.

Dated: February 6, 2024.

Julie Smith,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024–02676 Filed 2–8–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Thursday, February 22, 2023, from 2:00 p.m.–3:30 p.m. EDT.

PLACE: Virtual meeting—The meeting will be virtually for committee members, EXIM's Board of Directors and support staff, and virtually for all other participants.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register below for the meeting: *https://events.teams.microsoft.com/event/78ee9dee-6388-44d5-b95f-dce679df6ac5@b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED:

Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Enagagement Specialist, at 202–480–0062 or at *india.walker@exim.gov.*

Lin Zhou,

IT Specialist.

[FR Doc. 2024–02830 Filed 2–7–24; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 26, 2024.

A. *Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Jill Castilla and Lisa Trent, individually and as co-trustees of the Citizens Bancshares, Inc., ESOP, with Youssi Farag, all of Edmond, Oklahoma;* to retain control of voting shares of Citizens Bancshares, Inc., and thereby indirectly retain control of voting shares of The Citizens Bank of Edmond, both of Edmond, Oklahoma. Jill Castilla would join Randal K. Granzow to form a family group acting in concert.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–02715 Filed 2–8–24; 8:45 am]

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FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 26, 2024.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *David R. Esry, Lee's Summit, Missouri, as General Partner of the William and Marcile Reich Family Limited Partnership, Independence, Missouri, as trustee of the David Esry Family Trust, Independence, Missouri, and as co-trustee of the Esry Family Trust, Independence, Missouri;* to retain voting shares of Blue Ridge Bancshares, Inc., and thereby indirectly retain voting shares of Blue Ridge Bank, both of Independence, Missouri.

In addition, the Esry Family Trust, David Esry, Marcie Esry, Sarasota, Florida, and William Esry, Independence, Missouri, as co-trustees; to join the Esry Family group, a group acting in concert, to retain voting shares of Blue Ridge Bancshares, Inc., and thereby indirectly retain voting shares of Blue Ridge Bank. William Esry, Marcie Esry, and David Esry, all individually, were each previously permitted by the Federal Reserve System to acquire control of the voting shares of Blue Ridge Bancshares, Inc.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–02650 Filed 2–8–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–0840]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Formative Research and Tool Development'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 26, 2023 to obtain comments from the public and affected agencies. CDC received one non-substantive public comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(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 agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Formative Research and Tool Development (OMB Control No. 0920–0840, Exp. 7/31/2024)—Extension—National Center for HIV, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) requests approval for an Extension and a three-year approval for the previously approved Generic Clearance, ''Formative Research and Tool Development''. This information collection request is designed to allow NCHHSTP to conduct formative research information collection activities used to inform many aspects of surveillance, communications, health promotion, and research project development for NCHHSTP's four priority diseases (HIV/AIDS, sexually transmitted diseases/infections (STD/STI), viral hepatitis, tuberculosis elimination and the Division of School and Adolescent Heath (DASH)).

Formative research is the basis for developing effective strategies including communication channels, for influencing behavior change. It helps researchers identify and understand the characteristics—interests, behaviors and needs—of target populations that influence their decisions and actions. Formative research is integral in developing programs as well as improving existing and ongoing programs. Formative research also looks at the community in which a public health intervention is being, or will be implemented, and helps the project staff understand the interests, attributes and needs of different populations and persons in that community. Formative research is research that occurs before a program is designed and implemented,

or while a program is being conducted. NCHHSTP formative research is necessary for developing new programs or adapting programs that deal with the complexity of behaviors, social context, cultural identities, and health care that underlie the epidemiology of HIV/AIDS, viral hepatitis, STDs, and TB in the U.S, as well as for school and adolescent health. CDC conducts formative research to develop public-sensitive communication messages and user-friendly tools prior to developing or recommending interventions, or care. Sometimes these studies are entirely behavioral but most often they are cycles of interviews and focus groups designed to inform the development of a product.

Products from these formative research studies will be used for prevention of HIV/AIDS, Sexually Transmitted Infections (STI), viral Hepatitis, and Tuberculosis. Findings from these studies may also be presented as evidence to disease-specific National Advisory Committees, to support revisions to recommended prevention and intervention methods, as well as to develop new recommendations. Much of CDC's health communication takes place within campaigns that have lengthy planning periods—timeframes that accommodate the standard federal process for approving data collections. Short-term qualitative interviewing and cognitive research techniques have previously proven invaluable in the development of scientifically valid and population-appropriate methods, interventions, and instruments.

This request includes studies investigating the utility and acceptability of proposed sampling and recruitment methods, intervention contents and delivery, questionnaire domains, individual questions, and interactions with project staff or electronic data collection equipment. These activities will also provide information about how respondents answer questions and ways in which question response bias and error can be reduced. This request also includes collection of information from public health programs to assess needs related to initiation of a new program activity or expansion or changes in scope or implementation of existing program activities to adapt them to current needs. The information collected will be used to advise programs and provide capacity-building assistance tailored to identified needs.

Overall, these development activities are intended to provide information that will increase the success of the surveillance or research projects through increasing response rates and decreasing response error, thereby decreasing future data collection burden to the public. The studies that will be covered under this request will include one or more of the following investigational modalities: (1) structured and qualitative interviewing for surveillance, research, interventions and material development; (2) cognitive interviewing for development of specific data collection instruments; (3) methodological research; (4) usability testing of technology-based instruments and materials; (5) field testing of new methodologies and materials; (6) investigation of mental models for health decision-making, to inform health communication messages; and (7) organizational needs assessments to support development of capacity. Respondents who will participate in individual and group interviews (qualitative, cognitive, and computer assisted development activities) are selected purposively from those who respond to recruitment advertisements. In addition to utilizing advertisements for recruitment, respondents who will participate in research on survey methods may be selected purposively or systematically from within an ongoing surveillance or research project.

CDC requests OMB approval for an estimated 46,516 annual burden hours. Participation by respondents is voluntary, and there is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form mame	Number of respondents	Number of responses per respondent	Average hours per response
General public	Screener	56,840	1	10/60
Health care providers	Screener	24,360	1	10/60
General public	Consent Forms	28,420	1	5/60
Health care providers	Consent Forms	12,180	1	5/60
General public	Individual Interview	4,620	1	1
Health care providers	Individual Interview	1,980	1	1
General public	Focus Group Interview	2,800	1	2
Health care providers	Focus Group Interview	1,200	1	2
General public	Survey of Individual	21,000	1	30/60
Health care providers	Survey of Individual	9,000	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02681 Filed 2–8–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–1078]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''The Division of Workforce Development (DWD) Fellowship Alumni Assessment'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 30, 2023, to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(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 agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

The Division of Workforce Development (DWD) Fellowship Alumni Assessment (OMB Control No. 0920–1078, Exp. 02/29/2024)—Revision—National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce (NCSTLTPHIW), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works to protect America from health, safety and security threats, both foreign and in the U.S. CDC strives to fulfill this mission, in part, through a competent and capable public health workforce. One mechanism for developing the public health workforce is through fellowship programs like those sponsored and supported by the Division of Workforce Development (DWD). A robust public health workforce has sufficient workforce, organizational, and systems capacity to deliver essential public health services and protect the public's health. In 2023, after an agency-wide CDC reorganization, a number of CDC career fellowships were consolidated within one new division, DWD, which has a lead role in public health workforce development. Across all of its branches, DWD manages or supports many full-time, cross-cutting career fellowship programs that support CDC and State, Tribal, local, and Territorial health departments, and partner organizations. Through these programs, DWD strives to provide quality training for current and future members of the public health workforce to ensure they have foundational and contemporary public health skills. Nearly all these programs serve as a pathway to CDC career communities and are an important source of supply for the public health workforce.

In 2015, CDC obtained OMB approval to conduct follow-up surveys of alumni who had completed the Public Health Associate Program (PHAP) (OMB No. 0920–1078). Findings from the PHAP alumni surveys have improved CDC's understanding of alumni retention and career progression in the public health workforce and have informed management of the PHAP. In this Revision, CDC proposes to build on lessons learned in PHAP fellowship evaluation. CDC will broaden the scope of information collection to accommodate the full portfolio of DWD fellowships, which currently includes the Epidemiology Elective Program (EEP), Evaluation Fellowship Program(EFP), Epidemic Intelligence Service (EIS), Future Leaders in Infectious and Global Health Threats (FLIGHT), Laboratory Leadership Service (LLS), CDC Steven M. Teutsch Prevention Effectiveness (PE) Fellowship, Public Health Informatics Fellowship Program (PHIFP), and the Science Ambassador Fellowship (SAF), in addition to the Public Health Associate Program (PHAP). This ICR is also intentionally removing the host site supervisor component included in the original ICR. This revision will specifically focus on fellowship alumni only. A new ICR will be created for any host site supervisor surveys these fellowships may seek to conduct.

Each year, new cohorts ranging from three to 200 individuals are enrolled across these fellowship programs. While each fellowship differs in focus area, type of fellow, and projects, they all have the same mission: to train and provide learning opportunities to early- and mid-career professionals who contribute to the public health workforce. All share a common goal that, post-fellowship, alumni seek employment within the public health system (*i.e.,* Federal, State, Tribal, local, or Territorial health agencies, or non-governmental organizations). Given this common goal, CDC will apply a common approach to assessing how fellowship participation impacts the job placement, retention in the public health workforce, and career progression of alumni. DWD Fellowship Alumni Surveys will be administered to individual program alumni at three different time points (one year, three years, and five years post-program completion). Each fellowship program will invite their program's alumni to participate. Fellowships will be deploying surveys specific to their programs. Assessment questions will remain consistent at each administration timepoint (*i.e.,* one year, three years, or five years post-program completion). The language, however, will be updated for each survey administration to reflect the appropriate time period. There is a core set of assessment questions that all fellowship programs will use. Each program can also add fellowship-specific questions to their surveys to ensure relevance of the surveys to each program's alumni. Surveys will be administered electronically; a link to the survey will be provided in an email invitation. CDC will use survey findings to document program outcomes, demonstrate evidence of impact, and inform decision making about future program direction. The results of these surveys may be published in peer reviewed journals and/or in non-scientific publications such as practice reports and/or fact sheets.

OMB approval is requested for three years. The estimated burden is between 8–25 minutes per respondent per survey, and the total annualized estimated burden is 175 hours. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
EEP Alumni	EEP Alumni Survey	135	1	20/60
EFP Alumni	EFP Alumni Survey	60	1	8/60
EIS/LLS Alumni	EIS/LLS Alumni Survey	210	1	25/60
FLIGHT Alumni	FLIGHT Alumni Survey	5	1	8/60
PE Fellowship Alumni	PE Fellowship Alumni Survey	25	1	8/60
PHIFP Alumni	PHIFP Alumni Survey	20	1	8/60
PHAP Alumni	PHAP Alumni Survey	130	1	8/60
SAF Alumni	SAF Alumni Survey	60	1	10/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02682 Filed 2–8–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–0493; Docket No. CDC–2024–0010]

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 continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled 2025 and 2027 National Youth Risk Behavior Survey (YRBS). CDC is requesting a three-year approval to reinstate, with changes, the data collection for the national YRBS, a biennially school-based survey of high school students in the United States. This project includes a validation study that will inform the development of questions for the 2027 YRBS questionnaire.

DATES: CDC must receive written comments on or before April 9, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0010 by either of the following methods:

- *Federal eRulemaking Portal: www.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 H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.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 H21–8, Atlanta, Georgia 30329; Telephone: 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

2025 and 2027 National Youth Risk Behavior Survey (OMB Control No. 0920–0493)—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this request is to obtain OMB approval to reinstate with change, the data collection for the National Youth Risk Behavior Survey (YRBS) (OMB Control No. 0920–0493), a school-based survey that has been conducted biennially since 1991. OMB approval for the 2021 YRBS and 2023 YRBS expired November 30, 2023. CDC seeks a three-year approval to conduct the YRBS in Spring 2025 and Spring 2027. Changes incorporated into this Reinstatement request include the addition of a validation study of fruit and vegetable intake, the results of which will be used to inform changes to the 2027 YRBS questionnaire. Additional changes include an updated title for the information collection to accurately reflect the years in which the survey will be conducted and minor

changes to the data collection instrument.

The YRBS assesses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and young adults in the United States. Data on health risk behaviors of adolescents are the focus of approximately 65 national health objectives in Healthy People 2030, an initiative of the U.S. Department of Health and Human Services (HHS). The YRBS provides data to measure 14 Healthy People 2030 objectives. In addition, the YRBS can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the Healthy People 2030 objectives addressing adolescent health risk behaviors as the YRBS. The data also will have significant implications for policy and program development for school health programs nationwide.

In Spring 2025 and Spring 2027, the YRBS will be conducted among nationally representative samples of students attending public and private schools in Grades 9–12, and in 2025, the validation study will be conducted among a convenience sample of schools and students. Information supporting the YRBS also will be collected from state-, district-, and school-level administrators and teachers. The table below reports the number of respondents annualized over the three-year project period. The total estimated annualized burden hours are 4,388. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
State Administrators	State-level Recruitment Script for the Youth Risk Behavior Survey.	17	1	30/60	9
District Administrators	District-level Recruitment Script for the Youth Risk Behavior Survey.	80	1	30/60	40
School Administrators	School-level Recruitment Script for the Youth Risk Behavior Survey.	133	1	30/60	67
School Administrators	School-level Recruitment Script for the Validation Study.	6	1	30/60	3
Teachers	Permission Form Tracking Log for the Youth Risk Behavior Survey.	440	1	15/60	110
Teachers	Permission Form Tracking Log for the Validation Study.	14	1	15/60	4
Students	Youth Risk Behavior Survey	8,045	1	30/60	4022
Students	Dietary Behavior Questionnaire	200	1	10/60	33
Students	24-hour Dietary Recall Interview	200	1	30/60	100
Total					4,388

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02684 Filed 2–8–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–24CR; Docket No. CDC–2024–0011]

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 information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Global Public Health Data Innovation Performance Monitoring. This data collection is designed to help government decision makers gather timely, accurate, and comprehensive public health data to effectively prevent, detect, and respond to public health threats.

DATES: CDC must receive written comments on or before April 9, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0011 by either of the following methods:

- *Federal eRulemaking Portal: www.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 H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.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 H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; 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

Global Public Health Data Innovation (GPHDI) Performance Monitoring—New—Global Health Center (GHC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Global Public Health Data Innovation (GPHDI) initiative, led by the Centers for Disease Control and Prevention (CDC), aims to equip government decision makers with timely, accurate, and comprehensive public health data to effectively prevent, detect, and respond to public health threats. Challenges, such as limited data access, non-standardization, workforce limitations, and gaps in data systems and governance, often hinder the optimal use of data in public health response efforts. To overcome these challenges, GPHDI focuses on strengthening global outbreak response, pandemic preparedness, and surveillance through improved data availability and utilization. This is achieved by modernizing data systems and processes at all levels.

GPHDI is made possible by the American Rescue Plan Act passed by the Congress in 2021 and is rooted in key strategic pillars within CDC, namely the Data Modernization Initiative (DMI) and the Global Digital Health Strategy (GDHS). DMI is an agency-wide initiative aimed at improving data systems infrastructure within the United States. It offers valuable insights and artifacts that can be adapted and leveraged for the global context of the GPHDI initiative. The goal of DMI is to get better, faster, actionable insights for decision making at all levels of public health. Complementing this, the GDHS incorporates inputs from a multi-partner engagement process, enhancing the strategic approach of the initiative.

GPHDI is a current three-year investment that builds on an existing foundation laid by various country governments, donor agencies, and multilateral organizations. This investment is specifically allocated to advance the initiative in 10 selected countries, including Kenya, Sierra Leone, Uganda, and Zambia in Africa; Colombia and Paraguay in the South American Region; Georgia and Ukraine in Eastern Europe; Thailand in the Central Asia Region; and Honduras in the Central American Region. This data collection is aimed at monitoring and assessing the contributions of current GPHDI investments in data modernization and digital public health infrastructure towards improving data availability to prevent, detect, and respond to public health threats in the selected countries. The indicators to be collected include both structured response-type questions (Yes-No answers, coded answers) and narrative response-type questions. CDC contractors, RTI International (RTI) will conduct the interviews and CDC funded implementing partners (IPs) monitoring and evaluation (M&E) point of contacts will provide responses to the indicators based on their funded activities. RTI will document the responses from the interviews using CDC RedCap. Interviews will be conducted in a live one-on-one session between RTI and identified M&E point of contacts at the funded IPs. No patient-level or individual level or identifiable data will be collected for this project.

CDC requests OMB approval for an estimated 64 annual burden hours. Respondents will be responding to this data collection as a part of the organizations' funding requirements and obligation. There is no cost to respondents other than their time to participate.

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)
Implementing partners (Monitoring and evaluation point of contacts).	Monitoring question guide	32	1	2	64
					64

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02683 Filed 2–8–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10291, CMS–10529, CMS–10722, and CMS–R–148]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 9, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10291 State Collection and Reporting of Dental Provider and Benefit Package Information on the Insure Kids Now! Website and Hotline

CMS–10529 Quarterly Medicaid and CHIP Budget and Expenditure Reporting for the Medical Assistance Program, Administration and CHIP

CMS–10722 Annual State Report on CMS Value Based Purchasing Arrangements (VBP) Supplemental Rebate Agreements

CMS–R–148 Limitations on Provider Related Donations and Health Care Related Taxes, Medicaid and Supporting Regulations in 42 CFR 433.68 through 433.74

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. Type of Information Collection Request: Extension without change of a currently approved collection; *Title of Information Collection:* State Collection and Reporting of Dental Provider and Benefit Package Information on the Insure Kids Now! Website and Hotline; *Use:* On the Insure Kids Now (IKN) website, the Secretary is required to post a current and accurate list of dentists and providers that provide dental services to children enrolled in the State plan (or waiver) under Medicaid or the State child health plan (or waiver) under CHIP. States collect the information pertaining to their Medicaid and CHIP dental benefits. *Form Number:* CMS–10291 (OMB control number: 0938–1065); *Frequency:* Yearly and quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; Total Annual Responses: 255; *Total Annual Hours:* 11,781. (For policy questions regarding this collection contact Andrew Snyder at 410–786–1274.)

2. Type of Information Collection Request: Extension without change of a currently approved collection; *Title of Information Collection:* Quarterly Medicaid and CHIP Budget and Expenditure Reporting for the Medical Assistance Program, Administration and CHIP; *Use:* The Medicaid and CHIP Financial System is a financial reporting system that produces budget estimate statements for Forms CMS–37 and CMS–21B. The Medicaid and CHIP Budget and Expenditure System is a financial reporting system that produces expenditure statements for Forms CMS–64 and CMS–21. All forms are to be filed on a quarterly basis and need to be certified by the States. *Form Number:* CMS–10529 (OMB control number: 0938–1265); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 672; *Total Annual Hours:* 18,144. (For policy questions regarding this collection contact Robert Lane at 410–786–2015.)

3. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Annual State Report on CMS Value Based Purchasing Arrangements (VBP) Supplemental Rebate Agreements; *Use:* The reported data is being collected to safeguard against unnecessary utilization of such care and services and to assure that State payments to providers of Medicaid

services are consistent with efficiency, economy, and quality of care. CMS will collect this data to ensure that VBP programs adopted by States continue to meet these standards. *Form Number:* CMS–10722 (OMB control number: 0938–1385); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 306. (For policy questions regarding this collection contact Abraham Weinschneider at 410–786–5688.)

4. Type of Information Collection Request: Extension without change of a currently approved collection; *Title of Information Collection:* Limitations on Provider Related Donations and Health Care Related Taxes, Medicaid and Supporting Regulations in 42 CFR 433.68 through 433.74; *Use:* States may elect to submit a waiver to CMS for the broad based and/or uniformity requirements for any health care related tax program which does not conform to the broad based and uniformity requirements. It is also the responsibility of each State to demonstrate that their tax program(s) do not violate the hold harmless provision. For a waiver to be approved and a determination that the hold harmless provision is not violated, States must submit written documentation which satisfies the regulatory requirements. Without this information, the amount of FFP (Federal financial participation) payable to a State cannot be correctly determined. *Form Number:* CMS–R–148 (OMB control number: 0938–0618); *Frequency:* Quarterly and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 40; *Total Annual Hours:* 3,200. (For policy questions regarding this collection contact Stuart Goldstein at 410–786–0694.)

William N. Parham, III

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–02662 Filed 2–8–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–P–4279]

Determination That QMIIZ (Meloxicam) Orally Disintegrating Tablets, 7.5 Milligrams and 15 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 milligrams (mg) and 15 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6280, Silver Spring, MD 20993–0002, 301–796–3507, *Nicole.Mueller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, are the subject of NDA 211210, held by TerSera Therapeutics LLC (TerSera), and initially approved on October 19, 2018. QMIIZ is a non-steroidal anti-inflammatory indicated for osteoarthritis in adults, rheumatoid arthritis in adults, and pauciarticular or polyarticular course juvenile rheumatoid arthritis in pediatric patients who weigh greater than or equal to 60 kilograms.

In a letter dated March 24, 2021, TeraSera notified FDA that QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, were being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Pharmobedient Consulting submitted a citizen petition dated September 27, 2023 (Docket No. FDA–2023–P–4279), under 21 CFR 10.30, requesting that the Agency determine whether QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was

not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to QMIIZ (meloxicam) Orally Disintegrating Tablets, 7.5 mg and 15 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–02710 Filed 2–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0014]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. This meeting will be held to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2024 to 2025 influenza season. The meeting will be open to the public.

DATES: The meeting will be held virtually on March 5, 2024, from 9 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. The online web conference meeting will be available at the following link on the day of the meeting: *https://youtube.com/live/Wf0aE32DPKc.*

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–0014. The docket will close on March 4, 2024. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 4, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before February 26, 2024, will be provided to the committee. Comments received on or after February 26, 2024, and by March 4, 2024, will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–0014 for ''Vaccines and Related Biological Products Advisory Committee (VRBPAC); Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Sussan Paydar or Valerie Vashio, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 202–657–8533, *CBERVRBPAC@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. On March 5, 2024, the committee will meet in open session to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2024 to 2025 influenza season.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at: *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before February 26, 2024, will be provided to the Committee. Comments received on or after February 26, 2024, and by March 4, 2024, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, along with their names, email addresses, and direct contact phone numbers of proposed participants, on or before 12 p.m. Eastern Time on Friday, February 16, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by 6 p.m. Wednesday, February 21, 2024.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sussan Paydar or Valerie Vashio (See **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*) This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: February 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–02709 Filed 2–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4717]

Brendon Gagne: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Brendon Gagne for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Gagne was convicted of one felony

count under Federal law for conspiracy to smuggle goods into the United States. The factual basis supporting Mr. Gagne's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Gagne was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of January 5, 2024 (30 days after receipt of the notice), Mr. Gagne had not responded. Mr. Gagne's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is effective February 9, 2024.

ADDRESSES: Any application by Mr. Gagne for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All applications must include the Docket No. FDA–2023–N–4717. Received applications will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, at 240–402–8743, or *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On August 31, 2023, Mr. Gagne was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for Western District of Michigan when the court accepted his plea of guilty and entered judgment against him for two offenses, one of which was for conspiracy to smuggle goods into the United States in violation of 18 U.S.C. 371 and 545. The underlying facts supporting the conviction are as follows: As contained in the indictment from Mr. Gagne's case, filed on March 1, 2022, in the transcript from his guilty plea proceeding which was held on February 27, 2023, and from the Defendant's sentencing brief filed on August 15, 2023, beginning in or about 2018 and continuing until in or about October 2021, several individuals ran a website, *www.ExpressPCT.com,* which sold misbranded prescription drugs, as well as some Schedule III and Schedule IV controlled substances, in the United States without requiring a prescription. The drugs were manufactured overseas and then shipped in bulk to the United States to domestic redistributors. The packages did not declare their illicit contents and instead took steps to conceal their true nature. Once the packages entered the United States, the redistributors sent the bulk orders to second tier U.S.-based distributors who then finally shipped the drugs to the customers, making the purchasers think their drugs came from the United States and not from overseas. Part of Mr. Gagne's role in the scheme was to receive, repackage, and reship prescription drugs he received from other co-conspirators outside of the United States that were purchased by customers on the website *www.ExpressPCT.com.* In addition, Mr. Gagne recruited, managed and, using the profits from the sale of the misbranded prescription drugs, paid others engaged in the scheme who also received, repackaged, and reshipped prescription drugs they received from other co-conspirators outside of the United States.

As a result of this conviction, FDA sent Mr. Gagne, by certified mail, on November 30, 2023, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Gagne's felony conviction under Federal law for conspiracy to smuggle goods into the United States in violation of 18 U.S.C. 371 and 545, was

for conduct relating to the importation of any drug or controlled substance into the United States because Mr. Gagne was involved in a scheme to illegally import and introduce misbranded prescription drugs into the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Gagne's offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Gagne of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Gagne received the proposal and notice of opportunity for a hearing on December 6, 2023. Mr. Gagne failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Brendon Gagne has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Gagne is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Gagne is a prohibited act.

Dated: February 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–02706 Filed 2–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; HRSA Grantee Satisfaction Survey

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than March 11, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: HRSA Grantee Satisfaction Survey:

OMB No. 0906–0006—Revision.

Abstract: HRSA plans to survey HRSA grant recipients to better understand their opinions about HRSA's grants processes and to improve the way HRSA conducts business with them. This survey will focus on grantee customer satisfaction areas related to the grant life cycle, grantee relationships with HRSA staff (*e.g.,* Project Officers, Grants Management Officers), technical assistance received from HRSA Bureaus and Offices, availability of grant resources, and grantee access to guidance and instructional documents, etc. The seven grants management areas, which are directly related to the grants life cycle, are: Customer Service/Cooperation; Policies and Procedures; Pre-Award Phase; Award Phase; Reporting/Post-Award Administration; Technical Assistance; and Priorities for Improvement. Receiving this information from external customers will provide HRSA with a repository of information that will be incorporated into strategic efforts to improve grants management services and customer service.

HRSA revised the planned survey to reflect a change in the sampling methodology. In past survey administration cycles, HRSA sent a single survey to each organization and asked them to complete the survey for the award they had received from HRSA for the longest time period. This past approach did not allow for a range of program-specific feedback from HRSA grantees. In this survey administration cycle, HRSA will send the survey to each individual grant project director and ask them to complete the survey for a specific award. This new approach will enable HRSA to obtain more granular and actionable information regarding the full range of grant awards received by HRSA awardees.

Compared to the 60-day **Federal Register** notice, HRSA anticipates the number of potential survey respondents will increase from 3,690 to 7,813 due to the change in the sampling methodology. HRSA also anticipates an increase in the burden hours compared to the 60-day **Federal Register** notice, based on a reassessment of the time completion of the survey conducted during a pre-test. The adjusted average of completing the survey is 0.34 hours per response.

A 60-day notice for this information collection was published in the **Federal Register** on March 10, 2023, Vol. 88, No. 47; pp. 15053. There were no public comments.

Need and Proposed Use of the Information: The HRSA Grantee Satisfaction Survey will provide meaningful and relevant results to agency decision-makers about various customer satisfaction domains (*e.g.,* efficiency, timeliness, usefulness, responsiveness, quality of and overall satisfaction with HRSA project officers, products and services). The information collected will assist HRSA in its efforts to gauge, understand and respond to the needs and concerns of its customers, especially as they relate to the aforementioned areas. The survey results will provide HRSA with concrete indicators regarding the best areas in which to dedicate resources to improve

customer service. HRSA will use this information to support agency-wide continuous quality improvement efforts. HRSA will use survey results to improve the efficiency, quality, and timeliness of its grants business processes, as well as to strengthen its partnership with external customers.

Likely Respondents: Individuals who are identified as the project director for a current HRSA grant award.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
HRSA Grantee Satisfaction Survey	7,813	0.32	2,500	0.34	850
Total	7,813		2,500		850

*HRSA will send the survey to 7,813 potential respondents. Based on HRSA Grantee Satisfaction Surveys administered in previous years, HRSA estimates a 32 percent response rate.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–02730 Filed 2–8–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders Meeting and Solicitation for Oral and Written Comments

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Intergovernmental and External Affairs, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders.

ACTION: Notice of meeting and solicitation for written and oral comments.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next meeting of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders (Commission) and the solicitation of written and oral comment regarding the advancement of equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities. The meeting is open to the public and will be held in Clark County, Nevada. Virtual attendance will be available through livestream on February 27 and in-person attendance will be available on February 28, 2024. The Commission is working to accomplish its mission to provide independent advice and recommendations to the President on ways to advance equity, justice, and opportunity for AA and NHPI communities.

DATES: The Commission will meet on February 27, 2024, from 11:45 a.m. Eastern Time (ET) to 8:30 p.m. ET and February 28, 2024, from 12:00 p.m. ET to 4:00 p.m. ET. The final location and agenda will be posted on the website for the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders: *https://www.hhs.gov/about/whiaanhpi/commission/index.html* when this information becomes available.

ADDRESSES: Members of the public may attend the meeting virtually or in person, depending on the portion of the meeting. Registration is required through the following links:

February 27 meeting (virtual attendance only): *https://www.eventbrite.com/e/public-meeting-of-the-presidents-commission-on-aa-and-nhpis-tickets-814521895917?aff=oddtdtcreator.*

February 28 public listening session (in-person attendance only): *https://www.eventbrite.com/e/white-house-initiative-aa-and-nhpi-community-engagement-event-nevada-tickets-814515466687?aff=oddtdtcreator.*

FOR FURTHER INFORMATION CONTACT: Judith Teruya, Designated Federal Officer, President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, U.S. Department of Health and Human Services, Office of the Secretary, Office of Intergovernmental and External Affairs, U.S. Department of Health and Human Services, Hubert Humphrey Building, 620E, 200 Independence Ave. SW, Washington, DC 20201; email: *AANHPICommission@hhs.gov;* telephone: (202) 951–0235.

SUPPLEMENTARY INFORMATION:

Background: The meeting is the eighth in a series of federal advisory committee meetings regarding the development of recommendations to advance equity, justice, and opportunity for AA and NHPI communities. The meeting is open to the public and will be live streamed. The Commission, co-chaired by U.S. Health and Human Services Secretary Xavier Becerra and the U.S. Trade Representative Ambassador Katherine Tai, advises the President on: the development, monitoring, and coordination of executive branch efforts to advance equity, justice, and opportunity for AA and NHPI communities in the United States, including efforts to close gaps in health, socioeconomic, employment, and educational outcomes; policies to address and end anti-Asian bias, xenophobia, racism, and nativism, and opportunities for the executive branch to advance inclusion, belonging, and public awareness of the diversity and accomplishments of AA and NHPI people, cultures, and histories; policies, programs, and initiatives to prevent, report, respond to, and track anti-Asian hate crimes and hate incidents; ways in which the Federal Government can build on the capacity and contributions of AA and NHPI communities through equitable Federal funding, grantmaking, and employment opportunities; policies and practices to improve research and equitable data disaggregation regarding AA and NHPI communities; policies

and practices to improve language access services to ensure AA and NHPI communities can access Federal programs and services; and strategies to increase public-and private-sector collaboration, and community involvement in improving the safety and socioeconomic, health, educational, occupational, and environmental well-being of AA and NHPI communities.

Information is available on the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders website at *https://www.hhs.gov/about/whiaanhpi/commission/index.html.* The names of the members of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders are available at *https://www.hhs.gov/about/whiaanhpi/commission/commissioners/index.html.*

Purpose of Meeting: The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, authorized by Executive Order 14031 and amended by Executive Order 14109, will meet to discuss recommendations by the Commission's six subcommittees on ways to advance equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander communities. The subcommittees are: Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination; Data Disaggregation and Education; Economic Equity; Health Equity; Immigration and Citizenship Status; and Language Access.

Public Participation at Meeting: Members of the public may attend the meeting virtually and the public listening session in person. Registration is required through the following links:

February 27 (virtual attendance only): *https://www.eventbrite.com/e/public-meeting-of-the-presidents-commission-on-aa-and-nhpis-tickets-814521895917?aff=oddtdtcreator.*

February 28 public listening session (in-person attendance only): *https://www.eventbrite.com/e/white-house-initiative-aa-and-nhpi-community-engagement-event-nevada-tickets-814515466687?aff=oddtdtcreator.*

Written public comments: Written comments are welcomed throughout the development of the Commission's recommendations to promote equity, justice, and opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders and may be emailed to *AANHPICommission@hhs.gov* at any time. Respond concisely and in plain language. You may use any structure or layout that presents your information well. You may respond to some or all of the questions, and you can suggest other factors or relevant questions. You may also include links to online material or interactive presentations. Clearly mark any proprietary information and place it in its own section or file. Your response will become government property, and we may publish some of its non-proprietary content.

Oral public comments: Individuals may submit a request to make an oral public comment at the February 28, 2024, meeting in response to the questions below. Advance copy of oral public comment must be sent via email at *AANHPICommission@hhs.gov* with the subject line ''PACAANHPI: In-person Response to <insert the issue and question>'' no later than 11:59 p.m. ET on Friday, February 19, 2024. Submissions received after the deadline will not be considered for oral public comment. Your submitted oral comment will become government property and may be published as part of the meeting record.

Registration for oral public comment is on a first-come, first-served basis. Comments are limited to two (2) minutes or less per person. After the maximum number of speakers is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. You will be notified via email no later than February 26, 2024, if you have been identified to provide in-person public comment.

The Commission is interested in soliciting comments on the following questions:

1. Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee Questions:

a. Please describe policies, programs, models, or best practices that have been effective in reducing race-based violence, cyberbullying, or bias targeting AA and NHPI communities, including any programs geared toward children or youth.

b. What policies, programs, models, or best practices, if any, have reduced incidents of gun violence in AA and NHPI communities?

2. Data Disaggregation and Education Subcommittee Questions:

a. What obstacles do AA and NHPI communities face regarding federal datasets?

b. What is the status of educational programs in your respective state that address the AA and NHPI experience?

3. Economic Equity Subcommittee Questions:

a. How familiar are you with the federal government's resources dedicated to supporting small businesses through loans or grants, and what can be done to increase awareness of these services?

b. Do you think AA and NHPI community members are informed about federal government resources for apprentice training? What additional assistance or resources would be beneficial at the federal level to enhance access to the apprentice training?

4. Health Equity Subcommittee Questions:

a. What are the mental health concerns impacting AA and NHPI communities in Nevada and what are some of the ways communities are working to address these challenges?

b. What are some of the biggest barriers AA and NHPI communities face to accessing health care?

5. Immigration and Citizenship Status Subcommittee Questions:

a. Are you, or individuals you know, afraid to utilize public resources (*e.g.,* federal benefit programs) because you believe it will impact your immigration status? Please explain in detail. What can the government do to decrease concerns with accessing federal benefits?

b. How can the U.S. Department of Homeland Security (DHS) better conduct outreach to impacted communities in order to more effectively disseminate accurate immigration information? What can DHS subagencies offer to local community organizations to increase the spread of accurate information?

6. Language Access Subcommittee Questions:

a. How can the Federal Government promote the preservation, teaching, learning of, maintenance and utilization of AA and NHPI languages?

b. Are there any programs you recommend the Commission examine that provide meaningful language access to government benefits and services to persons with limited English proficiency?

Authority: Executive Order 14031 as amended by Executive Order 14109. The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of Federal advisory committees.

Krystal Ka'ai,

Executive Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders, President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders.

[FR Doc. 2024–02258 Filed 2–8–24; 8:45 am]

BILLING CODE 4153–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before April 9, 2024.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041 and *PRA@HHS.GOV*.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@HHS.GOV* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Research Misconduct and Noncompliance in Clinical Trials and Translational Research.

Type of Collection: New.

OMB No.: 0990–XXXX.

Abstract: The Department of Health and Human Services (HHS) Office of Research Integrity (ORI) has partnered with the Office for Human Research Protections (OHRP) to launch this data collection effort to better understand how to serve those who might benefit from additional education and resources to improve research integrity. ORI and OHRP have found that researchers, Institutional Review Board (IRB) Chairs, Research Integrity Officers (RIOs), Human Protections and Compliance Officers, and Human Protections Administrators, who oversee the conduct of research involving human research subjects, may struggle with identifying reportable noncompliance or unanticipated problems, protocol violations, protocol deficiencies, and falsifications and fabrications of data and methods in that research. Failure to recognize these concerns may result in noncompliance, protocol violations and research misconduct not being adequately addressed; falsified and/or fabricated methods, data, and results that may be published or used to obtain federal funding; human research subjects being harmed; and/or Public Health Service (PHS) funds not being protected.

This data collection is a new request and includes an online survey instrument used with stakeholders holding positions at institutions holding a Federalwide Assurance (FWA) and/or operating an IRB, and is designed to identify barriers in the identification, evaluation, and reporting of potential research misconduct, protocol violations, reportable noncompliance, and unanticipated problems in research that involves human subjects. This data collection is intended to assist ORI and OHRP in developing approaches to improve how to identify and distinguish incidents that are reportable to ORI and OHRP from those that do not require reporting to these offices. This information is also intended to give RIOs, IRBs, human protections administrators, compliance officers, and other institutional officials involved with human subjects' research insight into how they can strengthen their policies and procedures for identifying, evaluating, and/or communicating potential research misconduct and reportable noncompliance and unanticipated problems by identifying gaps, barriers, and areas in which communication and education may need to be enhanced within their institution.

ANNUALIZED BURDEN HOUR TABLE

Forms (If necessary)	Respondents (If necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
ORI/OHRP Survey		1165	1	20/60	388

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2024–02649 Filed 2–8–24; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) hereby gives notice that the National Vaccine Advisory Committee (NVAC) will hold an in-person meeting. The meeting will be open to the public and public comment will be heard during the meeting.

DATES: The meeting will be held February 22–23, 2024. The confirmed meeting times and agenda will be posted on the NVAC website at *http://www.hhs.gov/nvpo/nvac/meetings/index.html* as soon as they become available.

ADDRESSES: Instructions regarding attending this meeting will be posted online at: *http://www.hhs.gov/nvpo/nvac/meetings/index.html* at least one week prior to the meeting. Pre-registration is required for those who wish to attend the meeting in person or participate in public comment. Please register at *http://www.hhs.gov/nvpo/nvac/meetings/index.html*.

FOR FURTHER INFORMATION CONTACT: Ann Aikin, Acting Designated Federal Officer, Office of Infectious Disease and HIV/AIDS Policy, U.S. Department of Health and Human Services, Tower Building, Room, 1101 Wootton Parkway, Rockville, MD 20852. Email: *nvac@hhs.gov*. Phone: 202–795–7697.

SUPPLEMENTARY INFORMATION: Pursuant to section 2101 of the Public Health

Service Act (42 U.S.C. 300aa–1), the Secretary of HHS was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

During this meeting, NVAC will hear presentations to support the recent charge on innovation from Admiral Rachel L. Levine, MD, the Assistant Secretary for Health and Director of the National Vaccine Program. NVAC will also hear presentations on recent surges in measles cases, the Vaccines for Children's Program, real uses of artificial intelligence to support vaccination efforts, and supply chains. Presenters will also cover ways to improve immunization of children, adults, and pregnant people. Please note that agenda items are subject to change, as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC website: *http://www.hhs.gov/nvpo/nvac/index.html*.

Members of the public will have the opportunity to provide comment at the NVAC meeting during the public comment period designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Members of the public may also submit written comments. Written comments should not exceed three pages in length. Individuals planning to submit comments should email their written comments or their request to provide a comment during the meeting to *nvac@hhs.gov* at least five business days prior to the meeting.

Dated: January 11, 2024.

Ann Aikin,

Acting Designated Federal Official, Office of the Assistant Secretary for Health.

[FR Doc. 2024–02636 Filed 2–8–24; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Study Section Digestive Diseases and Nutrition C Study Section.

Date: March 13–15, 2024.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7009, Bethesda, MD 20892, (301) 594–4721, *kozelp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 6, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02697 Filed 2–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Understudied Proteins Associated with Rare Diseases (R03) Review.

Date: May 30, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Ming Yan, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, MSC 4874, Bethesda, MD 20892, (301) 827–4312, *ming.yan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 5, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02651 Filed 2–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel BRAIN K99, March 6, 2024, 11:00 a.m. to March 06, 2024, 6:30 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on February 2, 2024, FR Doc. 2024–02045, 89 FR 7403.

The meeting date has changed from March 6, 2024, to March 15, 2024. The

time of the meeting and the location remain the same. The meeting is closed to the public.

Dated: February 5, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02652 Filed 2–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 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 of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials and Biomarker Studies in Stroke (StrokeNet).

Date: March 1, 2024.

Time: 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Nilkantha Sen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *nilkantha.sen@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Collaborative Opportunities for Multidisciplinary, Bold, and Innovative Neuroscience (COMBINE) (RM1 Clinical Trial Optional).

Date: March 7–8, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *bo-shiun.chen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: February 5, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02654 Filed 2–8–24; 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 Meetings

Pursuant to section 1009 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: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: March 6, 2024.

Time: 9:30 a.m. to 7:00 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: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, (301) 435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: March 6, 2024.

Time: 10:00 a.m. to 7:00 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: Imoh S. Okon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–347–8881, *imoh.okon@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer and Hematologic Disorders Study Section.

Date: March 7–8, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: EVEN Hotel Rockville, Previously Holiday Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Steven M. Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 480–8665, *frenksm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Imaging, Surgery and Bioengineering.

Date: March 11, 2024.

Time: 1:00 p.m. to 7:00 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: Weihua Luo, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–21–089: Specific Pathogen Free Macaque Colonies.

Date: March 11, 2024.

Time: 1:00 p.m. to 5:00 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: Latha Malaiyandi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, *malaiyandilm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nucleic Acid Therapeutic Delivery (NATD).

Date: March 12, 2024.

Time: 9:00 a.m. to 6:00 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: Jingwu Xie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8625, *jingwu.xie@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurological and Neuropsychological Injuries and Disorders.

Date: March 12, 2024.

Time: 9:00 a.m. to 8:00 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: Todd Everett White, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3962, *todd.white@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Neuroscience and Substance use.

Date: March 12, 2024.

Time: 12:00 p.m. to 5:00 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: Anne-Sophie Marie Lucie Wattiez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4642, *anne-sophie.wattiez@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology, and Trauma.

Date: March 13, 2024.

Time: 10:00 a.m. to 6:00 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: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Epidemiology and Population Sciences.

Date: March 13–14, 2024.

Time: 10:00 a.m. to 8:00 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: Rebecca I. Tinker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 435–0637, *tinkerri@csr.nih.gov*.

(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: February 6, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02696 Filed 2–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 1009 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 Eye Institute Special Emphasis Panel; BRAIN Initiative: New Concepts and Early-Stage Research for Recording and Modulation in the Nervous System (R21).

Date: March 19, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Dr., Bethesda, MD 20817.

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; Conference Grant Applications (R13).

Date: April 15, 2024.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Dr., Bethesda, MD 20817.

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Drive, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 5, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02653 Filed 2–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) Drug Testing Advisory Board (DTAB) will convene via web conference on March 5, 2024, from 10 a.m. EST to 12:45 p.m. EST.

The board will meet in open-session March 5, 2024, from 10 a.m. EST to 12:45 p.m. EST to hear presentations regarding proposed changes to the analyte table including fentanyl prevalence, fentanyl immunoassay updates, cost and benefits analysis and a summary of public comments received regarding the proposed changes to the HHS Drug Testing Panels.

Section 8105 of the Fighting Opioid Abuse in Transportation Act, included in the SUPPORT for Patients and Communities Act, required the Secretary to determine whether it is justified, based on the reliability and cost-effectiveness of testing, to revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs to include fentanyl. Section 8105 additionally required the Secretary to consider whether to include any other drugs or other substances listed in Schedule I and II of Controlled Substances Act (CSA). Norfentanyl is a metabolite of fentanyl. Because it is also an immediate precursor used in the illicit manufacture of fentanyl, it is a Schedule II substance under the CSA.

Fentanyl is involved in a large proportion of overdose deaths in the United States and is therefore an important public safety concern. Furthermore, fentanyl is increasingly used as a stand-alone substance, not in conjunction with heroin and other substances. According to the National Forensic Laboratory Information System (NFLIS) 2022 report, fentanyl was the 3rd most frequently identified drug and accounted for 13.81% of all drugs reported by forensic laboratories.[1] Norfentanyl is an important component of identifying people who use fentanyl when urine is the specimen matrix. Fentanyl has been detected in oral fluid in patients receiving pain management

[1] National Forensic Laboratory Information System (NFLIS). (2022). *NFLIS-Drug 2022 Annual Report*. U.S. Department of Justice, Drug Enforcement Agency, Diversion Control Division. *2022 NFLIS-Drug Annual Report.pdf.*

services, overdose cases, and driving under the influence of drugs (DUID) cases. Information provided by HHS-certified laboratories in 2023 indicated that a majority (84%) of the laboratories analyzed non-regulated workplace specimens for fentanyl and/or norfentanyl, and that all had the ability to analyze urine specimens for fentanyl with sufficiently sensitive detection limits using commercially available immunoassay kits and confirmatory test instrumentation commonly used in HHS-certified laboratories.

Proposed addition to HHS Drug Testing Panels as listed below:

Urine analyte	Initial test cutoff	Confirmation cutoff
Fentanyl	1 ng/mL	1.0 ng/mL.
Norfentanyl	.....	1.0 ng/mL.

Oral fluid analyte	Initial test cutoff	Confirmation cutoff
Fentanyl	1 ng/mL	1.0 ng/mL.

The Department plans to remove MDA and methylenedioxy-methamphetamine (MDMA) from the drug testing panel, because the number of positive specimens reported by HHS-certified laboratories does not support testing all specimens for MDA and MDMA in Federal workplace drug testing programs. Information provided to the Department through the NLCP in 2021 and 2022 shows the positivity rate for MDMA ranges from 0.001 to 0.003%, and a review of the results indicate that >25% of the positive specimens are likely agency blind samples. MDA has a lower positivity rate than MDMA and both have lower positivity rates than phencyclidine (PCP). SAMHSA also considered removing PCP but decided against this change. While PCP has an overall positivity rate nearly as low as MDMA, there are regional differences in positivity, with some areas of the country having much higher rates, so PCP remains a regulated test analyte. Because MDA and MDMA are Schedule I drugs, a Federal agency may test specimens for these analytes in accordance with Section 3.2 of the UrMG and OFMG (*i.e.,* on a case-by-case basis for reasonable suspicion or post-accident testing, or routinely with a waiver from the Secretary).

Meeting registration information can be completed at *https://snacregister.samhsa.gov/.* Web conference and call information will be sent after completing registration. Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees website, *https://www.samhsa.gov/about-us/advisory-councils/meetings,* or by contacting the Designated Federal Officer, Lisa Davis.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: March 5, 2024, from 10:00 a.m. EST to 12:45 p.m. EST: OPEN.

Place: Virtual.

To Submit Comments: Requests to make public comment during the public comment period of the March DTAB meeting must be made in writing at least 7 days prior to the meeting to the following email: *DFWP@samhsa.hhs.gov.*

Contact: Lisa S. Davis, M.S, Social Science Analyst, Center for Substance Abuse Prevention, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (240) 276–1440, Email: *Lisa.Davis@samhsa.hhs.gov.*

Anastasia Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2024–02640 Filed 2–8–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2024–0006; OMB No. 1660–0110]

Agency Information Collection Activities: Proposed Collection; Comment Request; Nonprofit Security Grant Program (NSGP) Investment Justification & NSGP Prioritization Tracker

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of extension and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Nonprofit Security Grant Program (NSGP). The NSGP provides funding support for security-related enhancements to nonprofit organizations that are at high risk of a terrorist or other extremist attack.

DATES: Comments must be submitted on or before April 9, 2024.

ADDRESSES:

To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2024–0006. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Silveira, Branch Chief, FEMA Grant Programs Directorate, Preparedness Grants Program, 202–786–9598 *mark.silveira@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The collection of information for the Nonprofit Security Grant Program is mandated by sections 2003 and 2004 of the *Homeland Security Act of 2002* (6 U.S.C. 604), as amended by section 101, Title I of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (Pub. L. 110–053). These sections mandate that applicants submit plans to describe the proposed division of responsibilities and distribution of funding among the local and tribal government in the high-risk urban area; mandate that applicants submit information in support of the application as the Administrator may reasonably require; mandate that applicants submit their application to each State for review before submission of such application to the Department; and delineate and describe the actions Governors must take if deeming that an application is inconsistent with their States' Homeland Security Strategy.

This program is designed to promote coordination and collaboration in emergency preparedness activities among public and private community representatives, State, and local government agencies.

Collection of Information

Title: FEMA Preparedness Grants: Nonprofit Security Grant Program (NSGP).

Type of Information Collection: Extension of a currently approved information collection.

OMB Number: 1660–0110.

FEMA Forms: FEMA Form FF–207–FY–21–115 (formally 089–25), NSGP Investment Justification; FEMA Form FF–207–FY–21–114 (formerly 089–24), NSGP Prioritization of Investments Tracker.

Abstract: The Nonprofit Security Grant Program provides funding support for security related enhancements to nonprofit organizations that are at high risk of a terrorist or other extremist attack. The program seeks to integrate the preparedness activities of nonprofit organizations that are at high risk of a terrorist or other extremist attack with broader state and local preparedness efforts. The NSGP Investment Justification summarizes the nonprofit organization's mission, vulnerability assessment, and proposed project(s) details. The Prioritization of Investments Tracker is for State Administrative Agencies to use to prioritize which NSGP subapplicants/projects are recommended for funding.

Affected Public: State, Local or Tribal Governments; Not for Profits.

Estimated Number of Respondents: 6,056.

Estimated Number of Responses: 6,056.

Estimated Total Annual Burden Hours: 24,840.

Estimated Total Annual Respondent Cost: $807,221.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $354,515.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–02626 Filed 2–8–24; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet virtually on Monday, April 22, 2024. The meeting will be open to the public.

DATES: The meeting will take place on Monday, April 22, 2024, 2 p.m. to 4 p.m. Eastern Daylight Time (EDT). Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the virtual conference should contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business on April 12, 2024, to obtain the call-in number and access code for the April 22, 2024, virtual meeting. For more information on services for individuals with disabilities or to request special assistance, contact Deborah Gartrell-Kemp as soon as possible. The Board is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Participants seeking to have their comments considered during the meeting should submit them in advance or during the public comment segment. Comments submitted up to 30 days after the meeting will be included in the public record and may be considered at the next meeting. Comments submitted in advance must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Electronic Delivery:* Email Deborah Gartrell-Kemp at *Deborah.Gartrell-Kemp@fema.dhs.gov* no later than April 12, 2024, for consideration at the April 22, 2024 meeting.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the Docket ID for this action. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to view the Privacy and Security Notice via a link on the homepage of *https://www.regulations.gov/.*

Docket: For access to the docket and to read background documents or comments received by the National Fire Academy Board of Visitors, go to *https://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2008–0010'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.''

FOR FURTHER INFORMATION CONTACT:

Designated Federal Officer: Eriks Gabliks, telephone (301) 447–1308, email *Eriks.Gabliks@fema.dhs.gov.*

Logistical Information: Deborah Gartrell-Kemp, telephone (301) 447–7230, email *Deborah.Gartrell-Kemp@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board will meet virtually on Monday, April 22, 2024. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. ch. 10.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine

whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

On Monday, April 22, 2024, there will be four sessions, with deliberations and voting at the end of each session, as necessary:

1. The Board will discuss United States Fire Administration Data, EMS, Research, Prevention and Response.
2. The Board will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2024 and beyond Budget Request/Budget Planning.
3. The Board will deliberate and vote on recommendations on Academy program activities to include developments, deliveries, staffing, admissions, and strategic plan.
4. There will also be an update on the Board of Visitors Subcommittee Groups for the Professional Development Initiative Update and the National Fire Incident Report System.

There will be a 10-minute comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated following the last call for comments. Contact Deborah Gartrell-Kemp to register as a speaker. Meeting materials will be posted by April 12, 2024, at *https://www.usfa.fema.gov/nfa/about/board-of-visitors.html.*

Eriks J. Gabliks,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2024–02628 Filed 2–8–24; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6442–N–01]

Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program, and Other Programs, Fiscal Year 2024; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development, HUD.

ACTION: Notice of Revised Fiscal Year (FY) 2024 Fair Market Rents (FMRs).

SUMMARY: This notice updates the FY 2024 FMRs for one area based on new survey data.

DATES: The revised FY 2024 FMRs for this one area are effective on March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Bibler, Director, Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, HUD Headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410, Department of Housing and Urban Development, telephone (202) 402–6057. Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 (toll-free), email the Program Parameters and Research Division via *pprd@hud.gov,* or access the information on the HUD USER website: *http://www.huduser.gov/portal/datasets/fmr.html.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: On August 31, 2023, HUD published the FY 2024 FMRs, requested comments on the FY 2024 FMRs, and outlined procedures for requesting a reevaluation of an area's FY 2024 FMRs (88 FR 60223). This notice revises FY 2024 FMRs for one area based on data provided to HUD.

I. Revised FY 2024 FMRs

The updated FY 2024 FMRs appear in the following table. The FMRs are based on a survey conducted by the area public housing agencies (PHAs) and reflect the estimated 40th percentile rent levels trended to FY 2024.

The FMRs for the affected area are revised as follows:

2024 Fair Market Rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Urban Honolulu, HI MSA	$1,668	$1,824	$2,388	$3,365	$4,052

HUD has published these revised FMR values on the HUD USER website at: *http://www.huduser.gov/portal/datasets/fmr.html.* In addition, HUD has updated the FY 2024 Small Area FMRs (SAFMRs) for metropolitan areas with revised FMRs, which can be found at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.* HUD has also updated the 50th percentile rents for all affected FMR areas, which are published at *http://www.huduser.gov/portal/datasets/50per.html.*

II. Environmental Impact

This notice involves the establishment of Fair Market Rent schedules and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Solomon Greene,

Principal Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2024–02666 Filed 2–8–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0019; FXIA16710900000–245–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by March 11, 2024.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2024–0019.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2024–0019.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2024–0019; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov*.Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Milwaukee County Zoo, Milwaukee, WI; Permit No. PER1012710

The applicant requests a permit to import one wild jaguar (*Panthera onca*) from Belize Zoo, Belize, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: University of New Orleans, New Orleans, LA; Permit No. PER5817086

The applicant requests a permit to import hair and blood samples collected from wild lowland tapir (*Tapirus terrestris*) for the purpose of scientific research. This notification is for a single import.

Applicant: Memphis Zoo, Memphis, TN; Permit No. PER3939197

The applicant requests a permit to import two captive-bred Sumatran tigers (*Panthera tigris sumatrae*) from Taronga Conservation Society Australia in Mosman, Australia, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Audubon Nature Institute, New Orleans, LA; Permit No. PER0054404

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Panamanian golden frog	*Atelopus varius zeteki.*
Fiji banded iguana	*Brachylophus fasciatus.*
False gharial (Tomistoma)	*Tomistoma schlegelii.*
Komodo dragon	*Varanus komodoensis.*
Amur leopard	*Panthera pardus.*
African wild dog	*Lycaon pictus.*
Sumatran orangutan	*Pongo abelii.*
Asian elephant	*Elephas maximus.*
North Sulawesi babirusa	*Babyrousa celebensis.*
Swamp deer (barasingha)	*Cervus duvauceli.*
Bali myna (Rothschild's [myna]) starling	*Leucopsar rothschildi.*
Blue-throated macaw	*Ara glaucogularis.*
Mandrill	*Mandrillus (=Papio) sphinx.*

Applicant: Louisiana State University, Baton Rouge, LA; Permit No. PER6612201

The applicant requests the renewal of their permit to export and re-import non-living museum/herbarium specimens of endangered and threatened species (excluding animals) previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2024–02668 Filed 2–8–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2014–0048; [FXES11140600000–245–FF06E22000]

R-Project Transmission Line, Nebraska; Revised Proposed Habitat Conservation Plan for the American Burying Beetle and Draft Supplemental Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of documents related to an application for an incidental take permit (ITP) under the Endangered Species Act. The Nebraska Public Power District (NPPD) is applying for a permit associated with incidental take of the American burying beetle (*Nicrophorus americanus;* ABB) during construction, operation, and maintenance of a new transmission line in central Nebraska (known as the R-Project). NPPD has submitted a new application for a 50-year ITP, including a revised proposed habitat conservation plan (revised HCP) and associated documents. We previously issued an ITP for the R-Project and the applicant's earlier HCP to NPPD in 2019. However, that ITP was remanded by a Court. In response to the Court remand, NPPD has prepared the revised HCP as part of the new ITP application. In accordance with the National Environmental Policy Act, we now announce the availability of the draft supplemental EIS (draft SEIS) associated with the revised HCP. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: *Submitting Comments:* We must receive your written comments on or before April 9, 2024. Comments submitted online at *https://www.regulations.gov/* must be received by 11:59 p.m. eastern time on April 9, 2024.

Public Meetings: During the public comment period, the Service will hold two in-person public meetings in Nebraska, weather permitting, and one virtual public meeting.

- *In-person meetings:*
  - Tuesday, February 27, 2024, from 5:00 to 7:00 p.m. CST; North Platte, Nebraska, The Prairie Arts Center.
  - Thursday, February 29, 2024, from 1:00 to 3:00 p.m. CST; Broken Bow, Nebraska, Mid Plains Community College.
- *Virtual meeting:* Thursday, March 7, 2024, from 5:00 to 7:00 p.m. CST.

Additional information on the public meetings will be posted at least one week prior on our website, at *https://fws.gov/office/nebraska-ecological-services.* Following the virtual public meeting, an on demand recording of the virtual public meeting will be available for viewing by the public online, at *https://fws.gov/office/nebraska-ecological-services,* and at the following locations:

- North Platte Public Library, 120 W 4th St., North Platte, NE 69101.
- Thomas County Library, 501 Main St., Thedford, NE 69166.
- Taylor Public Library, 106 William St., Taylor, NE 68879.

ADDRESSES: *Obtaining Documents:* The draft SEIS and revised HCP, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R6–ES–2014–0048 at *https://www.regulations.gov.* Copies of the documents will be available for viewing at the three libraries with the recording of the virtual public meeting (see **DATES**).

Submitting Comments: You may submit comments by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R6–ES–2014–0048.

• *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2014–0048; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

• *Public Meetings:* Comments will also be accepted at the in-person and virtual public meetings (see **DATES**).

Reasonable Accommodations

Persons needing reasonable accommodations to attend and participate in the public meetings should contact the Service's Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) as soon as possible. To allow sufficient time to process requests, please make contact no later than 1 week before the desired public meeting. Information and documents are available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT: Jeff Runge, by phone at (308) 382–6468 or by email at *jeff_runge@fws.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TTD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of documents related to an application for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The Nebraska Public Power District (NPPD) is applying for a 50-year permit associated with incidental take of the American burying beetle (*Nicrophorus americanus;* ABB) during construction, operation, and maintenance of a new transmission line in central Nebraska (known as the R-Project). NPPD submitted an application for an ITP covering the take of ABB to the Service. If granted, the ITP would authorize incidental take of ABB resulting from the revised HCP's covered activities, as well as incidental take resulting from activities carried out as part of the revised HCP's conservation strategy. We invite comment on the documents from the public and local, State, Tribal, and Federal agencies.

Background

Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The ESA defines ''take'' to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. We may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA and its implementing regulations (50 CFR 17.22(b) and 17.32(b)) provide for authorizing incidental take of listed species. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The Service issued a **Federal Register** notice of availability for the original ITP application, final habitat conservation plan (final HCP), and final environmental impact statement (final EIS) for the R-Project on February 8, 2019 (84 FR 2900) and issued the ITP on June 12, 2019. However, on June 17, 2020, the U.S. District Court for the District of Colorado issued a decision on a lawsuit challenging the Service's decision to issue this ITP under the ESA, the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), and the National Historic Preservation Act (16 U.S.C. 470) (*Oregon-California Trails Association* v. *Walsh,* 1:19 cv 01945–WJM, D. Colo 2020). In its ruling, the Court vacated and remanded the ITP to the Service for further proceedings consistent with the Court's order. In response to the Court vacating the ITP, NPPD prepared the R-Project Transmission Line Revised Habitat Conservation Plan (revised HCP) and submitted the ITP application. We published a **Federal Register** notice of intent to prepare a SEIS for the R-Project revised HCP on November 18, 2022 (87 FR 69294).

The Service has prepared a draft SEIS to address the issues identified by the Court and to address new information and changed circumstances, as relevant, to the R-Project revised HCP and ITP application proposed by NPPD. The ITP application submitted by NPPD addresses the potential take of ABB associated with the revised HCP's covered activities associated with the R-Project.

Project Information

The R-Project is a proposed 226-mile transmission line that would start at NPPD's Gerald Gentleman Substation near Sutherland, Nebraska; go north to a 345-kV substation located in Thomas County near Thedford; and then extend eastward to another 345-kV substation sited in Holt County, and interconnect with Western Area Power Administration's existing Fort Thompson-to-Grand Island 345-kV line that is located on the eastern border of Holt County, Nebraska.

The ITP, if issued, would authorize take of the ABB that may occur incidental to the covered activities, which include components of the construction, operation, and maintenance of the R-Project and implementation of the revised HCP's conservation strategy. The revised HCP describes the covered activities, the anticipated impacts to ABB from the covered activities, and the measures that NPPD will implement to minimize and mitigate such impacts. The revised HCP also includes avoidance and minimization measures for ESA-listed species that are not covered species but may be present in the revised HCP Study Area (*i.e.,* ESA-listed species for which incidental take is not being requested because take will be avoided). The revised HCP also describes the environmental setting and biological resources present in the study area, the biological goals and objectives of the revised HCP, monitoring, adaptive management, and funding assurances.

National Environmental Policy Act Background

The potential issuance of the ITP is considered a Federal action under NEPA, and we determined that preparation of a supplemental EIS to analyze the potential impacts on the human (biological, physical, social, and economic) environment caused by the R-Project and implementation of the revised HCP was appropriate. The Draft SEIS also addresses the issues identified in the court remand issued on June 17, 2020. We prepared the Draft SEIS in accordance with the requirements of NEPA, with input from cooperating organizations and agencies, including History Nebraska, the Nebraska Game and Parks Commission, the National Park Service, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. We analyzed four alternatives in the draft SEIS, including the issuance of the ITP and implementation of the revised HCP (proposed action), a no action alternative, and two action alternatives. The action alternatives include construction of the R-Project and implementation of the HCP, with the following modifications: Alternative A reflects the proposed action from the final HCP and FEIS, and Alternative B reflects the use of steel monopole construction only.

We are seeking public input on the NEPA analysis in the Draft SEIS, including the associated impacts of the alternatives, as well as comments on the draft revised HCP submitted with the ITP application. We will respond to all substantive comments received during the comment period in the Final Supplemental EIS. No sooner than 30 days after the Final SEIS publication, we will issue a NEPA Record of Decision (ROD).

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection online in Docket No. FWS–R6–ES–2014–0048, at *https://www.regulations.gov/*.)

Next Steps and Decision To Be Made

We will make a permit decision based on the statutory and regulatory criteria of the ESA. This decision will also be informed by the data, analyses, and findings in the EIS and public comments received on the Draft SEIS and HCP. We will document our determinations in an ESA section 10 findings document, ESA section 7 biological opinion, and NEPA ROD developed at the conclusion of the ESA and NEPA compliance processes. If we find that all requirements for issuance of the ITP are met, we will issue the requested permit, subject to terms and conditions deemed necessary or appropriate to carry out the purposes of ESA Section 10.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Marjorie Nelson,

Acting Assistant Regional Director, Ecological Services, Mountain-Prairie Region.

[FR Doc. 2024–02490 Filed 2–8–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A51010.999900]

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2025 or Calendar Year 2025

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a deadline for Indian tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2025 or calendar year 2025.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2024.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 3624–MIB, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vickie Hanvey, Office of Self Governance, *Vickie.Hanvey@bia.gov*; Telephone (918) 931–0745. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Public Law 103–413), as amended by the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination Act of 2019–2020 and section 402(b)(1)(A) of the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS Act), the Secretary, acting through the Director of the Office of Self-Governance, may select not more than 50 new Indian Tribes per year from those eligible tribes. The application deadline listed in the **DATES** section is predicated upon providing the parties enough time to complete funding agreement negotiations in advance of the FY or CY start date of the 2025 funding agreement. The Act mandates that copies of the funding agreements be sent at least 90 days before the proposed effective date to each Tribe that is served by the Bureau of Indian Affairs' agency that is serving the Tribe that is a party to the funding agreement. Initial negotiations with a Tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 need to be signed and submitted by October 1.

Purpose of Notice

The regulations at 25 CFR 1000.10 through 1000.31 have been modified by section 201 of the newly enacted PROGRESS Act as follows:

Section 201. Definitions; reporting and audit requirements; application of programs.

To be eligible to participate in self-governance, an Indian Tribe shall:

(1) successfully complete the planning phase described in subsection (d);

(2) request participation in self-governance by resolution or other official

action by the Tribal governing body; and

(3) demonstrate for the 3 fiscal years preceding the date on which the Tribe requests participation, fiscal stability and financial management capability as evidenced by the Indian Tribe having no uncorrected significant and internal audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

An Indian Tribe seeking to begin participation in self-governance shall complete the planning phase. The planning phase shall:

(A) be conducted to the satisfaction of the Indian Tribe; and

(B) include:

(i) legal and budgetary research; and

(ii) internal Tribal governing planning, training, and organizational preparation.

Applicants should be guided by the referenced requirements in preparing their applications to begin participation in the tribal self-governance program in fiscal year 2025 and calendar year 2025. Copies of these requirements may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2025 or calendar year 2025 must respond to this notice, except for those tribes/consortia which are one of the 142 tribal entities with signed self-governance agreements.

Information Collection

This information collection is authorized by OMB Control Number 1076–0143, Tribal Self-Governance Program, which expires February 28, 2026.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–02639 Filed 2–8–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500160505]

Notice of Realty Action: Application by Randall L. Christian and Lynn L. Christian for Conveyance of Federally Owned Mineral Interests in Lake County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is processing an application for the conveyance of federally owned mineral interests in a 640-acre parcel of land located in Lake County, Oregon, to the surface owners, Randall L. Christian and Lynn L. Christian.

DATES: Interested persons may submit written comments to the BLM on or before March 25, 2024.

ADDRESSES: Submit written comments to the BLM Lakeview Field Office, 1301 S. G Street, Lakeview, OR 97630.

FOR FURTHER INFORMATION CONTACT: Jami Ludwig, Field Manager, BLM Lakeview, at the address listed earlier, by telephone at (541) 947–6102, or email at *jludwig@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The BLM is processing an application under section 209 of the Federal Land Policy and Management Act (FLPMA) to convey federally owned mineral interests that total 640 acres situated in Lake County, Oregon. The location of the federally owned mineral interests proposed for conveyance is identical in location to the privately owned surface interest of the applicant, and is described as follows:

Willamette Meridian, Oregon

T. 25 S., R. 14 E., sec. 25.

The area described contains 640 acres, according to the official plat of the survey of the said land, on file with the BLM.

Under certain conditions, section 209(b) of FLPMA authorizes the conveyance of the federally owned mineral interests in land when the surface estate is not federally owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) The reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and such development is a more beneficial use of the land than mineral development.

The applicant has deposited a sufficient sum of funding to cover the administrative costs of processing the application, including, but not limited to, the cost of the mineral potential report.

Subject to valid existing rights, on February 9, 2024 the federally owned mineral interests in the land described above is hereby segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will terminate upon: (1) Issuance of a patent or other document of conveyance of the mineral interests; (2) Final rejection of the application; or (3) February 9, 2026, whichever occurs first.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2720.1–1(b))

James Forbes,

Lakeview District Manager.

[FR Doc. 2024–02733 Filed 2–8–24; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500177759]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the National Park Service, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on March 11, 2024.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, P.O. Box 151029, Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT: David W. Ginther, Chief Cadastral Surveyor for Colorado, telephone: (970) 826–5064; email: *dginther@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The plat, in two sheets, incorporating the field notes of the dependent resurvey in Township 6 North, Range 75 West, Sixth Principal Meridian, Colorado, was accepted on November 27, 2023.

The plat and field notes of the dependent resurvey and survey in partially surveyed Township 5 North, Range 73 West, Sixth Principal Meridian, Colorado, were accepted on December 27, 2023.

The plat, in two sheets, incorporating the field notes of the dependent resurvey in Township 11 North, Range 85 West, Sixth Principal Meridian, Colorado, was accepted on January 11, 2024.

The plat incorporating the field notes of the dependent resurvey in Township 2 North, Range 84 West, Sixth Principal Meridian, Colorado, was accepted on January 19, 2024.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have

been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. ch. 3)

David W. Ginther,

Chief Cadastral Surveyor.

[FR Doc. 2024–02699 Filed 2–8–24; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–RPB—NPS00; PPMRSNR1Y.NM0000; PPWONRADE1; OMB Control Number 1024–NEW]

Agency Information Collection Activities; National Park Service Scenic Valuation Study

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 9, 2024.

ADDRESSES: Written comments on this information collection request (ICR) can be sent to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, (MS 244) Herndon, VA 20171, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number ''1024–NEW (Scenic Valuation)'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Heather Best, Economist, at *heather_best@nps.gov* (email) or 970–420–3153 (telephone). Please reference OMB Control Number 1024–NEW (Scenic Valuation) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary for the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

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

Abstract: The National Park Service (NPS) is authorized by 54 U.S.C. 100701 and the System Unit Resource Protection Act (54 U.S.C. 100721) to collect information that can be used to assess the economic value of lost or damaged resources. Currently, the NPS does not have any valuation estimates for quantifying the loss of scenic resources due to intentional or accidental actions. The NPS Environmental Quality Division will request approval to conduct a short on-site survey followed by a mail-back survey to determine the economic value associated with the preservation (avoided loss) of scenic resources within NPS units from intentional or accidental loss. Data from the study will be used by the NPS to provide parks with estimates of economic losses to park visitors associated with damages to park scenic resources.

Title of Collection: National Park Service Scenic Valuation Study.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 5,326 (3360 on-site respondents, 756 non-response respondents,1210 mail-back survey respondents).

Estimated Completion Time per Response: Varies between 2 and 15 minutes (5 min. on-site survey, 2 min. non-response survey, 15 min. mail-back survey).

Total Estimated Number of Annual Burden Hours: 608 hrs. (280 hrs. on-site survey; 25 hrs. non-response survey; 303 hrs. mail-back survey).

Respondent's Obligation: Voluntary.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2024–02725 Filed 2–8–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–NEW; Docket ID: BOEM–2024–0007]

Agency Information Collection Activities; Cook Inlet Recreation and Tourism Survey

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes a new information collection request (ICR).

DATES: Comments must be received by BOEM no later than April 9, 2024.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference Office of Management and Budget (OMB) Control Number 1010–NEW in the subject line of your comments. You may also view and comment on the ICR and its related documents by searching the docket number BOEM–2024–0007 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov,* or by telephone at 703–787–1025. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside of the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM solicits comments on the proposed ICR described below. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available.

In order for BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Note that BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

Even if BOEM withholds your information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA). If your comment is requested under FOIA, your information will only be withheld if BOEM determines that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

BOEM protects proprietary information in accordance with FOIA and the Department's implementing regulations.

Title of Collection: Cook Inlet Recreation and Tourism Survey.

Abstract: Natural resource-based recreation in the marine and coastal environments of Cook Inlet, Alaska, offers numerous economic, cultural, environmental, health, educational, and quality-of-life benefits. Recreation and tourism play a vital role in supporting local economies, preserving cultural heritage, promoting environmental stewardship, and improving the well-being of both residents and visitors. The Outer Continental Shelf Lands Act charges BOEM with managing the energy and mineral resources of the Outer Continental Shelf (OCS) for protection of marine and coastal environments that support human lives and society. Additionally, to ensure the scientific integrity of its National Environmental Policy Act (NEPA) assessments, BOEM requires reliable data and information to evaluate the extent to which its activities adversely affect the human environment (40 CFR 1502.23). As defined in 40 CFR 1508.1, the effects on the human environment evaluated in NEPA assessments include social and economic impacts, as well as the ecological, aesthetic, historic, cultural, and health effects.

BOEM intends to conduct a research study of outdoor recreation and tourism in the Cook Inlet OCS Planning Area and adjacent coastal areas (*i.e.,* the study area). BOEM seeks updated baseline information on the nature, distribution, and seasonality of outdoor recreation and tourism in the study area, and the relative preferences and values for these activities. BOEM would use this information to determine how stakeholders and the recreational and tourism economy may be affected by potential future oil, gas, renewable energy, and other energy exploration and development activities. This study would help BOEM identify any appropriate mitigation strategies to address potential adverse effects of its activities on recreation and tourism in the study area. Altogether, the study would enable BOEM to develop more rigorous and thorough environmental analyses during any NEPA processes related to future Cook Inlet OCS energy and mineral activities.

Specifically, this information collection would involve primary data collection (following ICR approval by OMB) to elicit information on: (a) activities and attributes contributing to the value of recreational experiences; (b) expenditures related to recreational activities; and (c) how these things differ across the region and different user groups (residents and visitors). The primary research would provide meaningful insight regarding the influence of energy development on recreation and tourism (*e.g.,* by comparing areas in the Upper Cook Inlet with existing energy infrastructure to other areas in Cook Inlet without any energy infrastructure). The study also would document user attitudes regarding how recreation and tourism may be affected by different energy development-related activities (*e.g.,* noise, space use conflicts, spill risks, aesthetic effects of infrastructure, and vessel traffic).

The study's primary research design would include three components: focus groups, cognitive interviews, and onsite intercept surveys. The focus groups and cognitive interviews would be used to develop and pretest a draft survey, first in a group setting (focus groups) and then in a one-on-one interview setting (cognitive interviews). The final onsite intercept surveys would be administered at approximately two dozen sites in the study area during the primary recreation season from May to October. Potential respondents would be approached as they arrive to or depart from a site and invited to fill out the survey.

1. Focus Groups—To inform survey development, BOEM would conduct focus groups with recreationists in the study area. The recreationists would identify their preferred coastal- and marine-related recreation sites; why they choose their preferred sites; the differences they perceive between sites near existing energy infrastructure (in portions of the Upper Cook Inlet) to sites that are not near any energy infrastructure, and the recreational quality of those sites; what they like about their recreational experiences around Cook Inlet; what they do not like about the Cook Inlet sites they avoid; how offshore energy exploration and development activities may affect their recreation site choice and experience; and other related issues.

2. Cognitive Interviews—The findings of the focus groups would be used to develop a draft survey instrument. BOEM would then conduct 25 cognitive interviews to test and refine the survey. Specifically, the interviews would test if the survey is working as expected. Factors relevant to that determination include evaluating if questions are easily understood, how respondents formulate their answers, whether response categories are exhaustive and mutually exclusive, and other similar issues.

3. Onsite Intercept Surveys—BOEM expects the final survey would cover topics such as recreational destinations, frequency of use in the past 12 months, recreation trip-related expenditures, preferences for recreation site attributes, attitudes about and recreation behavioral responses to offshore energy exploration and development, and demographics. Surveys would be administered at a range of sites, including at some hub cities, smaller communities, public lands, visitor centers, seaports, airports, and marinas. Because the surveys would be administered between May and October, a potential respondent may be intercepted on more than one occasion. If a respondent clarifies that they have already taken the survey, they would not be asked to take it again.

OMB Control Number: OMB Control Number 1010–NEW.

Respondents/Affected Public: Participants in the focus groups and cognitive interviews would be members of the public who have engaged in coastal or marine recreation in the study area in the past year. Respondents to the surveys would be members of the public engaged in coastal or marine recreational activities in the study area. Members of the public would consist of a mixture of local, State, and out-of-State residents.

Total Estimated Number of Annual Responses: 565: 40 focus group participants, 25 cognitive interview participants, and 500 completed surveys. The focus group questions would be semi-structured and open-ended. Survey questions would be primarily discrete choice and closed-ended with minimal open-ended questions.

Estimated Completion Time per Response: 90 minutes per focus group participant, 45 minutes per cognitive interview participant, and 12 minutes per survey participant. (BOEM anticipates that the survey would comprise approximately 30 questions with each question taking about 20–30 seconds to complete on average.)

Total Estimated Number of Annual Burden Hours: 60 hours for focus groups, 18.75 hours for cognitive interviews, and 100 hours for survey; total of 178.75 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Non-hour Burden Cost: There is no non-hour cost burden associated with this collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2024–02694 Filed 2–8–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–684 and 731–TA–1597 (Final)]

Gas Powered Pressure Washers 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 gas powered pressure washers from China, provided for in subheadings 8424.30.90 and 8424.90.90 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 subsidized by the government of China.[2] [3]

Background

The Commission instituted these investigations effective December 30, 2022, following receipt of petitions filed with the Commission and Commerce by FNA Group, Inc., Pleasant Prairie, Wisconsin. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of gas powered pressure washers from Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)) and that imports of gas powered pressure washers from China were being subsidized by the government of China within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(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 June 22, 2023 (*88 FR 40865*). The Commission conducted its hearing through written testimony and video conference on August 24, 2023. All persons who requested the opportunity were permitted to participate.

The investigation schedules became staggered when Commerce did not postpone its final determination for the antidumping duty investigation regarding gas powered pressured washers from Vietnam, while it did postpone the final determinations for the antidumping and countervailing duty investigations regarding gas powered pressure washers from China. On October 13, 2023, the Commission issued a final affirmative determination in its antidumping duty investigation of gas powered pressure washers from Vietnam (88 FR 71885, October 18, 2023). Following notification of final determinations by Commerce that imports of gas powered pressure washers from China were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a))

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 88365 (December 21, 2023), 88 FR 88578 (December 22, 2023).

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping or countervailing duty orders on gas powered pressure washes from China.

and subsidized by the government of China within the meaning of section 705(a) of the Act (19 U.S.C. 1671d(a)), notice of the supplemental scheduling of the final phase of the Commission's antidumping and countervailing duty investigations 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** of January 2, 2024 (*89 FR 90*).

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 February 5, 2024. The views of the Commission are contained in USITC Publication 5488 (February 2024), entitled *Gas Powered Pressure Washers from China: Investigation Nos. 701–TA–684 and 731–TA–1597 (Final).*

By order of the Commission.

Issued: February 5, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–02627 Filed 2–8–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0018]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; FOIAXpress/FOIA Public Access Link

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 9, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0473, *Raechel.Horowitz@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: This information collection is optional and voluntary. FOIAXpress is a software program that provides the EOIR Freedom of Information Act (FOIA) Program with a single, unified application for managing the entire lifecycle of FOIA requests and appeals. The Public Access Link (PAL) is a secure web-based application that provides an online platform for the public to file a FOIA request with EOIR. The PAL is integrated directly with FOIAXpress and offers a centralized location for EOIR to receive online FOIA requests, deliver responsive records, communicate with requesters, collect fees, if applicable, and provide access to released documents in a public reading room in accordance with agency proactive disclosure guidelines.

EOIR has developed several changes to the PAL platform to improve the Agency's FOIA request and response process and to reduce the burden on members of the public that submit FOIA requests to EOIR. These developments include the following substantive changes: modifying the request form to display only those data fields relevant to the type of FOIA request selected by the requestor; changing the date range field from voluntary to mandatory; prompting an individual that requests a Record of Proceeding (ROP) to provide on a voluntary basis the charging document date and a record subject's alias, parents' names, port and date of entry, and place and date of proceeding; and removing data fields that EOIR determined were no longer necessary for the Agency to fulfill a FOIA request. In addition, EOIR has identified the following non-substantive changes: modifying the appearance and formatting of the PAL request form; updating links to web pages and resources embedded throughout the form; revising existing form instructions for clarity; and reorganizing some data fields under different sections of the PAL form. EOIR intends these developments to reduce the public's burden in completing the PAL form and to improve the Agency's FOIA request and response process, and the public's experience with that process. These enhancements include: assisting requestors in making the most appropriate selection for the type of FOIA request; enhancing the logical direction with which a requestor completes the form; and tailoring the information solicited from the requestor to generate more precise requests, thereby reducing processing time.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* FOIAXpress/FOIA Public Access Link.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Individuals and households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 24,804 respondents will complete each form within approximately 3 minutes each.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated total annual burden hours for this collection is 1,240 annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
Completing the form (individuals)	24,804	1/annually	24,804	3	1,240

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: February 5, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–02632 Filed 2–8–24; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employer's First Report of Injury or Occupational Disease; Employer's Supplementary Report of Accident or Occupational Illness

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before March 11, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: Forms LS–202 and LS–210 are used to report injuries, periods of disability, and medical treatment under the Longshore and Harbor Workers' Compensation Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 12, 2023 (88 FR 62603).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Employer's First Report of Injury or Occupational Disease; Employer's Supplementary Report of Accident or Occupational Illness.

OMB Control Number: 1240–0003.

Affected Public: Private Sector—Businesses or other for-profits; Not-for-profit institutions.

Total Estimated Number of Respondents: 42,575.

Total Estimated Number of Responses: 43,039.

Total Estimated Annual Time Burden: 10,760 hours.

Total Estimated Annual Other Costs Burden: $611.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2024–02630 Filed 2–8–24; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

UL LLC: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of UL LLC, for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application. Additionally, OSHA proposes to add two test standards to the NRTL Program's List of Appropriate Test Standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 26, 2024.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however,

some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2009–0025). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Extension of comment period: Submit requests for an extension of the comment period on or before February 26, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that UL LLC, (UL) is applying to expand the current recognition as a NRTL. UL requests the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for initial recognition, as well as for expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *https://www.osha.gov/dts/otpca/nrtl/index.html.*

UL currently has fifty-five facilities (sites) recognized by OSHA for product testing and certification, with headquarters located at: UL LLC, 333 Pfingsten Road, Northbrook, Illinois 60062. A complete list of UL sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/ul.html.*

II. General Background on the Application

UL submitted an application, dated July 26, 2022 (OSHA–2009–0025–0059), to expand recognition to include three additional test standards. OSHA staff performed a detailed analysis of the application packet and other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1, below, lists the test standards found in UL's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 6420	Equipment Use for System Isolation and Rated as a Single Unit.
UL 6200 *	Controllers for Use in Power Production.
UL 62091 *	Low-Voltage Switchgear and Controlgear—Controllers for Drivers of Stationary Fire Pump.

* In this notice, OSHA also proposes to add these test standards to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standards to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to: (1) verify it represents a product category for which OSHA requires certification by a NRTL; (2) verify the document represents a product and not a component; and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standards in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add two new test standards to the NRTL Program's list of appropriate test standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA preliminarily determines that these test standards are appropriate test standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—STANDARDS OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 6200	Controllers for Use in Power Production.
UL 62091	Low-Voltage Switchgear and Controlgear—Controllers for Drivers of Stationary Fire Pump.

IV. Preliminary Findings on the Application

UL submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and related material preliminarily indicates that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of the test standards listed above for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of UL's application.

OSHA also preliminarily determined that the test standards listed above are appropriate test standards.

OSHA seeks public comment on these preliminary determinations.

V. Public Participation

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL and whether the test standard listed above is an appropriate test standard that should be included in the NRTL Program's List of Appropriate Test Standards. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2009–0025 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner and after addressing the issues raised by these comments, make a recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant UL's application for expansion of its scope of recognition and to add the test standards listed above to the NRTL Program's List of Appropriate Test Standards. The Assistant Secretary will make the final decision on granting the application and on adding the test standards listed above to the NRTL Program's List of Appropriate Test Standards. In making these decisions, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

VI. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020)), and 29 CFR 1910.7.

Signed at Washington, DC, on February 2, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–02629 Filed 2–8–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2024–015]

Freedom of Information Act (FOIA) Advisory Committee Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on March 5, 2024, from 10 a.m. to 1 p.m. EST. You must register by 11:59 p.m. EST March 3, 2024, to attend.

ADDRESSES: This meeting will be a virtual meeting. We will send access instructions for the meeting to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION:

Agendas and meeting materials: We will post all meeting materials, including the agenda, at *https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term.*

This meeting will be the eighth of the 2022–2024 committee term. The purpose of the meeting will be to hear reports from and consider any recommendations from each of the three subcommittees: Implementation, Modernization, and Resources.

Procedures: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2). If you wish to offer oral public comments during the public comments periods of the meetings, you must register in advance through Eventbrite *https://www.eventbrite.com/o/office-of-government-information-services-7515239993.* You must provide an email address so that we can provide you with information to access the meeting online. Public comments will be limited to three minutes per individual. We will also live-stream the meeting on the National Archives YouTube channel, *https://www.youtube.com/user/usnationalarchives,* and include a captioning option. To request additional

accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Merrily Harris,

Committee Management Officer.

[FR Doc. 2024–02732 Filed 2–8–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *travisd@arts.gov,* or call 202–682–5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:

FY25 Federal Advisory Committee on International Exhibitions (review of applications): This meeting will be closed.

Date and time: March 12, 2024; 2 p.m. to 4 p.m.

Dated: February 6, 2024.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2024–02693 Filed 2–8–24; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Awards and Facilities (A&F) hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Monday, February 12, 2024, from 1:00–2:00 p.m. Eastern.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's opening remarks about the agenda; Discussion of the Astro2020 Decadal Recommendations; Vote on proposed resolution.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2024–02707 Filed 2–6–24; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Service Contract Inventory; Notice of Availability

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The Division of Acquisition and Cooperative Support within the National Science Foundation (NSF) is publishing this notice to advise the public of the availability of its Fiscal Year (FY) 2023 Service Contracts Inventory Analysis Report.

FOR FURTHER INFORMATION CONTACT: Raymond McCollum, Policy Branch Chief, Division of Acquisition and Cooperative Support, National Science Foundation. Phone: 703–292–4225; email: *rmccollu@nsf.gov.*

SUPPLEMENTARY INFORMATION: NSF's FY 2023 Service Contract Inventory Analysis Report is included as part of a governmentwide service contract inventory. The inventory includes covered service contracts that were awarded in FY 2023. The NSF analyzes this data for the purpose of determining whether its contract labor is being used in an effective and appropriate manner and if the mix of federal employees and contractors in the agency is effectively balanced. The report does not include contractor proprietary or sensitive information.

The FY 2023 Service Contract Inventory Analysis Report is provided at the following link: *https://www.nsf.gov/bfa/dcca/contracts/index.jsp.*

Authority: 42 U.S.C. 1861, *et seq.*

Dated: February 2, 2024.

Raymond L. McCollum,

Policy Branch Chief, National Science Foundation.

[FR Doc. 2024–02656 Filed 2–8–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–0152; NRC–2024–0021]

Purdue University; License Renewal Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Acceptance for docketing; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application from Purdue University (Purdue or the applicant), to renew Special Nuclear Material (SNM) License Number 142 (SNM–142). The renewed license would authorize the applicant to continue to use SNM in various research operations, calibration, and testing at its campus in West Lafayette, Indiana. If the license renewal application is approved, the license would authorize Purdue to continue to possess and use SNM under NRC regulations for 10 years beyond its current license. Because the license application contains sensitive unclassified non-safeguards information (SUNSI) and safeguards information (SGI), an order imposes procedures to obtain access to SUNSI and SGI for contention preparation.

DATES: A request for a hearing or petition for leave to intervene must be filed by April 9, 2024. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI or SGI is necessary to respond to this notice must request document access by February 20, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0021 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0021. 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, at 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.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jenny Tobin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2328; email: *Jennifer.Tobin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated September 18, 2023 (ADAMS Package Accession No. ML23268A087), an application from Purdue to renew its license, SNM–142. Purdue is authorized to use SNM under 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' at its campus in West Lafayette for research operations, calibration, and testing. More specifically, Purdue may possess and use SNM for, among other things, activities associated with the study of thermal and mechanical properties of uranium dioxide (UO_2); activation analysis studies, instrument calibration, and other research projects as approved by the university's radiation safety committee using plutonium-beryllium (PuBe) sources; and activities associated with the Fast Breeder Blanket Facility.

The renewed SNM license would allow Purdue to continue licensed activities for 10 years. Purdue filed the original license renewal application on July 21, 2023, at least 30 days before the license's expiration date of September 25, 2023. This original application included incorrect security markings, leading Purdue to re-submit the application (including all of the enclosures) with the correct security markings by letter dated September 18, 2023. The NRC staff docketed the resubmitted application. Under 10 CFR 70.38(a), when a licensee files an application for renewal not less than 30 days before the expiration date of the existing license, the license will not expire until the Commission makes a final determination regarding the license renewal application. Although the original renewal request was incorrectly marked, Purdue submitted it at least 30 days before the expiration date. Therefore, pursuant to the timely renewal provisions in 10 CFR 70.38(a), Purdue is permitted to continue using its SNM in accordance with the existing SNM–142 license, pending final decision by the Commission on the license renewal application.

An NRC acceptance review of the revised application, dated December 13, 2023 (ADAMS Accession No. ML23324A448), found the application acceptable for a technical review. In its letter accepting the application for a technical review, the NRC included three observations related to information the NRC could potentially request during the technical review. These observations where that: (1) the application was not updated to include financial awareness of the Nuclear Energy Innovation and Modernization Act and the requirements therein; (2) the material control and accounting portions of the application included outdated regulatory citations; and (3) the radioactive waste management program at Purdue is tied to the NRC's broadscope license under 10 CFR part 33 and thus, the application should highlight what commitments are needed for the renewal of the part 70 SNM license. During the technical review, the NRC will evaluate the application for radiation safety, nuclear criticality safety, chemical safety, fire safety, security, decommissioning, decommissioning financial assurance, and material control/accountability. The NRC will document its findings in a safety evaluation report.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the renewal of the special nuclear materials license. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed within 60 days, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h), no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://;adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the RC website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the

internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically, why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the National Background Investigation Services e-App system, a secure website that is owned and operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $310.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address:

U.S. Nuclear Regulatory Commission, Office of Administration, ATTN: Personnel Security Branch, Mail Stop: TWFN–07D04M, 11555 Rockville Pike, Rockville, MD 20852

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4), as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2), the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide the requestor's full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to DCSA's adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: February 5, 2024.

For the Nuclear Regulatory Commission.

Carrie M. Safford,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).

[6] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2024–02633 Filed 2–8–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–181; MC2024–182 and CP2024–188; MC2024–183 and CP2024–189]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 13, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2023–181; *Filing Title:* USPS Notice of Amendment to Priority Mail, First-Class Package Service, Parcel Select & Parcel Return Service Contract 1, Filed Under Seal; *Filing Acceptance Date:* February 5, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Cherry Yao; *Comments Due:* February 13, 2024.

2. *Docket No(s).:* MC2024–182 and CP2024–188; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 46 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* February 13, 2024.

3. *Docket No(s).:* MC2024–183 and CP2024–189; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 184 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Samuel Robinson; *Comments Due:* February 13, 2024.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2024–02731 Filed 2–8–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99470; File No. SR–NYSEARCA–2024–09]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.62P–O

February 5, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 23, 2024, 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 modify Rule 6.62P–O (Orders and Modifiers) to adopt electronic Customer Cross Order and Complex Customer Cross Order functionality and to amend Rule 1.1 (Definitions) to clarify the treatment of Professional Customer interest. 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 modify Rule 6.62P–O (Orders and Modifiers) to adopt electronically-entered Customer Cross (''C2C'') Orders and Complex Customer Cross (''Complex C2C'') Orders (collectively, ''Customer Cross Orders''). The Exchange also proposes to amend the definition of ''Customer and Professional Customer'' (Rule 1.1.) to clarify the treatment of Professional Customer interest.

Proposed Rule 6.62P–O(g)(2): Customer Cross Orders [4]

The Exchange proposes to adopt rules governing electronically-entered Customer Cross Orders, which rules are substantively identical to the recently-adopted Customer Cross Orders on the Exchange's affiliate, NYSE American LLC (''NYSE American'').[5]

Proposed Rule 6.62P–O(g)(2) would describe Customer Cross Orders. Proposed Rule 6.62P–O(g)(2)(A) would provide that a C2C Order and a Complex C2C Order must be comprised of a Customer (but not a Professional Customer) order to buy and a Customer (but not a Professional Customer) order to sell at the same price and for the same quantity. The proposal to limit eligible interest to Customer but not Professional Customer interest is substantively identical to the rules of NYSE American.[6] In addition, as proposed, a C2C Order or Complex C2C Order that is not rejected on arrival would immediately trade in full at its limit price.[7] Further, proposed Rule 6.62P–O(g)(2)(A) would provide that C2C Orders and Complex C2C Orders would not route and may be entered with a Minimum Price Variation (''MPV'') of $0.01 regardless of the MPV of the options series.[8] Finally, the proposed Rule would specify that Commentary .01 to Rule 6.47A–O would apply to Customer Cross Orders, which means that OTP Holders and OTP Firms may not utilize Customer Cross Orders to increase their economic gain without first giving other trading interest on the Exchange an opportunity to participate in the trade or to trade at the transaction price when the OTP Holder or OTP Firm was already bidding or offering at that price.[9] This proposed handling of Customer Cross Orders is substantively identical to the rules on NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] To reflect the addition of Customer Cross Orders, the Exchange proposes to amend current Rule 6.62P–O(g) by removing the statement that ''[a] Cross Order is a Qualified Contingent Cross (''QCC'') Order'' and retaining the title of ''Cross Orders''. In addition, the Exchange proposes to update the title of paragraph Rule 6.62P–O (g)(1) to ''Qualified Contingent Cross (''QCC'') Orders.'' The Exchange believes that these proposed changes would add clarity and transparency to, and improve the accuracy of, the Exchange's rules. *See* proposed Rule 6.62P–O(g) and (g)(1).

[5] *See* NYSE American Rule 900.3NYP(g)(2) (describing single-leg and complex Customer Cross Orders). *See also* Securities Exchange Act Release No. 99231 (December 22, 2023), 88 FR 89783 (December 28, 2023) (SR–NYSEAMER–2023–66) (immediately effective rule change to adopt electronically-entered Customer Cross Orders).

[6] *See* NYSE American Rule 900.3NYP(g)(2)(A).

[7] *See* proposed Rule 6.62P–O(g)(2)(A) (providing, in relevant part, that ''[a] C2C Order or Complex C2C Order that is not rejected per Rule 6.62P–O(g)(2)(B) [Execution of C2C Orders] or (C) [Execution of Complex C2C Orders], respectively, will immediately trade in full at its limit price'').

[8] Rule 1.1 defines ''Minimum Price Variation'' or ''MPV'' as the price variations established by the Exchange, which for quoting and trading options traded on the Exchange are set forth in 6.72–O(a).

[9] *See* proposed Rule 6.62P–O(g)(2)(A). *See also* Rule 6.47A–O, Commentary .01.

American regarding the handling of such orders on that exchange.[10]

Proposed Rule 6.62P–O(g)(2)(B) provides that a C2C Order that has one option leg would be rejected if received when the NBBO is crossed or if the C2C would trade at a price that (i) is at the same price as a displayed Customer order on the Consolidated Book and (ii) is not at or between the NBBO and the Exchange BBO. The Exchange believes that the proposal would provide for the efficient entry and execution of C2C Orders while continuing to protect same-priced, displayed Customer interest (*i.e.,* by ensuring that the C2C Order does not trade ahead of displayed Customer interest resting in the Consolidated Book). As noted above, the proposed C2C Orders would operate in a manner that is identical to the handling of single-leg customer cross orders per NYSE American rules.[11]

Proposed Rule 6.62P–O(g)(2)(C) would describe the Exchange's pricing requirements for a Complex C2C Order, which requirements are identical to those set forth in NYSE American Rule 900.3NYP(g)(2)(C). As is the case per NYSE American rules, to validate the price of a Complex C2C Order, the Exchange would rely on the Derived BBO (''DBBO'') as described in Rule 6.91P–O(a)(5).[12] If the Exchange is not able to calculate the DBBO for a complex strategy because of one of the circumstances described in Rule 6.91P–O(a)(5)(B)–(C), the Exchange will not execute an order for that strategy until the circumstance is resolved.[13]

Consistent with this handling, the Exchange proposes that it would reject a Complex C2C Order if the Exchange is unable to calculate the DBBO for a leg of the Complex C2C Order per Rule 6.91P–O(a)(5)(B) or (a)(5)(C).[14]

In addition, proposed Rule 6.62P–O(g)(2)(C) provides that no option leg of a Complex C2C Order will trade at a price worse than the Exchange BBO and such order would be rejected if it fails to meet the following requirements:

- the transaction price must be at or between the DBBO and may not equal the DBBO if the DBBO is calculated using the Exchange BBO and the Exchange BBO of any component of the complex strategy on either side of the market includes displayed Customer interest. If the DBB (DBO) includes displayed Customer interest on the Exchange, the transaction price must improve the DBB (DBO) by at least one cent ($0.01) (per proposed Rule 6.62P–O(g)(2)(C)(i)); and
- the transaction price must be at or between the best-priced Complex Orders to buy and sell in the complex strategy and may not equal the price of a resting Customer Complex Order (per proposed Rule 6.62P–O(g)(2)(C)(ii)).

As noted above the pricing requirements for the proposed Complex C2C Orders are identical to NYSE American's requirement for such orders.[15]

The Exchange also proposes a conforming change to Rule 6.91P–O(b)(1) to include Complex Customer Cross Orders among the type of Electronic Complex Orders available for trading on the Exchange, which change would add clarity, transparency, and internal consistency to the Exchange's rules.[16]

Rule 1.1: Definitions of Customer and Professional Customer

The Exchange proposes to modify the definition of ''Customer'' to provide that, ''unless otherwise specified'', the definition of ''Customer'' includes a ''Professional Customer'', as described below.[17]

Per Rule 1.1, for options traded on the Exchange, the terms ''Customer'' and ''Professional Customer'' do not include a broker or dealer.[18] When the Exchange adopted its definition of Professional Customer nearly a decade ago, it noted that its definition was ''similar to designations that have been adopted by all other options exchanges.'' [19] At that time, however, the Exchange explicitly stated that it was not proposing ''to revise any order execution or processing rules, including its priority rules, to change the treatment of Professional Customers'' but noted instead that ''Professional Customer orders will be treated as Customer orders under Exchange rules for all purposes, except those related to order marking.'' [20] The Exchange further noted that ''[a]s the only options Exchange to have not yet adopted the Professional Customer definition, the Exchange's proposal will allow OTP Holders to mark their Professional Customer orders similarly regardless of whether the order is placed on the Exchange or another options exchange'' and that adopting the Professional Customer designation would ''facilitate cross-market initiatives (such as harmonizing rules relating to Obvious Errors).'' [21] Although the Exchange was clear as to its intent when it adopted the Professional Customer designation, it did not modify its definition of ''Customer'' to reflect this intention. Thus, for avoidance of doubt and consistent with the Exchange's previously stated intent, the Exchange proposes to modify the definition of Customer to include

[10] *See* Rule 6.47A–O, Commentary .01 (providing an identical prohibition to the one set forth in NYSE American Rule 935NY, Commentary .01, which prevents order-senders from using the customer crossing mechanism to increase economic gain without first providing an opportunity of eligible interest to trade at the transaction price of the cross order).

[11] *See* NYSE American Rule 900.3NYP(g)(2)(B).

[12] The DBBO provides for the establishment of a derived (theoretical) bid or offer for a particular complex strategy. *See* Rule 6.91P–O(a)(5) (defining the DBBO and providing that the bid (offer) price used to calculate the DBBO on each leg will be the Exchange BB (BO) (if available), bound by the maximum allowable Away Market Deviation). The Away Market Deviation, as defined in Rule 6.91P–O(a)(1), ensures that an ECO does not execute too far away from the prevailing market. Rule 6.91P–O(a)(5) also provides for the establishment of the DBBO in the absence of an Exchange BB (BO), or ABB(ABO), or both. The Exchange's definition of DBBO and its use in relation to Complex C2C Orders is identical to how this concept is defined and utilized by NYSE American. *Compare* Rule 6.91P–O(a)(5) *with* NYSE American Rule 980NYP(a)(5).

[13] *See* proposed Rule 6.62P–O(g)(2)(C). *See also* Rule 6.91P–O(a)(5)(B) (providing that, ''[i]f, for a leg of a complex strategy, there is neither an Exchange BBO nor an ABBO, the Exchange will not allow the complex strategy to trade until, for that leg, there is either an Exchange BB or BO, or an ABB or ABO, on at least one side of the market'') and (a)(5)(C) (providing, in relevant part that, ''[i]f the best bid and offer prices (when not based solely on the Exchange BBO) for a component leg of the complex strategy are locked or crossed, the Exchange will not allow an ECO for that strategy to execute against another ECO until this condition resolves''). This proposed handling of Complex C2C Orders is identical to the handling of such orders on NYSE American. *Compare* proposed Rule 6.62P–O(g)(2)(C) *with* NYSE American Rule 900.3NYP(g)(2)(C).

[14] *See* proposed Rule 6.62P–O(g)(2)(B). *See also* NYSE American Rule 900.3NYP(g)(2)(B).

[15] *See* NYSE American Rule 900.3NYP(g)(2)(C)(i)–(ii).

[16] *See* proposed Rule 6.91P–O(b)(1) (providing that Electronic Complex Orders ''may be entered as Limit Orders, Limit Orders designated as Complex Only Orders, Complex QCCs, *or as Complex Customer Cross Orders*) (emphasis added). *See also* NYSE American Rule 980NYP(b)(1).

[17] *See* proposed Rule (emphasis added). *See also* NYSE American Rule 980NYP(b)(1).

[18] *See* Rule 1.1 (defining Customer and Professional Customer). For order counting purposes, the term ''Professional Customer'' applies to an individual or organization that ''places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).'' *See id.*

[19] *See* Securities Exchange Act Release No. 73665 (November 21, 2014), 79 FR 70907, 70908 at n. 7 (November 28, 2014) (SR–NYSEARCA–2014–133) (immediately effective rule change to adopt the definition of Professional Customer) (the ''2014 Proposal''). *See id.,* 79 FR, at 70908 at n. 7 (citing other options markets that had already adopted the Professional Customer designation).

[20] *See id.,* 79 FR at 70908, n. 8 (specifying that, at that time, at least two other options exchanges had adopted a definition of Professional Customer that was the ''same'' as the Exchange's then-proposed definition and that those exchanges likewise did ''not treat Professional Customers differently than Customers for purposes of execution or processing.''). Thus, from inception, the treatment of market participants designated as Professional Customers differed among options exchanges.

[21] *See id.,* 79 FR at 70908.

Professional Customer, ''unless otherwise specified'' in Exchange rules.[22] The Exchange believes this rule change would add clarity and transparency to the Exchange's rules, making them easier to navigate and understand.

Implementation

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, is anticipated to be in the first quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[23] in general, and furthers the objectives of Section 6(b)(5),[24] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed Customer Cross Orders (for single-leg and complex interest) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rules would allow OTP Holders and OTP Firms to electronically trade these types of crossing orders on the Exchange. The proposed functionality would benefit investors and the public interest because it would enhance and automate each order entry firms' ability to submit two-sided Customer orders—*i.e.,* Customer Cross Orders (both single-leg and complex). As such, the proposed rule change would provide OTP Holders and OTP Firms with an efficient means of executing their Customer orders. In addition, the proposed Customer Cross Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because OTP Holders and OTP Firms would be given an additional way to execute single-leg and Complex Orders on the Exchange. As noted herein, the proposed Customer Cross Orders functionality is identical to functionality described in the rules of the Exchange's affiliate, NYSE American.[25] With this proposal, OTP Holders and OTP Firms would likewise have an additional venue on which to execute two-sided Customer orders electronically—*i.e.,* Customer Cross Orders. As such, the proposed order types may attract additional Customer order flow (both two-sided and single-sided) to the Exchange, which may, in turn, result in greater liquidity available for trading on the Exchange.

Regarding the proposed single-leg C2C Order type, the Exchange believes that the adoption of this order type would provide for the efficient entry and execution of C2C Orders while continuing to protect same-priced, displayed Customer interest (*i.e.,* by ensuring that the C2C Order does not trade ahead of displayed Customer interest resting in the Consolidated Book). Further, as noted herein, the proposed order type is not new or novel because each C2C Order would operate in a manner that is identical to the handling of single-leg customer cross orders per the rules of NYSE American.[26]

The proposed Complex C2C Order would protect investors and the public interest by assuring that these orders comply with the existing priority and allocation rules applicable to the processing and execution of Complex Orders per Rule 6.91P–O. In particular, the proposed Complex C2C Orders would continue to protect same-priced, displayed Customer interest and would ensure that Complex C2C Orders do not trade ahead of such displayed Customer interest, whether in the leg markets or as Customer Complex Orders. The Exchange believes the proposed Complex C2C Orders would promote just and equitable principles of trade because (as discussed herein) the proposed orders—which are not new or novel—would operate in a manner that is identical to the handling of complex customer cross orders per the rules of NYSE American.[27]

The Exchange believes the proposed amendment to the Rule 1.1 definition of Customer and Professional Customer would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would add clarity and transparency to—and improve the accuracy of—the Exchange's rules making them easier to comprehend to the benefit of all market participants.

Finally, the proposed conforming changes to Rules 6.62P–O(g) and 6.91P–O(b)(1) to accommodate the adoption of single-leg and Complex Customer Cross Orders on the Exchange would remove impediments to and perfect the mechanism of a free and open market and a national market system because the rule changes would add clarity and transparency to—and improve the accuracy of—the Exchange's rules making them easier to comprehend to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange's proposal to adopt a new electronically-entered crossing order type (*i.e.,* the Customer Cross Order) would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would not impose a burden on intra-market competition because the proposed order types would provide OTP Holders and OTP Firms with the option of utilizing another means of executing two-sided Customer interest—both single-leg and Complex Orders on the Exchange. The proposed change would also benefit investors by providing another venue (*i.e.,* in addition to NYSE American) on which Customer Cross Orders may be submitted electronically.

The Exchange believes that the proposed change would enhance intermarket competition. The Exchange believes that adopting Customer Cross Orders would promote competition as it would afford OTP Holders and OTP Firms another venue on which to execute two-sided Customer orders for single-leg and complex trading interest. Further, the Exchange anticipates that this proposal will create new opportunities for the Exchange to attract new business to the Exchange. As such, the Exchange believes that this proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets.

The Exchange does not believe the proposed amendment to the Rule 1.1

[22] *See* proposed Rule 1.1 (providing that ''[f]or options traded on the Exchange, the term 'Customer' does not include a broker or dealer *and, unless otherwise specified, includes a* ''*Professional Customer*''(emphasis added) *See, e.g.,* proposed Rule 6.62P–O(g)(2) (specifying that Customer Cross Orders ''must be comprised of a Customer (but not a Professional Customer) order to buy and a Customer (but not a Professional Customer) order to sell at the same price and for the same quantity'')).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* NYSE American Rule 900.3NYP(g)(2).

[26] *See* NYSE American Rule 900.3NYP(g)(2)(B).

[27] *See* NYSE American Rule 900.3NYP(g)(2)(C).

definition of Customer and Professional Customer would impose any undue burden on intra-market or intermarket competition as all market participants on the Exchange would be subject to the updated definition. In addition, the proposal to limit the availability of the proposed Customer Cross Orders to interest submitted on behalf of Customers would align the Exchange with the rules of NYSE American, which has the same limitation.[28]

In addition, the proposed conforming changes to Rules 6.62P–O(g) and 6.91P–O(b)(1) to accommodate the addition of single-leg and Complex Customer Cross Orders would not impose an undue burden on intra-market or intermarket competition but would instead add clarity, transparency, and internal consistency to the Exchange's rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [29] and Rule 19b–4(f)(6) thereunder.[30] 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 and Rule 19b–4(f)(6)(iii) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6) [32] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will provide market participants with an additional venue for executing two-sided single-leg and complex Customer orders electronically. In addition, the proposed change to the definition of ''Customer'' is designed to reflect the Exchange's intention when it adopted the definition of definition of Professional Customer in 2014, as described above.

The proposed C2C and Complex C2C Orders are substantively identical to order types adopted by the Exchange's affiliate, NYSE American.[34] Among other things, the proposed rules protect the priority of displayed Customer interest on the Exchange by providing that a C2C Order with one option leg will be rejected if it would trade at the same price as a displayed Customer order on the Exchange's Consolidated Book.[35] In addition, a Complex C2C Order must trade at a price that is (i) better than the DBB (DBO) if the DBB (DBO) includes displayed Customer interest on the Exchange, and (ii) better than a resting Customer Complex Order on the Exchange.[36] Consistent with the rules of other options exchanges that offer customer cross orders, the proposed Customer Cross Orders are limited to Customer orders.[37] The proposed change to the definition of Customer is designed to ensure that the definition reflects the Exchange's intention, as described in the 2014 Proposal, to treat Professional Customers as Customers, unless otherwise specified. The proposed conforming changes to Exchange Rules 6.62P–O(g)(1) and 6.91P–O(b)(1) will update the Exchange's rules to reflect the addition of Customer Cross Orders. The proposal, which does not raise new or novel regulatory issues, will provide market participants with an additional venue for crossing single-leg and complex Customer Cross Orders electronically. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[38]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the

[28] *See* NYSE American Rule 900.3NYP(g)(2).

[29] 15 U.S.C. 78s(b)(3)(A)(iii).

[30] 17 CFR 240.19b–4(f)(6).

[31] *Id.* In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] *See* NYSE American Rule 900.3NYP(g)(2) and note 5, *supra*.

[35] *See* proposed Exchange Rule 6.62P–O(g)(2)(B)(i).

[36] *See* proposed Exchange Rule 6.62P–O(g)(2)(C).

[37] *See* proposed Exchange Rule 6.62P–O(g)(2)(A) and NYSE American Rule 900.3NYP(g)(2)(A). *See also* Cboe Rule 5.38(f).

[38] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–09 and should be submitted on or before March 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02647 Filed 2–8–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99471; File No. SR–IEX–2024–04]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Pursuant to IEX Rule 15.110 To Amend IEX's Fee Schedule

February 5, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 24, 2024, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to amend its Fee Schedule, [6] pursuant to IEX Rule 15.110(a) and (c) (the ''Fee Schedule''), to revise the Fee Codes [7] applicable to transactions that involve a Post Only order that executes on entry. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,[8] and the Exchange plans to implement the changes on February 15, 2024.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to revise the Fee Codes applicable to transactions that involve a Post Only order that executes on entry. IEX recently filed a rule change to introduce a Post Only order parameter instruction and a Trade Now instruction.[9] The Post Only Filing was effective on filing but will not be implemented until February 15, 2024.[10]

As described in the Post Only Filing, Members [11] may attach a Post Only parameter instruction to any displayable, non-routable order priced at or above $1.00 per share (*i.e.,* a Post Only order).[12] A Post Only order will not remove contra-side liquidity from the IEX Order Book [13] on entry (and will rest on the Order Book as a displayed liquidity adding order), except in two specific circumstances: (i) if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, including the applicable fees charged or rebates provided (the ''Sum of Fees''), or (ii) if the contra-side resting order with which the incoming order could match is a non-displayed order with a ''Trade Now'' instruction.[14] When an incoming Post Only order matches a resting order with a Trade Now instruction, the resting order converts into an executable order that removes liquidity against the incoming Post Only order, and the incoming Post Only order becomes the liquidity adding order.

Fee Schedule Changes

IEX proposes to introduce two new Fee Codes, to specify (1) when a Post Only order executed on entry, and (2) when a resting non-displayed order with a Trade Now instruction removed liquidity from a Post Only order that executed on entry. Specifically, as proposed, Fee Code Y will be included on any execution report for a Post Only order that executes on entry, and Fee Code W will be included on any execution report for a resting order with a Trade Now instruction that removes liquidity against an incoming liquidity-adding Post Only order. IEX proposes to add these Fee Codes to the Fee Code Modifiers table on the IEX Fee Schedule as follows:

Additional Fee Codes	Description	Fee
Y	Post Only order executes on entry	See Relevant Fee Code Combinations Below.
W	Resting order removes against Post Only order	See Relevant Fee Code Combinations Below.

[39] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Fee Schedule at *https://www.iexexchange.io/resources/trading/fee-schedule* for the complete list of fee code combinations and their corresponding fees.

[7] Fee Codes are identified on each execution report message from the Exchange in the Trade Liquidity Indicator (FIX tag 9730) field. *See* ''Transaction Fees/Definitions'' on the Fee Schedule.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] *See* Securities Exchange Act Release No. 98988 (November 20, 2023), 88 FR 82926 (November 27, 2023) (SR–IEX–2023–13) (''Post Only Filing'').

[10] *See* IEX Trading Alert 2024–003, available at *https://iextrading.com/alerts/#/239.*

[11] *See* IEX Rule 1.160(s).

[12] If a Member submits a Post Only order that is priced below $1.00 per share, the Exchange will disregard the Post Only instruction. *See* IEX Rule 11.190(b)(20)(A).

[13] *See* IEX Rule 1.160(p).

[14] *See* IEX Rule 11.190(b)(21).

Additionally, IEX proposes to add four new Fee Code Combinations to the Additional Fee Code Combinations and Associated Fees table that reflect the fees IEX will assess for an execution involving a Post Only order that executes on entry:

• Fee Code Combination TIY, would apply to a Post Only order priced at $1.00 or more that removes non-displayed liquidity on entry. The fees associated with Fee Code Combination TIY are the same as the fees associated with Fee Code Combination TI, the fee code for an order that removes non-displayed liquidity on entry (currently $0.0010 per share). IEX would include Fee Code Combination TIY on execution reports to specify that a Post Only order executed on entry because the Sum of Fees was less than the value of the execution if the order had added displayed liquidity on the Exchange. Because the Exchange will disregard the Post Only instruction on orders priced less than $1.00 per share (''sub-dollar''),[15] IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table read ''N/A''.[16]

• Fee Code Combination TLY, would apply to a Post Only order priced at $1.00 or more per share that removes displayed liquidity on entry. The fees associated with Fee Code Combination TLY are the same as the fees associated with Fee Code Combination TL, the fee code for an order that removes displayed liquidity on entry (currently $0.0010 per share). IEX would include Fee Code Combination TLY on execution reports to specify that a Post Only order executed on entry because the Sum of Fees was less than the value of the execution if the order had added displayed liquidity on the Exchange. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,[17] IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table read ''N/A''.[18]

• Fee Code Combination MLY, would apply to a Post Only order priced at $1.00 or more per share that executes on entry with a contra-side order with the Trade Now instruction. The fees associated with Fee Code Combination MLY are the same as the fees associated with Fee Code Combination ML, the fee code for an order that adds displayed liquidity (currently a rebate of $0.0004 per share). IEX would include Fee Code Combination MLY on execution reports to specify that although the order executed on entry, it executed as the adder of displayed liquidity because of the contra-side order's Trade Now instruction. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,[19] IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table column read ''N/A''.[20]

• Fee Code Combination TLW, would apply to a resting non-displayed order with the Trade Now instruction that executes against an incoming Post Only order priced at $1.00 or more per share. The fees associated with Fee Code Combination TLW are the same as the fees associated with Fee Code Combination MI, the fee code for an execution that adds non-displayed liquidity (currently $0.0010 per share for executions at or above $1.00). IEX would include Fee Code Combination TLW on execution reports that the order executed as the taker of displayed liquidity. Because the Exchange will disregard the Post Only instruction on an incoming sub-dollar Post Only order,[21] that order will not trigger a resting order with the ''Trade Now'' instruction to become the taking order. Therefore, Fee Code Combination TLW would never apply to a resting non-displayed order that matches with an incoming sub-dollar order with a Post Only instruction, and IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table column read ''N/A''.

IEX proposes to add these Fee Codes to the Additional Fee Code Combinations and Associated Fees table on the IEX Fee Schedule as follows:

Fee Codes	Description	Executions at or above $1.00	Executions below $1.00
MLY	Post Only order adds liquidity against resting non-displayed order	($0.0004)	N/A
TIY	Post Only order removes non-displayed liquidity	0.0010	N/A
TLY	Post Only order removes displayed liquidity	0.0010	N/A
TLW	Resting non-displayed order removes liquidity against incoming Post Only order	0.0010	N/A

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(4)[23] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX Members and persons using its facilities. As described in the Purpose section, these proposed Fee Code changes will not change the fees the Exchange charges for impacted orders but will simply provide additional information with respect to such fees. Therefore, the Exchange does not believe that adding this additional information raises any new or novel issues not already considered by the Commission. IEX also believes that the proposed rule change is nondiscriminatory since all Members are eligible to enter orders with Post Only and/or Trade Now instructions.

Additionally, IEX believes that the proposed changes to the Fee Schedule are consistent with the investor protection objectives of Section 6(b)(5)[24] of the Act, in particular, in that they are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and

[15] *See supra* note 9.

[16] An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting non-displayed order will result in a Fee Code Combination of TI (''Removes non-displayed liquidity'') on the execution report and be charged the normal sub-dollar dark taking fee of 0.10% of the Total Dollar Value (''TDV'').

[17] *See supra* note 9.

[18] An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting displayed order will result in a Fee Code Combination of TL (''Removes displayed liquidity'') on the execution report and be charged the normal sub-dollar lit taking fee of 0.09% of the TDV.

[19] *See supra* note 9.

[20] An incoming sub-dollar order with a disregarded Post Only instruction will not trigger a resting order with the ''Trade Now'' instruction to become the taking order and will not be treated as the making order. Thus, Fee Code Combination MLY would never apply. If the incoming order matched with a resting non-displayed or displayed order, it will result in a Fee Code Combination of TL or TI, with fees of 0.09% or 0.10% of TDV, respectively.

[21] *See supra* note 9.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(4).

[24] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, brokers, or dealers. IEX believes that providing additional specificity to Members on execution reports about the circumstances under which a Post Only order executed on entry, as well as when an order with a Trade Now instruction executed as a liquidity remover, will assist Members with their order routing strategies, thereby facilitating transactions in securities. Further, IEX believes that specifying that these new Fee Code Combinations do not apply to sub-dollar executions because IEX disregards the Post Only instruction on orders priced below $1.00 per share will also assist Members with their order routing strategies, thereby facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed Fee Code changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described in the Purpose and Statutory Basis sections, the Exchange is not proposing to change any fees but merely to provide additional information to Members regarding certain executions.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees will apply to all Members in the same manner, as discussed in the Statutory Basis section. Accordingly, the Exchange does not believe that these changes will have any impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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) [25] of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2024–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–IEX–2024–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–IEX–2024–04 and should be submitted on or before March 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02643 Filed 2–8–24; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99476; File No. SR–MIAX–2024–06]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule to Modify Certain Connectivity and Port Fees

February 5, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, 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 the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members [3] and non-Members; and (2) amend the monthly port fee for additional Limited Service MIAX Express Interface (''MEI'') Ports [4] available to Market Makers.[5] The Exchange and its affiliate, MIAX PEARL, LLC (''MIAX Pearl'') operated 10Gb ULL connectivity (for MIAX Pearl's options market) on a single shared network that provided access to both exchanges via a single 10Gb ULL connection. The Exchange last increased fees for 10Gb ULL connections from $9,300 to $10,000 per month on January 1, 2021.[6] At the same time, MIAX Pearl also increased its 10Gb ULL connectivity fee from $9,300 to $10,000 per month.[7] The Exchange and MIAX Pearl shared a combined cost analysis in those filings due to the single shared 10Gb ULL connectivity network for both exchanges. In those filings, the Exchange and MIAX Pearl allocated a combined total of $17.9 million in expenses to providing 10Gb ULL connectivity.[8]

Beginning in late January 2023, the Exchange determined a substantial operational need to no longer operate 10Gb ULL connectivity on a single shared network with MIAX Pearl. The Exchange bifurcated 10Gb ULL connectivity due to ever-increasing capacity constraints and to enable it to continue to satisfy the anticipated access needs for Members and other market participants.[9] Since the time of the 2021 increase discussed above, the Exchange experienced ongoing increases in expenses, particularly internal expenses.[10] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $14,410,793 for providing 10Gb ULL connectivity on a single unshared network (an overall increase over its prior cost to provide 10Gb ULL connectivity on a shared network with MIAX Pearl) and $2,399,192 for providing Limited Service MEI Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited Service MEI Ports in order to recoup cost related to bifurcating 10Gb connectivity to the Exchange and MIAX Pearl as well as the ongoing costs and increase in expenses set forth below in the Exchange's cost analysis.[11] The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The Exchange initially filed the proposal on December 30, 2022 (SR–MIAX–2022–50) (the ''Initial Proposal'').[12] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–MIAX–2023–08) (the ''Second Proposal'').[13] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with a revised proposal (SR–MIAX–2023–18) (the ''Third Proposal'').[14] On June 16, 2023, the Exchange withdrew the Third Proposal and replaced it with a revised proposal (SR–MIAX–2023–25) (the ''Fourth Proposal'').[15] On August 8, 2023, the Exchange withdrew the Fourth Proposal and replaced it with a

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The MIAX Express Interface (''MEI'') is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. *See* Fee Schedule, note 26.

[5] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100. For purposes of Limit Service MEI Ports, Market Makers also include firms that engage in other types of liquidity activity, such as seeking to remove resting liquidity from the Exchange's Book.

[6] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[7] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

[8] *See id.*

[9] *See MIAX Options and MIAX Pearl Options—Announce planned network changes related to shared 10G ULL extranet,* issued August 12, 2022, *available at https://www.miaxglobal.com/alert/2022/08/12/miax-options-and-miax-pearl-options-announce-planned-network-changes-0.* The Exchange will continue to provide access to both the Exchange and MIAX Pearl over a single shared 1Gb connection. *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[10] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and 2023 expenses.

[11] The Exchange notes that MIAX Pearl Options will make a similar filing to increase its 10Gb ULL connectivity fees.

[12] *See* Securities Exchange Act Release No. 96629 (January 10, 2023), 88 FR 2729 (January 17, 2023) (SR–MIAX–2022–50).

[13] *See* Securities Exchange Act Release No. 97081 (March 8, 2023), 88 FR 15782 (March 14, 2023) (SR–MIAX–2023–08).

[14] *See* Securities Exchange Act Release No. 97419 (May 2, 2023), 88 FR 29777 (May 8, 2023) (SR–MIAX–2023–18).

[15] The Exchange met with Commission Staff to discuss the Third Proposal during which the Commission Staff provided feedback and requested additional information, including, most recently, information about total costs related to certain third party vendors. Such vendor cost information is subject to confidentiality restrictions. The Exchange provided this information to Commission Staff under separate cover with a request for confidentiality. While the Exchange will continue to be responsive to Commission Staff's information requests, the Exchange believes that the Commission should, at this point, issue substantially more detailed guidance for exchanges to follow in the process of pursuing a cost-based approach to fee filings, and that, for the purposes of fair competition, detailed disclosures by exchanges, such as those that the Exchange is providing now, should be consistent across all exchanges, including for those that have resisted a cost-based approach to fee filings, in the interests of fair and even disclosure and fair competition. *See* Securities Exchange Act Release No. 97814 (June 27, 2023), 88 FR 42844 (July 3, 2023) (SR–MIAX–2023–25).

revised proposal (SR–MIAX–2023–30) (the ''Fifth Proposal'').[16] Since a U.S. government shutdown was avoided, on October 2, 2023, the Exchange withdrew the Fifth Proposal and replaced it with a revised proposal (SR–MIAX–2023–39) (the ''Sixth Proposal'').[17] On November 27, the Exchange withdrew the Sixth Proposal and replaced it with a revised proposal (SR–MIAX–2023–48) (the ''Seventh Proposal'').[18] On January 25, 2024, the Exchange withdrew the Seventh Proposal and replaced it with a further revised proposal (SR–MIAX–2024–XX) (the ''Eighth Proposal'').

The Exchange previously included a cost analysis in the Initial, Second, Third, Fourth, Fifth, Sixth, and Seventh Proposals. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX Pearl (separately among MIAX Pearl Options and MIAX Pearl Equities) and MIAX Emerald[19] (together with MIAX Pearl Options and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. The Exchange continues to propose fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Limited Service MEI Ports with a reasonable mark-up over those costs.

The cost analysis included in prior filings was based on the Exchange's 2023 fiscal year of operations and projected expenses. In its Initial Proposal filed on December 30, 2022, the Exchange committed to conduct an annual review after implementation of these fees. The Exchange recently completed its 2024 fiscal year budget process, which included its annual review of these fees and the projected costs to provide these services, based on its approved 2024 expense budget. Therefore, the Cost Analysis included in this proposal is based on the Exchange's 2024 fiscal year of operations and projected expenses. The Exchange believes it reasonable to now use costs from its 2024 fiscal year budget because they reflect the Exchange's current cost base. The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Consequently, these increased costs included in the 2024 budget result in lower projected profit margins for 10Gb ULL connectivity and Limited Service MEI Ports, versus the profit margins included in prior filings that proposed the same fee levels for 10Gb ULL connectivity and Limited Service MEI Ports based on 2023 costs. The Exchange believes it is reasonable and appropriate to now use expenses from its 2024 budget because those expenses amounts are the most current and more accurately reflect the Exchange's current expense base and projected revenues for the 2024 fiscal year. Continuing to use 2023 budget numbers would result in the Exchange's Cost Analysis to be based on stale data which would not reflect the Exchanges most recent cost estimates and projected margins.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision*[20] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[21] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[22] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[23] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.''[24] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[25] However, the

[16] *See* Securities Exchange Act Release No. 98173 (August 21, 2023), 88 FR 58378 (August 25, 2023) (SR–MIAX–2023–30). Due to the prospect of a U.S. government shutdown, the Commission suspended the Fifth Proposal on September 29, 2023. *See* Securities Exchange Act Release No. 98657 (September 29, 2023) (SR–MIAX–2023–30).

[17] *See* Securities Exchange Act Release No. 98752 (October 13, 2023), 88 FR 72117 (October 19, 2023) (SR–MIAX–2023–39).

[18] *See* Securities Exchange Act Release No. 99137 (December 11, 2023), 88 FR 86983 (December 15, 2023) (SR–MIAX–2023–48).

[19] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[20] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[21] *Id.*

[22] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[23] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[24] *Id.* at page 2.

[25] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [26] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[27] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [28] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [29] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [30]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [31] and remanded for further proceedings consistent with its opinion.[32] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [33] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act Section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[34] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [35] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[36]

As a result of the Commission's loss of the *NASDAQ* vs. *SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [37] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[38] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees

[26] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[27] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[28] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees (the ''Staff Guidance'').*

[29] *Id.*

[30] *Id.*

[31] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, --- Fed. App'x ----, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[32] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''Section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[33] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[34] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[35] *Id.*

[36] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[37] *See supra* note 32, at page 2.

[38] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

to become effective), at least 92 filings [39] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[40] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[41] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020 [42] and $80,383,000 for 2021.[43] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020 [44] and $22,843,000 for 2021.[45] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020 [46] and $44,800,000 for 2021.[47] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020 [48] and $30,687,000 for 2021.[49] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[50] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.'' [51]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[52] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates),[53] which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain

[39] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[40] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[41] The Exchange has filed, and subsequently withdrawn, various forms of this proposed fee change numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[42] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[43] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[44] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[45] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[46] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[47] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[48] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[49] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[50] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[51] *See* PHLX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[52] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[53] *See, e.g.,* Cboe Fee Schedule, Page 4, Affiliate Volume Plan, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing that if a market maker or its affiliate receives a credit under Cboe's Volume Incentive Program (''VIP''), the market maker will receive an access credit on their BOE Bulk Ports corresponding to the VIP tier reached and the market maker will receive a transaction fee credit on their sliding scale market maker transaction fees) *and* NYSE American Options Fee Schedule, Section III, E, Floor Broker Incentive and Rebate Programs, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (providing floor brokers the opportunity to prepay certain non-transaction fees for the following calendar year by achieving certain amounts of volume executed on NYSE American).

competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. There is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[54] this is not the reality experienced by exchanges such as MIAX. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[55] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in Section 6(b)(4) of the Act [56] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[57] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [58] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and places a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[59]

* * * * *

10Gb ULL Connectivity Fee Change

The Exchange filed a proposal to no longer operate 10Gb connectivity to the Exchange on a single shared network with its affiliate, MIAX Pearl Options. This change is an operational necessity due to ever-increasing capacity constraints and to accommodate anticipated access needs for Members and other market participants.[60] This proposal: (i) sets forth the applicable fees for the bifurcated 10Gb ULL network; (ii) removes provisions in the Fee Schedule that provide for a shared 10Gb ULL network; and (iii) specifies that market participants may continue to connect to both the Exchange and MIAX Pearl Options via the 1Gb network.

The Exchange bifurcated the Exchange and MIAX Pearl Options 10Gb ULL networks on January 23, 2023. The Exchange issued an alert on August 12, 2022 publicly announcing the planned network change and implementation plan and dates to provide market participants adequate time to prepare.[61] Upon bifurcation of the 10Gb ULL network, subscribers need to purchase separate connections to the Exchange and MIAX Pearl Options at the applicable rate. The Exchange's

[54] *See supra* note 28, at note 1.

[55] *See* Securities Exchange Act Release Nos. 94890 (May 11, 2022), 87 FR 29945 (May 17, 2022) (SR–MIAX–2022–20); 94720 (April 14, 2022), 87 FR 23586 (April 20, 2022) (SR–MIAX–2022–16); 94719 (April 14, 2022), 87 FR 23600 (April 20, 2022) (SR–MIAX–2022–14); 94259 (February 15, 2022), 87 FR 9747 (February 22, 2022) (SR–MIAX–2022–08); 94256 (February 15, 2022), 87 FR9711 (February 22, 2022) (SR–MIAX–2022–07); 93771 (December 14, 2021), 86 FR 71940 (December 20, 2021) (SR–MIAX–2021–60); 93775 (December 14, 2021), 86 FR 71996 (December 20, 2021) (SR–MIAX–2021–59); 93185 (September 29, 2021), 86 FR 55093 (October 5, 2021) (SR–MIAX–2021–43); 93165 (September 28, 2021), 86 FR 54750 (October 4, 2021) (SR–MIAX–2021–41); 92661 (August 13, 2021), 86 FR 46737 (August 19, 2021) (SR–MIAX–2021–37); 92643 (August 11, 2021), 86 FR 46034 (August 17, 2021) (SR–MIAX–2021–35).

[56] 15 U.S.C. 78f(b)(4).

[57] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[58] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[59] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[60] *See supra* note 9.

[61] *Id.*

proposed amended rate for 10Gb ULL connectivity is described below. Prior to the bifurcation of the 10Gb ULL networks, subscribers to 10Gb ULL connectivity would be able to connect to both the Exchange and MIAX Pearl Options at the applicable rate set forth below.

The Exchange, therefore, proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks[62] via a 10Gb ULL fiber connection and to specify that this fee is for a dedicated connection to the Exchange and no longer provides access to MIAX Pearl Options. Specifically, the Exchange proposes to amend Sections 5)a)–b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[63] The Exchange also proposes to amend the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both the Exchange and MIAX Pearl Options.

The Exchange proposes to make the following changes to reflect the bifurcated 10Gb ULL network for the Exchange and MIAX Pearl Options. The Exchange proposes to amend the explanatory paragraphs below the network connectivity fee tables in Sections 5)a)–b) of the Fee Schedule to specify that, with the bifurcated 10Gb ULL network, Members (and non-Members) utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX Pearl Options via a single, can only do so via a shared 1Gb connection.

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Limited Service MEI Ports

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to amend the monthly port fee for Limited Service MEI Ports available to Market Makers.[64] The Exchange currently allocates two (2) Full Service MEI Ports[65] and two (2) Limited Service MEI Ports[66] per matching engine[67] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Market Makers were previously assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free. This fee was unchanged since 2016 (before the proposals to adopt a tiered fee structure).[68]

Limited Service MEI Port Fee Changes

The Exchange now proposes to amend the monthly fee per Limited Service MEI Port and increase the number of free Limited Service MEI Ports per matching engine from two (2) to four (4). Specifically, the Exchange will now provide the first, second, third, and fourth Limited Service MEI Ports for each matching engine free of charge. For additional Limited Service MEI Ports after the first four ports per matching engine that are provided for free (*i.e.,* beginning with the fifth Limited Service MEI Port), the Exchange proposes to increase the monthly fee from $100 to $275 per Limited Service MEI Port per matching engine.

Market Makers that elect to purchase more than the number of Limited Service Ports that are provide for free do so due to the nature of their business and their perceived need for numerous ports to access the Exchange. Meanwhile, Market Makers who utilize the free Limited Service MEI Ports do so based on their business needs.

The Exchange notes that it last proposed to increase its monthly Limited Service MEI Port fees in 2016 (other than the prior proposals to adopt a tiered fee structure for Limited Service MEI Ports),[69] and such increase proposed herein is designed to recover a portion of the ever increasing costs associated with directly accessing the Exchange.

[62] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[63] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Fee Schedule. *See* Fee Schedule, Section 4)c), *available at https://www.miaxglobal.com/markets/us-options/miax-options/fees* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

[64] The Exchange notes that in its prior filings (the Initial, Second, Third, Fourth and Fifth Proposals), the Exchange proposed to adopt a tiered-pricing structure for Limited Service MEI Ports.

[65] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 27.

[66] Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 28.

[67] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* Fee Schedule, Section 5)d)ii), note 29.

[68] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[69] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act [70] in general, and furthers the objectives of Section 6(b)(4) of the Act [71] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act [72] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order [73] and the Staff Guidance,[74] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [75] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [76] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.'' [77]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity (driven by the bifurcation of the 10Gb ULL network) and Limited Service MEI Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange commenced operations in 2012 and adopted its initial fee schedule, with all connectivity and port fees set at $0.00 (the Exchange originally had a non-ULL 10Gb connectivity option, which it has since removed).[78] As a new exchange entrant, the Exchange chose to offer connectivity and ports free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[79]

[70] 15 U.S.C. 78f(b).

[71] 15 U.S.C. 78f(b)(4).

[72] 15 U.S.C. 78f(b)(5).

[73] *See supra* note 27.

[74] *See supra* note 28.

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *See* Securities Exchange Act Release No. 68415 (December 12, 2012), 77 FR 74905 (December 18, 2012) (SR–MIAX–2012–01).

[79] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX . . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities

Continued

Later in 2013, as the Exchange's market share increased,[80] the Exchange adopted a nominal $10 fee for each additional Limited Service MEI Port.[81] The Exchange last increased the fees for its 10Gb ULL fiber connections from $9,300 to $10,000 per month on January 1, 2021.[82] The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[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'. . . .'' [83]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.'' [84]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [85] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [86] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [87] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [88]

The Exchange believes the competing exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. Each of the connectivity or port rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX (as proposed) (equity options market share of 6.30% for the month of December 2023) [a].	10Gb ULL connection	$13,500.
	Limited Service MEI Ports	1–4 ports: FREE; 5 or more ports: $275 each.
NASDAQ [b] (equity options market share of 5.58% for the month of December 2023) [c].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port [d]	1–5 ports: $1,500 per port; 6–20 ports: $1,000 per port; 21 or more ports: $500 per port.
NASDAQ ISE LLC (''ISE'') [e] (equity options market share of 6.39% for the month of December 2023) [f].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port	$1,100 per port.
NYSE American LLC (''NYSE American'') [g] (equity options market share of 7.49% for the month of December 2023) [h].	10Gb LX LCN connection	$22,000 per connection.
	Order/Quote Entry Port	1–40 ports: $450 per port; 41 or more ports: $150 per port.

Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[80] The Exchange experienced a monthly average equity options trading volume of 1.87% for the month of November 2013. *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*

[81] *See* Securities Exchange Act Release No. 70903 (November 20, 2013), 78 FR 70615 (November 26, 2013) (SR–MIAX–2013–52).

[82] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[83] *See NetCoalition,* 615 F.3d at 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)).

[84] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[85] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[86] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[87] *Id.*

[88] *See supra* note 28.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
NASDAQ GEMX, LLC (''GEMX'') [i] (equity options market share of 2.63% for the month of December 2023) [j].	10Gb Ultra connection	$15,000 per connection.
	SQF Port	$1,250 per port.

[a] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/*.
[b] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.
[c] *See supra* note a.
[d] Similar to the Exchange's MEI Ports, SQF ports are primarily utilized by Market Makers.
[e] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.
[f] *See supra* note a.
[g] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.
[h] *See supra* note a.
[i] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.
[j] *See supra* note a.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. Market participants may choose to become a member of one or more options exchanges based on the market participant's assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, the Exchange's affiliate, MIAX Pearl Options, experienced a decrease in membership as the result of similar fees proposed herein. One MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023, as a direct result of the proposed connectivity and port fee changes proposed by MIAX Pearl Options.

It is not a requirement for market participants to become members of all options exchanges; in fact, certain market participants conduct an options business as a member of only one options market.[89] A very small number of market participants choose to become a member of all sixteen options exchanges. Most firms that actively trade on options markets are not currently Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Members or service bureaus, and only a Member may utilize a port.[90]

One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[91] The Exchange and its affiliated options markets, MIAX Pearl Options and MIAX Emerald, have a total of 46 members. Of those 46 total members, 37 are members of all three affiliated options markets, two are members of only two affiliated options markets, and seven are members of only one affiliated options market. The Exchange also notes that no firm is a Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all options exchanges, let alone the Exchange and its two affiliates, and broker-dealers may elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool.

Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the broker-dealer membership analysis of the options exchanges discussed above. As noted above, this is evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options (which are similar to the changes proposed herein). Indeed, broker-dealers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at—or establish connectivity to—the Exchange.[92] If the Exchange is not at the national best bid or offer (''NBBO'') [93], the Exchange will route an

[89] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ''. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].'' Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange'' and that ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.''

[90] Service Bureaus may obtain ports on behalf of Members.

[91] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

[92] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), *available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[93] *See* Exchange Rule 100.

order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[94]

With respect to the submission of orders, Members may also choose not to purchase any connection from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Member of the Exchange may be utilized by a retail investor to submit orders into an exchange. An institutional investor may utilize a broker-dealer, a service bureau,[95] or request sponsored access [96] through a member of an exchange in order to submit a trade directly to an options exchange.[97] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-party).[98] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[99] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 16 options markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member, and is approved for membership by the Exchange, the Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become a Member of the Exchange. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. If a market participant chooses to become a Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

Bifurcation of 10Gb ULL Connectivity and Related Fees

The Exchange began to operate on a single shared network with MIAX Pearl Options when MIAX Pearl commenced operations as a national securities exchange on February 7, 2017.[100] The Exchange and MIAX Pearl Options operated on a single shared network to provide Members with a single convenient set of access points for both exchanges. Both the Exchange and MIAX Pearl Options offer two methods of connectivity, 1Gb and 10Gb ULL connections. The 1Gb connection services are supported by a discrete set of switches providing 1Gb access ports to Members. The 10Gb ULL connection services are supported by a second and mutually exclusive set of switches providing 10Gb ULL access ports to Members. Previously, both the 1Gb and 10Gb ULL shared extranet ports allowed Members to use one connection to access both exchanges, namely their trading platforms, market data systems, test systems, and disaster recovery facilities.

The Exchange stresses that bifurcating the 10Gb ULL connectivity between the Exchange and MIAX Pearl Options was not designed with the objective to generate an overall increase in access fee revenue. Rather, the proposed change was necessitated by 10Gb ULL connectivity experiencing a significant decrease in port availability mostly driven by connectivity demands of latency sensitive Members that seek to maintain multiple 10Gb ULL connections on every switch in the network. Operating two separate national securities exchanges on a single shared network provided certain benefits, such as streamlined connectivity to multiple exchanges, and simplified exchange infrastructure. However, doing so was no longer sustainable due to ever-increasing capacity constraints and current system limitations. The network is not an unlimited resource. As described more fully in the proposal to bifurcate the 10Gb ULL network,[101] the connectivity

[94] Members may elect to not route their orders by utilizing the Do Not Route order type. *See* Exchange Rule 516(g).

[95] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders.

[96] Sponsored Access is an arrangement whereby a Member permits its customers to enter orders into an exchange's system that bypass the Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[97] This may include utilizing a floor broker and submitting the trade to one of the five options trading floors.

[98] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at* US Direct-Extranet Connection (nasdaqtrader.com); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[99] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

[100] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (establishing MIAX Pearl Fee Schedule and establishing that the MENI can also be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of MIAX Pearl's affiliate, MIAX, via a single, shared connection).

[101] *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December

needs of Members and market participants has increased every year since the launch of MIAX Pearl Options and the operations of the Exchange and MIAX Pearl Options on a single shared 10Gb ULL network is no longer feasible. This required constant System [102] expansion to meet Member demand for additional ports and 10Gb ULL connections has resulted in limited available System headroom, which eventually became operationally problematic for both the Exchange and its customers.

As stated above, the shared network is not an unlimited resource and its expansion was constrained by MIAX's and MIAX Pearl Options' ability to provide fair and equitable access to all market participants of both markets. Due to the ever-increasing connectivity demands, the Exchange found it necessary to bifurcate 10Gb ULL connectivity to the Exchange's and MIAX Pearl Options' Systems and networks to be able to continue to meet ongoing and future 10Gb ULL connectivity and access demands.[103]

Unlike the switches that provide 1Gb connectivity, the availability for additional 10Gb ULL connections on each switch had significantly decreased. This was mostly driven by the connectivity demands of latency sensitive Members (*e.g.,* Market Makers and liquidity removers) that sought to maintain connectivity across multiple 10Gb ULL switches. Based on the Exchange's experience, such Members did not typically use a shared 10Gb ULL connection to reach both the Exchange and MIAX Pearl Options due to related latency concerns. Instead, those Members maintain dedicated separate 10Gb ULL connections for the Exchange and separate dedicated 10Gb ULL connections for MIAX Pearl Options. This resulted in a much higher 10Gb ULL usage per switch by those Members on the shared 10Gb ULL network than would otherwise be needed if the Exchange and MIAX Pearl Options had their own dedicated 10Gb ULL networks. Separation of the Exchange and MIAX Pearl Options 10Gb ULL networks naturally lends itself to reduced 10Gb ULL port consumption on each switch and, therefore, increased 10Gb ULL port availability for current Members and new Members.

Prior to bifurcating the 10Gb ULL network, the Exchange and MIAX Pearl Options continued to add switches to meet ongoing demand for 10Gb ULL connectivity. That was no longer sustainable because simply adding additional switches to expand the current shared 10Gb ULL network would not adequately alleviate the issue of limited available port connectivity. While it would have resulted in a gain in overall port availability, the existing switches on the shared 10Gb ULL network in use would have continued to suffer from lack of port headroom given many latency sensitive Members' needs for a presence on each switch to reach both the Exchange and MIAX Pearl Options. This was because those latency sensitive Members sought to have a presence on each switch to maximize the probability of experiencing the best network performance. Those Members routinely decide to rebalance orders and/or messages over their various connections to ensure each connection is operating with maximum efficiency. Simply adding switches to the extranet would not have resolved the port availability needs on the shared 10Gb ULL network since many of the latency sensitive Members were unwilling to relocate their connections to a new switch due to the potential detrimental performance impact. As such, the impact of adding new switches and rebalancing ports would not have been effective or responsive to customer needs. The Exchange has found that ongoing and continued rebalancing once additional switches are added has had, and would have continued to have had, a diminishing return on increasing available 10Gb ULL connectivity.

Based on its experience and expertise, the Exchange found the most practical way to increase connectivity availability on its switches was to bifurcate the existing 10Gb ULL networks for the Exchange and MIAX Pearl Options by migrating the exchanges' connections from the shared network onto their own set of switches. Such changes accordingly necessitated a review of the Exchange's previous 10Gb ULL connectivity fees and related costs. The proposed fees are necessary to allow the Exchange to cover ongoing costs related to providing and maintaining such connectivity, described more fully below. The ever increasing connectivity demands that necessitated this change further support that the proposed fees are reasonable because this demand reflects that Members and non-Members believe they are getting value from the 10Gb ULL connections they purchase.

The Exchange announced on August 12, 2022 the planned network change and the January 23, 2023 implementation date to provide market participants adequate time to prepare.[104] Beginning August 12, 2022, the Exchange worked with the then-current 10Gb ULL subscribers to address their connectivity needs ahead of the January 23, 2023 date. Based on those interactions and subscriber feedback, the Exchange experienced a minimal net increase of six (6) overall 10Gb ULL connectivity subscriptions across the Exchange and MIAX Pearl Options when the 10Gb ULL network was bifurcated. This immaterial increase in overall connections reflects a minimal fee impact for all types of subscribers and reflects that subscribers elected to reallocate existing 10Gb ULL connectivity directly to the Exchange or MIAX Pearl Options, or choose to decrease or cease connectivity as a result of the change.

Should the Commission Staff disapprove such fees, it would effectively dictate how an exchange manages its technology and would hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval could also have the adverse effect of discouraging an exchange from optimizing its operations and deploying innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from covering its costs and monetizing operational enhancements, thus adversely impacting competition. Also, as noted above, the economic consequences of not being able to better establish fee parity with other exchanges for non-transaction fees hampers the Exchange's ability to compete on transaction fees.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity and port services, the

20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[102] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[103] Currently, the Exchange maintains sufficient headroom to meet ongoing and future requests for 1Gb connectivity. Therefore, the Exchange did not propose to alter 1Gb connectivity and continues to provide 1Gb connectivity over a shared network.

[104] *See supra* note 9.

Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[105] and Rule 19b–4 thereunder,[106] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[107] which requires, among other things, that exchange fees be reasonable and equitably allocated,[108] not designed to permit unfair discrimination,[109] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[110] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[111] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $14,410,793 (or approximately $1,200,900 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Limited Service MEI Ports at $2,399,193 (or approximately $199,933 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its users (both Members and non-Members [112]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection and to remove language providing for a shared 10Gb ULL network between the Exchange and MIAX Pearl Options. The Exchange also proposes to modify its Fee Schedule to amend the monthly fee for additional Limited Service MEI Ports and provide two additional ports free of charge for a total of four free Limited Service MEI Ports per matching engine to which each Member connects.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[113] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[114] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount

[105] 15 U.S.C. 78s(b)(1).

[106] 17 CFR 240.19b–4.

[107] 15 U.S.C. 78f(b).

[108] 15 U.S.C. 78f(b)(4).

[109] 15 U.S.C. 78f(b)(5).

[110] 15 U.S.C. 78f(b)(8).

[111] *See supra* note 28.

[112] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access Limited Service MEI Ports on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[113] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[114] For example, the Exchange maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (59% of total expense amount allocated to 10Gb ULL connectivity), with smaller allocations to additional Limited Service MEI Ports (5.5%), and the remainder to the provision of other connectivity, other ports, transaction execution, membership services and market data services (35.5%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity and port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity and port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide 10Gb ULL connectivity and Limited Service MEI Port services, including both physical 10Gb connections and Limited Service MEI Ports, is $1,400,833 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Limited Service MEI Ports by 12 months, then adding both numbers together), as further detailed below.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.,* as set forth below, the Exchange allocated approximately 22.4% of its overall Human Resources cost to offering 10Gb ULL physical connectivity).

Cost drivers	Allocated annual cost[k]	Allocated monthly cost[l]	Percent of all
Human Resources	$5,097,079	$424,757	22.4
Connectivity (external fees, cabling, switches, etc.)	55,020	4,585	59.0
Internet Services and External Market Data	551,120	45,927	71.3
Data Center	881,177	73,431	59.0
Hardware and Software Maintenance and Licenses	991,378	82,615	48.5
Depreciation	2,573,534	214,461	58.3
Allocated Shared Expenses	4,261,485	355,124	48.1
Total	14,410,793	1,200,900	35.6

[k] The Annual Cost includes figures rounded to the nearest dollar.

[l] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology

utilizes the actual projected costs of the Exchange (which are specific to the Exchange and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to connectivity. From that portion allocated to the Exchange that applied to connectivity, the Exchange then allocated a weighted average of 46% of each employee's time from the above group to 10Gb ULL connectivity.

The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing physical connectivity) and then applied a smaller allocation to such employees' time to 10Gb ULL connectivity (less than 16%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to 10Gb ULL connectivity, whether it is a sales person selling a connection, finance personnel billing for connectivity or providing budget analysis, or information security ensuring that such connectivity is secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity:

Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 46% of each of their employee's time assigned to the Exchange for 10Gb ULL connectivity, as stated above. Employees from these departments perform numerous functions to support 10Gb ULL connectivity, such as the installation, re-location, configuration, and maintenance of 10Gb ULL connections and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting 10Gb ULL connectivity and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support 10Gb ULL connectivity, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the 10Gb ULL connectivity related Human Resources costs to the extent that they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. options industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges and the Options Price Reporting Authority (''OPRA''). The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Internet Services and External Market Data

The next cost driver consists of internet Services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami.

External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange includes external market data fee costs towards the provision of 10Gb ULL connectivity because such market data is necessary for certain services related to connectivity, including pre-trade risk checks and checks for other conditions (*e.g.,* re-pricing of orders to avoid locked or crossed markets and trading collars). Since external market data from other exchanges is consumed at the Exchange's matching engine level, (to which 10Gb ULL connectivity provides access) in order to validate orders before additional orders enter the matching engine or are executed, the Exchange believes it is reasonable to allocate an amount of such costs to 10Gb ULL connectivity.

The Exchange relies on various content service providers for data feeds for the entire U.S. options industry, as well as content for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes content service providers to receive market data from OPRA, other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to receive market data and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Lastly, the Exchange notes that the actual dollar amounts allocated as part of the second step of the 2024 budget process differ among the Exchange and its affiliated markets for the internet Services and External Market Data cost driver, even though but for MIAX Emerald, the allocation percentages are generally consistent across markets (*e.g.,* MIAX Emerald, MIAX, and MIAX Pearl Options allocated 84.8%, 71.3%, and 74.8%, respectively, to the same cost driver). This is because: (i) a different percentage of the overall internet Services and External Market Data cost driver was allocated to MIAX Emerald and its affiliated markets due to the factors set forth under the first step of the 2024 budget review process described above (unique technical architecture, market structure, and business requirements of each marketplace); and (ii) MIAX Emerald itself allocated a larger portion of this cost driver to 10Gb ULL connectivity because of recent initiatives to improve the latency and determinism of its systems. The Exchange notes while the percentage MIAX Emerald allocated to the internet Services and External Market Data cost driver is greater than the Exchange and its other affiliated markets, the overall dollar amount allocated to the Exchange under the initial step of the 2024 budget process is lower than its affiliated markets. However, the Exchange believes that

this is not, in dollar amounts, a significant difference. This is because the total dollar amount of expense covered by this cost driver is relatively small compared to other cost drivers and is due to nuances in exchange architecture that require different initial allocation amount under the first step of the 2024 budget process described above. Thus, non-significant differences in percentage allocation amounts in a smaller cost driver create the appearance of a significant difference, even though the actual difference in dollar amounts is small. For instance, despite the difference in cost allocation percentages for the internet Services and External Market Data cost driver across MIAX and MIAX Pearl Options, the actual dollar amount difference is approximately only $13,000 per month, a non-significant amount.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (59.0%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity by market participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[115] The Exchange notes that this allocation is less than MIAX Pearl Options by a significant amount, and slightly less than MIAX Emerald, as MIAX Pearl Options allocated 59.8% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 48.5% and 50.9%, respectively, to the same category of expense. This is because MIAX Pearl Options is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance. At the time of this filing, MIAX Pearl Options is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, the Exchange has materially higher expense than its affiliates.

Depreciation

All physical assets, software, and hardware used to provide 10Gb ULL connectivity, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to 10Gb ULL connectivity in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to 10Gb ULL connectivity. As noted above, the Exchange allocated 58.3% of its allocated depreciation costs to providing physical 10Gb ULL connectivity.

The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the percentages the Exchange and its affiliate, MIAX Emerald, allocated to the depreciation of hardware and software used to provide 10Gb ULL connectivity are similar. However, the Exchange's dollar amount is greater than that of MIAX Emerald by approximately $35,508 per month due to two factors: first, the Exchange has undergone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware that software that is subject to depreciation. Second, the Exchange maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of the Exchange's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on the Exchange.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to overall physical connectivity costs. These general shared costs are integral to exchange operations, including its ability to provide physical connectivity. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[116] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to 10Gb ULL connectivity pursuant to its

[115] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl Options because, unlike the Exchange, MIAX Pearl Options maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl Options. This expense also differs in dollar amount among the Exchange, MIAX Pearl Options, and MIAX Emerald because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

[116] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including connectivity. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* 10Gb ULL connectivity as a sub-category of connectivity. In determining the percentage of general shared expenses allocated to connectivity that ultimately apply to 10Gb ULL connectivity, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to 10Gb ULL connectivity. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as 10Gb ULL connectivity.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all physical connectivity on the Exchange. The Exchange then allocated 48.1% of the portion allocated to physical connectivity to 10Gb ULL connectivity. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 48.1% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to 10Gb ULL connectivity also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster 10Gb ULL connectivity than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance network connectivity, of which 10Gb ULL connectivity is a main contributor. The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which system networks can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 1,100,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 1,100,000 distinct trading products. These value add services are part of the Exchange's strategy for offering a high performance trading system, which utilizes 10Gb ULL connectivity.

The Exchange notes that the 48.1% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Limited Service MEI Ports. This is based on its allocation methodology that weighted costs attributable to each core service. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), Limited Service MEI Ports do not require as many broad or indirect resources as other core services.

* * * * *

Approximate Cost per 10Gb ULL Connection per Month

After determining the approximate allocated monthly cost related to 10Gb ULL connectivity, the total monthly cost for 10Gb ULL connectivity of $1,200,900 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (93), to arrive at a cost of approximately $12,913 per month (rounded up to the nearest dollar), per physical 10Gb ULL connection. Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of 10Gb ULL connections.

* * * * *

Costs Related to Offering Limited Service MEI Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 5.7% of its overall Human Resources cost to offering Limited Service MEI Ports).

Cost drivers	Allocated annual cost[m]	Allocated monthly cost[n]	Percent of all
Human Resources	$1,297,498	$108,125	5.7
Connectivity (external fees, cabling, switches, etc.)	2,730	228	2.9
Internet Services and External Market Data	42,377	3,531	5.5
Data Center	81,963	6,830	5.5
Hardware and Software Maintenance and Licenses	112,103	9,342	5.5
Depreciation	217,699	18,142	4.9
Allocated Shared Expenses	644,822	53,735	7.3
Total	2,399,192	199,933	5.9

[m] *See supra* note k (describing rounding of Annual Costs).
[n] *See supra* note l (describing rounding of Monthly Costs based on Annual Costs).

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the

actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

With respect to Limited Service MEI Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Limited Service MEI Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing Limited Service MEI Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Limited Service MEI Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing Limited Service MEI Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were allocated Human Resources costs to the extent they are involved in overseeing tasks specifically related to providing Limited Service MEI Ports. Senior level executives were only allocated Human Resources costs to the extent that they are involved in managing personnel responsible for tasks integral to providing and maintaining Limited Service MEI Ports. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost includes external fees paid to connect to other exchanges and cabling and switches, as described above.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of Limited Service MEI Ports, the Exchange also includes a portion of its costs related to external market data. External market data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange includes external market data costs towards the provision of Limited Service MEI Ports because such market data is necessary (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the NBBO and checking for other conditions (*e.g.,* halted securities).[117] Thus, since

[117] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to

market data from other exchanges is consumed at the Exchange's Limited Service MEI Port level in order to validate orders, before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to Limited Service MEI Ports.

The Exchange notes that the allocation for the Internet Services and External Market Data cost driver is greater than that of its affiliate, MIAX Pearl Options, as MIAX allocated 5.5% of its Internet Services and External Market Data expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports for the same cost driver. The allocation percentages set forth above differ because they directly correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure and internet Service), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Limited Service MEI Ports in the third-party data centers where it maintains its equipment as well as related costs for market data to then enter the Exchange's system via Limited Service MEI Ports (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

The Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX allocated 5.5% of its Hardware and Software Maintenance and License expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Depreciation

The vast majority of the software the Exchange uses to provide Limited Service MEI Ports has been developed in-house and the cost of such development, which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production environment. Hardware used to provide Limited Service MEI Ports includes equipment used for testing and monitoring of order entry infrastructure and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 4.9% of all depreciation costs to providing Limited Service MEI Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Limited Service MEI Ports. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost driver was therefore narrowly tailored to depreciation related to Limited Service MEI Ports.

The Exchange notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the Exchange notes that the percentages it and its affiliate, MIAX Emerald, allocated to the depreciation cost driver for Limited Service MEI Ports differ by only 1.7%. However, the Exchange's approximate dollar amount is greater than that of MIAX Emerald by approximately $8,773 per month. This is due to two primary factors. First, the Exchange has under gone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware that software that is subject to depreciation. Second, the Exchange maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of the Exchange's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on the Exchange.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Limited Service MEI Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Limited Service MEI Ports. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 10% of the overall cost for

providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26).

directors was allocated to providing Limited Service MEI Ports. The Exchange notes that the 7.3% allocation of general shared expenses for Limited Service MEI Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Limited Service MEI Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange.

Lastly, the Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX allocated 7.3% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.0% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI Ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.[118]

* * * * *

Approximate Cost per Limited Service MEI Port per Month

Based on projected 2024 data, the total monthly cost allocated to Limited Service MEI Ports of $199,933 was divided by the total number of Limited Service MEI Ports utilized by Members in December, which was 1,785 (and includes free and charged ports), resulting in an approximate cost of $112 per port per month (when rounding to the nearest dollar). The Exchange used the total number of Limited Service MEI Ports it maintained in August for all Members and included free and charged ports. However, in prior filings, the Exchange did not include the expense of maintaining the two free Limited Service MEI Ports per matching engine that each Member receives when the Exchange discussed the approximate cost per port per month, but did include the two free Limited Service MEI Ports in the total expense amounts. As described herein, the Exchange changed its proposed fee structure since past filings to now offer four free Limited Service MEI Ports per matching engine to which each Member connects. After the first four free Limited Service MEI Ports, the Exchange proposes to charge $275 per Limited Service MEI Port per matching engine, up to a total of twelve (12) Limited Service MEI Ports per matching engine.

For the sake of clarity, if a Member wanted to connect to all 24 of the Exchange's matching engines and utilize the maximum number of Limited Service MEI Ports on each matching engine (*i.e.,* 12), that Member would have a total of 288 Limited Service MEI Ports (24 matching engines multiplied by 12 Limited Service MEI Ports per matching engine). With the proposed increase to now provide four Limited Service MEI Ports for free on each matching engine, that particular Member would receive 96 free Limited Service MEI Ports (4 free Limited Service MEI Ports multiplied by 24 matching engines), and be charged for the remaining 192 Limited Service MEI Ports (288 total Limited Service MEI Ports across all matching engines minus 96 free Limited Service MEI Ports across all matching engines).

As mentioned above, Members utilized a total of 1,785 Limited Service MEI Ports in the month of December 2023 (free and charged ports combined). Using December 2023 data to extrapolate out after the proposed changes herein go into effect, the total number of Limited Service MEI Ports that the Exchange would not charge for as a result of this increase in free ports is 942 (meaning the Exchange would charge for only 843 ports) and amounts to a total expense of $105,504 per month to the Exchange ($112 per port multiplied by 942 free Limited Service MEI Ports).

* * * * *

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Limited Service MEI Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (46%) given their focus on functions necessary to provide 10Gb ULL physical connections. The salaries of those same personnel were allocated only 7.2% to Limited Service MEI Ports and the remaining 52.2% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 15% for 10Gb ULL connectivity or 15.8% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (4% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Limited Service MEI Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Limited Service MEI Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 23.5% of its personnel costs to providing 10Gb ULL and 1Gb ULL connectivity and 5.7% of its personnel costs to providing Limited Service MEI Ports, for a total allocation of 29.2% Human Resources expense to provide these specific connectivity and port services. In turn, the Exchange allocated the remaining 70.8% of its Human Resources expense

[118] The Exchange allocated a slightly lower amount (7.3%) of this cost as compared to MIAX Emerald (8.7%). This is not a significant difference. However, both allocations resulted in a similar cost amount (approximately $0.6 million for MIAX and $0.8 million for MIAX Emerald), despite the Exchange having a higher number of Limited Service MEI Ports. MIAX Emerald was allocated a higher cost per Limited Service MEI Port due to the additional resources and expenditures associated with maintaining its recently enhanced low latency network.

to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Limited Service MEI Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 63.2% of the Exchange's overall depreciation and amortization expense to connectivity services (58.3% attributed to 10Gb ULL physical connections and 4.9% to Limited Service MEI Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 36.8%) toward the cost of providing transaction services, membership services, other port services, 1Gb connectivity, and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Limited Service MEI Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases. However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [119]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity and port services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services will equal $14,410,793. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $14,518,284. The Exchange believes this represents a modest profit of 0.7% when compared to the cost of providing 10Gb ULL connectivity services.

The Exchange's Cost Analysis estimates the annual cost to provide Limited Service MEI Port services will equal $2,399,193. Based on November 2023 data for Limited Service MEI Port usage and counting for the proposed increase in free Limited Service MEI Ports and proposed increase in the monthly fee from $100 to $275 per port, the Exchange would generate annual revenue of approximately $2,768,700. The Exchange believes this would result in an estimated profit margin of 13.3% after calculating the cost of providing Limited Service MEI Port services. The Exchange notes that the cost to provide Limited Service MEI Ports is higher than the cost for the Exchange's affiliate, MIAX Pearl Options, to provide Full Service MEO Ports due to the substantially higher number of Limited Service MEI Ports used by Exchange Members. For example, utilizing December 2023 data, MIAX Market

[119] For purposes of calculating projected 2024 revenue for 10Gb ULL connectivity, the Exchange used revenues for the most recently completed full month.

Makers utilized 1,785 Limited Service MEI Ports compared to only 360 Full Service MEO Ports (Bulk and Single combined) allocated to MIAX Pearl Options members.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Limited Service MEI Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Limited Service MEI Port services.

The Exchange also notes that this the resultant profit margin differs slightly from the profit margins set forth in similar fee filings by its affiliated markets. This is not atypical among exchanges and is due to a number of factors that differ between these four markets, including: different market models, market structures, and product offerings (equities, options, price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* the Exchange maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines); and different maturity phase of the Exchange and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, the Exchange proposes to charge rates that are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for 10Gb ULL connectivity, the Exchange proposes a lower fee than the fee charged by Nasdaq for its comparable 10Gb Ultra fiber connection ($13,500 per month for the Exchange vs. $15,000 per month for Nasdaq).[120] NYSE American charges even higher fees for its comparable 10GB LX LCN connection than the Exchange's proposed fees ($13,500 for the Exchange vs. $22,000 per month for NYSE American).[121] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to 10Gb ULL connectivity on the Exchange than its affiliated markets or vice versa).

* * * * *

The Exchange has operated at a cumulative net annual loss since it launched operations in 2012.[122] This is due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as low latency connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange does not believe that it should now be penalized for seeking to raise its fees as it now needs to upgrade its technology and absorb increased costs. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in connectivity clients or in transaction activity, the Exchange could experience a net reduction in revenue. While the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple exchanges. The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Commission Staff should also consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by

[120] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[121] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[122] The Exchange has incurred a cumulative loss of $71 million since its inception in 2012 through full year 2022. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 26, 2023, *available at https://www.sec.gov/Archives/edgar/vprr/2300/23007741.pdf.*

competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. Further, if Commission Staff is making determinations as to appropriate profit margins in their approval of exchange fees, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, as is reflected in the proposal, the Exchange continuously and aggressively works to control its costs as a matter of good business practice. A potential profit margin should not be evaluated solely on its size; that assessment should also consider cost management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[123] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Limited Service MEI Ports

The proposed changes to the monthly fee for Limited Service MEI Ports is not unfairly discriminatory because it would apply to all Market Makers equally. All Market Makers would now be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same monthly rate regardless of the number of additional Limited Service MEI Ports they purchase. Certain market participants choose to purchase additional Limited Service MEI Ports based on their own particular trading/quoting strategies and feel they need a certain number of connections to the Exchange to execute on those strategies. Other market participants may continue to choose to only utilize the free Limited Service MEI Ports to accommodate their own trading or quoting strategies, or other business models. All market participants elect to receive or purchase the amount of Limited Service MEI Ports they require based on their own business decisions and all market participants would be subject to the same fee structure and flat fee. Every market participant may receive up to four (4) free Limited Service MEI Ports and those that choose to purchase additional Limited Service MEI Ports may elect to do so based on their own business decisions and would continue to be subject to the same flat fee. The Exchange notes that it filed to amend this fee in 2016 and that filing contained the same fee structure, *i.e.,* a certain number of free Limited Service MEI Ports coupled with a flat fee for additional Limited Service MEI Ports.[124] At that time, the Commission did not find the structure to be unfairly discriminatory by virtue of that proposal surviving the 60-day suspension period. Therefore, the proposed changes to the fees for Limited Service MEI Ports is not unfairly discriminatory because it would continue to apply to all market participants equally and provides a fee structure that includes four free Limited Service MEI Ports for one monthly rate that was previously in place and filed with the Commission.

The Exchange believes that its proposed fee for Limited Service MEI Ports is reasonable, fair and equitable, and not unfairly discriminatory because it is designed to align fees with services provided, will apply equally to all Members that are assigned Limited Service MEI Ports (either directly or through a Service Bureau), and will minimize barriers to entry by now providing all Members with four, instead of the prior two, free Limited Service MEI Ports.[125] As a result of the proposed fee structure, a significant majority of Members will not be subject to any fee, and only six Members will potentially be subject to a fee for Limited Service MEI Ports in excess of four per month, based on current usage. In contrast, as described above, other exchanges generally charge in excess of $450 per port without providing any free ports.[126] Even for Members that choose to maintain more than four Limited Service MEI Ports, the Exchange believes that the cost-based

[123] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[124] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[125] The following rationale to support providing a certain number of Limited Service MEI Ports for free prior to applying a fee is similar to that used by the Investors Exchange LLC (''IEX'') in 2020 proposal to do the same as proposed herein. *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07).

[126] *See supra* notes a–j above.

fee proposed herein is low enough that it will not operate to restrain any Member's ability to maintain the number of Limited Service MEI Ports that it determines are consistent with its business objectives. The small number of Members projected to be subject to the highest fees will still pay considerably less than competing exchanges charge.[127] Further, the number of assigned Limited Service MEI Ports will continue to be based on decisions by each Member, including the ability to reduce fees by discontinuing unused Limited Service MEI Ports.

The Exchange believes that providing four free Limited Service MEI Ports is fair and equitable, and not unfairly discriminatory because it will enable all Members (and more Members than when the Exchange previously provided two free Limited Service MEI Ports) to access the Exchange free of charge, thereby encouraging order flow and liquidity from a diverse set of market participants, facilitating price discovery and the interaction of orders. The Exchange believes that four Limited Service MEI Ports is an appropriate number to provide for free because it aligns with the number of such ports currently maintained by a substantial majority of Members. Based on a review of Limited Service MEI Port usage, 39 of 45 connected Members are not projected to be subject to any Limited Service MEI Port fees under the proposed fee.

The Exchange assessed whether the fee may impact different types or sizes of Members differently. As a threshold matter, the fee does not by design apply differently to different types or sizes of Members. Nonetheless, the Exchange assessed whether there would be any differences in the amount of the projected fee that correlate to the type and/or size of different Members. This assessment revealed that the number of assigned Limited Service MEI Ports, and thus projected fees, correlates closely to a Member's inbound message volume to the Exchange. Specifically, as inbound message volume increases per Member, the number of requested and assigned Limited Service MEI Ports increases. The following table presents data from December 2023 evidencing the correlation between a Member's inbound message volume and the number of Limited Service MEI Port assigned to the Member as of December 31, 2023.

Number of ports	Average daily message traffic	Total message traffic	Overall percentage of all message traffic for month
1–4	3,847,597,203	76,951,944,054	22.99
5 or more	12,891,271,595	257,825,431,896	77.01

Members with relatively higher inbound message volume are projected to pay higher fees because they have requested more Limited Service MEI Ports. For example, the six Members that subscribe to five or more Limited Service MEI Ports and are subject to the proposed monthly fee on average account for 77.01% of December 2023 inbound messages over Limited Service MEI Ports. The 39 Members that, based on their December 2023 Limited Service MEI Port usage are not projected to be subject to any Limited Service MEI Port fees, on average account for only 22.99% of December 2023 inbound messages over Limited Service MEI Port. This includes one Member that previously paid a fee that was not charged in October 2023 under the proposed fee structure.

The Exchange believes that the variance between projected fees and Limited Service MEI Ports usage is not unfairly discriminatory because it is based on objective differences in Limited Service MEI Port usage among different Members. The Exchange notes that the distribution of total inbound message volume is concentrated in relatively few Members, which consume a much larger proportionate share of the Exchange's resources (compared to the majority of Members that send substantially fewer inbound order messages). This distribution of inbound message volume requires the Exchange to maintain sufficient Limited Service MEI Port capacity to accommodate the higher existing and anticipated message volume of higher volume Members. Thus, the Exchange's incremental aggregate costs for all Limited Service MEI Ports are disproportionately related to volume from the highest inbound message volume Members. For these reasons, the Exchange believes it is not unfairly discriminatory for the Members with the highest inbound message volume to pay a higher share of the total Limited Service MEI Ports fees.

While Limited Service MEI Port usage is concentrated in a few relatively larger Members, the number of such ports requested is not based on the size or type of Member but rather correlates to a Member's inbound message volume to the Exchange. Further, Members with relatively higher inbound message volume also request (and are assigned) more Limited Service MEI Ports than other Members, which in turn means they account for a disproportionate share of the Exchange's aggregate costs for providing Limited Service MEI Ports.[128] Therefore, the Exchange believes it is not unfairly discriminatory for the Members with higher inbound message volume to pay a modestly higher proportionate share of the Limited Service MEI Port fees.

To achieve consistent, premium network performance, the Exchange must build and maintain a network that has the capacity to handle the message rate requirements of its heaviest network consumers during anticipated peak market conditions. The resultant need to support billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. This need also requires the Exchange to purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the

[127] Assuming a Member selects five Limited Service MEI Ports based on their business needs, that Member on MIAX would be charged only for the fifth Limited Service MEI Port and pay only the $275 monthly fee, as the first four Limited Service Ports would be free. Meanwhile, a Member that purchases five ports on NYSE Arca Options would pay $450 per port per month, resulting in a total charge of $2,250 per month. On Cboe BZX Options, that same member would pay $750 per port per month, resulting in a total charge of $3,750 per months for five ports. *See* NYSE Arca Options Fees and Charges, dated November 2023, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* and Cboe BZX Options Fee Schedule *available at https://www.cboe.com/us/options/membership/fee_schedule/.*

[128] *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07) (justifying providing 5 ports for free and charging a fee for every port purchased in excess of 5 ports based on the higher message traffic of subscribers with increased number of ports).

Exchange Act.[129] Thus, as the number of connections per Market Maker increases, other costs incurred by the Exchange also increase, *e.g.,* storage costs, surveillance costs, service expenses.

Accordingly, the Exchange believes that the fee will be applied consistently with its specific purpose—to partially recover the Exchange's aggregate costs, encourage the efficient use of Limited Service MEI Ports, and align fees with Members' Limited Service MEI Port and system usage.

The Exchange further believes that the proposed fees are reasonable, fair and equitable, and non-discriminatory because they will apply to all Members in the same manner and are not targeted at a specific type or category of market participant engaged in any particular trading strategy. All Members will receive four free Limited Service MEI Ports and pay the same proposed fee per Limited Service MEI Ports for each additional Limited Service MEI Port. Each Limited Service MEI Port is identical, providing connectivity to the Exchange on identical terms. While the proposed fee will result in a different effective ''per unit'' rate for different Members after factoring in the four free Limited Service MEI Ports, the Exchange does not believe that this difference is material given the overall low proposed fee per Limited Service MEI Port. Because the first four Limited Service MEI Ports are free of charge, each entity will have a ''per unit'' rate of less than the proposed fee. Further, the fee is not connected to volume based tiers. All Members will be subject to the same fee schedule, regardless of the volume sent to or executed on the Exchange. The fee also does not depend on any distinctions between Members, customers, broker-dealers, or any other entity. The fee will be assessed solely based on the number of Limited Service MEI Ports an entity selects and not on any other distinction applied by the Exchange. While entities that send relatively more inbound messages to the Exchange may select more Limited Service MEI Ports, thereby resulting in higher fees, that distinction is based on decisions made by each Member and the extent and nature of the Member's business on the Exchange rather than application of the fee by the Exchange. Members can determine how many Limited Service MEI Ports they need to implement their trading strategies effectively. The Exchange proposes to offer additional Limited Service MEI Ports at a low fee to enable all Members to purchase as many Limited Service MEI Ports as their business needs dictate in order to optimize throughput and manage latency across the Exchange.

Notwithstanding that Members with the highest number of Limited Service MEI Ports will pay a greater percentage of the total projected fees than is represented by their Limited Service MEI Port usage, the Exchange does not believe that the proposed fee is unfairly discriminatory. It is not possible to fully synchronize the Exchange's objective to provide four free Limited Service MEI Ports to all Members, thereby minimizing barriers to entry and incentivizing liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Limited Service MEI Ports. As proposed, the Exchange is providing a reasonable increased number of Limited Service MEI Ports to each Member without charge. In fact, the Exchange proposes to provide more Limited Service MEI Ports for free by increasing the number of available Limited Service MEI Ports that are provided for free from two to four. Any variance between projected fees and Limited Service MEI Port usage is attributable to objective differences among Members in terms of the number of Limited Service MEI Ports they determine are appropriate based on their trading on the Exchange. Further, the Exchange believes that the low amount of the proposed fee (which in the aggregate is projected to only partially recover the Exchange's directly-related costs as described herein) mitigates any disparate impact.

Further, the fee will help to encourage Limited Service MEI Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[130] Reg SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[131] By encouraging Members to be efficient with their Limited Service MEI Ports usage, the proposed fee will support the Exchange's Reg SCI obligations in this regard by ensuring that unused Limited Service MEI Ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase. Additionally, because the Exchange will continue not to charge connectivity testing and certification fees to its Disaster Recovery Facility or where the Exchange requires testing and certification, the proposed fee structure will further support the Exchange's Reg SCI compliance by reducing the potential impact of a disruption should the Exchange be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing without incurring any port fee costs.[132]

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee will enable a broad range of the Exchange Members to continue to connect to the Exchange, thereby facilitating the economically efficient execution of securities transactions on the Exchange, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on the Exchange when it is the best market.

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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has

[129] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[130] 17 CFR 242.1000–1007.

[131] 17 CFR 242.1001(a).

[132] By comparison, some other exchanges charge less to connect to their disaster recovery facilities, but still charge an amount that could both recoup costs and potentially be a source of profits. *See, e.g.,* Nasdaq Stock Market LLC Equity 7, Section 115 (Ports and other Services).

operated at a cumulative net annual loss since it launched operations in 2012 [133] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership on January 1, 2023 as a direct result of the similar proposed fee changes by MIAX Pearl Options.[134] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Lastly, the Exchange does not believe its proposed changes to the monthly rate for Limited Service MEI Ports will place certain market participants at a relative disadvantage to other market participants. All market participants would be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same flat fee regardless of the number of additional Limited Service MEI Ports they purchase. All firms purchase the amount of Limited Service MEI Ports they require based on their own business decisions and similarly situated firms are subject to the same fees.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change and price increase will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As this is a fee increase, arguably if set too high, this fee would make it easier for other exchanges to compete with the Exchange. Only if this were a substantial fee decrease could this be considered a form of predatory pricing. In contrast, the Exchange believes that, without this fee increase, we are potentially at a competitive disadvantage to certain other exchanges that have in place higher fees for similar services. As we have noted, the Exchange believes that connectivity fees can be used to foster more competitive transaction pricing and additional infrastructure investment and there are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also believes that the proposed fees for 10Gb connectivity are appropriate and warranted and would not impose any burden on competition. This is a technology driven change designed to meet customer needs. The proposed fees would assist the Exchange in recovering costs related to providing dedicated 10Gb connectivity to the Exchange while enabling it to continue to meet current and anticipated demands for connectivity by its Members and other market participants. Separating its 10Gb network from MIAX Pearl Options enables the Exchange to better compete with other exchanges by ensuring it can continue to provide adequate connectivity to existing and new

[133] *See supra* note 122.

[134] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See supra* note 79. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

Members, which may increase in ability to compete for order flow and deepen its liquidity pool, improving the overall quality of its market. The proposed rates for 10Gb ULL connectivity are structured to enable the Exchange to bifurcate its 10Gb ULL network shared with MIAX Pearl Options so that it can continue to meet current and anticipated connectivity demands of all market participants.

Similarly, and also in connection with a technology change, Cboe amended its access and connectivity fees, including port fees.[135] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports,[136] tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to.[137] Cboe justified its proposal by stating that, ''. . . the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over-the-Counter (OTC) markets.'' [138] The Exchange concurs with the following statement by CBOE,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[139]

The Cboe proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[140] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[141] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [142] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[143]

Cboe also filed to establish a monthly fee for Certification Logical Ports of $250 per Certification Logical Port.[144] Cboe reasoned that purchasing additional Certification Logical Ports, beyond the one Certification Logical Port per logical port type offered in the production environment free of charge, is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange.[145]

In its statutory basis, Cboe justified the new port fee by stating that it believed the Certification Logical Port fee were reasonable because while such ports were no longer completely free, TPHs and non-TPHs would continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that is currently offered in the production environment.[146] Cboe noted that other exchanges assess similar fees and cited to NASDAQ LLC and MIAX.[147] Cboe also noted that the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[148] Finally, similar proposals to adopt a Certification Logical Port monthly fee were filed by Cboe BYX Exchange, Inc.,[149] BZX,[150] and Cboe EDGA Exchange, Inc.[151]

The Cboe fee proposals described herein were filed subsequent to the D.C. Circuit decision in *Susquehanna Int'l Grp., LLC* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017), meaning that such fee filings were subject to the same (and current) standard for SEC review and approval as this proposal. In summary, the Exchange requests the Commission apply the same standard of review to this proposal which was applied to the various Cboe and Cboe affiliated markets' filings with respect to non-transaction fees. If the Commission were to apply a different standard of review

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[135] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). The Exchange notes that Cboe submitted this filing *after* the Staff Guidance and contained no cost based justification.

[136] *See* Cboe Fee Schedule, Page 12, Logical Connectivity Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (BOE/FIX logical monthly port fees of $750 per port for ports 1–5 and $800 per port for port 6 or more; and BOE Bulk logical monthly port fees of $1,500 per port for ports 1–5, $2,500 per port for ports 6–30, and $3,000 for port 31 or more).

[137] *Id.* at 71676.

[138] *Id.*

[139] *Id.* at 71676.

[140] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011). Cboe offers BOE and FIX Logical Ports, BOE Bulk Logical Ports, DROP Logical Ports, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. For each type of the aforementioned logical ports that are used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports'').

[145] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011).

[146] *Id.* at 18426.

[147] *Id.*

[148] *Id.*

[149] *See* Securities Exchange Act Release No. 94507 (March 24, 2002), 87 FR 18439 (March 30, 2022) (SR–CboeBYX–2022–004).

[150] *See* Securities Exchange Act Release No. 94511 (March 24, 2002), 87 FR 18411 (March 30, 2022) (SR–CboeBZX–2022–021).

[151] *See* Securities Exchange Act Release No. 94517 (March 25, 2002), 87 FR 18848 (March 31, 2022) (SR–CboeEDGA–2022–004).

to this proposal than it applied to other exchange fee filings it would create a burden on competition such that it would impair the Exchange's ability to make necessary technology driven changes, such as bifurcating its 10Gb ULL network, because it would be unable to monetize or recoup costs related to that change and compete with larger, non-legacy exchanges.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal, one comment letter on the Second Proposal, one comment letter on the Third Proposal, one comment letter on the Fourth Proposal, one comment letter on the Fifth Proposal, one comment letter on the Sixth Proposal, and one comment letter on the Seventh Proposal all from the same commenter.[152] In their letters, the commenters from SIG seek to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. The Exchange also received comment letters from a separate commenter on the Sixth and Seventh Proposals.[153] The Exchange believes issues raised by each commenters are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. Among other things, the commenters are requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

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,[154] and Rule 19b–4(f)(2) [155] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2024–06 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–MIAX–2024–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2024–06 and should be submitted on or before March 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[156]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02655 Filed 2–8–24; 8:45 am]

BILLING CODE 8011–01–P

[152] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letter from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024.

[153] *See* letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024.

[154] 15 U.S.C. 78s(b)(3)(A)(ii).

[155] 17 CFR 240.19b–4(f)(2).

[156] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–429, OMB Control No. 3235–0480]

Proposed Collection; Comment Request; Extension: Rule 9b–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 9b–1, Options Disclosure Document (17 CFR 240.9b–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document (''ODD'') and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments prior to accepting an order to purchase or sell an option on behalf of that customer or when approving a customer's account for options trading.

There are 17 options markets [1] that must comply with Rule 9b–1. These respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file approximately 3 amendments per year. The staff calculates that the preparation and filing of amendments should take no more than eight hours per options market. Thus, the total time burden for options markets per year is approximately 408 hours (17 options markets × 8 hours per amendment × 3 amendments). The estimated cost for an in-house attorney is $483 per hour,[2] resulting in a total internal cost of compliance for these respondents of approximately $197,064 per year (408 hours at $483 per hour).

In addition, approximately 955 broker-dealers [3] must comply with Rule 9b–1. Each of these respondents will process an average of 3 new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual time burden for each of these respondents of approximately 78 minutes or 1.3 hours. Thus, the total time burden per year for broker-dealers is approximately 1,242 hours (955 broker-dealers × 1.3 hours). The estimated cost for a general clerk of a broker-dealer is $81 per hour,[4] resulting in a total internal cost of compliance for these respondents of approximately $100,602 per year (1,242 hours at $81 per hour).

The total time burden for all respondents under this rule (both options markets and broker-dealers) is approximately 1,650 hours per year (408 hours for options markets + 1,242 hours for broker-dealers), and the total internal cost of compliance is approximately $297,666 per year ($197,064 + $100,602).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by April 9, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 6, 2024.

Sherry R. Haywood

Assistant Secretary.

[FR Doc. 2024–02716 Filed 2–8–24; 8:45 am]

BILLING CODE 8011–01–P

[1] The seventeen options markets are as follows: BOX Exchange LLC, Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., MEMX, LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, the Nasdaq Options Market (NOM), NYSE Arca, Inc., and NYSE American LLC.

[2] SIFMA did its last annual survey in 2013 and will not resume the survey process. Accordingly, the $483 figure is based on the 2013 figure ($380) adjusted by the inflation rate calculated using the Bureau of Labor Statistics' CPI Inflation Calculator. The $380 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[3] The estimate of 955 broker-dealers required to comply with Rule 9b–1 is derived from Item 12 of the Form BD (OMB Control No. 3235–0012). This estimate may be high as it includes broker-dealers that engage in only a proprietary business, and as a result are not required to deliver an ODD, as well as those broker-dealers subject to Rule 9b–1.

[4] The $81 figure is based on the 2013 figure ($57) adjusted for inflation. *See supra* note 2. The $57 per hour figure for a General Clerk is from SIFMA's *Office Salaries in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff believes that the ODD would be mailed or electronically delivered to customers by a general clerk of the broker-dealer or some other equivalent position.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99475; File No. SR–EMERALD–2024–03]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify Certain Connectivity and Port Fees

February 5, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Emerald Options Exchange Fee Schedule (the ''Fee Schedule'') to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

amend certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings,* at MIAX Emerald's principal office, 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 the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members [3] and non-Members; and (2) amend the monthly port fee for additional Limited Service MIAX Emerald Express Interface (''MEI'') Ports [4] available to Market Makers.[5] The Exchange last increased the fees for both 10Gb ULL fiber connections and Limited Service MEI Ports beginning with a series of filings on October 1, 2020 (with the final filing made on March 24, 2021).[6] Prior to that fee change, the Exchange provided Limited Service MEI Ports for $50 per port, after the first two Limited Service MEI Ports that are provided free of charge, and the Exchange incurred all the costs associated to provide those first two Limited Service MEI Ports since it commenced operations in March 2019. The Exchange then increased the fee by $50 to a modest $100 fee per Limited Service MEI Port and increased the fee for 10Gb ULL fiber connections from $6,000 to $10,000 per month.

Also, in that fee change, the Exchange adopted fees for providing five different types of ports for the first time. These ports were FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[7] Again, the Exchange absorbed all costs associated with providing these ports since its launch in March 2019. As explained in that filing, expenditures, as well as research and development (''R&D'') in numerous areas resulted in a material increase in expense to the Exchange and were the primary drivers for that proposed fee change. In that filing, the Exchange allocated a total of $9.3 million in expenses to providing 10Gb ULL fiber connectivity, additional Limited Service MEI Ports, FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[8]

Since the time of the 2021 increase discussed above, the Exchange experienced ongoing increases in expenses, particularly internal expenses.[9] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $15,469,330 for providing 10Gb ULL connectivity and $2,506,232 for providing Limited Service MEI Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited Service MEI Ports in order to recoup ongoing costs and increase in expenses set forth below in the Exchange's cost analysis. The Exchange initially filed this proposal on December 30, 2022 as SR–EMERALD–2022–38. On January 9, 2023, the Exchange withdrew SR–EMERALD–2022–38 and resubmitted this proposal as SR–EMERALD–2023–01 (the ''Initial Proposal'').[10] On, February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–EMERALD–2023–05) (the ''Second Proposal'').[11] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with a revised proposal (SR–EMERALD–2023–12) (the ''Third Proposal'').[12] On June 16, 2023, the Exchange withdrew the Third Proposal and replaced it with a revised proposal (SR–EMERALD–2023–14) (the ''Fourth Proposal'').[13] On August 8, 2023, the Exchange withdrew the Fourth Proposal and replaced it with a revised proposal (SR–EMERALD–2023–

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[5] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100. For purposes of Limit Service MEI Ports, Market Makers also include firms that engage in other types of liquidity activity, such as seeking to remove resting liquidity from the Exchange's Book.

[6] *See* Securities Exchange Act Release Nos. 91460 (April 1, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11); 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12); 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17); 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02); *and* 91200 (February 24, 2021), 86 FR 12221 (March 2, 2021) (SR–EMERALD–2021–07).

[7] *See id.* for a description of each of these ports.

[8] *Id.*

[9] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and 2023 expenses.

[10] *See* Securities Exchange Act Release No. 96628 (January 10, 2023), 88 FR 2651 (January 17, 2023) (SR–EMERALD–2023–01).

[11] *See* Securities Exchange Act Release No. 97079 (March 8, 2023), 88 FR 15764 (March 14, 2023) (SR–EMERALD–2023–05).

[12] *See* Securities Exchange Act Release No. 97422 (May 2, 2023), 88 FR 29750 (May 8, 2023) (SR–EMERALD–2023–12).

[13] The Exchange met with Commission Staff to discuss the Third Proposal during which the Commission Staff provided feedback and requested additional information, including, most recently, information about total costs related to certain third party vendors. Such vendor cost information is subject to confidentiality restrictions. The Exchange provided this information to Commission Staff under separate cover with a request for confidentiality. While the Exchange will continue to be responsive to Commission Staff's information requests, the Exchange believes that the Commission should, at this point, issue substantially more detailed guidance for exchanges to follow in the process of pursuing a cost-based approach to fee filings, and that, for the purposes of fair competition, detailed disclosures by exchanges, such as those that the Exchange is providing now, should be consistent across all exchanges, including for those that have resisted a cost-based approach to fee filings, in the interests of fair and even disclosure and fair competition. *See* Securities Exchange Act Release No. 97813 (June 27, 2023), 88 FR 42785 (July 3, 2023) (SR–EMERALD–2023–14).

19) (the ''Fifth Proposal'').[14] Since a U.S. government shutdown was avoided, on October 2, 2023, the Exchange withdrew the Fifth Proposal and replaced it with a further revised proposal (SR–EMERALD–2023–27) (the ''Sixth Proposal'').[15] On November 27, 2023, the Exchange withdrew the Sixth Proposal and replaced it with this further revised proposal (SR–EMERALD–2023–30) (the ''Seventh Proposal'').[16] On January 25, 2024, the Exchange withdrew the Seventh Proposal and replaced it with a further revised proposal (SR–EMERALD–2024–03) (the ''Eighth Proposal'').

The Exchange previously included a cost analysis in the Initial, Second, Third, Fourth, Fifth, Sixth and Seventh Proposals. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX PEARL, LLC (''MIAX Pearl'') (separately among MIAX Pearl Options and MIAX Pearl Equities) and MIAX[17] (together with MIAX Pearl Options and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. The Exchange continues to propose fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Limited Service MEI Ports with a reasonable mark-up over those costs.

The cost analysis included in prior filings was based on the Exchange's 2023 fiscal year of operations and projected expenses. In its Initial Proposal filed on December 30, 2022, the Exchange committed to conduct an annual review after implementation of these fees. The Exchange recently completed its 2024 fiscal year budget process, which included its annual review of these fees and the projected costs to provide these services, based on its approved 2024 expense budget. Therefore, the Cost Analysis included in this proposal is based on the Exchange's 2024 fiscal year of operations and projected expenses. The Exchange believes it reasonable to now use costs from its 2024 fiscal year budget because they reflect the Exchange's current cost base. The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Consequently, these increased costs included in the 2024 budget result in a lower projected profit margin for 10Gb ULL connectivity and Limited Service MEI Ports than the profit margins included in prior filings that proposed the same fee levels for 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes it is reasonable and appropriate to now use expenses from its 2024 budget because those expenses are more recent and more accurately reflect the Exchange's current expenses and projected revenues for the 2024 fiscal year. Continuing to use 2023 budget numbers would result in the Exchange's Cost Analysis to be based on stale data which would not reflect the Exchanges most recent cost estimates and projected margins.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision*[18] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[19] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[20] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[21] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [22] The Commission denied requests by various exchanges and plan participants for reconsideration of the

[14] *See* Securities Exchange Act Release No. 98176 (August 21, 2023), 88 FR 58341 (August 25, 2023) (SR–EMERALD–2023–19). Due to the prospect of a U.S. government shutdown, the Commission suspended the Fifth Proposal on September 29, 2023. *See* Securities Exchange Act Release No. 98656 (September 29, 2023) (SR–EMERALD–2023–19).

[15] *See* Securities Exchange Act Release No. 98751 (October 13, 2023), 88 FR 72174 (October 19, 2023) (SR–EMERALD–2023–27).

[16] *See* Securities Exchange Act Release No. 99138 (December 11, 2023), 88 FR 87020 (December 15, 2023) (SR–EMERALD–2023–30).

[17] The term ''MIAX'' means Miami International Securities Exchange, LLC. *See* Exchange Rule 100.

[18] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[19] *Id.*

[20] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[21] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[22] *Id.* at page 2.

Remand Order.[23] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [24] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[25] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [26] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [27] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [28]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [29] and remanded for further proceedings consistent with its opinion.[30] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [31] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act Section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[32] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [33] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[34]

As a result of the Commission's loss of the *NASDAQ* v. *SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [35] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[36] The legacy exchanges all established a significantly higher baseline for access

[23] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[24] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[25] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[26] See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[27] *Id.*

[28] *Id.*

[29] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, --- Fed. App'x ----, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[30] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''Section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[31] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[32] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[33] *Id.*

[34] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[35] *See supra* note 30, at page 2.

[36] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings [37] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[38] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[39] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020 [40] and $80,383,000 for 2021.[41] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020 [42] and $22,843,000 for 2021.[43] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020 [44] and $44,800,000 for 2021.[45] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020 [46] and $30,687,000 for 2021.[47] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[48] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.'' [49]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[50] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates),[51] which are more immediately impactful

[37] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[38] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[39] The Exchange has filed, and subsequently withdrawn, various forms of this proposed fee numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[40] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[41] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[42] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[43] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[44] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[45] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[46] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[47] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[48] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[49] *See* PHLX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[50] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[51] *See, e.g.,* Cboe Fee Schedule, Page 4, Affiliate Volume Plan, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing that if a market maker or its affiliate receives a credit under Cboe's Volume Incentive Program (''VIP''), the market maker will receive an access credit on their BOE Bulk Ports corresponding to the VIP tier reached and the market maker will receive a transaction fee credit on their sliding scale market maker transaction fees) *and* NYSE American Options Fee Schedule, Section III, E, Floor Broker Incentive and Rebate Programs, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (providing floor brokers the opportunity to prepay certain non-transaction fees for the following calendar year by achieving certain amounts of volume executed on NYSE American).

in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. There is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[52] this is not the reality experienced by exchanges such as MIAX Emerald. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[53] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in Section 6(b)(4) of the Act[54] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[55] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [56] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and places a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[57]

* * * * *

10Gb ULL Connectivity Fee Change

The Exchange proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks [58] via a 10Gb ULL fiber connection. Specifically, the Exchange proposes to amend Sections 5)a)–b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[59]

[52] *See supra* note 26, at note 1.

[53] *See* Securities Exchange Act Release Nos. 94889 (May 11, 2022), 87 FR 29928 (May 17, 2022) (SR–EMERALD–2022–19); 94718 (April 14, 2022), 87 FR 23633 (April 20, 2022) (SR–EMERALD–2022–15); 94717 (April 14, 2022), 87 FR 23648 (April 20, 2022) (SR–EMERALD–2022–13); 94260 (February 15, 2022), 87 FR 9695 (February 22, 2022) (SR–EMERALD–2022–05); 94257 (February 15, 2022), 87 FR 9678 (February 22, 2022) (SR–EMERALD–2022–04); 93772 (December 14, 2021), 86 FR 71965 (December 20, 2021) (SR–EMERALD–2021–43); 93776 (December 14, 2021), 86 FR 71983 (December 20, 2021) (SR–EMERALD–2021–42); 93188 (September 29, 2021), 86 FR 55052 (October 5, 2021) (SR–EMERALD–2021–31); (SR–EMERALD–2021–30) (withdrawn without being noticed by the Commission); 93166 (September 28, 2021), 86 FR 54760 (October 4, 2021) (SR–EMERALD–2021–29); 92662 (August 13, 2021), 86 FR 46726 (August 19, 2021) (SR–EMERALD–2021–25); 92645 (August 11, 2021), 86 FR 46048 (August 17, 2021) (SR–EMERALD–2021–23).

[54] 15 U.S.C. 78f(b)(4).

[55] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[56] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[57] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[58] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[59] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Fee Schedule. *See* Fee Schedule, Section 4)c), *available at https://www.miaxglobal.com/markets/us-options/miax-options/fees* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Limited Service MEI Ports

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to amend the monthly port fee for Limited Service MEI Ports available to Market Makers.[60] The Exchange currently allocates two (2) Full Service MEI Ports [61] and two (2) Limited Service MEI Ports [62] per matching engine [63] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Market Makers were previously assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free (before the proposals to adopt a tiered fee structure).

Limited Service MEI Port Fee Changes

The Exchange now proposes to amend the monthly fee per Limited Service MEI Port and increase the number of free Limited Service MEI Ports per matching engine from two (2) to four (4). Specifically, the Exchange will now provide the first, second, third and fourth Limited Service MEI Ports for each matching engine free of charge. For additional Limited Service MEI Ports after the first four ports per matching engine that are provided for free (*i.e.,* beginning with the fifth Limited Service MEI Port), the Exchange proposes to increase the monthly fee from $100 to $420 per Limited Service MEI Port per matching engine.[64]

Market Makers that elect to purchase more than the number of Limited Service Ports that are provide for free do so due to the nature of their business and their perceived need for numerous ports to access the Exchange. Meanwhile, Market Makers who utilize the free Limited Service MEI Ports do so based on their business needs.

The Exchange notes that it last proposed to increase its monthly Limited Service MEI Port fees in 2020 (other than the prior proposals to adopt a tiered fee structure for Limited Service MEI Ports),[65] and such increase proposed herein is designed to recover a portion of the ever increasing costs associated with directly accessing the Exchange.

The Exchange also proposes to make corresponding changes to the Definitions section of the Fee Schedule and the paragraph describing the cap on the number of Limited Service MEI Ports each Market Maker may receive in Section 5)d)ii) of the Fee Schedule to account for the proposed change to now provide the first four (4) Limited Service MEI Ports for free per matching engine. Accordingly, the Exchange proposes to amend the last sentence of the paragraph describing the fees for Limited Service MEI Ports in Section 5)d)ii) of the Fee Schedule to now state that Market Makers are limited to ten additional Limited Service MEI Ports per matching engine, for a total of fourteen Limited Service MEI Ports per matching engine.

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act [66] in general, and furthers the objectives of Section 6(b)(4) of the Act [67] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act [68] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order [69] and the Staff Guidance,[70] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in

mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

[60] The Exchange notes that in its prior filings (the Initial, Second, Third, Fourth and Fifth Proposals), the Exchange proposed to adopt a tiered-pricing structure for Limited Service MEI Ports.

[61] The term ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[62] The term ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[63] The term ''Matching Engine'' means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[64] As noted in the Fee Schedule, Market Makers will continue to be limited to fourteen Limited Service MEI Ports per Matching Engine. The Exchange also proposes to make a ministerial clarifying change to remove the defined term ''Additional Limited Service MEI Ports''. The Exchange proposes to make a related change to add the term ''Limited Service MEI Ports'' after the word ''fourteen'' in the Fee Schedule.

[65] *See supra* note 6.

[66] 15 U.S.C. 78f(b).

[67] 15 U.S.C. 78f(b)(4).

[68] 15 U.S.C. 78f(b)(5).

[69] *See supra* note 25.

[70] *See supra* note 26.

excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [71] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [72] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.'' [73]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity and Limited Service MEI Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange initially adopted a fee of $50 per port, after the first two Limited Service MEI Ports that are provided free of charge, and the Exchange incurred all the costs associated to provide those first two Limited Service MEI Ports since it commenced operations in March 2019. At that same time, the Exchange only charged $6,000 per month for each 10Gb ULL connection. As a new exchange entrant, the Exchange chose to offer connectivity and ports at very low fees to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[74]

Later in 2020, as the Exchange's market share increased,[75] the Exchange then increased the fee by $50 to a modest $100 fee per Limited Service MEI Port and increased the fee for 10Gb ULL fiber connections from $6,000 to $10,000 per month.[76] The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.'

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX . . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[75] The Exchange experienced a monthly average trading volume of 3.43% for the month of October 2020. *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*

[76] *See* Securities Exchange Act Release Nos. 91460 (April 1, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11); 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12); 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17); 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02); *and* 91200 (February 24, 2021), 86 FR 12221 (March 2, 2021) (SR–EMERALD–2021–07).

. . . 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'. . . .'' [77]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.'' [78]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [79] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [80] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [81] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [82]

The Exchange believes the competing exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. Each of the connectivity or port rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Emerald (as proposed) (equity options market share of 3.72% for the month of December 2023) [a].	10Gb ULL connection	$13,500.
	Limited Service MEI Ports	1–4 ports: FREE. 5 or more ports: $420 each.
NASDAQ [b] (equity options market share of 5.58% for the month of December 2023) [c].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port	1–5 ports: $1,500 per port. 6–20 ports: $1,000 per port. 21 or more ports: $500 per port.
NASDAQ ISE LLC ("ISE") [d] (equity options market share of 6.39% for the month of December 2023) [e].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port [f]	$1,100 per port.
NYSE American LLC ("NYSE American") [g] (equity options market share of 7.49% for the month of December 2023)[h].	10Gb LX LCN connection	$22,000 per connection.
	Order/Quote Entry Port	1–40 Ports: $450 per port. 41 or more Ports: $150 per port.
NASDAQ GEMX, LLC ("GEMX") [i] (equity options market share of 2.63% for the month of December 2023) [j].	10Gb Ultra connection	$15,000 per connection.
	SQF Port	$1,250 per port.

[a] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*
[b] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.
[c] *See supra* note a.
[d] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.
[e] *See supra* note a.
[f] Similar to the Exchange's MEI Ports, SQF ports are primarily utilized by Market Makers.
[g] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.
[h] *See supra* note a.
[i] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.
[j] *See supra* note a.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. Market participants may choose to become a member of one or more options

[77] *See NetCoalition,* 615 F.3d at 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)).
[78] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').
[79] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').
[80] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).
[81] *Id.*
[82] *See* Staff Guidance, *supra* note 26.

exchanges based on the market participant's assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, the Exchange's affiliate, MIAX Pearl Options, experienced a decrease in membership as the result of similar fees proposed herein. One MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023, as a direct result of the proposed connectivity and port fee changes proposed by MIAX Pearl Options.

It is not a requirement for market participants to become members of all options exchanges; in fact, certain market participants conduct an options business as a member of only one options market.[83] A very small number of market participants choose to become a member of all sixteen options exchanges. Most firms that actively trade on options markets are not currently Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Members or service bureaus, and only a Member may utilize a port.[84]

One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[85] The Exchange and its affiliated options markets, MIAX Pearl Options and MIAX, have a total of 46 members. Of those 46 total members, 37 are members of all three affiliated options markets, two are members of only two affiliated options markets, and seven are members of only one affiliated options market. The Exchange also notes that no firm is a Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all options exchanges, let alone the Exchange and its two affiliates, and broker-dealers may elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool.

Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the broker-dealer membership analysis of the options exchanges discussed above. As noted above, this is evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options (which are similar to the changes proposed herein). Indeed, broker-dealers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at—or establish connectivity to—the Exchange.[86] If the Exchange is not at the national best bid or offer (''NBBO''),[87] the Exchange will route an order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[88]

With respect to the submission of orders, Members may also choose not to purchase any connection from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Member of the Exchange may be utilized by a retail investor to submit orders into an exchange. An institutional investor may utilize a broker-dealer, a service bureau,[89] or request sponsored access [90] through a member of an exchange in order to submit a trade directly to an options exchange.[91] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude

[83] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ''. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].'' Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange'' and that ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.''

[84] Service Bureaus may obtain ports on behalf of Members.

[85] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

[86] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), *available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[87] *See* Exchange Rule 100.

[88] Members may elect to not route their orders by utilizing the Do Not Route order type. *See* Exchange Rule 516(g).

[89] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders.

[90] Sponsored Access is an arrangement whereby a Member permits its customers to enter orders into an exchange's system that bypass the Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[91] This may include utilizing a floor broker and submitting the trade to one of the five options trading floors.

market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-party).[92] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[93] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 16 options markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member, and is approved for membership by the Exchange, the Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become a Member of the Exchange. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. If a market participant chooses to become a Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity and port services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[94] and Rule 19b–4 thereunder,[95] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[96] which requires, among other things, that exchange fees be reasonable and equitably allocated,[97] not designed to permit unfair discrimination,[98] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[99] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[100] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $15,469,330 (or approximately $1,289,111 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Limited Service MEI Ports at $2,506,232 (or approximately $208,853 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its users (both Members and non-Members [101]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection. The Exchange also proposes to modify its Fee Schedule to amend the monthly fee for additional Limited Service MEI Ports and provide two additional ports free of charge for a total of four free Limited Service MEI Ports per matching engine to which each Member connects.

In 2020, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[102] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and

[92] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at* US Direct-Extranet Connection (*nasdaqtrader.com*); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[93] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

[94] 15 U.S.C. 78s(b)(1).

[95] 17 CFR 240.19b–4.

[96] 15 U.S.C. 78f(b).

[97] 15 U.S.C. 78f(b)(4).

[98] 15 U.S.C. 78f(b)(5).

[99] 15 U.S.C. 78f(b)(8).

[100] *See* Staff Guidance, *supra* note 26.

[101] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access Limited Service MEI Ports on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[102] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[103] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time.

All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (61.9% of total expense amount allocated to 10Gb ULL connectivity), with smaller allocations to additional Limited Service MEI Ports (4.0%), and the remainder to the provision of other connectivity, other ports, transaction execution, membership services and market data services (34.1%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity and port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity and port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide 10Gb

[103] For example, the Exchange maintains 12 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX maintains 24 matching engines.

ULL connectivity and Limited Service MEI Port services, including both physical 10Gb connections and Limited Service MEI Ports, is $1,497,964 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Limited Service MEI Ports by 12 months, then adding both numbers together), as further detailed below.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.,* as set forth below, the Exchange allocated approximately 28.9% of its overall Human Resources cost to offering 10Gb ULL physical connectivity).

Cost drivers	Allocated annual cost [k]	Allocated monthly cost [l]	% of all
Human Resources	$6,440,638	$536,720	28.9
Connectivity (external fees, cabling, switches, etc.)	57,736	4,811	61.9
Internet Services and External Market Data	448,208	37,351	84.8
Data Center	949,073	79,089	61.9
Hardware and Software Maintenance and Licenses	890,310	74,193	50.9
Depreciation	2,147,438	178,953	61.0
Allocated Shared Expenses	4,535,927	377,994	51.5
Total	15,469,330	1,289,111	40.2

[k]. The Annual Cost includes figures rounded to the nearest dollar.
[l]. The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to connectivity. From that portion allocated to the Exchange that applied to connectivity, the Exchange then allocated a weighted average of 48% of each employee's time from the above group to 10Gb ULL connectivity.

The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing physical connectivity) and then applied a smaller allocation to such employees' time to 10Gb ULL connectivity (less than 18%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to 10Gb ULL connectivity, whether it is a sales person selling a connection, finance personnel billing for connectivity or providing budget analysis, or information security ensuring that such connectivity is secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 48% of each of their employee's time assigned to the Exchange for 10Gb ULL connectivity, as stated above. Employees from these departments perform numerous functions to support 10Gb ULL connectivity, such as the installation, re-location, configuration, and maintenance of 10Gb ULL connections and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting 10Gb ULL connectivity and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support 10Gb ULL connectivity, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the 10Gb ULL connectivity related Human Resources costs to the extent that they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, Etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. options industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges and the Options Price Reporting Authority (''OPRA''). The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Internet Services and External Market Data

The next cost driver consists of internet Services and external market data. The internet services cost driver includes third-party service providers that provide the internet, fiber and

bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami.

External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange includes external market data fee costs towards the provision of 10Gb ULL connectivity because such market data is necessary for certain services related to connectivity, including pre-trade risk checks and checks for other conditions (*e.g.,* re-pricing of orders to avoid locked or crossed markets and trading collars). Since external market data from other exchanges is consumed at the Exchange's matching engine level, (to which 10Gb ULL connectivity provides access) in order to validate orders before additional orders enter the matching engine or are executed, the Exchange believes it is reasonable to allocate an amount of such costs to 10Gb ULL connectivity.

The Exchange relies on various content service providers for data feeds for the entire U.S. options industry, as well as content for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes content service providers to receive market data from OPRA, other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to receive market data and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Lastly, the Exchange notes that the actual dollar amounts allocated as part of the second step of the 2024 budget process differ among the Exchange and its affiliated markets for the internet Services and External Market Data cost driver, even though, but for the Exchange, the allocation percentages are generally consistent across markets (*e.g.,* MIAX Emerald, MIAX, and MIAX Pearl Options allocated 84.8%, 71.3%, and 74.8, respectively, to the same cost driver). This is because: (i) a different percentage of the overall internet Services and External Market Data cost driver was allocated to the Exchange and its affiliated markets due to the factors set forth under the first step of the 2024 budget review process described above (unique technical architecture, market structure, and business requirements of each marketplace); and (ii) the Exchange itself allocated a larger portion of this cost driver to 10Gb ULL connectivity because of recent initiatives to improve the latency and determinism of its systems. The Exchange notes while the percentage it allocated to the internet Services and External Market Data cost driver is greater than its affiliated markets, the overall dollar amount allocated to the Exchange under the initial step of the 2024 budget process is lower than its affiliated markets. However, the Exchange believes that this is not, in dollar amounts, a significant difference. This is because the total dollar amount of expense covered by this cost driver is relatively small compared to other cost drivers and is due to nuances in exchange architecture that require different initial allocation amount under the first step of the 2024 budget process described above. Thus, non-significant differences in percentage allocation amounts in a smaller cost driver create the appearance of a significant difference, even though the actual difference in dollar amounts is small. For instance, despite the difference in cost allocation percentages for the internet Services and External Market Data cost driver across the Exchange and MIAX, the actual dollar amount difference is approximately only $8,576 per month, a non-significant amount.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (61.9%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity by market participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[104] The Exchange notes that this allocation is less than MIAX Pearl Options by a significant amount, but slightly more than MIAX, as MIAX Pearl Options allocated 59.8% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 48.5% and 50.9%, respectively, to the same category of expense. This is because MIAX Pearl Options is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance. At the time of this filing, MIAX Pearl Options is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, the Exchange has materially higher expense than its affiliates.

Depreciation

All physical assets, software, and hardware used to provide 10Gb ULL connectivity, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow

[104] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl Options because, unlike the Exchange, MIAX Pearl Options maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl Options. This expense also differs in dollar amount among the Exchange, MIAX Pearl Options, and MIAX because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to 10Gb ULL connectivity in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to 10Gb ULL connectivity. As noted above, the Exchange allocated 61.0% of its allocated depreciation costs to providing physical 10Gb ULL connectivity.

The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the percentages the Exchange and its affiliate, MIAX, allocated to the depreciation of hardware and software used to provide 10Gb ULL connectivity are similar. However, the Exchange's dollar amount is lower than that of MIAX by approximately $35,508 per month due to two factors: first, MIAX has undergone a technology refresh since the time MIAX Emerald launched in February 2019, leading MIAX to have more hardware that software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on MIAX.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to overall physical connectivity costs. These general shared costs are integral to exchange operations, including its ability to provide physical connectivity. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[105] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to 10Gb ULL connectivity pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including connectivity. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* 10Gb ULL connectivity as a sub-category of connectivity. In determining the percentage of general shared expenses allocated to connectivity that ultimately apply to 10Gb ULL connectivity, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to 10GBb ULL connectivity. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as 10Gb ULL connectivity.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all physical connectivity on the Exchange. The Exchange then allocated 51.5% of the portion allocated to physical connectivity to 10Gb ULL connectivity. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 51.5% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to 10Gb ULL connectivity also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster 10Gb ULL connectivity than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance network connectivity, of which 10Gb ULL connectivity is a main contributor. The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which system networks can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 1,100,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 1,100,000 distinct trading products. These value add services are part of the Exchange's strategy for offering a high performance trading system, which utilizes 10Gb ULL connectivity.

The Exchange notes that the 51.5% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Limited Service MEI Ports. This is based on its allocation methodology that weighted costs attributable to each core service. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), Limited Service MEI Ports do not require as many broad or indirect resources as other core services.

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Approximate Cost per 10Gb ULL Connection per Month

After determining the approximate allocated monthly cost related to 10Gb connectivity, the total monthly cost for 10Gb ULL connectivity of $1,289,111 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (102), to arrive

[105] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

at a cost of approximately $12,638 per month, per physical 10Gb ULL connection. Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of 10Gb ULL connections.

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Costs Related to Offering Limited Service MEI Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 6.7% of its overall Human Resources cost to offering Limited Service MEI Ports).

Cost drivers	Allocated annual cost [m]	Allocated monthly cost [n]	% of all
Human Resources	$1,495,643	$124,637	6.7
Connectivity (external fees, cabling, switches, etc.)	2,643	220	2.8
Internet Services and External Market Data	14,965	1,247	2.8
Data Center	62,061	5,172	4.0
Hardware and Software Maintenance and Licenses	49,543	4,129	2.8
Depreciation	112,425	9,369	3.2
Allocated Shared Expenses	768,952	64,079	8.7
Total	2,506,232	208,853	6.5

[m] *See supra* note k (describing rounding of Annual Costs).
[n] *See supra* note l (describing rounding of Monthly Costs based on Annual Costs).

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers described by the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

With respect to Limited Service MEI Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Limited

Service MEI Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing Limited Service MEI Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Limited Service MEI Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing Limited Service MEI Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were allocated Human Resources costs to the extent they are involved in overseeing tasks specifically related to providing Limited Service MEI Ports. Senior level executives were only allocated Human Resources costs to the extent that they are involved in managing personnel responsible for tasks integral to providing and maintaining Limited Service MEI Ports. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost includes external fees paid to connect to other exchanges and cabling and switches, as described above.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of Limited Service MEI Ports, the Exchange also includes a portion of its costs related to external market data. External market data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange includes external market data costs towards the provision of Limited Service MEI Ports because such market data is necessary (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the NBBO and checking for other conditions (*e.g.,* halted securities).[106] Thus, since market data from other exchanges is consumed at the Exchange's Limited Service MEI Port level in order to validate orders, before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to Limited Service MEI Ports.

The Exchange notes that the allocation for the internet Services and External Market Data cost driver is greater than that of its affiliate, MIAX Pearl Options, as MIAX Emerald allocated 2.8% of its internet Services and External Market Data expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports for the same cost driver. The allocation percentages set forth above differ because they directly correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports and MIAX Market Makers utilized 1,785 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure and internet Service), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Limited Service MEI Ports in the third-party data centers where it maintains its equipment as well as related costs for market data to then enter the Exchange's system via Limited Service MEI Ports (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

The Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX Emerald allocated 2.8% of its Hardware and Software Maintenance and License expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 260 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Depreciation

The vast majority of the software the Exchange uses to provide Limited Service MEI Ports has been developed in-house and the cost of such development, which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production environment. Hardware used to provide Limited Service MEI Ports includes equipment used for testing and monitoring of order entry infrastructure

[106] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26).

and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 3.2% of all depreciation costs to providing Limited Service MEI Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Limited Service MEI Ports. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost driver was therefore narrowly tailored to depreciation related to Limited Service MEI Ports.

The Exchange notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the Exchange notes that the percentages it and its affiliate, MIAX, allocated to the depreciation cost driver for Limited Service MEI Ports differ by only 1.7%. However, MIAX's approximate dollar amount is greater than that of MIAX Emerald by approximately $8,773er month. This is due to two primary factors. First, MIAX has under gone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware that software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on the Exchange.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Limited Service MEI Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Limited Service MEI Ports. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 9% of the overall cost for directors was allocated to providing Limited Service MEI Ports. The Exchange notes that the 8.7% allocation of general shared expenses for Limited Service MEI Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Limited Service MEI Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange.

Lastly, the Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX Emerald allocated 8.7% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.0% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.[107]

* * * * *

Approximate Cost per Limited Service MEI Port per Month

Based on projected 2024 data, the total monthly cost allocated to Limited Service MEI Ports of $208,853 was divided by the total number of Limited Service MEI Ports utilized by Members in December, which was 1,070 (and includes free and charged ports), resulting in an approximate cost of $195 per port per month (when rounding to the nearest dollar). The Exchange used the total number of Limited Service MEI Ports it maintained in August for all Members and included free and charged ports. However, in prior filings, the Exchange did not include the expense of maintaining the two free Limited Service MEI Ports per matching engine that each Member receives when the Exchange discussed the approximate cost per port per month, but did include the two free Limited Service MEI Ports in the total expense amounts. As described herein, the Exchange changed its proposed fee structure since past filings to now offer four free Limited Service MEI Ports per matching engine to which each Member connects. After the first four free Limited Service MEI Ports, the Exchange proposes to charge $420 per Limited Service MEI Port per matching engine, up to a total of fourteen (14) Limited Service MEI Ports per matching engine.

For the sake of clarity, if a Member wanted to connect to all 12 of the Exchange's matching engines and utilize the maximum number of Limited Service MEI Ports on each matching engine (*i.e.,* 14), that Member would have a total of 168 Limited Service MEI Ports (12 matching engines multiplied by 14 Limited Service MEI Ports per matching engine). With the proposed increase to now provide four Limited Service MEI Ports for free on each matching engine, that particular Member would receive 48 free Limited Service MEI Ports (4 free Limited Service MEI Ports multiplied by 12 matching engines), and be charged for the remaining 120 Limited Service MEI Ports (168 total Limited Service MEI

[107] MIAX allocated a slightly lower amount (7.3%) of this cost as compared to MIAX Emerald (8.7%). This is not a significant difference. However, both allocations resulted in a similar cost amount (approximately $0.6 million for MIAX and $0.8 million for MIAX Emerald), despite MIAX having a higher number of Limited Service MEI Ports. MIAX Emerald was allocated a higher cost per Limited Service MEI Port due to the additional resources and expenditures associated with maintaining its recently enhanced low latency network.

Ports across all matching engines minus 48 free Limited Service MEI Ports across all matching engines).

As mentioned above, Members utilized a total of 1,070 Limited Service MEI Ports in the month of December 2023 (free and charged ports combined). Using December 2023 data to extrapolate out after the proposed changes herein go into effect, the total number of Limited Service MEI Ports that the Exchange would not charge for as a result of this increase in free ports is 494 (meaning the Exchange would charge for only 576 ports) and amounts to a total expense of $96,330 per month to the Exchange ($195 per port multiplied by 494 free Limited Service MEI Ports).

* * * * *

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Limited Service MEI Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (48.1%) given their focus on functions necessary to provide 10Gb ULL physical connections. The salaries of those same personnel were allocated only 7.8% to Limited Service MEI Ports and the remaining 44.1% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 17.7% for 10Gb ULL connectivity or 17.7% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (4% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Limited Service MEI Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Limited Service MEI Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 29% of its personnel costs to providing 10Gb ULL and 1Gb connectivity and 6.7% of its personnel costs to providing Limited Service MEI Ports, for a total allocation of 35.7% Human Resources expense to provide these specific connectivity and port services. In turn, the Exchange allocated the remaining 64.3% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Limited Service MEI Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 64.2% of the Exchange's overall depreciation and amortization expense to connectivity services (61% attributed to 10Gb ULL physical connections and 3.2% to Limited Service MEI Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 35.8%) toward the cost of providing transaction services, membership services, other port services, 1Gb connectivity, and market data

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Limited Service MEI Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [108]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity and port services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services will equal $15,469,330. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $18,020,568. The Exchange believes this represents a modest profit of 14.2% when compared to the cost of providing 10Gb ULL connectivity services.

The Exchange's Cost Analysis estimates the annual cost to provide Limited Service MEI Port services will equal $2,506,232. Based on December 2023 data for Limited Service MEI Port usage and counting for the proposed increase in free Limited Service MEI Ports and proposed increase in the monthly fee from $100 to $420 per port, the Exchange would generate annual revenue of approximately $2,903,040. The Exchange believes this would result in an estimated profit margin of 13.7% after calculating the cost of providing Limited Service MEI Port services. The Exchange notes that the cost to provide Limited Service MEI Ports is higher than the cost for the Exchange's affiliate, MIAX Pearl Options, to provide Full Service MEO Ports due to the substantially higher number of Limited Service MEI Ports used by Exchange Members. For example, utilizing December 2023 data, MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports compared to only 360 Full Service MEO Ports (Bulk and Single combined) allocated to MIAX Pearl Options members.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Limited Service MEI Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Limited Service MEI Port services.

The Exchange also notes that this the resultant profit margin differs slightly from the profit margins set forth in similar fee filings by its affiliated markets. This is not atypical among exchanges and is due to a number of factors that differ between these four markets, including: different market models, market structures, and product offerings (equities, options, price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* the Exchange maintains only 12 matching engines while MIAX maintains 24 matching engines); and different maturity phase of the Exchange and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, the Exchange proposes to charge rates that are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for 10Gb ULL connectivity, the Exchange proposes a lower fee than the fee charged by Nasdaq for its comparable 10Gb Ultra fiber connection ($13,500 per month for the Exchange vs. $15,000 per month for Nasdaq).[109] NYSE American charges even higher fees for its comparable 10GB LX LCN connection than the Exchange's proposed fees ($13,500 per month for the Exchange vs. $22,000 per month for NYSE American).[110] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to 10Gb ULL connectivity on the Exchange than its affiliated markets or vice versa).

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The Exchange operated at a cumulative net annual loss from the time it launched operations in 2019 through fiscal year 2021.[111] This was due to a number of factors, one of which was choosing to forgo revenue by offering certain products, such as low latency connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange does not believe that it should now be penalized for seeking to raise its fees as it now needs to upgrade its technology and absorb increased costs. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well

[108] For purposes of calculating projected 2024 revenue for 10Gb ULL connectivity, the Exchange used revenues for the most recently completed full month.

[109] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[110] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[111] Beginning with fiscal year 2022, the Exchange incurred a net gain of approximately $14 million. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 26, 2023, *available at https://www.sec.gov/Archives/edgar/vprr/2300/23007742.pdf.*

as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in connectivity clients or in transaction activity, the Exchange could experience a net reduction in revenue. While the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple exchanges. The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Commission Staff should also consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. Further, if Commission Staff is making determinations as to appropriate profit margins in their approval of exchange fees, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, as is reflected in the proposal, the Exchange continuously and aggressively works to control its costs as a matter of good business practice. A potential profit margin should not be evaluated solely on its size; that assessment should also consider cost management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[112] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Limited Service MEI Ports

The proposed changes to the monthly fee for Limited Service MEI Ports is not unfairly discriminatory because it

[112] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

would apply to all Market Makers equally. All Market Makers would now be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same monthly rate regardless of the number of additional Limited Service MEI Ports they purchase. Certain market participants choose to purchase additional Limited Service MEI Ports based on their own particular trading/quoting strategies and feel they need a certain number of connections to the Exchange to execute on those strategies. Other market participants may continue to choose to only utilize the free Limited Service MEI Ports to accommodate their own trading or quoting strategies, or other business models. All market participants elect to receive or purchase the amount of Limited Service MEI Ports they require based on their own business decisions and all market participants would be subject to the same fee structure and flat fee. Every market participant may receive up to four (4) free Limited Service MEI Ports and those that choose to purchase additional Limited Service MEI Ports may elect to do so based on their own business decisions and would continue to be subject to the same flat fee. The Exchange notes that it filed to amend this fee in 2020 and that filing contained the same fee structure, *i.e.,* a certain number of free Limited Service MEI Ports coupled with a flat fee for additional Limited Service MEI Ports.[113] At that time, the Commission did not find the structure to be unfairly discriminatory by virtue of that proposal surviving the 60-day suspension period. Therefore, the proposed changes to the fees for Limited Service MEI Ports is not unfairly discriminatory because it would continue to apply to all market participants equally and provides a fee structure that includes four free Limited Service MEI Ports for one monthly rate that was previously in place and filed with the Commission.

The Exchange believes that its proposed fee for Limited Service MEI Ports is reasonable, fair and equitable, and not unfairly discriminatory because it is designed to align fees with services provided, will apply equally to all Members that are assigned Limited Service MEI Ports (either directly or through a Service Bureau), and will minimize barriers to entry by now providing all Members with four, instead of the prior two, free Limited Service MEI Ports.[114] As a result of the proposed fee structure, a significant majority of Members will not be subject to any fee, and only seven Members will potentially be subject to a fee for Limited Service MEI Ports in excess of four per month, based on current usage. In contrast, as described above, other exchanges generally charge in excess of $450 per port without providing any free ports.[115] Even for Members that choose to maintain more than four Limited Service MEI Ports, the Exchange believes that the cost-based fee proposed herein is low enough that it will not operate to restrain any Member's ability to maintain the number of Limited Service MEI Ports that it determines are consistent with its business objectives. The small number of Members projected to be subject to the highest fees will still pay considerably less than competing exchanges charge.[116] Further, the number of assigned Limited Service MEI Ports will continue to be based on decisions by each Member, including the ability to reduce fees by discontinuing unused Limited Service MEI Ports.

The Exchange believes that providing four free Limited Service MEI Ports is fair and equitable, and not unfairly discriminatory because it will enable all Members (and more Members than when the Exchange previously provided two free Limited Service MEI Ports) to access the Exchange free of charge, thereby encouraging order flow and liquidity from a diverse set of market participants, facilitating price discovery and the interaction of orders. The Exchange believes that four Limited Service MEI Ports is an appropriate number to provide for free because it aligns with the number of such ports currently maintained by a substantial majority of Members. Based on a review of Limited Service MEI Port usage, 28 of 35 connected Members are not projected to be subject to any Limited Service MEI Port fees under the proposed fee.

The Exchange assessed whether the fee may impact different types or sizes of Members differently. As a threshold matter, the fee does not by design apply differently to different types or sizes of Members. Nonetheless, the Exchange assessed whether there would be any differences in the amount of the projected fee that correlate to the type and/or size of different Members. This assessment revealed that the number of assigned Limited Service MEI Ports, and thus projected fees, correlates closely to a Member's inbound message volume to the Exchange. Specifically, as inbound message volume increases per Member, the number of requested and assigned Limited Service MEI Ports increases. The following table presents data from December 2023 evidencing the correlation between a Member's inbound message volume and the number of Limited Service MEI Port assigned to the Member as of December 31, 2023.

Number of ports	Average daily message traffic	Total message traffic	Overall percentage of all message traffic for month
1–4	2,096,585,967	41,931,719,332	19.67
5 or more	8,559,796,282	171,195,925,646	80.33

Members with relatively higher inbound message volume are projected to pay higher fees because they have requested more Limited Service MEI Ports. For example, the seven Members that subscribe to five or more Limited

[113] *See supra* note 6.

[114] The following rationale to support providing a certain number of Limited Service MEI Ports for free prior to applying a fee is similar to that used by the Investors Exchange LLC (''IEX'') in 2020 proposal to do the same as proposed herein. *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07).

[115] *See supra* notes a–j above.

[116] Assuming a Member selects five Limited Service MEI Ports based on their business needs, that Member on MIAX Emerald would be charged only for the fifth Limited Service MEI Port and pay only the $420 monthly fee, as the first four Limited Service Ports would be free. Meanwhile, a Member that purchases five ports on NYSE Arca Options would pay $450 per port per month, resulting in a total charge of $2,250 per month. On Cboe BZX Options, that same member would pay $750 per port per month, resulting in a total charge of $3,750 per months for five ports. *See* NYSE Arca Options Fees and Charges, dated November 2023, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* and Cboe BZX Options Fee Schedule *available at https://www.cboe.com/us/options/membership/fee_schedule/.*

Service MEI Ports and are subject to the proposed monthly fee on average account for 80.33% of December 2023 inbound messages over Limited Service MEI Ports. The 28 Members that, based on their December 2023 Limited Service MEI Port usage are not projected to be subject to any Limited Service MEI Port fees, on average account for only 19.67% of December 2023 inbound messages over Limited Service MEI Port. This includes two Members that previously paid a fee that were not charged in December 2023 under the proposed fee structure.

The Exchange believes that the variance between projected fees and Limited Service MEI Ports usage is not unfairly discriminatory because it is based on objective differences in Limited Service MEI Port usage among different Members. The Exchange notes that the distribution of total inbound message volume is concentrated in relatively few Members, which consume a much larger proportionate share of the Exchange's resources (compared to the majority of Members that send substantially fewer inbound order messages). This distribution of inbound message volume requires the Exchange to maintain sufficient Limited Service MEI Port capacity to accommodate the higher existing and anticipated message volume of higher volume Members. Thus, the Exchange's incremental aggregate costs for all Limited Service MEI Ports are disproportionately related to volume from the highest inbound message volume Members. For these reasons, the Exchange believes it is not unfairly discriminatory for the Members with the highest inbound message volume to pay a higher share of the total Limited Service MEI Ports fees.

While Limited Service MEI Port usage is concentrated in a few relatively larger Members, the number of such ports requested is not based on the size or type of Member but rather correlates to a Member's inbound message volume to the Exchange. Further, Members with relatively higher inbound message volume also request (and are assigned) more Limited Service MEI Ports than other Members, which in turn means they account for a disproportionate share of the Exchange's aggregate costs for providing Limited Service MEI Ports.[117] Therefore, the Exchange believes it is not unfairly discriminatory for the Members with higher inbound message volume to pay a modestly higher proportionate share of the Limited Service MEI Port fees.

To achieve consistent, premium network performance, the Exchange must build and maintain a network that has the capacity to handle the message rate requirements of its heaviest network consumers during anticipated peak market conditions. The resultant need to support billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. This need also requires the Exchange to purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[118] Thus, as the number of connections per Market Maker increases, other costs incurred by the Exchange also increase, *e.g.,* storage costs, surveillance costs, service expenses.

Accordingly, the Exchange believes that the fee will be applied consistently with its specific purpose—to partially recover the Exchange's aggregate costs, encourage the efficient use of Limited Service MEI Ports, and align fees with Members' Limited Service MEI Port and system usage.

The Exchange further believes that the proposed fees are reasonable, fair and equitable, and non-discriminatory because they will apply to all Members in the same manner and are not targeted at a specific type or category of market participant engaged in any particular trading strategy. All Members will receive four free Limited Service MEI Ports and pay the same proposed fee per Limited Service MEI Ports for each additional Limited Service MEI Port. Each Limited Service MEI Port is identical, providing connectivity to the Exchange on identical terms. While the proposed fee will result in a different effective ''per unit'' rate for different Members after factoring in the four free Limited Service MEI Ports, the Exchange does not believe that this difference is material given the overall low proposed fee per Limited Service MEI Port. Because the first four Limited Service MEI Ports are free of charge, each entity will have a ''per unit'' rate of less than the proposed fee. Further, the fee is not connected to volume based tiers. All Members will be subject to the same fee schedule, regardless of the volume sent to or executed on the Exchange. The fee also does not depend on any distinctions between Members, customers, broker-dealers, or any other entity. The fee will be assessed solely based on the number of Limited Service MEI Ports an entity selects and not on any other distinction applied by the Exchange. While entities that send relatively more inbound messages to the Exchange may select more Limited Service MEI Ports, thereby resulting in higher fees, that distinction is based on decisions made by each Member and the extent and nature of the Member's business on the Exchange rather than application of the fee by the Exchange. Members can determine how many Limited Service MEI Ports they need to implement their trading strategies effectively. The Exchange proposes to offer additional Limited Service MEI Ports at a low fee to enable all Members to purchase as many Limited Service MEI Ports as their business needs dictate in order to optimize throughput and manage latency across the Exchange.

Notwithstanding that Members with the highest number of Limited Service MEI Ports will pay a greater percentage of the total projected fees than is represented by their Limited Service MEI Port usage, the Exchange does not believe that the proposed fee is unfairly discriminatory. It is not possible to fully synchronize the Exchange's objective to provide four free Limited Service MEI Ports to all Members, thereby minimizing barriers to entry and incentivizing liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Limited Service MEI Ports. As proposed, the Exchange is providing a reasonable increased number of Limited Service MEI Ports to each Member without charge. In fact, the Exchange proposes to provide more Limited Service MEI Ports for free by increasing the number of available Limited Service MEI Ports that are provided for free from two to four. Any variance between projected fees and Limited Service MEI Port usage is attributable to objective differences among Members in terms of the number of Limited Service MEI Ports they determine are appropriate based on their trading on the Exchange. Further, the Exchange believes that the low amount of the proposed fee (which in the aggregate is projected to only partially recover the Exchange's directly-related costs as described herein) mitigates any disparate impact.

Further, the fee will help to encourage Limited Service MEI Port usage in a way

[117] *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07) (justifying providing 5 ports for free and charging a fee for every port purchased in excess of 5 ports based on the higher message traffic of subscribers with increased number of ports).

[118] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[119] Reg SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[120] By encouraging Members to be efficient with their Limited Service MEI Ports usage, the proposed fee will support the Exchange's Reg SCI obligations in this regard by ensuring that unused Limited Service MEI Ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase. Additionally, because the Exchange will continue not to charge connectivity testing and certification fees to its Disaster Recovery Facility or where the Exchange requires testing and certification, the proposed fee structure will further support the Exchange's Reg SCI compliance by reducing the potential impact of a disruption should the Exchange be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing without incurring any port fee costs.[121]

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee will enable a broad range of the Exchange Members to continue to connect to the Exchange, thereby facilitating the economically efficient execution of securities transactions on the Exchange, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on the Exchange when it is the best market.

[119] 17 CFR 242.1000–1007.

[120] 17 CFR 242.1001(a).

[121] By comparison, some other exchanges charge less to connect to their disaster recovery facilities, but still charge an amount that could both recoup costs and potentially be a source of profits. See, *e.g.,* Nasdaq Stock Market LLC Equity 7, Section 115 (Ports and other Services).

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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange operated at a cumulative net annual loss since its launch in 2019 through 2021 [122] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership on January 1, 2023 as a direct result of the similar proposed fee changes by MIAX Pearl Options.[123] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party

[122] The Exchange incurred a cumulative loss of $9 million from its inception in 2019 through 2021. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 29, 2022, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001164.pdf.*

[123] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 74. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Lastly, the Exchange does not believe its proposed changes to the monthly rate for Limited Service MEI Ports will place certain market participants at a relative disadvantage to other market participants. All market participants would be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same flat fee regardless of the number of additional Limited Service MEI Ports they purchase. All firms purchase the amount of Limited Service MEI Ports they require based on their own business decisions and similarly situated firms are subject to the same fees.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change and price increase will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As this is a fee increase, arguably if set too high, this fee would make it easier for other exchanges to compete with the Exchange. Only if this were a substantial fee decrease could this be considered a form of predatory pricing. In contrast, the Exchange believes that, without this fee increase, we are potentially at a competitive disadvantage to certain other exchanges that have in place higher fees for similar services. As we have noted, the Exchange believes that connectivity fees can be used to foster more competitive transaction pricing and additional infrastructure investment and there are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal, one comment letter on the Second Proposal, one comment letter on the Third Proposal, one comment letter on the Fourth Proposal, one comment letter on the Fifth Proposal, one comment letter on the Sixth Proposal, and one comment letter on the Seventh Proposal all from the same commenter.[124] In their letters, the commenters from SIG seek to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. The Exchange also received comment letters from a separate commenter on the Sixth and Seventh Proposals.[125] The Exchange believes issues raised by each commenters are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. Among other things, the commenters are requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

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,[126] and Rule 19b–4(f)(2)[127] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

[124] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letter from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024.

[125] *See* letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024.

[126] 15 U.S.C. 78s(b)(3)(A)(ii).

[127] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include file number SR–EMERALD–2024–03 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–EMERALD–2024–03. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2024–03 and should be submitted on or before March 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[128]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02648 Filed 2–8–24; 8:45 am]

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[128] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99474; File No. SR–PEARL–2024–05]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Exchange Fee Schedule To Modify Certain Connectivity and Port Fees

February 5, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the MIAX Pearl Options Exchange Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings,* at MIAX Pearl's principal office, 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.

[3] All references to the ''Exchange'' in this filing mean MIAX Pearl Options. Any references to the equities trading facility of MIAX PEARL, LLC, will specifically be referred to as ''MIAX Pearl Equities.''

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 the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[4] and non-Members; (2) amend the calculation of fees for MIAX Express Network Full Service (''MEO'')[5] Ports (Bulk and Single); and (3) amend the fees for Full Service MEO Ports (Bulk and Single). The Exchange and its affiliate, Miami International Securities Exchange, LLC (''MIAX'') operated 10Gb ULL connectivity on a single shared network that provided access to both exchanges via a single 10Gb ULL connection. The Exchange last increased fees for 10Gb ULL connections from $9,300 to $10,000 per month on January 1, 2021.[6] At the same time, MIAX also increased its 10Gb ULL connectivity fee from $9,300 to $10,000 per month.[7] The Exchange and MIAX shared a combined cost analysis in those filings due to the single shared 10Gb ULL connectivity network for both exchanges. In those filings, the Exchange and MIAX allocated a combined total of $17.9 million in expenses to providing 10Gb ULL connectivity.[8]

Beginning in late January 2023, the Exchange determined a substantial operational need to no longer operate 10Gb ULL connectivity on a single shared network with MIAX. The Exchange bifurcated 10Gb ULL connectivity due to ever-increasing capacity constraints and to enable it to continue to satisfy the anticipated access needs for Members and other market participants.[9] Since the time of

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

[7] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[8] *See id.*

[9] *See MIAX Options and MIAX Pearl Options—Announce planned network changes related to shared 10G ULL extranet,* issued August 12, 2022, *available at https://www.miaxglobal.com/alert/2022/08/12/miax-options-and-miax-pearl-options-announce-planned-network-changes-0.* The Exchange will continue to provide access to both the Exchange and MIAX over a single shared 1Gb

Continued

the 2021 increase discussed above,[10] the Exchange experienced ongoing increases in expenses, particularly internal expenses.[11] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $15,593,990for providing 10Gb ULL connectivity on a single unshared network (an overall increase over its prior cost to provide 10Gb ULL connectivity on a shared network with MIAX) and $1,989,497 for providing Full Service MEO Ports.[12]

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Full Service MEO Ports (Bulk and Single) in order to recoup cost related to bifurcating 10Gb connectivity to the Exchange and MIAX as well as the ongoing costs and increase in expenses set forth below in the Exchange's cost analysis.[13] The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The Exchange initially filed the proposal on December 30, 2022 (SR–PEARL–2022–62) (the ''Initial Proposal'').[14] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–PEARL–2023–08) (the ''Second Proposal'').[15] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with a revised proposal (SR–PEARL–2023–19) (the ''Third Proposal'').[16] On June 16, 2023, the Exchange withdrew the Third Proposal and replaced it with a revised proposal (SR–PEARL–2023–27) (the ''Fourth Proposal'').[17] On August 8, 2023, the Exchange withdrew the Fourth Proposal and replaced it with a revised proposal (SR–PEARL–2023–35) (the ''Fifth Proposal'').[18] Since a U.S. government shutdown was avoided, on October 2, 2023, the Exchange withdrew the Fifth Proposal and replaced it with a further revised proposal (SR–PEARL–2023–55) (the ''Sixth Proposal'').[19] On November 27, 2023, the Exchange withdrew the Sixth Proposal and replaced it with a revised proposal (SR–PEARL–2023–64) (the ''Seventh Proposal'').[20] On January 25, 2024, the Exchange withdrew the Seventh Proposal and replaced it with a further revised proposal (SR–PEARL–2024–05) (the ''Eighth Proposal'').

The Exchange previously included a cost analysis in the Initial, Second, Third, Fourth, Fifth, Sixth, and Seventh Proposals. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (separately among MIAX Pearl Options and MIAX Pearl Equities, MIAX and MIAX Emerald[21] (together with MIAX and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. Although the baseline cost analysis used to justify the proposed fees was made in the Initial, Second, Third, Fourth, Fifth, Sixth and Seventh Proposals, the fees themselves have not changed since the Initial, Second, Third, Fourth, Fifth, Sixth or Seventh Proposals and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Full Service MEO Ports with a reasonable mark-up over those costs.

The cost analysis included in prior filings was based on the Exchange's 2023 fiscal year of operations and projected expenses. In its Initial Proposal filed on December 30, 2022, the Exchange committed to conduct an annual review after implementation of these fees. The Exchange recently completed its 2024 fiscal year budget process, which included its annual review of these fees and the projected costs to provide these services, based on its approved 2024 expense budget. Therefore, the Cost Analysis included in this proposal is based on the Exchange's 2024 fiscal year of operations and projected expenses. The Exchange believes it reasonable to now use costs from its 2024 fiscal year budget because they reflect the Exchange's current cost

connection. *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[10] The Exchange notes it last filed to amend the fees for Full Service MEO Ports in 2018 (excluding filings made in July 2021 through early 2022), prior to which the Exchange provided Full Service MEO Ports free of charge since the it launched operations in 2017 and absorbed all costs since that time. *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[11] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and 2023 expenses.

[12] For the avoidance of doubt, all references to costs in this filing, including the cost categories discussed below, refer to costs incurred by MIAX Pearl Options only and not MIAX Pearl Equities, the equities trading facility.

[13] The Exchange notes that MIAX will make a similar filing to increase its 10Gb ULL connectivity fees.

[14] *See* Securities Exchange Act Release No. 96632 (January 10, 2023), 88 FR 2707 (January 17, 2023) (SR–PEARL–2022–62).

[15] *See* Securities Exchange Act Release No. 97082 (March 8, 2023), 88 FR 15825 (March 14, 2023) (SR–PEARL–2023–05).

[16] *See* Securities Exchange Act Release No. 97420 (May 2, 2023), 88 FR 29701 (May 8, 2023) (SR–PEARL–2023–19).

[17] The Exchange met with Commission Staff to discuss the Third Proposal during which the Commission Staff provided feedback and requested additional information, including, most recently, information about total costs related to certain third party vendors. Such vendor cost information is subject to confidentiality restrictions. The Exchange provided this information to Commission Staff under separate cover with a request for confidentiality. While the Exchange will continue to be responsive to Commission Staff's information requests, the Exchange believes that the Commission should, at this point, issue substantially more detailed guidance for exchanges to follow in the process of pursuing a cost-based approach to fee filings, and that, for the purposes of fair competition, detailed disclosures by exchanges, such as those that the Exchange is providing now, should be consistent across all exchanges, including for those that have resisted a cost-based approach to fee filings, in the interests of fair and even disclosure and fair competition. *See* Securities Exchange Act Release No. 97815 (June 27, 2023), 88 FR 42759 (July 3, 2023) (SR–PEARL–2023–27).

[18] *See* Securities Exchange Act Release No. 98180 (August 21, 2023), 88 FR 58404 (August 25, 2023) (SR–PEARL–2023–35). Due to the prospect of a U.S. government shutdown, the Commission suspended the Fifth Proposal on September 29, 2023. *See* Securities Exchange Act Release No. 98658 (September 29, 2023) (SR–PEARL–2023–35).

[19] *See* Securities Exchange Act Release No. 98753 (October 13, 2023), 88 FR 72142 (October 19, 2023) (SR–PEARL–2023).

[20] *See* Securities Exchange Act Release No. 99140 (December 11, 2023), 88 FR 86951 (December 15, 2023) (SR–PEARL–2023–64).

[21] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

base. The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Consequently, these increased costs included in the 2024 budget result in a lower projected profit margin for 10Gb ULL connectivity and Full Service MEO Ports than the profit margins included in prior filings that proposed the same fee levels for 10Gb ULL connectivity and Full Service MEO Ports. The Exchange believes it is reasonable and appropriate to now use expenses from its 2024 budget because those expenses are more recent and more accurately reflect the Exchange's current expenses and projected revenues for the 2024 fiscal year. Continuing to use 2023 budget numbers would result in the Exchange's Cost Analysis to be based on stale data which would not reflect the Exchanges most recent cost estimates and projected margins.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [22] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[23] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[24] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[25] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [26] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[27] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [28] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[29] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [30] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [31] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [32]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock*

[22] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[23] *Id.*

[24] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[25] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[26] *Id.* at page 2.

[27] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[28] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[29] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[30] See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[31] *Id.*

[32] *Id.*

Market, LLC v. *SEC*[33] and remanded for further proceedings consistent with its opinion.[34] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.''[35] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act Section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[36] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*''[37] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[38]

As a result of the Commission's loss of the *NASDAQ vs. SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.''[39] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[40] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings[41] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[42] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as MIAX Pearl, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[43] By impeding any

[33] *NASDAQ Stock Mkt., LLC v. SEC,* No 18–1324,----Fed. App'x----, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[34] *Nasdaq v. SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''Section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[35] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[36] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[37] *Id.*

[38] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[39] *See supra* note 34, at page 2.

[40] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[41] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[42] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[43] The Exchange has filed, and subsequently withdrew, various forms of this proposed fee change numerous times since August 2021 with

path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020[44] and $80,383,000 for 2021.[45] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020[46] and $22,843,000 for 2021.[47] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[48] and $44,800,000 for 2021.[49] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[50] and $30,687,000 for 2021.[51] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[52] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.''[53]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[54] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates),[55] which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. There is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[56] this is not the reality experienced by exchanges such as MIAX Pearl. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[57] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in Section 6(b)(4) of the Act[58] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is

each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[44] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[45] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[46] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[47] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[48] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[49] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[50] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[51] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[52] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[53] *See* PHLX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[54] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[55] *See, e.g.,* Cboe Fee Schedule, Page 4, Affiliate Volume Plan, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing that if a market maker or its affiliate receives a credit under Cboe's Volume Incentive Program (''VIP''), the market maker will receive an access credit on their BOE Bulk Ports corresponding to the VIP tier reached and the market maker will receive a transaction fee credit on their sliding scale market maker transaction fees) *and* NYSE American Options Fee Schedule, Section III, E, Floor Broker Incentive and Rebate Programs, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (providing floor brokers the opportunity to prepay certain non-transaction fees for the following calendar year by achieving certain amounts of volume executed on NYSE American).

[56] *See supra* note 30, at note 1.

[57] *See* Securities Exchange Act Release Nos. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021) (SR–PEARL–2021–33); 92644 (August 11, 2021), 86 FR 46055 (August 17, 2021) (SR–PEARL–2021–36); 93162 (September 28, 2021), 86 FR 54739 (October 4, 2021) (SR–PEARL–2021–45); 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53); 93774 (December 14, 2021), 86 FR 71952 (December 20, 2021) (SR–PEARL–2021–57); 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58); 94258 (February 15, 2022), 87 FR 9659 (February 22, 2022) (SR–PEARL–2022–03); 94286 (February 18, 2022), 87 FR 10860 (February 25, 2022) (SR–PEARL–2022–04); 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11); 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12); 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18).

[58] 15 U.S.C. 78f(b)(4).

effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[59] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [60] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and place a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[61]

* * * * *

10Gb ULL Connectivity Fee Change

MIAX Pearl Options filed a proposal to no longer operate 10Gb connectivity to MIAX Pearl Options on a single shared network with its affiliate, MIAX. This change is an operational necessity due to ever-increasing capacity constraints and to accommodate anticipated access needs for Members and other market participants.[62] This proposal: (i) sets forth the applicable fees for the bifurcated 10Gb ULL network; (ii) removes provisions in the Fee Schedule that provide for a shared 10Gb ULL network; and (iii) specifies that market participants may continue to connect to both MIAX Pearl Options and MIAX via the 1Gb network.

MIAX Pearl Options bifurcated the MIAX Pearl Options and MIAX 10Gb ULL networks in the first quarter of 2023, which change became effective on January 23, 2023. The Exchange issued an alert on August 12, 2022 publicly announcing the planned network change and implementation plan and dates to provide market participants adequate time to prepare.[63] Upon bifurcation of the 10Gb ULL network, subscribers need to purchase separate connections to MIAX Pearl Options and MIAX at the applicable rate. The Exchange's proposed amended rate for 10Gb ULL connectivity is described below. Prior to the bifurcation of the 10Gb ULL networks, subscribers to 10Gb ULL connectivity were able to connect to both MIAX Pearl Options and MIAX at the applicable rate set forth below.

The Exchange, therefore, proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks [64] via a 10Gb ULL fiber connection and to specify that this fee is for a dedicated connection to MIAX Pearl Options and no longer provides access to MIAX. Specifically, MIAX Pearl Options proposes to amend Sections 5)a)-b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[65] The Exchange also proposes to amend the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both MIAX Pearl Options and MIAX.

The Exchange proposes to make the following changes to reflect the bifurcated 10Gb ULL network for the Exchange and MIAX. First, in the Definitions section of the Fee Schedule, the Exchange proposes to amend the last sentence in the definition of ''MENI'' to specify that the MENI can be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange's affiliate, MIAX, via a single, shared 1Gb connection. Next, the Exchange proposes to amend the explanatory paragraphs below the network connectivity fee tables in Sections 5)a)-b) of the Fee Schedule to specify that, with the bifurcated 10Gb ULL network, Members (and non-Members) utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX via a single, can only do so via a shared 1Gb connection.

The Exchange will continue to assess monthly Member and non-Member

[59] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[60] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[61] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[62] *See supra* note 9.

[63] *Id.*

[64] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[65] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Fee Schedule. *See* Fee Schedule, Section 4)c), *available at https://www.miaxglobal.com/markets/us-options/pearl-options/fees* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Full Service MEO Ports—Bulk and Single

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to amend the calculation and amount of fees for Full Service MEO Ports. The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[66] a Full Service MEO Port-Single,[67] and a Limited Service MEO Port.[68] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine[69] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Currently, the Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates[70] on the Exchange, across all origin types, not including Excluded Contracts,[71] as compared to the Total Consolidated Volume (''TCV''),[72] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees to Members in each month the market participant is credentialed to use a Port in the production environment.

Full Service MEO Port (Bulk) Fee Changes

Current Full Service MEO Port (Bulk) Fees. The Exchange currently assesses all Members (Market Makers[73] and Electronic Exchange Members[74] (''EEMs'')) monthly Full Service MEO Port—Bulk fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port (Bulk) Fees. The Exchange proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for EEMs and Market Makers. In particular, for EEMs, the Exchange proposes to move away from the above-described volume tier-based fee structure and instead charge all EEMs that utilize Full Service MEO Ports (Bulk) a flat monthly fee of $7,500. For this flat monthly fee, EEMs will continue to be entitled to two (2) Full Service MEO Ports (Bulk) for each Matching Engine for the single monthly fee of $7,500. The Exchange now proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for Market Makers by moving away from the above-described volume tier-based fee structure to harmonize the Full Service MEO Port (Bulk) fee structure for Market Makers with that of the Exchange's affiliates, MIAX and MIAX Emerald.[75] The Exchange proposes that the amount of the monthly Full Service MEO Port (Bulk) fees for Market Makers would be based on the lesser of either the per class traded or percentage of total national average daily volume (''ADV'') measurement based on classes traded by volume. The amount of monthly Market Maker Full Service MEO Port (Bulk) fee would be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages. This change in how Full Service MEO Port (Bulk) fees are calculated is identical to how the Exchange assesses Market Makers Trading Permit fees, which is in line with how numerous exchanges charge similar membership fees.

Specifically, the Exchange proposes to adopt the following Full Service MEO Port (Bulk) fees for Market Makers: (i) $5,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) $7,500 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) $10,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) $12,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58%

[66] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[67] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[68] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[69] A ''Matching Engine'' is a part of the Exchange's electronic system that processes options orders and trades on a symbol-by-symbol basis. *See* the Definitions Section of the Fee Schedule.

[70] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). *See* the Definitions Section of the Fee Schedule.

[71] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[72] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[73] The term ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[74] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[75] *See* MIAX Fee Schedule, Section 5)d)ii) and MIAX Emerald Fee Schedule, Section 5)d)ii).

of the total national average daily volume in the prior calendar quarter, the Exchange would assess $7,500 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Pearl'. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $5,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume. The Exchange notes that the proposed tiers (ranging from $5,000 to $12,000) are lower than the tiers that the Exchange's affiliates charge for their comparable ports (ranging from $5,000 to $20,500) for similar per class tier thresholds.[76]

With the proposed changes, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class.[77] The Exchange will assess MIAX Pearl Options Market Makers the monthly Market Maker Full Service MEO Port (Bulk) fee based on the greatest number of classes listed on MIAX Pearl Options that the MIAX Pearl Options Market Maker registered to quote in on any given day within a calendar month. Therefore, with the proposed changes to the calculation of Market Maker Full Service MEO Port (Bulk) fees, the Exchange's Market Makers would be encouraged to quote in more series in each class they are registered in because each additional series in that class would not count against their total classes for purposes of the Full Service MEO Port (Bulk) fee tiers. The class volume percentage is based on the total national ADV in classes listed on MIAX Pearl Options in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Full Service MEO Port (Bulk) fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national ADV.

The Exchange also proposes to adopt an alternative lower Full Service MEO Port (Bulk) fee for Market Makers who fall within the 2nd, 3rd and 4th levels of the proposed Market Maker Full Service MEO Port (Bulk) fee table: (i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume; (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (iii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Pearl Options. In particular, the Exchange proposes to adopt footnote ''**'' following the Market Maker Full Service MEO Port (Bulk) fee table for these Monthly Full Service MEO Port (Bulk) tier levels. New proposed footnote ''**'' will provide that if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl–listed option classes for that month, then the fee will be $6,000 instead of the fee otherwise applicable to such level.

The purpose of the alternative lower fee designated in proposed footnote ''**'' is to provide a lower fixed fee to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed fees to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed fee. The Exchange notes that the Exchange's affiliates, MIAX and MIAX Emerald, also provide lower MIAX Express Interface (''MEI'') Port fees (the comparable ports on those exchanges) for Market Makers who quote the entire MIAX and MIAX Emerald markets (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX or MIAX Emerald.[78] The proposed changes to the Full Service MEO Port (Bulk) fees for Market Makers who fall within the 2nd, 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[79] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Market Makers may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on the lesser of either the per class traded or percentage of total national ADV measurement based on classes traded by volume, as described above. For illustrative purposes, the Exchange currently assesses a fee of $5,000 per month for Market Makers that reach the highest Full Service MEO Port (Bulk) tier, regardless of the number of Full Service MEO Ports allocated to the Market Maker. For example, assuming a Market Maker connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports (Bulk) per matching engine, this results in an effective fee of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month, as compared to other exchanges that charge over $1,000 per port and require multiple ports to connect to all of their matching engines.[80] This fee had been unchanged since the Exchange

[76] *See id.*

[77] Pursuant to Exchange Rule 602(a), a Member that has qualified as a Market Maker may register to make markets in individual series of options.

[78] *See* MIAX Fee Schedule, Section 5)d)ii), note ''*'' and MIAX Emerald Fee Schedule, Section 5)d)ii), note ''■''.

[79] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). *See* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); *and* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). *See* NASDAQ Fee Schedule, NASDAQ Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). *See* NASDAQ Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, *available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf* (the ''NASDAQ SQF Interface Specification''). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, NASDAQ Phlx and NASDAQ BX, Inc. (''BX''), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option classes. Further, the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

[80] *Id. See also infra* table on page 37 and accompanying text.

adopted Full Service MEO Port fees in 2018.[81] The Exchange proposes to increase Full Service MEO Port fees, with the highest monthly fee of $12,000 for the Full Service MEO Ports (Bulk). Market Makers will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Market Maker connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in an effective fee of $500 per Full Service MEO Port ($12,000 divided by 24).

FULL SERVICE MEO PORTS (BULK)

	Number of match engines	Total number of ports for market maker to connect to all match engines	Total fee (monthly)	Effective per port Fee
Pricing Based on Market Maker Being Charged the Highest Tier (Current)	12	24	$5,000	$208.33
Pricing Based on Market Maker Being Charged the Highest Tier (as proposed)	12	24	12,000	500

Full Service MEO Port (Single) Fee Changes

Current Full Service MEO Port (Single) Fees. The Exchange currently assesses all Members (Market Makers and EEMs) monthly Full Service MEO Port (Single) fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port (Single) Fees. The Exchange proposes to amend the calculation and amount of Full Service MEO Port (Single) fees for EEMs and Market Makers. In particular, the Exchange proposes to move away from the above-described volume tier-based fee structure and instead charge all Members that utilize Full Service MEO Ports (Single) a flat monthly fee of $4,000. For this flat monthly fee, all Members will continue to be entitled to two (2) Full Service MEO Ports (Single) for each Matching Engine for the single monthly fee of $4,000.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that the System has to assess. Those Members account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout. For example, three (3) Members account for 64% of all 10Gb ULL connections and Full Service MEO Ports purchased.

The Exchange proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were adopted in 2018,[82] which are designed to recover a portion of the costs associated with directly accessing the Exchange. As described above, the Exchange's affiliates, MIAX and MIAX Emerald, also charge fees for their high throughput, low latency ports in a similar fashion as the Exchange proposes to charge for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[83] This concept is, therefore, not new or novel.

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[84] in general, and furthers the objectives of Section 6(b)(4) of the Act[85] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act[86] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order[87] and the Staff Guidance,[88] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data

[81] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[82] *See id.*

[83] *See* MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

[84] 15 U.S.C. 78f(b).

[85] 15 U.S.C. 78f(b)(4).

[86] 15 U.S.C. 78f(b)(5).

[87] *See supra* note 29.

[88] *See supra* note 30.

and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [89] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [90] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.'' [91]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity (driven by the bifurcation of the 10Gb ULL network) and Full Service MEO Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange commenced operations in February 2017 [92] and adopted its initial fee schedule, with 10Gb ULL connectivity fees set at $8,500 (the Exchange originally had a non-ULL 10Gb connectivity option, which it has since removed) and a fee waiver for all Full Service MEO Port fees.[93] As a new exchange entrant, the Exchange chose to offer Full Service MEO Ports free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[94]

Later in 2018, as the Exchange's market share increased,[95] the Exchange adopted nominal fees for Full Service MEO Ports.[96] The Exchange last increased the fees for its 10Gb ULL fiber connections from $9,300 to $10,000 per month on January 1, 2021.[97] The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has long been recognized by

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *See* MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, *available at https://www.miaxglobal.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.*

[93] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[94] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX . . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[95] The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. *See* the ''Market Share'' section of the Exchange's website, *available at www.miaxglobal.com.*

[96] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[97] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[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'. . ..'' [98]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.'' [99]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [100] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [101] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [102] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [103]

The Exchange believes the competing exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. Each of the connectivity and port rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Pearl Options (as proposed) ..... (equity options market share of 5.68% for the month of December 2023) [a].	10Gb ULL connection	$13,500.
	Full Service MEO Port (Bulk) for Market Makers.	Lesser of either the per class basis or percentage of total national ADV by the Market Maker, as follows: $5,000—up to 10 classes or up to 20% of classes by volume. $7,500**—up to 40 classes or up to 35% of classes by volume. $10,000**—up to 100 classes or up to 50% of classes by volume. $12,000**—over 100 classes or over 50% of all classes by volume up to all classes (or $500 per port per matching engine). **A lower rate of $6,000 will apply to these tiers if the Market Maker's total monthly executed volume is less than 0.040% of total monthly TCV for MIAX Pearl options.
	Full Service MEO Port (Bulk) for EEMs.	$7,500 (or $312.50 per port per matching engine.
	Full Service MEO Port (Single) for Market Makers and EEMs.	$4,000 (or $166.66 per port per matching engine).
NASDAQ [b] (equity options market share of 5.58% for the month of December 2023) [c].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port [d]	1–5 ports: $1,500 per port. 6–20 ports: $1,000 per port. 21 or more ports: $500 per port.
NASDAQ ISE LLC (''ISE'') [e] (equity options market share of 6.39% for the month of December 2023) [f].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port.	$1,100 per port.

[98] *See NetCoalition,* 615 F.3d at 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)).

[99] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[100] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[101] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca-2006–21).

[102] *Id.*

[103] *See* Staff Guidance, *supra* note 30.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
NYSE American LLC (“NYSE American”) [g] (equity options market share of 7.49% for the month of December 2023) [h].	10Gb LX LCN connection	$22,000 per connection.
	Order/Quote Entry Port.	1–40 ports: $450 per port. 41 or more ports: $150 per port.
NASDAQ GEMX, LLC (“GEMX”) [i] (equity options market share of 2.63% for the month of December 2023) [j].	10Gb Ultra connection	$15,000 per connection.
	SQF Port.	$1,250 per port.

[a] *See* the ‘‘Market Share’’ section of the Exchange’s website, *available at* https://www.miaxglobal.com/.
[b] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.
[c] *See supra* note a.
[d] Similar to the MIAX Pearl Options’ MEO Ports, SQF ports are primarily utilized by Market Makers.
[e] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.
[f] *See supra* note a.
[g] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.
[h] *See supra* note a.
[i] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.
[j] *See supra* note a.

The Exchange acknowledges that, without additional contextual information, the above table may lead someone to believe that the Exchange’s proposed fees for Full Service MEO Ports is higher than other exchanges when in fact, that is not true. The Exchange provides each Member or non-Member access to two (2) ports on all twelve (12) matching engines for a single fee and a vast majority choose to connect to all twelve (12) matching engines and utilize both ports for a total of 24 ports. Other exchanges charge on a per port basis and require firms to connect to multiple matching engines, thereby multiplying the cost to access their full market.[104] On the Exchange, this is not the case. The Exchange provides each Member or non-Member access, but does not require they connect to, all twelve (12) matching engines.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. Market participants may choose to become a member of one or more options exchanges based on the market participant’s assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, one Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes proposed by MIAX Pearl Options.

It is not a requirement for market participants to become members of all options exchanges; in fact, certain market participants conduct an options business as a member of only one options market.[105] A very small number of market participants choose to become a member of all sixteen options exchanges. Most firms that actively trade on options markets are not currently Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Members or service bureaus, and only a Member may utilize a port.[106]

One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[107] The Exchange and its affiliated options markets, MIAX and MIAX Emerald, have a total of 46 members. Of those 46 total members, 37 are members of all three affiliated options markets, two are members of only two affiliated options markets, and seven are members of only one affiliated options market. The Exchange also notes that no firm is a Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all options exchanges, let alone the Exchange and its two affiliates, and broker-dealers may elect to do so based on their own business decisions and need to directly access each exchange’s liquidity pool.

Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ‘‘de facto’’ or practical requirement as well, as further evidenced by the broker-dealer membership analysis of the options exchanges discussed above. As noted above, this is evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. Indeed, broker-dealers choose if and how to access a

[104] *See* Specialized Quote Interface Specification, Nasdaq PHLX, Nasdaq Options Market, Nasdaq BX Options, Version 6.5a, Section 2, Architecture (revised August 16, 2019), *available at http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/SQF6.5a-2019-Aug.pdf.* The Exchange notes that it is unclear whether the NASDAQ exchanges include connectivity to each matching engine for the single fee or charge per connection, per matching engine. *See also* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020). The Exchange notes that NYSE provides a link to an Excel file detailing the number of matching engines per options exchange, with Arca and Amex having 19 and 17 matching engines, respectively.

[105] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ‘‘. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].’’ Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ‘‘is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange’’ and that ‘‘neither the trade-through requirements under Regulation NMS nor broker-dealers’ best execution obligations require a broker-dealer to become a member of every exchange.’’

[106] Service Bureaus may obtain ports on behalf of Members.

[107] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX’s observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at—or establish connectivity to—the Exchange.[108] If the Exchange is not at the national best bid or offer (''NBBO''),[109] the Exchange will route an order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[110]

With respect to the submission of orders, Members may also choose not to purchase any connection from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Member of the Exchange may be utilized by a retail investor to submit orders into an exchange. An institutional investor may utilize a broker-dealer, a service bureau,[111] or request sponsored access [112] through a member of an exchange in order to submit a trade directly to an options exchange.[113] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-party).[114] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[115] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 16 options markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member, and is approved for membership by the Exchange, the Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become a Member of the Exchange. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. If a market participant chooses to become a Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

Bifurcation of 10Gb ULL Connectivity and Related Fees

The Exchange began to operate on a single shared network with MIAX when MIAX Pearl Options commenced operations as a national securities exchange on February 7, 2017.[116] The Exchange and MIAX operated on a single shared network to provide Members with a single convenient set of access points for both exchanges. Both the Exchange and MIAX offer two methods of connectivity, 1Gb and 10Gb ULL connections. The 1Gb connection services are supported by a discrete set of switches providing 1Gb access ports to Members. The 10Gb ULL connection services are supported by a second and mutually exclusive set of switches providing 10Gb ULL access ports to Members. Previously, both the 1Gb and

[108] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), *available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[109] *See* Exchange Rule 100.

[110] Members may elect to not route their orders by utilizing the Do Not Route order type. *See* Exchange Rule 516(g).

[111] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders.

[112] Sponsored Access is an arrangement whereby a Member permits its customers to enter orders into an exchange's system that bypass the Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[113] This may include utilizing a floor broker and submitting the trade to one of the five options trading floors.

[114] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at,* US Direct-Extranet Connection (nasdaqtrader.com); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[115] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

[116] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (establishing MIAX Pearl Options Fee Schedule and establishing that the MENI can also be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of MIAX Pearl Options' affiliate, MIAX, via a single, shared connection).

10Gb ULL shared extranet ports allowed Members to use one connection to access both exchanges, namely their trading platforms, market data systems, test systems, and disaster recovery facilities.

The Exchange stresses that bifurcating the 10Gb ULL connectivity between the Exchange and MIAX was not designed with the objective to generate an overall increase in access fee revenue. Rather, the proposed change was necessitated by 10Gb ULL connectivity experiencing a significant decrease in port availability mostly driven by connectivity demands of latency sensitive Members that seek to maintain multiple 10Gb ULL connections on every switch in the network. Operating two separate national securities exchanges on a single shared network provided certain benefits, such as streamlined connectivity to multiple exchanges, and simplified exchange infrastructure. However, doing so was no longer sustainable due to ever-increasing capacity constraints and current system limitations. The network is not an unlimited resource. As described more fully in the proposal to bifurcate the 10Gb ULL network,[117] the connectivity needs of Members and market participants has increased every year since the launch of MIAX Pearl Options and the operations of the Exchange and MIAX on a single shared 10Gb ULL network is no longer feasible. This required constant System expansion to meet Member demand for additional ports and 10Gb ULL connections has resulted in limited available System headroom, which eventually became operationally problematic for both the Exchange and its customers.

As stated above, the shared network is not an unlimited resource and its expansion was constrained by MIAX's and MIAX Pearl Options' ability to provide fair and equitable access to all market participants of both markets. Due to the ever-increasing connectivity demands, the Exchange found it necessary to bifurcate 10Gb ULL connectivity to the Exchange's and MIAX's Systems and networks to be able to continue to meet ongoing and future 10Gb ULL connectivity and access demands.[118]

Unlike the switches that provide 1Gb connectivity, the availability for additional 10Gb ULL connections on each switch had significantly decreased. This was mostly driven by the connectivity demands of latency sensitive Members (*e.g.,* Market Makers and liquidity removers) that sought to maintain connectivity across multiple 10Gb ULL switches. Based on the Exchange's experience, such Members did not typically use a shared 10Gb ULL connection to reach both the Exchange and MIAX due to related latency concerns. Instead, those Members maintain dedicated separate 10Gb ULL connections for the Exchange and separate dedicated 10Gb ULL connections for MIAX. This resulted in a much higher 10Gb ULL usage per switch by those Members on the shared 10Gb ULL network than would otherwise be needed if the Exchange and MIAX had their own dedicated 10Gb ULL networks. Separation of the Exchange and MIAX 10Gb ULL networks naturally lends itself to reduced 10Gb ULL port consumption on each switch and, therefore, increased 10Gb ULL port availability for current Members and new Members.

Prior to bifurcating the 10Gb ULL network, the Exchange and MIAX continued to add switches to meet ongoing demand for 10Gb ULL connectivity. That was no longer sustainable because simply adding additional switches to expand the current shared 10Gb ULL network would not adequately alleviate the issue of limited available port connectivity. While it would have resulted in a gain in overall port availability, the existing switches on the shared 10Gb ULL network in use would have continued to suffer from lack of port headroom given many latency sensitive Members' needs for a presence on each switch to reach both the Exchange and MIAX. This was because those latency sensitive Members sought to have a presence on each switch to maximize the probability of experiencing the best network performance. Those Members routinely decide to rebalance orders and/or messages over their various connections to ensure each connection is operating with maximum efficiency. Simply adding switches to the extranet would not have resolved the port availability needs on the shared 10Gb ULL network since many of the latency sensitive Members were unwilling to relocate their connections to a new switch due to the potential detrimental performance impact. As such, the impact of adding new switches and rebalancing ports would not have been effective or responsive to customer needs. The Exchange has found that ongoing and continued rebalancing once additional switches are added has had, and would have continued to have had, a diminishing return on increasing available 10Gb ULL connectivity.

Based on its experience and expertise, the Exchange found the most practical way to increase connectivity availability on its switches was to bifurcate the existing 10Gb ULL networks for the Exchange and MIAX by migrating the exchanges' connections from the shared network onto their own set of switches. Such changes accordingly necessitated a review of the Exchange's previous 10Gb ULL connectivity fees and related costs. The proposed fees necessary to allow the Exchange to cover ongoing costs related to providing and maintaining such connectivity, described more fully below. The ever increasing connectivity demands that necessitated this change further support that the proposed fees are reasonable because this demand reflects that Members and non-Members believe they are getting value from the 10Gb ULL connections they purchase.

The Exchange announced on August 12, 2022 the planned network change and January 23, 2023 implementation date to provide market participants adequate time to prepare.[119] Beginning August 12, 2022, the Exchange worked with the then-current 10Gb ULL subscribers to address their connectivity needs ahead of the January 23, 2023 date. Based on those interactions and subscriber feedback, the Exchange experienced a minimal net increase of six (6) overall 10Gb ULL connectivity subscriptions across MIAX Pearl Options and MIAX when the 10Gb ULL network was bifurcated. This immaterial increase in overall connections reflects a minimal fee impact for all types of subscribers and reflects that subscribers elected to reallocate existing 10Gb ULL connectivity directly to the Exchange or MIAX, or chose to decrease or cease connectivity as a result of the change.

Should the Commission Staff disapprove such fees, it would effectively dictate how an exchange manages its technology and would hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval could also have the adverse effect of discouraging an exchange from optimizing its operations and deploying innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from covering its costs and monetizing its operational

[117] *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[118] Currently, the Exchange maintains sufficient headroom to meet ongoing and future requests for 1Gb connectivity. Therefore, the Exchange did not propose to alter 1Gb connectivity and continues to provide 1Gb connectivity over a shared network.

[119] *See supra* note 9.

enhancements, thus adversely impacting competition. Also, as noted above, the economic consequences of not being able to better establish fee parity with other exchanges for non-transaction fees hampers the Exchange's ability to compete on transaction fees.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity and port services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[120] and Rule 19b–4 thereunder,[121] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[122] which requires, among other things, that exchange fees be reasonable and equitably allocated,[123] not designed to permit unfair discrimination,[124] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[125] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[126] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $15,593,990 (or approximately $1,299,500 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Full Service MEO Ports at $1,989,497 (or approximately $165,791 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its users (both Members and non-Members [127]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection and to remove language providing for a shared 10Gb ULL network between the Exchange and MIAX. The Exchange also proposes to modify its Fee Schedule to charge tiered rates for Full Service MEO Ports (Bulk) depending on the number of classes assigned or the percentage of national ADV, which is in line with how the Exchange's affiliates, MIAX and MIAX Emerald, assess fees for their comparable MEI Ports.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[128] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[129] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above.

[120] 15 U.S.C. 78s(b)(1).

[121] 17 CFR 240.19b–4.

[122] 15 U.S.C. 78f(b).

[123] 15 U.S.C. 78f(b)(4).

[124] 15 U.S.C. 78f(b)(5).

[125] 15 U.S.C. 78f(b)(8).

[126] *See* Staff Guidance, *supra* note 30.

[127] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[128] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[129] For example, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, MIAX maintains 24 matching engines and MIAX Emerald maintains 12 matching engines.

This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (61.8% of total expense amount allocated to 10Gb ULL connectivity), with smaller allocations to Full Service MEO Ports (2.7%), and the remainder to the provision of other connectivity, other ports, transaction execution, membership services and market data services (35.5%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity and port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity and port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide 10Gb ULL connectivity and Full Service MEO Port services, is $1,465,293 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Full Service MEO Ports by 12 months, then adding both numbers together), as further detailed below.

Lastly, the Exchange notes that, based on: (i) the total expense amounts contained in this filing (which are 2024 projected expenses), and (ii) the total expense amounts contained in the 2023 similar MIAX Pearl Equities filing (utilizing 2023 expenses), MIAX PEARL, LLC's total costs have increased at a greater rate over the last three years than the total costs of MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is also reflected in the total costs reported in MIAX PEARL, LLC's Form 1 filings over the last three years, when comparing MIAX PEARL, LLC to MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is primarily because that MIAX PEARL, LLC operates two markets, one for options and one for equities, while MIAX and MIAX Emerald each operate only one market. This is also due to higher current expense for MIAX PEARL, LLC for 2022, 2023 and 2024, due to a hardware refresh (*i.e.,* replacing old hardware with new equipment) for MIAX Pearl Options, as well as higher costs associated with MIAX Pearl Equities due to greater development efforts to grow that newer marketplace.[130] The Exchange confirms

[130] *See, e.g.,* Securities Exchange Act Release Nos. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2022) (SR–PEARL–2022–06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2617(b) To Adopt Two New Routing Options, and To Make Related Changes and Clarifications to Rules 2614(a)(2)(B) and 2617(b)(2)); 94851 (May 4, 2022), 87 FR 28077 (May 10, 2022) (SR–PEARL–2022–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 532, Order Price Protection Mechanisms and Risk Controls); 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR–PEARL–2022–29) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the Route to Primary Auction Routing Option Under Exchange Rule 2617(b)(5)(B)); 95679 (September 6, 2022), 87 FR 55866 (September 12, 2022) (SR–PEARL–2022–34) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2614, Orders and Order Instructions, To Adopt the Primary Peg Order Type); 96205 (November 1, 2022), 87 FR 67080 (November 7, 2022) (SR–PEARL–2022–43) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2614, Orders and Order Instructions and Rule 2618, Risk Settings and Trading Risk Metrics To Enhance Existing Risk Controls); 96905 (February 13, 2023), 88 FR 10391 (February 17, 2023) (SR–PEARL–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend

that there is no double counting of expenses between the options and equities platform of MIAX Pearl; the greater expense amounts of the MIAX PEARL, LLC (relative to its affiliated exchanges, MIAX and MIAX Emerald) is solely attributed to the unique factors of MIAX Pearl discussed above.

Costs Related To Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.,* as set forth below, the Exchange allocated approximately 27.3% of its overall Human Resources cost to offering physical 10Gb ULL connectivity).

Cost drivers	Allocated annual cost[k]	Allocated monthly cost[l]	% of all
Human Resources	6,058,041	504,837	27.3
Connectivity (external fees, cabling, switches, etc.)	57,696	4,808	61.8
Internet Services and External Market Data	395,204	32,934	74.8
Data Center	946,590	78,883	61.8
Hardware and Software Maintenance and Licenses	1,186,815	98,901	59.8
Depreciation	2,446,896	203,908	61.3
Allocated Shared Expenses	4,502,748	375,229	50.8
Total	15,593,990	1,299,500	39.8

[k] The Annual Cost includes figures rounded to the nearest dollar.
[l] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because MIAX Pearl Options' cost allocation methodology utilizes the actual projected costs of MIAX Pearl Options (which are specific to MIAX Pearl Options, and are independent of the costs projected and utilized by MIAX Pearl Options' affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. MIAX Pearl Options provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which

Exchange Rule 2618 To Add Optional Risk Control Settings); 97236 (March 31, 2023), 88 FR 20597 (April 6, 2023) (SR–PEARL–2023–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 2617 and 2626 Regarding Retail Orders Routed Pursuant to the Route to Primary Auction Routing Option).

resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to connectivity. From that portion allocated to the Exchange that applied to connectivity, the Exchange then allocated a weighted average of 48.5% of each employee's time from the above group to 10Gb ULL connectivity. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing physical connectivity) and then applied a smaller allocation to such employees' time to 10Gb ULL connectivity (less than 17%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to 10Gb ULL connectivity, whether it is a sales person selling a connection, finance personnel billing for connectivity or providing budget analysis, or information security ensuring that such connectivity is secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 48.5% of each of their employee's time assigned to the Exchange for 10Gb ULL connectivity, as stated above. Employees from these departments perform numerous functions to support 10Gb ULL connectivity, such as the installation, re-location, configuration, and maintenance of 10Gb ULL connections and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting 10Gb ULL connectivity and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support 10Gb ULL connectivity, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the 10Gb ULL connectivity related Human Resources costs to the extent that they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. options industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges and the Options Price Reporting Authority (''OPRA''). The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Internet Services and External Market Data

The next cost driver consists of internet Services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami.

External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange includes external market data fee costs towards the provision of 10Gb ULL connectivity because such market data is necessary for certain services related to connectivity, including pre-trade risk checks and checks for other conditions (*e.g.,* re-pricing of orders to avoid locked or crossed markets and trading collars). Since external market data from other exchanges is consumed at the Exchange's matching engine level, (to which 10Gb ULL connectivity provides access) in order to validate orders before additional orders enter the matching engine or are executed, the Exchange believes it is reasonable to allocate an amount of such costs to 10Gb ULL connectivity.

The Exchange relies on content service providers for data feeds for the entire U.S. options industry, as well as content for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes content service providers to receive market data from OPRA, other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to receive market data and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Lastly, the Exchange notes that the actual dollar amounts allocated as part of the second step of the 2024 budget process differ among the Exchange and its affiliated markets for the internet Services and External Market Data cost driver, even though, but for MIAX Emerald, the allocation percentages are generally consistent across markets (*e.g.,* MIAX Emerald, MIAX, and MIAX Pearl Options allocated 84.8%, 71.3%, and 74.8%, respectively, to the same cost driver). This is because: (i) a different percentage of the overall internet Services and External Market Data cost driver was allocated to MIAX Emerald and its affiliated markets due to the factors set forth under the first step of the 2024 budget review process described above (unique technical architecture, market structure, and business requirements of each marketplace); and (ii) MIAX Emerald itself allocated a larger portion of this cost driver to 10Gb ULL connectivity because of recent initiatives to improve the latency and determinism of its systems. The Exchange notes while the percentage MIAX Emerald allocated to the internet Services and External Market Data cost driver is greater than the Exchange and its other affiliated markets, the overall dollar amount allocated to the Exchange under the initial step of the 2024 budget process is lower than its affiliated markets. However, the Exchange believes that this is not, in dollar amounts, a significant difference. This is because the total dollar amount of expense covered by this cost driver is relatively small compared to other cost drivers and is due to nuances in exchange architecture that require different initial allocation amount under the first step of the 2024 budget process described above. Thus, non-significant differences in percentage allocation amounts in a smaller cost driver create the appearance of a significant difference, even though the actual difference in dollar amounts is small. For instance, despite the difference in cost allocation percentages for the internet Services and External Market Data cost driver across MIAX and MIAX Pearl Options, the actual dollar amount difference is approximately only $13,000 per month, a non-significant amount.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (61.8%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity by market participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[131] The Exchange notes that this allocation is greater than MIAX and MIAX Emerald options exchanges by a significant amount as MIAX Pearl Options allocated 59.8% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 48.5% and 50.9%, respectively, to the same category of expense. This is because MIAX Pearl Options is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance. At the time of this filing, the Exchange is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, the Exchange has materially higher expense than its affiliates.

Depreciation

All physical assets, software and hardware used to provide 10Gb ULL

[131] This expense may be greater than the Exchange's affiliated markets, specifically MIAX and MIAX Emerald, because, unlike the MIAX and MIAX Emerald, MIAX Pearl Options maintains an additional gateway to accommodate its Members' and Equity Members' access and connectivity needs. This added gateway contributes to the difference in allocations between MIAX Pearl Options, MIAX and MIAX Emerald. This expense also differs in dollar amount among the MIAX Pearl Options, MIAX, and MIAX Emerald because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

connectivity, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to 10Gb ULL connectivity in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to 10Gb ULL connectivity. As noted above, the Exchange allocated 61.3% of its allocated depreciation costs to providing physical 10Gb ULL connectivity.

The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the percentages the Exchange and its affiliate, MIAX, allocated to the depreciation of hardware and software used to provide 10Gb ULL connectivity are similar. However, the Exchange's dollar amount is less than that of MIAX by approximately $10,553 per month due to two factors: first, MIAX has undergone a technology refresh since the time MIAX Pearl Options launched in 2017, leading to it having more hardware that software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Pearl Options maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Pearl Options' hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on MIAX.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to overall physical connectivity costs. These general shared costs are integral to exchange operations, including its ability to provide physical connectivity. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[132] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to 10Gb ULL connectivity pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including connectivity. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* 10Gb ULL connectivity as a sub-category of connectivity. In determining the percentage of general shared expenses allocated to connectivity that ultimately apply to 10Gb ULL connectivity, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to 10Gb ULL connectivity. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as 10Gb ULL connectivity.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all physical connectivity on the Exchange. The Exchange then allocated 50.8% of the portion allocated to physical connectivity to 10Gb ULL connectivity. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 50.8% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to 10Gb ULL connectivity also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster 10Gb ULL connectivity than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance network connectivity, of which 10Gb ULL connectivity is a main contributor. The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which system networks can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 1,100,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 1,100,000 distinct trading products. These value add services are part of the Exchange's strategy for offering a high performance trading system, which utilizes 10Gb ULL connectivity.

The Exchange notes that the 50.8% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Full Service MEO Ports. This is based on its allocation methodology that weighted costs attributable to each core service. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), Full Service MEO Ports do not require as many broad or indirect resources as other core services.

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[132] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

Approximate Cost Per 10Gb Connection Per Month

After determining the approximate allocated monthly cost related to 10Gb connectivity, the total monthly cost for 10Gb ULL connectivity of $1,299,500 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (108), to arrive at a cost of approximately $12,032 per month (rounded to the nearest dollar), per physical 10Gb ULL connection. Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of 10Gb ULL connections.

* * * * *

Costs Related To Offering Full Service MEO Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Full Service MEO Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 6.9% of its overall Human Resources cost to offering Full Service MEO Ports).

Cost drivers	Allocated annual cost [m]	Allocated monthly cost [n]	% of all
Human Resources	1,518,357	126,530	6.9
Connectivity (external fees, cabling, switches, etc.)	1,018	85	1.1
Internet Services and External Market Data	5,766	481	1.1
Data Center	41,762	3,480	2.7
Hardware and Software Maintenance and Licenses	21,643	1,804	1.1
Depreciation	132,334	11,028	3.3
Allocated Shared Expenses	268,617	22,385	3.0
Total	1,989,497	165,793	5.1

[m] *See supra* note k (describing rounding of Annual Costs).
[n] *See supra* note l (describing rounding of Monthly Costs based on Annual Costs).

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering Full Service MEO Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in

percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

With respect to Full Service MEO Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Full Service MEO Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing Full Service MEO Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Full Service MEO Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing Full Service MEO Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were allocated Human Resources costs to the extent they are involved in overseeing tasks specifically related to providing Full Service MEO Ports. Senior level executives were only allocated Human Resources costs to the extent that they are involved in managing personnel responsible for tasks integral to providing Full Service MEO Ports. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost includes external fees paid to connect to other exchanges and cabling and switches, as described above.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of Full Service MEO Ports, the Exchange also includes a portion of its costs related to external market data. External market data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange includes external market data costs towards the provision of Full Service MEO Ports because such market data is necessary (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the NBBO and checking for other conditions (*e.g.,* halted securities).[133] Thus, since market data from other exchanges is consumed at the Exchange's Full Service MEO Port level in order to validate orders, before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to Full Service MEO Ports.

The Exchange notes that the allocation for the internet Services and External Market Data cost driver is lower than that of its affiliate, MIAX, as MIAX allocated 5.5% of its internet Services and External Market Data expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports for the same cost driver. The allocation percentages set forth above differ because they directly correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure and internet Service), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Full Service MEO Ports in the third-party data centers where it maintains its equipment as well as related costs for market data to then enter the Exchange's system via Full Service MEO Ports (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

The Exchange notes that this allocation is less than its affiliate, MIAX, as MIAX allocated 5.5% of its Hardware and Software Maintenance and License expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Depreciation

The vast majority of the software the Exchange uses to provide Full Service MEO Ports has been developed in-house and the cost of such development,

[133] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26).

which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production environment. Hardware used to provide Full Service MEO Ports includes equipment used for testing and monitoring of order entry infrastructure and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 3.3% of all depreciation costs to providing Full Service MEO Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange to Full Service MEO Ports because such software is related to the provision of Full Service MEO Ports. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost driver was therefore narrowly tailored to depreciation related to Full Service MEO Ports.

The Exchange notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

For example, the Exchange notes that the percentage it allocated to the depreciation cost driver for Full Service MEO Ports and the percentage its affiliate, MIAX, allocated to the depreciation cost driver for MIAX's Limited Service MEI Ports, differ by only 1.6%. However, MIAX's approximate dollar amount is greater than that of MIAX Pearl Options by approximately $7,000 per month. This is due to two primary factors. First, MIAX has under gone a technology refresh since the time MIAX Pearl Options launched in 2017, leading to it having more hardware that software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Pearl Options maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Pearl Options' hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on MIAX.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Full Service MEO Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 4.0% of the overall cost for directors was allocated to providing Full Service MEO Ports. The Exchange notes that the 3.0% allocation of general shared expenses for Full Service MEO Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Full Service MEO Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange.

Lastly, the Exchange notes that this allocation is less than its affiliate, MIAX, as MIAX allocated 7.3% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.0% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI Ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.

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Approximate Cost Per Full Service MEO Port Per Month

Based on projected 2024 data, the total monthly cost allocated to Full Service MEO Ports of $165,793 was divided by the number of chargeable Full Service MEO Ports the Exchange maintained at the time that proposed pricing was determined (25 total; 25 Full Service MEO Port, Bulk, and 0 Full Service MEO Port, Single), to arrive at a cost of approximately $6,632per month, per charged Full Service MEO Port.

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Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Full Service MEO Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to 10Gb ULL physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (48.5%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 5.4% to Full Service MEO Ports and the remaining 46.1% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing

physical connections to any other employee group, outside of a smaller allocation of 16.2% for 10Gb ULL connectivity or 16.3% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (6.0% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Full Service MEO Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Full Service MEO Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 27.3% of its personnel costs to providing 10Gb ULL connectivity and 6.9% of its personnel costs to providing Full Service MEO Ports, for a total allocation of 34.2% Human Resources expense to provide these specific connectivity and port services. In turn, the Exchange allocated the remaining 65.8% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Full Service MEO Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 64.6% of the Exchange's overall depreciation and amortization expense to connectivity services (61.3% attributed to 10Gb ULL physical connections and 3.3% to Full Service MEO Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 35.4%) toward the cost of providing transaction services, membership services, other port services and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Full Service MEO Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, we believe that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [134]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity and port services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services will equal $15,593,990. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual

[134] For purposes of calculating projected 2024 revenue for 10Gb ULL connectivity, the Exchange used revenues for the most recently completed full month.

revenue of approximately $15,714,000. The Exchange believes this represents a modest profit of 0.8% when compared to the cost of providing 10Gb ULL connectivity services.

The Exchange's Cost Analysis estimates the annual cost to provide Full Service MEO Port services will equal $1,989,497. Based on current Full Service MEO Port services usage, the Exchange would generate annual revenue of approximately $2,016,000. The Exchange believes this would result in a small margin of 1.3% after calculating the cost of providing Full Service MEO Port services.

Based on the above discussion, even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in excessive pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Full Service MEO Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Full Service MEO Port services.

The Exchange also notes that this the resultant profit margin differs slightly from the profit margins set forth in similar fee filings by its affiliated markets. This is not atypical among exchanges and is due to a number of factors that differ between these four markets, including: different market models, market structures, and product offerings (equities, options, price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* the Exchange maintains 12 matching engines while MIAX maintains 24 matching engines); and different maturity phase of the Exchange and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, the Exchange proposes to charge rates that are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for 10Gb ULL connectivity, the Exchange proposes a lower fee than the fee charged by Nasdaq for its comparable 10Gb Ultra fiber connection ($13,500 per month for the Exchange vs. $15,000 per month for Nasdaq).[135] NYSE American charges even higher fees for its comparable 10GB LX LCN connection than the Exchange's proposed fees ($13,500 for the Exchange vs. $22,000 per month for NYSE American).[136] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to 10Gb ULL connectivity on the Exchange than its affiliated markets or vice versa).

* * * * *

The Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[137] This is due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as low latency connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange does not believe it should now be penalized for seeking to raise its fees as it now needs to upgrade its technology and absorb increased costs. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Full Service MEO Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Full Service MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Full Service MEO Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Full Service MEO Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in connectivity clients or in transaction activity, the Exchange could experience a net reduction in revenue. While the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple exchanges. The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the

[135] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[136] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[137] The Exchange has incurred a cumulative loss of $83 million since its inception in 2017 through full year 2022. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 26, 2023, *available at https://www.sec.gov/Archives/edgar/vprr/2300/23007743.pdf.*

application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Commission Staff should also consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. Further, if Commission Staff is making determinations as to appropriate profit margins in their approval of exchange fees, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, as is reflected in the proposal, the Exchange continuously and aggressively works to control its costs as a matter of good business practice. A potential profit margin should not be evaluated solely on its size; that assessment should also consider cost management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing is not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[138] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Full Service MEO Ports

The tiered pricing structure for Full Service MEO Ports has been in effect since 2018.[139] The Exchange now proposes a pricing structure that is used by the Exchange's affiliates, MIAX and MIAX Emerald, except with lower pricing for each tier for Full Service MEO Ports (Bulk) and a flat fee for Full Service MEO Ports (Single). Members that are frequently in the highest tier for Full Service MEO Ports consume the most bandwidth and resources of the network. Specifically, as noted above for 10Gb ULL connectivity, Market Makers who reach the highest tier for Full Service MEO Ports (Bulk) account for greater than 84% of ADV on the Exchange, while Market Makers that are typically in the lowest Tier for Full Service MEO Ports, account for less than 14% of ADV on the Exchange. The remaining 1% is accounted for by Market Makers who are frequently in the middle Tier for Full Service MEO Ports (Bulk).

To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers during anticipated peak market conditions. The need to support billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[140] Thus, as the number of connections a Market Maker has increases, the related pull on Exchange resources also increases. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange.

The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[141] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary

[138] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[139] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[140] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[141] *See supra* table on page 28 and accompanying text.

based on certain volume percentages. The Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port—Bulk ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[142] Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports (Bulk) per matching engine, this would result in a cost of $500 per Full Service MEO Port ($12,000 divided by 24).

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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Full Service MEO Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017 [143] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Full Service MEO Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their membership on January 1, 2023 as a direct result of the proposed fee changes.[144] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change and price increase will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As this is a fee increase, arguably if set too high, this fee would make it easier for other exchanges to compete with the Exchange. Only if this were a substantial fee decrease could this be considered a form of predatory pricing. In contrast, the Exchange believes that, without this fee increase, we are

[142] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[143] *See supra* note 137.

[144] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 133. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

potentially at a competitive disadvantage to certain other exchanges that have in place higher fees for similar services. As we have noted, the Exchange believes that connectivity fees can be used to foster more competitive transaction pricing and additional infrastructure investment and there are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also believes that the proposed fees for 10Gb connectivity are appropriate and warranted and would not impose any burden on competition. This is a technology driven change designed to meet customer needs. The proposed fees would assist the Exchange in recovering costs related to providing dedicated 10Gb connectivity to the Exchange while enabling it to continue to meet current and anticipated demands for connectivity by its Members and other market participants. Separating its 10Gb network from MIAX enables the Exchange to better compete with other exchanges by ensuring it can continue to provide adequate connectivity to existing and new Members, which may increase in ability to compete for order flow and deepen its liquidity pool, improving the overall quality of its market. The proposed rates for 10Gb ULL connectivity are structured to enable the Exchange to bifurcate its 10Gb ULL network shared with MIAX so that it can continue to meet current and anticipated connectivity demands of all market participants.

Similarly, and also in connection with a technology change, Cboe Exchange, Inc. (''Cboe'') amended its access and connectivity fees, including port fees.[145] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports,[146] tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to.[147] Cboe justified its proposal by stating that, ''. . . the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over-the-Counter (OTC) markets.'' [148] The Exchange concurs with the following statement by Cboe,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[149]

The Cboe proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[150] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[151] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [152] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[153]

Cboe also filed to establish a monthly fee for Certification Logical Ports of $250 per Certification Logical Port.[154] Cboe reasoned that purchasing additional Certification Logical Ports, beyond the one Certification Logical Port per logical port type offered in the production environment free of charge, is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange.[155]

In its statutory basis, Cboe justified the new port fee by stating that it believed the Certification Logical Port fee were reasonable because while such ports were no longer completely free, TPHs and non-TPHs would continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that is currently offered in the production environment.[156] Cboe noted that other exchanges assess similar fees and cited to NASDAQ LLC

[145] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). The Exchange notes that Cboe submitted this filing *after* the Staff Guidance and contained no cost based justification.

[146] *See* Cboe Fee Schedule, Page 12, Logical Connectivity Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (BOE/FIX logical monthly port fees of $750 per port for ports 1–5 and $800 per port for port 6 or more; and BOE Bulk logical monthly port fees of $1,500 per port for ports 1–5, $2,500 per port for ports 6–30, and $3,000 for port 31 or more).

[147] *See supra* note 145 at 71676.

[148] *Id.*

[149] *Id.* at 71676.

[150] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011). Cboe offers BOE and FIX Logical Ports, BOE Bulk Logical Ports, DROP Logical Ports, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. For each type of the aforementioned logical ports that are used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports'').

[155] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011).

[156] *Id.* at 18426.

and MIAX.[157] Cboe also noted that the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[158] Finally, similar proposals to adopt a Certification Logical Port monthly fee were filed by Cboe BYX Exchange, Inc.,[159] BZX,[160] and Cboe EDGA Exchange, Inc.[161]

The Cboe fee proposals described herein were filed subsequent to the D.C. Circuit decision in *Susquehanna Int'l Grp., LLC* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017), meaning that such fee filings were subject to the same (and current) standard for SEC review and approval as this proposal. In summary, the Exchange requests the Commission apply the same standard of review to this proposal which was applied to the various Cboe and Cboe affiliated markets' filings with respect to non-transaction fees. If the Commission were to apply a different standard of review to this proposal than it applied to other exchange fee filings it would create a burden on competition such that it would impair the Exchange's ability to make necessary technology driven changes, such as bifurcating its 10Gb ULL network, because it would be unable to monetize or recoup costs related to that change and compete with larger, non-legacy exchanges.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal, one comment letter on the Second Proposal, one comment letter on the Third Proposal, one comment letter on the Fourth Proposal, one comment letter on the Fifth Proposal, one comment letter on the Sixth Proposal, and one comment letter on the Seventh Proposal, all from the same commenter.[162] In their letters, the commenter letters from SIG seek to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. The Exchange also received comment letters from a separate commenter on the Sixth and Seventh Proposals.[163] The Exchange believes issues raised by each commenters are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. Among other things, the commenters are requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

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,[164] and Rule 19b–4(f)(2) [165] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–PEARL–2024–05 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–PEARL–2024–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[157] *Id.*

[158] *Id.*

[159] *See* Securities Exchange Act Release No. 94507 (March 24, 2002), 87 FR 18439 (March 30, 2022) (SR–CboeBYX–2022–004).

[160] *See* Securities Exchange Act Release No. 94511 (March 24, 2002), 87 FR 18411 (March 30, 2022) (SR–CboeBZX–2022–021).

[161] *See* Securities Exchange Act Release No. 94517 (March 25, 2002), 87 FR 18848 (March 31, 2022) (SR–CboeEDGA–2022–004).

[162] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, *and* letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letter from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024.

[163] *See* letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024.

[164] 15 U.S.C. 78s(b)(3)(A)(ii).

[165] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2024–05 and should be submitted on or before March 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[166]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02645 Filed 2–8–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99472; File No. SR–EMERALD–2024–02]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Citations to Rule 600(b) of Regulation National Market System

February 5, 2024.

Pursuant to the provisions of 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 January 24, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to update citations to Rule 600(b) of Regulation National Market System (''Regulation NMS'') in Exchange Rule 518, Complex Orders and Rule 530, Limit Up-Limit Down.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings,* at MIAX Emerald's principal office, 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 update citations to Rule 600(b) of Regulation NMS in Exchange Rule 518, Complex Orders and Rule 530, Limit Up-Limit Down.

In 2021, the Securities and Exchange Commission (the ''Commission'') amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.[3] As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definitions of Trading Center (formerly Rule 600(b)(78)), NMS Stock (formerly Rule 600(b)(47)), and Regular Trading Hours (formerly Rule 600(b)(64)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows:

- The citation to the definition of NMS Stock in Rule 518 would be changed to Rule 600(b)(55).
- The citation to the definition of Trading Center in Rule 518 would be changed to Rule 600(b)(95).
- The citation to the definition of Regular Trading Hours in Rule 530, Limit Up-Limit Down, would be changed to Rule 600(b)(77).

2. Statutory Basis

The Exchange believes the proposed rules changes are consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rules changes are consistent with Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that Members[6] would benefit from the increased clarity, thereby reducing potential confusion and ensuring that those subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed changes would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rules changes would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules changes is not intended to address competitive issues but rather would modify Exchange rules to update citations to Rule 600(b) of Regulation NMS. Since the proposal

[166] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

does not substantively modify System [7] functionality or processes on the Exchange, the proposed changes will not impose any burden on competition nor are they meant to affect competition among the exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and subparagraph (f)(6) of Rule 19b-4 thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed change modifies the Exchange's rules to correct citations to Rule 600(b) of Regulation NMS, which should help prevent confusion and add clarity to the Exchange's rules. For these reasons, and because the proposal raises no novel legal or regulatory issues, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–EMERALD–2024–02 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–EMERALD–2024–02. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2024–02 and should be submitted on or before March 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

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[7] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12), 59.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99473; File No. SR–MIAX–2024–04]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Citations to Rule 600(b) of Regulation National Market System

February 5, 2024.

Pursuant to the provisions of 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 January 24, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to update citations to Rule 600(b) of Regulation National Market System (''Regulation NMS'') in Exchange Rule 518, Complex Orders, Rule 530, Limit Up-Limit Down, and Rule 1701,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Consolidated Audit Trail Compliance Rule—Definitions.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, 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 update citations to Rule 600(b) of Regulation NMS in Exchange Rule 518, Complex Orders, Rule 530, Limit Up-Limit Down, and Rule 1701, Consolidated Audit Trail Compliance Rule—Definitions.

In 2021, the Securities and Exchange Commission (the ''Commission'') amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.[3] As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definitions of Trading Center (formerly Rule 600(b)(78)), NMS Stock (formerly Rule 600(b)(47)), Regular Trading Hours (formerly Rule 600(b)(64)), and Listed Option or Option ((formerly Rule 600(b)(35)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows:

- The citation to the definition of NMS Stock in Rule 518 would be changed to Rule 600(b)(55).
- The citation to the definition of Trading Center in Rule 518 would be changed to Rule 600(b)(95).
- The citation to the definition of Regular Trading Hours in Rule 530, Limit Up-Limit Down, would be changed to Rule 600(b)(77).
- The citation to the definition of Listed Option or Option in Rule 1701, Consolidated Audit Trail Compliance Rule—Definitions, would be changed to Rule 600(b)(43).
- The citation to the definition of NMS Stock in Rule 1701, Consolidated Audit Trail Compliance Rule—Definitions, would be changed to Rule 600(b)(55).

2. Statutory Basis

The Exchange believes the proposed rules changes are consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rules changes are consistent with Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that Members[6] would benefit from the increased clarity, thereby reducing potential confusion and ensuring that those subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed changes would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

In addition, the Exchange proposes to correct a grammatical error in the definition of ''Listed Options'' or ''Option'' in Exchange Rule 1701 to conform to the other definitions in the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rules changes would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules changes is not intended to address competitive issues but rather would modify Exchange rules to update citations to Rule 600(b) of Regulation NMS. Since the proposal does not substantively modify System[7] functionality or processes on the Exchange, the proposed changes will not impose any burden on competition nor are they meant to affect competition among the exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon

[3] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

filing. The proposed change modifies the Exchange's rules to correct citations to Rule 600(b) of Regulation NMS and make a grammatical correction, which should help prevent confusion and add clarity to the Exchange's rules. For these reasons, and because the proposal raises no novel legal or regulatory issues, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2024–04 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–MIAX–2024–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2024–04 and should be submitted on or before March 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02644 Filed 2–8–24; 8:45 am]

BILLING CODE 8011–01–P

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12), (59).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) plans to seek approval from the Office of Management and Budget (OMB) to conduct the data collection activities described below. The Paperwork Reduction Act requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information to OMB, and to allow 60 days for the public to comment in response to the notice. This notice complies with such requirements and announces the SBA's proposal to conduct a survey of cluster administrators, small businesses, and partner organizations including Entrepreneurial Support Organizations (ESO) who participated in the SBA's Regional Innovation Cluster (RIC) Initiative.

DATES: Submit comments on or before April 7, 2024.

ADDRESSES: Send all comments to Alison Evans, Office of Investment and Innovation, 409 3rd Street SW, Suite 6300, Washington DC 20416, with the subject line: ''Regional Innovation Cluster Program Evaluation''

FOR FURTHER INFORMATION CONTACT: Alison Evans, Office of Investment and Innovation (*Alison.Evans@sba.gov*), or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This is a request for the extension with changes to a currently approved collection (previous OMB number: 3245–0392). Through the RIC Initiative, the SBA is investing in regional clusters—geographic concentrations of interconnected companies, specialized suppliers, academic institutions, service providers, and associated organizations with a specific industry focus—throughout the United States that span a variety of industries. The three primary goals of the initiative are to (1) increase opportunities for small business participation within clusters, (2) promote innovation in the industries on which the clusters are focused, and (3) enhance economic development and growth in cluster regions. To achieve these goals, the clusters provide a host of services to the target population of small and emerging businesses within their regional and industry focuses. Services include direct business advising and support and sponsoring events, such as networking opportunities with investors, partner organizations, ESOs, and other stakeholders in the regions. This information collection is necessary for the SBA to understand the progress of the RIC Initiative towards achieving its goals.

The evaluation consists of two key components: an implementation evaluation and an outcome evaluation. The implementation evaluation focuses on how the Initiative is implemented across the fourteen clusters and on the services that each cluster provides to its small businesses. The outcome evaluation focuses on short and intermediate-term outcomes linked directly to the cluster services, as well as on long-term business outcomes that can be reasonably expected to result from the short- and intermediate-term outcomes. The short-term outcomes include the satisfaction and the perceived effectiveness of the program for business management and growth. The intermediate-term outcomes include development of new products, commercialization of new technologies,

marketing and export services, improved access to capital, and industry integration. Long-term outcomes include increased revenue and employment. Over the previous years, evaluation results have helped to track the program performance outcomes and provide suggestions for program improvements to better facilitate innovation and small business growth. Furthermore, the evaluation survey data helped the SBA to better focus cluster activities on local contexts, particularly for rural and agricultural small businesses. This data will not be used to evaluate the effectiveness of an individual cluster.

The data collection effort involves three types of RIC Initiative stakeholders: small businesses, partner organizations, and cluster administrators. Small businesses participating in the cluster will be sent an online survey to provide data about their cluster participation experiences, satisfaction with the program and its components, the performance of their firms with respect to a variety of outcomes, and the role of cluster participation in the achievement of these outcomes. Similarly, partner organizations will be asked to complete an online survey to provide data about their experiences with the RIC Initiative. The questions include reasons for the RIC participation, collaboration with and support for small businesses, and the role of cluster participation on key organizational outcomes associated with the RIC Initiative participation. Small businesses and partner organizations will also be interviewed once a year to obtain information on barriers, facilitators, and other local influences on cluster and ecosystem engagement, best practices to facilitate innovation, and suggestions for potential cluster improvements (among other topics). The cluster administrators will be asked to provide participant rosters, which provide the framework for the surveys that the small businesses and partner organizations are sent. The administrator survey requests information about the services they provided to these two groups of stakeholders, and their operations in general. Cluster administrators will also be interviewed once a year to obtain information about how their operations have evolved, the adjustments they made, best practices, issues encountered, and the lessons learned.

Small Business Web Survey. Estimated Number of Respondents: 180. Frequency of Response: Once per year. Estimated Average Minutes per Respondent: 114.7. Estimated Total Annual Hour Burden: 344. *Small Business Interview.* Estimated Total Number of Respondents: 12. Frequency of Response: Once per year. Estimated Average Minutes per Response: 43. Estimated Total Annual Hour Burden: 8.6. *Partner Organization Web Survey.* Estimated Number of Respondents: 150. Frequency of Response: Once per year. Estimated Average Minutes per Respondent: 71. Estimated Annual Hour Burden: 177.5. *Partner organization Interview.* Estimated Total Number of Respondents: 12. Frequency of Response: Once per year. Estimated Average Minutes per Response: 37. Estimated Total Annual Hour Burden: 7.4. *Cluster Administrator Interview.* Estimated Number of Respondents: 20. Frequency of Response: Once per year. Estimated Average Minutes per Response: 87. Estimated Annual Hour Burden: 29. *Cluster Administrator Web Survey.* Estimated Number of Respondents: 20. Frequency of Response: Once per year. Estimated Average Minutes per Response: 35.3. Estimated Annual Hour Burden: 11.8 (including the time needed for administrators to prepare their rosters). *Administrative data request.* Estimated Number of Respondents: 20. Frequency of Response: Once per year. Estimated Average Minutes per Response: 30. Estimated Annual Hour Burden: 10.

Solicitation of Public Comments: The SBA requests comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information collected. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Summary of Information Collection

PRA Number: 3245–0392.

(1) *Title:* Evaluation of the Regional Innovation Cluster (RIC) Initiative.

Description of Respondents: Smal businesses concerns and partner organizations involved in Regional Innovation Clusters and cluster administrators.

Form Number: N/A.

Total Estimated Annual Responses: 350.

Total Estimated Annual Hour Burden: 531.5.

Curtis B. Rich,

Agency Clearance Officer.

[FR Doc. 2024–02641 Filed 2–8–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12323]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Korean Couture: Generations of Revolution'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Korean Couture: Generations of Revolution'' at the Cleveland Museum of Art, Cleveland, Ohio, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–02729 Filed 2–8–24; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36496]

Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(e)—CSX Transportation, Inc., and Norfolk Southern Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of hearing.

SUMMARY: The Board will hold a hearing involving the National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks (collectively, the ''Port''; and with Amtrak, CSXT, and NSR, the ''Parties''), and the City of Mobile, Ala. (Mobile), if Mobile chooses to participate. The hearing will take place on February 14, 2024, at 11 a.m. EST in the hearing room of the Board's headquarters. The hearing will also be available for public viewing on YouTube.

DATES: The hearing will take place on February 14, 2024, at 11 a.m. EST.

ADDRESSES: The hearing will take place in the hearing room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: On March 16, 2021, Amtrak filed an application with the Board, pursuant to 49 U.S.C. 24308(e), seeking an order requiring CSXT and NSR to allow Amtrak to operate additional intercity passenger trains, consisting of two round-trips per day, over the rail lines of CSXT and NSR between New Orleans, La., and Mobile, Ala. Following 11 days of evidentiary hearings in April and May of 2022, the Parties notified the Board on November 21, 2022, that they had reached a settlement and asked the Board to hold the proceeding in abeyance, which the Board did the next day. Subsequently, the Board twice continued to hold the proceeding in abeyance at the Parties' request as they worked to implement their settlement agreement. The Parties were scheduled to file a status report by February 1, 2024 (February Status Report).

By decision served January 19, 2024, the Board directed the Parties to provide, in the February Status Report, detailed information regarding the status of the implementation of the settlement agreement and, in particular, to describe any issues that remain outstanding. *See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(e)—CSX Transp., Inc.,* FD 36496, slip op. at 2 (STB served Jan. 19, 2024). The Board also scheduled a hearing with the Parties on February 14, 2024, for the Parties to report more fully on the settlement status and invited Mobile to participate in the hearing. *Id.* The Board noted that additional details on the hearing would be provided in the hearing notice published in the **Federal Register**.

The Parties jointly filed the February Status Report on February 1, 2024. The Board will conduct a hearing to obtain information about the status of the implementation of the settlement agreement.

The hearing will take place on February 14, 2024, at 11 a.m. EST, in the hearing room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001. Participation will be limited to the Parties' counsel and a representative from Mobile, if Mobile chooses to participate. The hearing will be available for public viewing on YouTube. If at any point it is necessary to discuss confidential and/or highly confidential information, all those not authorized to view the confidential and/or highly confidential information will be excused from the hearing room.

Instructions for Attendance at Hearing

All persons attending the hearing must use the main entrance to the Board's headquarters, located at 395 E Street, SW There will be no reserved seating. There is public parking in the building. The two closest Metro stops are Federal Center SW (3rd and D Streets SW, serving the Blue, Orange, and Silver Lines) and L'Enfant Plaza (6th and D Streets SW, serving the Yellow, Green, Blue, Orange, and Silver Lines). Upon arrival, check in at the security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or federal government identification); sign in at the security desk; submit to an inspection of all briefcases, handbags, etc.; and pass through a metal detector. Persons who exit the building during the hearing will be subject to these security procedures again if they choose to re-enter the building.

Laptops and recorders may be used in the hearing room, and Wi-Fi will be available.[1] Cell phones may be used quietly in the corridor outside the hearing room or in the building's main lobby.

Members of the media should contact Michael Booth in the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–1760 if they plan to attend the hearing.

The hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245–0245 by the close of business on February 12, 2024.

The hearing will be available for public viewing at *www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live.* A link to the hearing can also be accessed through the Board's website at *www.stb.gov,* under ''Quick Links'' on the homepage, by clicking on ''WATCH LIVE HEARINGS HERE.'' If confidential or highly confidential materials are to be presented, all attendees who are not authorized to view the confidential or highly confidential information will be asked to leave the hearing room during the presentation of such information and the YouTube stream of the hearing will be interrupted.

Board Releases and Transcript Availability: Decisions and notices of the Board, including this notice, are available on the Board's website at *www.stb.gov.* A recording of the hearing and a transcript will be posted on the Board's website when they become available.

It is ordered:

1. A hearing is scheduled for February 14, 2024, at 11:00 a.m. EST, in the hearing room of the Board's headquarters.

2. This decision is effective on its service date.

3. This decision will be published in the **Federal Register**.

Decided: February 6, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2024–02750 Filed 2–8–24; 8:45 am]

BILLING CODE 4915–01–P

[1] The password will be available in the hearing room.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Performance Review Board Membership

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the Office of the United States Trade

Representative (USTR) staff members selected to serve on the Senior Executive Service (SES) and Senior Level (SL) Performance Review Board (PRB). This notice supersedes all previous PRB membership notices.

DATES: The staff members in this notice will begin serving as PRB members on February 9, 2024.

FOR FURTHER INFORMATION CONTACT: Cassie Ender, Human Capital Specialist, Office of Human Capital and Services, at (202) 881–7782 or *Cassie.L.Ender@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: USTR is required (*see* 5 U.S.C. 4314(c)) to establish a PRB to review and make recommendations to the U.S. Trade Representative for final approval of the performance rating, performance-based pay adjustment, and performance award for each incumbent SES and SL. The following staff members have been selected to serve on USTR's PRB:

Chair: Rachel Howe, Assistant U.S. Trade Representative for ICTIME.

Member: Daniel Lee, Assistant U.S. Trade Representative for Innovation and Intellectual Property.

Member: Daniel Watson, Assistant U.S. Trade Representative for Western Hemisphere Affairs.

Member: Julie Callahan, Assistant U.S. Trade Representative for Agricultural Affairs.

Member: Juan Millan, Assistant U.S. Trade Representative for Monitoring and Investment.

Fred Ames,

Assistant U.S. Trade Representative for Administration, Office of the United States Trade Representative.

[FR Doc. 2024–02714 Filed 2–8–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program for Dane County Regional Airport/Truax Field, Dane County, Wisconsin

AGENCY: Federal Aviation Administration, DOT.

ACTION: Acceptance of Dane County Regional Airport/Truax Field noise exposure map.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by Dane County for Dane County Regional Airport/Truax Field is in compliance with applicable statutory and regulatory requirements.

DATES: The effective date of the FAA's determination on the noise exposure map is December 21, 2023.

FOR FURTHER INFORMATION CONTACT: Bobb Beauchamp, 2300 Devon Avenue, Suite 312, Des Plaines, Illinois 60018. 847–294–7364.

SUPPLEMENTARY INFORMATION: The FAA determined the noise exposure map submitted by Dane County for Dane County Regional Airport/Truax Field, is in compliance with applicable statutory and regulatory requirements, effective December 21, 2023. Under title 49, United States Code (U.S.C.) section 47503, an airport operator may submit to the FAA, noise exposure maps depicting non-compatible uses as of the date such map is submitted, a description of estimated aircraft operations during a forecast period that is at least five years in the future and how those operations will affect the map. A noise exposure map must be prepared in accordance with title 14, Code of Federal Regulations (CFR) part 150, the regulations promulgated pursuant to 49 U.S.C. 47502 and developed in consultation with public agencies and planning authorities in the area surrounding the airport, State and Federal agencies, interested and affected parties in the local community, and aeronautical users of the airport. In addition, an airport operator that submitted a noise exposure map, which the FAA determined is compliant with statutory and regulatory requirements, may submit a noise compatibility program for FAA approval that sets forth measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA completed its review of the noise exposure map and supporting documentation submitted by Dane County and determined the noise exposure map and accompanying documentation are in compliance with applicable requirements. The documentation that constitutes the Noise Exposure Map includes: Table ES–1–1 Existing (2022) and Forecast (2027) Land Use Compatibility; Table ES–1–2 Existing (2022) and Forecast (2027) Noise Sensitive Sites; Figure ES–1 Existing Condition (2022) Noise Exposure Map; Figure ES–2 Future Conditions (2027) Noise Exposure Map; Figure 3–1 Existing Land Use; Table 5–1 Runway Specifications; Table 5–2 Operation Counts by Tower Category; Table 5–3 Modeled 2022 Annual Itinerant Operations; Table 5–4 Modeled 2022 Annual Local Operations; Table 5–5 Modeled 2027 Annual Itinerant Operations; Table 5–6 Modeled 2027 Annual Local Operations; Figure 5–2 AEDT Runway Use; Figure 5–3 NMAP Runway Use; Table 5–7 Runway Utilization for Fixed-Wing Aircraft; Table 5–8 AEDT-Modeled Itinerant Jet Model Track Utilization; Table 5–9 Military NMAP-Modeled Itinerant Fixed-Wing Model Track Utilization; Table 5–10 AEDT-Modeled Itinerant Non-Jet Fixed-Wing Model Track Utilization; Table 5–11 AEDT-Modeled Local Fixed-Wing Model Track Utilization; Table 5–12 NMAP-Modeled Local Military Model Track Utilization; Table 5–13 AEDT-Modeled Itinerant Civilian Helicopter Model Track Utilization; Table 5–14 NMAP-Modeled Military Itinerant Helicopter Model Track Utilization; Figure 5–4 AEDT-Modeled Fixed-Wing Arrival Flight Tracks; Figure 5–5 AEDT-Modeled Fixed-Wing Departure Flight Tracks; Figure 5–6 AEDT-Modeled Fixed-Wing Circuit Flight Tracks; Figure 5–7 NMAP-Modeled Fixed-Wing Arrival Flight Tracks; Figure 5–8 NMAP-Modeled Fixed-Wing Departure Flight Tracks; Figure 5–9 NMAP-Modeled Fixed-Wing Circuit Flight Tracks; Figure 5–10 AEDT-Modeled Helicopter Arrival Flight Tracks; Figure 5–11 AEDT-Modeled Helicopter Departure Flight Tracks; Figure 5–12 NMAP-Modeled Helicopter Arrival Flight Tracks; Figure 5–13 NMAP-Modeled Helicopter Departure Flight Tracks; Figure 5–14 NMAP-Modeled Helicopter Circuit Flight Tracks; Table 5–15 Modeled Engine Runup Activity for the Wisconsin Air and Army National Guard; Figure 5–15 Modeled Engine Runup Locations for the Wisconsin Air and Army National Guard; Figure 6–1 Existing Condition (2022) Noise Exposure Map; Figure 6–2 Future Condition (2027) Noise Exposure Map; Figure 6–3 Comparison of Existing Condition (2022) and Future Condition (2027) Noise Exposure Map; Table 6–1 Existing 2022 and Forecast 2027 Land Use Compatibility; Table 6–2 Existing 2022 and Forecast 2027 Noise Sensitive Sites; Figure 6–4 Comparison of Existing Condition (2022) and Future Condition (2027) Enlarged Insets of Figure 6–3 required by 14 CFR 150.101 and 49 U.S.C 47503 and 47506. This determination is effective on December 21, 2023. FAA's determination on an airport's noise exposure map is limited to a finding that the noise exposure map was developed in accordance with the 49 U.S.C 47503 and 47506 and procedures contained in 14 CFR part 150, appendix A. FAA's acceptance of an NEM does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If

questions arise concerning the precise relationship of specific properties within noise exposure contours depicted on a noise exposure map, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of 49 U.S.C. 47506. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA review and acceptance of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted a noise exposure map or with those public and planning agencies with which consultation is required under 49 U.S.C. 47503. The FAA relied on the certification by the airport operator, under of 14 CFR 150.21 that the required consultations and opportunity for public review has been accomplished during the development of the noise exposure maps. Copies of the noise exposure map and supporting documentation and the FAA's evaluation of the noise exposure maps are available for examination at the following locations: Federal Aviation Administration Chicago Airports District Office, 2300 Devon Avenue, Suite 312, Des Plaines, IL 60018, and Dane County Regional Airport/Truax Field and Dane County at 4000 International Lane, Madison, WI 53704. Questions may be directed to the individual listed in the FOR **FURTHER INFORMATION CONTACT** section of this notice.

Issued in Des Plaines, Illinois, on February 5, 2024.

Debra L Bartell,

Manager, Chicago Airports District Office, FAA Great Lakes Region.

[FR Doc. 2024–02660 Filed 2–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0010]

Agency Information Collection Activities: Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for reinstatement of a previously approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 9, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0010 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wendy McAbee, 202–366–5658, Office of Bridges and Structures, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Tunnel Inspection Program.

OMB Control No.: 2125–0640.

Background: This collection is necessary to meet legislative requirements of 23 U.S.C. 144 and 23 CFR part 650, subpart E—National Tunnel Inspection Standards which require States, Federal agencies, and Tribal governments to: (1) perform, and report inventory and element data from, initial, routine, damage, in-depth, and special inspections as appropriate for all highway tunnels on public roads, and (2) report critical findings on highway tunnels. The critical findings information is periodically provided to the FHWA. The tunnel information is used for multiple purposes, including: (1) the determination of the condition of the Nation's tunnels; (2) for various reports to Congress on Tunnel Safety; (3) for conducting oversight of the National Tunnel Inspection Program at the State, Federal agency, and Tribal level; and (4) for strategic national defense needs.

Respondents: 42 States, the District of Columbia, Puerto Rico and 4 Federal agencies. The number of inspection per respondent varies in accordance with the National Tunnel Inspection Standards.

Estimated Average Burden per Response: The estimated average burden for each tunnel inspection is 40 hours. The estimated average burden for reporting critical findings is 40 hours.

Estimated Total Annual Burden Hours: The annual burden hours associated with this renewal is 15,880 hours. This estimated figure is based on annual instances for tunnel inspections multiplied by 40 hours (13,960 hours); plus 40 hours for follow up on critical findings multiplied by 48 respondents (1,920 hours) for a combined annual burden of 15,880 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 6, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–02667 Filed 2–8–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2024–0016]

Agency Information Collection Activities: Approval of Information Collection

AGENCY: Office of the Secretary (OST), DOT.

ACTION: 30-Day notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Department of Transportation (DOT) is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On September 6, 2023, DOT published a notice providing a 60-day period for public comment on the ICR. DOT received no comments on this notice. This collection is necessary for administration of the Reconnecting Communities (RCP) and Neighborhood Access and Equity (NAE) Discretionary Grant Programs and funding opportunities. Together, these programs are known as ''Reconnecting Communities and Neighborhoods (RCN)'' in the combined NOFO. RCN provides federal financial assistance for surface transportation infrastructure projects. Through RCP, this includes removing, retrofitting, or mitigating transportation facilities such as highways and rail lines that create barriers to community connectivity including to mobility, access, or economic development. Through NAE, this includes the RCP eligibilities and expands eligibility to activities that reduce the burdens to communities of existing transportation infrastructure, including air quality impacts and greenhouse gas emissions, urban heat islands, gaps in tree canopy coverage, and other natural environment concerns.

DATES: Written comments should be submitted by March 11, 2024.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W–12–140 1200, New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: To ensure proper docketing of your comment, please include the agency name and docket number [DOT–OST–2024–0016] at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact the Office of the Secretary via email at *ReconnectingCommunities@dot.gov* or contact Andrew Emanuele at *andrew.emanuele@dot.gov.* A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993.

SUPPLEMENTARY INFORMATION: New Collection. OMB number will be issued after the collection is approved.

Title: Reconnecting Communities Pilot Program and Neighborhood Access and Equity Program (Reconnecting Communities and Neighborhoods [RCN] Program) Discretionary Grants.

Form Numbers: None.

Type of Review: New Information Collection Request (ICR).

Background: The Office of the Secretary (OST) within the Department of Transportation (DOT) provides financial assistance for surface transportation infrastructure projects, including removing, retrofitting, or mitigating transportation facilities such as highways and rail lines that create barriers to community connectivity including to mobility, access, or economic development. The Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021) (Bipartisan Infrastructure Law, or BIL) provided funds to DOT to invest in planning and capital construction grants to reduce transportation barriers: the Reconnecting Communities Pilot Program, found under section 11509 of division A. The Inflation Reduction Act (Pub. L. 117–169, August 16, 2022) (IRA) provided funds to DOT for the NAE to invest in planning and construction grants to improve walkability and safety and provide affordable access: the Neighborhood Access and Equity grant program, found at 23 U.S.C. 177. To help streamline the process for applicants, DOT has combined the applications for the RCP and NAE programs into the RCN common application.

DOT combined these two programs into one single Notice of Funding Opportunity (NOFO) to provide a more efficient application process for project sponsors. While they remain separate programs for the purposes of award, the programs share many common characteristics. Because of these shared characteristics, it is possible for many projects to be eligible and considered for multiple programs using a single application.

This notice seeks comments on the proposed information collection, which will collect information necessary to support the ongoing oversight and administration of previous awards, a Letter of Intent screening tool, the evaluation and selection of new applications, the funding agreement negotiation stage for new awards, and the evaluation of the programs. The reporting requirements for the program is as follows:

Prior to applying, a project sponsor may fill out a ''Letter of Intent'' screening tool to help determine eligibility for one or both programs within the RCN NOFO or help direct them to a more appropriate grant program.

To be considered to receive an RCN grant, a project sponsor must submit an application to DOT containing standard forms, a key information table, a project narrative, and budget description, as detailed in the NOFO. These materials should include the information necessary for DOT to determine that the project satisfies eligibility requirements as warranted by law.

Following the announcement of a funding award, the recipient and DOT will negotiate and sign a funding agreement with awardees. In the agreement, the recipient must describe the project that DOT agreed to fund, which is the project that was described in the RCN application or a reduced-scope version of that project. The agreement also includes project schedule milestones, a budget, and project-related climate change, equity, and workforce planning and policies.

To fulfill evaluation requirements, DOT will conduct interviews with stakeholders associated with each awarded capital construction grant. These interviews will be used to inform case studies that will be developed for each funded capital construction project.

During the project monitoring stage, grantees will submit reports on the financial condition of the project and the project's progress. Grantees will submit progress and monitoring reports to DOT on a quarterly basis until completion of the project. The progress reports will include an SF–425, Federal Financial Report, and other information

determined by the administering DOT Operating Administration. This information will be used to monitor grantees' use of Federal funds, ensuring accountability and financial transparency in the RCN programs.

For Post Construction Reporting, the DOT will evaluate the program for recipients of capital construction grants and include the outcomes and impacts of the completed projects. The reporting will document any changes in the overall level of mobility, congestion, access, and safety in the project areas, and environmental impacts and economic development opportunities in project areas. Performance reporting continues for five years after project construction is completed, during which DOT will not provide grant funding specifically for performance reporting.

DOT received 682 applications in Fiscal Year (FY) 2023. For the purposes of estimating the information collection burden below for new applicants and awardees, DOT expects to receive 600 applications in FY 2024 and 435 applications in FY 2025, with the expected depletion of NAE funds. DOT is negotiating 45 funding agreements in FY 2023 and estimates that for FY 2024 and FY 2025, it will negotiate 100 funding agreements per year. Quarterly project monitoring will occur for the 45 RCP projects awarded in FY 2022 and in the following year, for both FY 2022 and 2023 awards. DOT will conduct interviews with 30 stakeholders (five for each of the six capital construction grants awarded in the FY 2022 round) in FY 2024 and 175 stakeholders (five for each of the estimated 35 capital construction grants awarded in the FY 2023 round) in FY 2025. DOT estimates that 600 respondents will use the Letter of Intent tool in FY 2024 and 250 respondents will use it in FY 2025. For a detailed breakdown of burden hours, please see Table 1.

TABLE 1

Respondent	Year 1 (2023)			Year 2 (2024)			Year 3 (2025)			Total hrs.
	#	Hrs.	Freq.	#	Hrs.	Freq.	#	Hrs.	Freq.	
Letter of Intent										
Applicants	682	100	1							68,200
Awardee Funding Agreements	45	6	1							270
Quarterly Monitoring										
Letter of Intent				600	0.5	1				300
Applicants				600	100	1				60,000
Awardee Funding Agreements				100	6	1				600
Interviews				30	2	1				60
Quarterly Monitoring (FY 2022)				45	5	4				900
Letter of Intent							250	0.5	1	125
Applicants							435	100	1	43,500
Awardee Funding Agreements							100	6	1	600
Interviews							175	2	1	350
Quarterly Monitoring (FY 2022 and 2023)							145	5	4	2900
Grand Total										177,805

DOT's estimated burden for this information collection is the following:

For Letter of Intent Screening Tool

Expected Number of Respondents: Approximately 600 in Year 2. DOT expects 250 in Year 3 with depletion of NAE funding, reducing those using the tool.

Frequency: Once.

Estimated Average Burden Per Response: 0.5 hours per respondent.

For Applications

Expected Number of Respondents: DOT received 682 applications in Year 1 and expects to receive 600 applications in Year 2 and 435 in Year 3 with the expected depletion of NAE funds.

Frequency: Once.

Estimated Average Burden per Response: 100 hours for each application.

For Funding Agreements

Expected Number of Respondents: DOT awarded 45 grants in Year 1 and expects to award approximately 100 in Years 2 and 3.

Frequency: Once.

Estimated Average Burden per Response: 6 hours for each funding agreement.

For Program Evaluation

Expected Number of Respondents: Estimated 30 in Year 2 (five interviews per capital construction grant awarded) and 175 in Year 3 (five interviews per an estimated 35 capital construction grants awarded.

Frequency: Once.

Estimated Average Burden per Response: 2 hours for each interview.

For Quarterly Monitoring

Expected Number of Respondents: Approximately 45 in Year 2 and 145 in Year 3.

Frequency: Quarterly.

Estimated Average Burden per Response: 5 hours for each Quarterly Monitoring Report.

For Post-Construction Project Monitoring

Because RCN expect no projects to complete construction by 2025, post-construction monitoring hours and cost are not computed in this document.

Estimated Total 3-Year Burden on Respondents: 177,805 Hours

- Letter of Intent [425 hours]
- Applicants [171,700 hours]
- Awardee Funding Agreements [1,470 hours]
- Interviews [410 hours]
- Prior Awardee Quarterly Project Monitoring [3,800 hours]

The following is detailed information and instructions regarding the specific reporting requirements for each report identified above:

Letter of Intent Screening Stage

To help applicants determine their eligibility for the RCN combined grant opportunity, DOT will develop and use the ''Letter of Intent'' tool to help applicants determine eligibility, direct them to a more appropriate grant

program if applicable, and identify application materials they may be missing. The tool will save potential applicants hundreds of hours of application development time if the project has a ''fatal flaw'' that would render it ineligible. The tool will consist of 10–20 questions and takes 0.5 hour to complete.

Application Stage

To be considered for an RCN grant award, a project sponsor must apply to DOT, providing standard forms, a key information table, a project narrative, and budget description, as detailed in the NOFO. These materials should include the information necessary for DOT to determine that the project satisfies eligibility requirements.

Applications must be submitted through *www.valideval.com.* Instructions for submitting planning or capital construction grant applications can be found at *https://usg.valideval.com/teams/rcn_planning/signup* or *https://usg.valideval.com/teams/rcn_capitalconstruction/signup,* respectively. The application must include the Standard Form 424 (Application for Federal Assistance), Standard Form 424a (Budget Information for Non-Construction Programs) or 424c (Budget Information for Construction Programs), Standard Form 424b (Assurances—Non-Construction Programs) or 424d (Assurances—Construction Programs), a Key Information Table, narrative, and budget.

The application should include a table of contents, maps, and graphics, as appropriate, to make the information easier to review. DOT recommends that the application be prepared with standard formatting preferences (*i.e.,* a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The only substantive portions that may exceed the page limit are documents supporting assertions or conclusions made in the project narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document refers to. At the applicant's discretion, relevant materials provided previously to a modal administration in support of a different DOT financial assistance program may be referenced and described as unchanged.

DOT estimates that it takes approximately 100 person-hours to compile an application package for an RCN application.

Funding Agreement Stage

DOT enters into a funding agreement with each grant recipient. In the agreement, the recipient describes the project that DOT agreed to fund, which is typically the project that was described in the RCN application or a reduced-scope version of that project. The agreement also includes a project schedule, budget, and project related climate change and equity planning and policies.

DOT estimates that it takes approximately 6 person-hours to provide the information necessary for funding agreements.

Program Evaluation Stage (Interviews)

To fulfill evaluation requirements, DOT will conduct interviews with stakeholders associated with each awarded capital construction grant. These interviews will be used to inform case studies that will be developed for each funded capital construction project.

Project Monitoring Stage

DOT requires each grant recipient to submit quarterly reports during the project period to ensure the proper and timely expenditure of federal funds under the grant.

The requirements comply with 2 CFR part 200 and are restated in the funding agreement. During the project monitoring stage, the grantee will complete quarterly progress reports to allow DOT to monitor the project budget and schedule.

DOT estimates that it takes approximately 5 person-hours to develop and submit a quarterly progress report.

Post Construction Monitoring Stage

For Post Construction Reporting, DOT will evaluate the program for recipients of capital construction grants and include the outcomes and impacts of the completed projects, The reporting will document any changes in the overall level of mobility, congestion, access, and safety in the project areas, and environmental impacts and economic development opportunities in project areas. Because RCN expect no projects to complete construction by 2025, post-construction monitoring hours and cost are not computed in this document.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on February 5, 2024.

John Augustine,

Director of the Office of Infrastructure Finance and Innovation, Office of the Under Secretary for Transportation Policy.

[FR Doc. 2024–02671 Filed 2–8–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Meeting of the Electronic Tax Administration Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC) will hold a public meeting via telephone conference line on Wednesday, March 20, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Alec Johnston, Office of National Public Liaison, at (202) 317–4299, or send an email to *publicliaison@irs.gov*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 5 U.S.C. 10(a)(2) of the Federal Advisory Committee Act, that a public meeting via conference call of the ETAAC will be held on Wednesday, March 20, 2024, at 12:30 p.m. EDT. The purpose of the ETAAC is to provide continuing advice regarding the development and implementation of the IRS organizational strategy for electronic tax administration. ETAAC is an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud. It supports the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. Please call or email Alec Johnston to confirm your attendance. Mr. Johnston can be reached at 202–317–4299 or *PublicLiaison@irs.gov* . Should you wish the ETAAC to consider a written statement, please call 202–317–4299 or email: *PublicLiaison@irs.gov.*

Dated: February 6, 2024.

John A. Lipold,

Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.

[FR Doc. 2024–02726 Filed 2–8–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0715]

Agency Information Collection Activity: Servicer's Staff Appraisal Reviewer (SAR) Application

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 9, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0715'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0715'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA FORM 26–0829 Servicer's Staff Appraisal Reviewer (SAR) Application.

OMB Control Number: 2900–0715.

Type of Review: Revision of a currently approved collection.

Abstract: Title 38 U.S.C. 3702(d) authorizes the Department of Veterans Affairs (VA) to establish standards for servicers making automatically guaranteed loans and 38 U.S.C. 3731(f) authorizes VA to establish, in regulation, standards and procedures to authorize a lender to determine the reasonable value of property. VA has implemented this authority through its Servicer Appraisal Processing Program (SAPP), codified in 38 CFR 36.4348.

Affected Public: Individuals (employees of servicers making applications).

Estimated Annual Burden: 0.8 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10 per year.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–02661 Filed 2–8–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Friday,
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Part II

Regulatory Information Service Center

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2023

REGULATORY INFORMATION SERVICE CENTER

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2023

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions.

SUMMARY: Publication of the Fall 2023 Unified Agenda of Federal Regulatory and Deregulatory Actions represents a key component of the regulatory planning mechanism prescribed in Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' (58 FR 51735, as amended) and reaffirmed in E.O. 13563, ''Improving Regulation and Regulatory Review,'' (76 FR 3821) and E.O. 14094, ''Modernizing Regulatory Review,'' (88 FR 21879). The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the **Federal Register** describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). The Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda), published in the fall and spring, helps agencies fulfill all of these requirements. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of this publication. The complete publication of the Fall 2023 Unified Agenda contains the Regulatory Plans of 29 Federal agencies and 69 Federal agency regulatory agendas available to the public at *www.reginfo.gov.*

The Fall 2023 Unified Agenda publication appearing in the **Federal Register** includes the Regulatory Plan and agency Regulatory Flexibility Agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency Regulatory Flexibility Agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

ADDRESSES: Regulatory Information Service Center (MV), General Services Administration, 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the agency contact listed for each entry. To provide comment on or to obtain further information about this publication, contact: Boris Arratia, Director, Regulatory Information Service Center (MV), General Services Administration, 1800 F Street NW, Washington, DC 20405, 703–795–0816. You may also send comments to us by email at: *RISC@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Introduction to the Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions

I. What are the Regulatory Plan and the Unified Agenda?

The Regulatory Plan serves as a defining statement of the Administration's regulatory and deregulatory policies and priorities. The Plan is part of the fall edition of the Unified Agenda. Each participating agency's regulatory plan contains: (1) A narrative statement of the agency's regulatory and deregulatory priorities, and, for the most part; and (2) a description of the most important significant regulatory and deregulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. This edition includes the regulatory plans of 29 agencies.

The Unified Agenda provides information about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983 and has been available online since 1995. The complete Unified Agenda is available to the public at *www.reginfo.gov.* The online Unified Agenda offers flexible search tools and access to the historic Unified Agenda database dating back to

1995. The complete online edition of the Unified Agenda includes regulatory agendas from 69 Federal agencies. Agencies of the United States Congress are not included.

The Fall 2023 Unified Agenda publication appearing in the **Federal Register** consists of the Regulatory Plan and Regulatory Flexibility Agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency Regulatory Flexibility Agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete Unified Agenda information for those entries appears online in a uniform format at *www.reginfo.gov.*

The following agencies have no entries identified for inclusion in the printed Regulatory Flexibility Agenda. An asterisk (*) indicates agencies that appear in The Regulatory Plan. The regulatory agendas of these agencies are available to the public at *www.reginfo.gov.*

Cabinet Departments

Department of Housing and Urban Development*
Department of State
Department of Veterans Affairs*

Other Executive Agencies

Agency for International Development
Committee for Purchase From People Who Are Blind or Severely Disabled
Corporation for National and Community Service*
Council on Environmental Quality
Court Services and Offender Supervision Agency for the District of Columbia
Equal Employment Opportunity Commission*
Federal Mediation Conciliation Service
Institute of Museum and Library Services
Inter-American Foundation
National Aeronautics and Space Administration*
National Archives and Records Administration*
National Endowment for the Arts
National Endowment for the Humanities
National Mediation Board
National Science Foundation*
Office of Government Ethics
Office of Management and Budget
Office of the National Cyber Director
Office of Personnel Management*
Office of the United States Trade Representative
Peace Corps
Pension Benefit Guaranty Corporation*
Railroad Retirement Board
Selective Service System
Social Security Administration*
U.S. Agency for Global Media

Independent Agencies

Commodity Futures Trading Commission
Defense Nuclear Facilities Safety Board
Farm Credit Administration
Federal Deposit Insurance Corporation
Federal Energy Regulatory Commission
Federal Housing Finance Agency
Federal Maritime Commission
Federal Mine Safety and Health Review Commission
Federal Permitting Improvement Steering Council
Federal Trade Commission*
National Credit Union Administration
National Indian Gaming Commission
National Transportation Safety Board
Postal Regulatory Commission
U.S. Chemical Safety and Hazard Investigation Board

The Regulatory Information Service Center compiles the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866, as amended (incorporated in Executive Order 13563). The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency officials, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may choose to include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. Executive Order 12866, as amended, does not require agencies to include regulations concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. The Unified Agenda does not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.

II. Why are the Regulatory Plan and the Unified Agenda published?

The Regulatory Plan and the Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610). Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' signed August 13, 2002 (67 FR 53461), provides additional guidance on compliance with the Act.

Executive Order 12866

Executive Order 12866, ''Regulatory Planning and Review,'' September 30, 1993 (58 FR 51735), as amended, requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their ''most important significant regulatory actions,'' which appears as part of the fall Unified Agenda. Executive Order 13497, signed January 30, 2009 (74 FR 6113), revoked the amendments to Executive Order 12866 that were contained in Executive Order 13258 and Executive Order 13422.

Executive Order 14094

Executive Order (E.O.) 14094, ''Modernizing Regulatory Review,'' April 6, 2023 (88 FR 21879) sets forth specific actions for Federal agencies and OIRA designed to modernize the regulatory process in order to advance policies that promote the public interest and address national priorities. E.O. 14094, among other things, amends Section 3(f)(1) of E.O. 12866 (Regulatory Planning and Review) to increase the monetary threshold for significance under that provision, amends Section 3(f)(4) to clarify what is significant under that provision, and encourages greater public participation during all stages of the regulatory process.

Executive Order 13563

Executive Order 13563, ''Improving Regulation and Regulatory Review,'' January 18, 2011 (76 FR 3821) supplements and reaffirms the

principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866, which includes the general principles of regulation and public participation, and orders integration and innovation in coordination across agencies; flexible approaches where relevant, feasible, and consistent with regulatory approaches; scientific integrity in any scientific or technological information and processes used to support the agencies' regulatory actions; and retrospective analysis of existing regulations.

Executive Order 13132

Executive Order 13132, ''Federalism,'' August 4, 1999 (64 FR 43255), directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications'' as defined in the Order. Under the Order, an agency that is proposing a regulation with federalism implications, which either preempt State law or impose non-statutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such a regulation, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions ''that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any 1 year.'' The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' May 18, 2001 (66 FR 28355), directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for ''those matters identified as significant energy actions.'' As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 *et seq.*), which defers, unless exempted, the effective date of a ''major'' rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is ''major'' if it has resulted, or is likely to result, in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

III. How are the Regulatory Plan and the Unified Agenda organized?

The Regulatory Plan appears in part II in a daily edition of the **Federal Register**. The Plan is a single document beginning with an introduction, followed by a table of contents, followed by each agency's section of the Plan. Following the Plan in the **Federal Register**, as separate parts, are the Regulatory Flexibility Agendas for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The sections of the Plan and the parts of the Unified Agenda are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority (Agenda only); and independent regulatory agencies. Agencies may in turn be divided into subagencies. Each printed agency agenda has a table of contents listing the agency's printed entries that follow. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

Each agency's section of the Plan contains a narrative statement of regulatory priorities and, for most agencies, a description of the agency's most important significant regulatory and deregulatory actions. Each agency's part of the Agenda contains a preamble providing information specific to that agency plus descriptions of the agency's regulatory and deregulatory actions.

Agency regulatory flexibility agendas are printed in a single daily edition of the **Federal Register**. A regulatory flexibility agenda is printed for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The parts are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Agencies may in turn be divided into sub-agencies. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

The online, complete Unified Agenda contains the preambles of all participating agencies. Unlike the printed edition, the online Agenda has no fixed ordering. In the online Agenda, users can select the particular agencies' agendas they want to see. Users have broad flexibility to specify the characteristics of the entries of interest to them by choosing the desired responses to individual data fields. To see a listing of all of an agency's entries, a user can select the agency without specifying any particular characteristics of entries.

Each entry in the Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. Prerule Stage—actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include

Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. Proposed Rule Stage—actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. Final Rule Stage—actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.

4. Long-Term Actions—items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. Completed Actions—actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

Long-Term Actions are rulemakings reported during the publication cycle that are outside of the required 12-month reporting period for which the Agenda was intended. Completed Actions in the publication cycle are rulemakings that are ending their lifecycle either by Withdrawal or completion of the rulemaking process. Therefore, the Long-Term and Completed RINs do not represent the ongoing, forward-looking nature intended for reporting developing rulemakings in the Agenda pursuant to Executive Order 12866, section 4(b) and 4(c). To further differentiate these two stages of rulemaking in the Unified Agenda from active rulemakings, Long-Term and Completed Actions are reported separately from active rulemakings, which can be any of the first three stages of rulemaking listed above. A separate search function is provided on *www.reginfo.gov* to search for Completed and Long-Term Actions apart from each other and active RINs.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified Agenda for the first time.

In the printed edition, all entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. The sequence number is used as the reference in the printed table of contents. Sequence numbers are not used in the online Unified Agenda because the unique Regulation Identifier Number (RIN) is able to provide this cross-reference capability.

Editions of the Unified Agenda prior to fall 2007 contained several indexes, which identified entries with various characteristics. These included regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis, actions selected for periodic review under section 610(c) of the Regulatory Flexibility Act, and actions that may have federalism implications as defined in Executive Order 13132 or other effects on levels of government. These indexes are no longer compiled, because users of the online Unified Agenda have the flexibility to search for entries with any combination of desired characteristics. The online edition retains the Unified Agenda's subject index based on the **Federal Register** Thesaurus of Indexing Terms. In addition, online users have the option of searching Agenda text fields for words or phrases.

IV. What information appears for each entry?

All entries in the online Unified Agenda contain uniform data elements including, at a minimum, the following information:

Title of the Regulation—a brief description of the subject of the regulation. In the printed edition, the notation ''Section 610 Review'' following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews. In the online edition, these notations appear in a separate field.

Priority—an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant and Section 3(f)(1) Significant

On April 6, 2023, the President issued E.O. 14904 entitled ''Modernizing Regulatory Review.'' E.O. 14904 amends Section 3(f)(1) of E.O. 12866 to increase the monetary threshold for significance under this provision from $100 million to $200 million in annual effects and directs that it be adjusted for GDP growth every three years. For rulemaking actions that were in development prior to the issuance of E.O. 14904, the Agenda largely uses the previous nomenclature of ''economically significant'' to indicate rulemaking actions expected to have an annual effect on the economy of $100 million or more, the threshold in E.O. 12866 prior to April 6, 2023. For rulemaking actions which were submitted for OIRA review after the issuance of the E.O. 14904 on April 6, 2023 and are expected to have an annual effect on the economy of $200 million or more, the term ''Section 3(f)(1) Significant'' is used and will continue to be used in future Unified Agendas. The amended definition of ''Section 3(f)(1) Significant'' under Executive Order 12866 is a rulemaking action that will ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

(2) Other Significant

A rulemaking that is not Economically Significant but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866, as amended, or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) Substantive, Nonsignificant

A rulemaking that has substantive impacts, but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

Major—whether the rule is ''major'' under 5 U.S.C. 801 (Pub. L. 104–121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

Unfunded Mandates—whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate.

Legal Authority—the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

CFR Citation—the section(s) of the Code of Federal Regulations that will be affected by the action.

Legal Deadline—whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

Abstract—a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

Timetable—the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 12/00/19 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is ''To Be Determined.'' ''Next Action Undetermined'' indicates the agency does not know what action it will take next.

Regulatory Flexibility Analysis Required—whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

Small Entities Affected—the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

Government Levels Affected—whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

International Impacts—whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation's international trading partners.

Federalism—whether the action has ''federalism implications'' as defined in Executive Order 13132. This term refers to actions ''that 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.'' Independent regulatory agencies are not required to supply this information.

Included in the Regulatory Plan—whether the rulemaking was included in the agency's current regulatory plan published in the fall 2022.

Agency Contact—the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, email address, and TDD for each agency contact.

Some agencies have provided the following optional information:

RIN Information URL—the internet address of a site that provides more information about the entry.

Public Comment URL—the internet address of a site that will accept public comments on the entry.

Alternatively, timely public comments may be submitted at the Governmentwide e-rulemaking site, *www.regulations.gov.*

Additional Information—any information an agency wishes to include that does not have a specific corresponding data element.

Compliance Cost to the Public—the estimated gross compliance cost of the action.

Affected Sectors—the industrial sectors that the action may most affect, either directly or indirectly. Affected sectors are identified by North American Industry Classification System (NAICS) codes.

Energy Effects—an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' signed May 18, 2001 (66 FR 28355).

Related RINs—one or more past or current RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Statement of Need—a description of the need for the regulatory action.

Summary of the Legal Basis—a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

Alternatives—a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of Executive Order 12866.

Anticipated Costs and Benefits—a description of preliminary estimates of the anticipated costs and benefits of the action.

Risks—a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

V. Abbreviations

The following abbreviations appear throughout this publication:

ANPRM—An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. An agency may issue an ANPRM before it develops a detailed proposed rule. An ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR—The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the agencies of the Federal Government. The Code is divided into 50 titles, each title covering a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

E.O.—An Executive order is a directive from the President to Executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

FR—The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices

of meetings, and other official documents issued by Federal agencies.

FY—The Federal fiscal year runs from October 1 to September 30.

NPRM—A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum: A statement of the time, place, and nature of the public rulemaking proceeding;

Legal Authority—A reference to the legal authority under which the rule is proposed; and either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Public Law—A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, Public Law 112–4 is the fourth public law of the 112th Congress.

RFA—A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

RIN—The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Regulatory Plan and the Unified Agenda, as directed by Executive Order 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

Seq. No.—The sequence number identifies the location of an entry in the printed edition of the Regulatory Plan and the Unified Agenda. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers if it appears in different printed editions of the Unified Agenda. Sequence numbers are not used in the online Unified Agenda.

U.S.C.—The United States Code is a consolidation and codification of all general and permanent laws of the United States. The U.S.C. is divided into 50 titles, each title covering a broad area of Federal law.

VI. How can users get copies of the Unified Agenda?

Copies of the **Federal Register** issue containing the printed edition of the Unified Agenda (agency regulatory flexibility agendas) are available from the Superintendent of Documents, U.S. Government Publishing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone: (202) 512–1800 or 1–866–512–1800 (toll-free). Copies of individual agency materials may be available directly from the agency or may be found on the agency's website. Please contact the particular agency for further information. All editions of The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions since fall 1995 are available in electronic form at *www.reginfo.gov,* along with flexible search tools. The Government Publishing Office's GPO GovInfo website contains copies of the Agendas and Regulatory Plans that have been printed in the **Federal Register**. These documents are available at *www.govinfo.gov.*

Boris Arratia,

Director.

DEPARTMENT OF AGRICULTURE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
1	Unfair Practices, Undue Preferences, and Harm to Competition Under the Packers and Stockyards Act (AMS–FTPP–21–0046).	0581–AE04	Proposed Rule Stage.
2	Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045).	0581–AE05	Final Rule Stage.
3	Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages.	0584–AE82	Final Rule Stage.
4	Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans.	0584–AE88	Final Rule Stage.
5	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions.	0584–AE94	Final Rule Stage.
6	Interim Final Rule—Implementing Provisions From the Consolidated Appropriations Act, 2023: Establishing the Summer EBT Program and Non-Congregate Option in the Summer Food Service Program.	0584–AE96	Final Rule Stage.
7	Labeling of Meat and Poultry Products Made Using Animal Cell Culture Technology.	0583–AD89	Proposed Rule Stage.
8	Salmonella Framework	0583–AD96	Proposed Rule Stage.
9	Revision of the Nutrition Facts Labels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed.	0583–AD56	Final Rule Stage.
10	Voluntary Labeling of FSIS-Regulated Products With U.S. Origin Claims	0583–AD87	Final Rule Stage.
11	Update and Clarification of the Locatable Minerals Regulations	0596–AD32	Proposed Rule Stage.
12	Higher Blends Infrastructure Incentive Program	0570–AB11	Proposed Rule Stage.

DEPARTMENT OF COMMERCE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
13	Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act.	0648–BG11	Proposed Rule Stage.
14	Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule	0648–BI88	Final Rule Stage.
15	Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat.	0648–BK47	Final Rule Stage.
16	Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation.	0648–BK48	Final Rule Stage.
17	Setting and Adjusting Patent Fees	0651–AD64	Proposed Rule Stage.
18	Setting and Adjusting Trademark Fees	0651–AD65	Proposed Rule Stage.

DEPARTMENT OF DEFENSE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
19	Cybersecurity Maturity Model Certification (CMMC) Program	0790–AL49	Proposed Rule Stage.
20	Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities.	0790–AK86	Final Rule Stage.
21	Definitions of Gold Star Family and Gold Star Survivor	0790–AL56	Final Rule Stage.
22	Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DoD and in Equal Access to Information and Communication Technology Used by DoD.	0790–AJ04	Long-Term Actions.
23	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041).	0750–AK81	Proposed Rule Stage.
24	Modification of Prize Authority For Advanced Technology Achievements (DFARS Case 2022–D014).	0750–AL65	Proposed Rule Stage.
25	Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055).	0750–AK16	Final Rule Stage.
26	Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043).	0750–AK84	Final Rule Stage.
27	DFARS Buy American Act Requirements (DFARS Case 2022–D019)	0750–AL74	Final Rule Stage.
28	Policy and Procedures for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408.	0710–AB22	Proposed Rule Stage.
29	Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision	0710–AB34	Proposed Rule Stage.
30	USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources.	0710–AB41	Proposed Rule Stage.
31	Appendix C Procedures for the Protection of Historic Properties	0710–AB46	Proposed Rule Stage.
32	Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers.	0710–AA78	Final Rule Stage.
33	Credit Assistance for Water Resources Infrastructure Projects	0710–AB31	Completed Actions.
34	Revised Definition of ''Waters of the United States''; Conforming	0710–AB55	Completed Actions.
35	TRICARE Coverage of Clinical Trials and Termination of Expanded Access Treatments.	0720–AB83	Final Rule Stage.
36	Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic	0720–AB85	Final Rule Stage.
37	Collection From Third Party Payers of Reasonable Charges for Healthcare Services; Amendment.	0720–AB87	Final Rule Stage.

DEPARTMENT OF EDUCATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
38	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.	1870–AA16	Final Rule Stage.
39	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria For Male and Female Athletic Teams.	1870–AA19	Final Rule Stage.
40	EDGAR Revisions	1875–AA14	Proposed Rule Stage.
41	Family Educational Rights and Privacy Act	1875–AA15	Proposed Rule Stage.
42	Student Loan Relief	1840–AD93	Proposed Rule Stage.
43	Gainful Employment	1840–AD57	Completed Actions.
44	Improving Income Driven Repayment	1840–AD81	Completed Actions.

DEPARTMENT OF ENERGY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
45	Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings.	1904–AB96	Final Rule Stage.
46	Energy Conservation Standards for Consumer Water Heaters	1904–AD91	Final Rule Stage.
47	Coordination of Federal Authorizations for Electric Transmission Facilities	1901–AB62	Final Rule Stage.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
48	Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities.	0945–AA15	Proposed Rule Stage.
49	Proposed Modifications to the HIPAA Security Rule to Strengthen the Cybersecurity of Electronic Protected Health Information.	0945–AA22	Proposed Rule Stage.
50	Confidentiality of Substance Use Disorder Patient Records	0945–AA16	Final Rule Stage.
51	Nondiscrimination in Health Programs and Activities	0945–AA17	Final Rule Stage.
52	Safeguarding the Rights of Conscience as Protected by Federal Statutes	0945–AA18	Final Rule Stage.
53	Health and Human Services Grants Regulation	0945–AA19	Final Rule Stage.
54	Proposed Modifications to the HIPAA Privacy Rule to Support Reproductive Health Care Privacy.	0945–AA20	Final Rule Stage.
55	Establishment of Disincentives for Health Care Providers Who Have Committed Information Blocking.	0955–AA05	Proposed Rule Stage.
56	Control of Communicable Diseases; Foreign Quarantine	0920–AA75	Final Rule Stage.
57	Tobacco Product Standard for Nicotine Level of Certain Tobacco Products	0910–AI76	Proposed Rule Stage.
58	Front-of-Package Nutrition Labeling	0910–AI80	Proposed Rule Stage.
59	Medical Devices; Laboratory Developed Tests	0910–AI85	Proposed Rule Stage.
60	Nonprescription Drug Product With an Additional Condition for Nonprescription Use.	0910–AH62	Final Rule Stage.
61	Nutrient Content Claims, Definition of Term: Healthy	0910–AI13	Final Rule Stage.
62	Tobacco Product Standard for Characterizing Flavors in Cigars	0910–AI28	Final Rule Stage.
63	Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water.	0910–AI49	Final Rule Stage.
64	Tobacco Product Standard for Menthol in Cigarettes	0910–AI60	Final Rule Stage.
65	Countermeasures Injury Compensation Program: COVID–19 Countermeasures Injury Table.	0906–AB31	Proposed Rule Stage.
66	340B Drug Pricing Program; Administrative Dispute Resolution	0906–AB28	Final Rule Stage.
67	Healthcare System Resiliency and Modernization (CMS–3426)	0938–AU91	Proposed Rule Stage.
68	Appeal Rights for Certain Changes in Patient Status (CMS–4204)	0938–AV16	Proposed Rule Stage.
69	Contract Year 2025 Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, and Medicare Cost Plan Programs, and PACE (CMS–4205).	0938–AV24	Proposed Rule Stage.
70	Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS–3442).	0938–AV25	Proposed Rule Stage.
71	Streamlining the Medicaid, CHIP, and BHP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS–2421).	0938–AU00	Final Rule Stage.
72	Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (CMS–9904).	0938–AU67	Final Rule Stage.
73	Ensuring Access to Medicaid Services (CMS–2442)	0938–AU68	Final Rule Stage.
74	Coverage of Certain Preventive Services Under the Affordable Care Act (CMS–9903).	0938–AU94	Final Rule Stage.
75	Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality (CMS–2439).	0938–AU99	Final Rule Stage.
76	Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities (CMS–6084).	0938–AU90	Long-Term Actions.
77	Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018–2022 (CMS–1793).	0938–AV18	Completed Actions.
78	Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net Program.	0970–AC97	Proposed Rule Stage.
79	Employment and Training Services for Noncustodial Parents in the Child Support Services Program.	0970–AD00	Proposed Rule Stage.
80	Supporting the Head Start Workforce and Other Quality Improvements	0970–AD01	Proposed Rule Stage.
81	Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B.	0970–AD03	Proposed Rule Stage.
82	Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF).	0970–AD02	Final Rule Stage.
83	Separate Licensing Standards for Relative or Kinship Foster Family Homes	0970–AC91	Completed Actions.
84	Adult Protective Services Functions and Grant Programs	0985–AA18	Proposed Rule Stage.

DEPARTMENT OF HOMELAND SECURITY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
85	Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status.	1615–AA67	Proposed Rule Stage.
86	Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits.	1615–AC22	Proposed Rule Stage.
87	Asylum Eligibility and Public Health	1615–AC57	Proposed Rule Stage.
88	Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations.	1615–AC65	Proposed Rule Stage.
89	Procedures for Asylum and Bars to Asylum Eligibility	1615–AC69	Proposed Rule Stage.
90	Modernizing H–1B Requirements and Oversight, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers.	1615–AC70	Proposed Rule Stage.
91	Modernizing H–2 Program Requirements, Oversight, and Worker Protections	1615–AC76	Proposed Rule Stage.
92	Citizenship and Naturalization and Other Related Flexibilities	1615–AC80	Proposed Rule Stage.
93	U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.	1615–AC68	Final Rule Stage.
94	Shipping Safety Fairways Along the Atlantic Coast	1625–AC57	Proposed Rule Stage.
95	Cybersecurity in the Marine Transportation System	1625–AC77	Proposed Rule Stage.
96	MARPOL Annex VI; Prevention of Air Pollution From Ships	1625–AC78	Proposed Rule Stage.
97	Advance Passenger Information System: Electronic Validation of Travel Documents.	1651–AB43	Final Rule Stage.
98	Enhancing Surface Cyber Risk Management	1652–AA74	Proposed Rule Stage.
99	Flight Training Security Program	1652–AA35	Final Rule Stage.
100	Frequency of Renewal Cycle for Indirect Air Carrier Security Programs	1652–AA72	Final Rule Stage.
101	Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses.	1652–AA76	Final Rule Stage.
102	Clarifying and Revising Custody Determination and Detention Classification Procedures.	1653–AA92	Proposed Rule Stage.
103	National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form.	1660–AB06	Proposed Rule Stage.
104	Update of FEMA's Public Assistance Regulations	1660–AB09	Proposed Rule Stage.
105	Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard.	1660–AB12	Proposed Rule Stage.
106	Individual Assistance Program Equity	1660–AB07	Final Rule Stage.
107	National Flood Insurance Program's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats.	1660–AB11	Long-Term Actions.

DEPARTMENT OF THE INTERIOR

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
108	ONRR Designation Form for Payment Responsibility	1012–AA33	Proposed Rule Stage.
109	Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule.	1014–AA44	Proposed Rule Stage.
110	Revisions to Subpart J—Pipelines and Pipeline Rights-of-Way Proposed Rule	1014–AA45	Proposed Rule Stage.
111	Outer Continental Shelf Lands Act; Operating in High-Pressure and/or High-Temperature (HPHT) Environments.	1014–AA49	Final Rule Stage.
112	Carbon Sequestration	1082–AA04	Proposed Rule Stage.
113	Department of the Interior Acquisition Regulation Governance Titles	1090–AB25	Proposed Rule Stage.
114	Natural Resource Damages for Hazardous Substances	1090–AB26	Proposed Rule Stage.
115	Privacy Act Exemption for INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LERMS).	1090–AB28	Proposed Rule Stage.
116	Privacy Act Exemption for INTERIOR/OIG–02 Investigative Records	1090–AB27	Final Rule Stage.
117	Office of Hearings and Appeals (OHA) Rule	1094–AA57	Proposed Rule Stage.
118	Wildlife and Fisheries; Compensatory Mitigation Mechanisms	1018–BF63	Proposed Rule Stage.
119	Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, Proposed Rule.	1018–BF71	Proposed Rule Stage.
120	Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System, Proposed rule.	1018–BG78	Proposed Rule Stage.
121	Permits for Incidental Take of Eagles and Eagle Nests, Final Rule	1018–BE70	Final Rule Stage.
122	Regulations Pertaining to Endangered and Threatened Wildlife and Plants	1018–BF88	Final Rule Stage.
123	Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, Final Rule.	1018–BF95	Final Rule Stage.
124	Endangered and Threatened Wildlife and Plants; Interagency Cooperation	1018–BF96	Final Rule Stage.
125	Endangered Species Act Section 10 Regulations; Enhancement of Survival and Incidental Take Permits, Final rule.	1018–BF99	Final Rule Stage.
126	Revision to the Section 4(d) Rule for the African Elephant, Final rule	1018–BG66	Final Rule Stage.
127	Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado, Final Rule.	1018–BG79	Final Rule Stage.

DEPARTMENT OF THE INTERIOR—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
128	National Wildlife Refuge System; Station-Specific Hunting and Sport Fishing Regulations, 2023–24, Final rule.	1018–BG71	Completed Actions.
129	Native American Graves Protection and Repatriation Act Regulations	1024–AE19	Final Rule Stage.
130	Alaska; Hunting and Trapping in National Preserves	1024–AE70	Final Rule Stage.
131	Agricultural Leasing of Indian Land	1076–AF66	Proposed Rule Stage.
132	Procedures for Federal Acknowledgment of Indian Tribes	1076–AF67	Proposed Rule Stage.
133	Indian Arts and Crafts	1076–AF69	Proposed Rule Stage.
134	Mining of the Osage Mineral Estate for Oil and Gas	1076–AF59	Final Rule Stage.
135	Class III Tribal State Gaming Compact Process	1076–AF68	Final Rule Stage.
136	Land Acquisitions	1076–AF71	Final Rule Stage.
137	Fitness to Operate Standards for Oil and Gas Operators and Lessees on the Outer Continental Shelf.	1010–AE21	Proposed Rule Stage.
138	Renewable Energy Modernization Rule	1010–AE04	Final Rule Stage.
139	Protection of Marine Archaeological Resources	1010–AE11	Final Rule Stage.
140	Risk Management and Financial Assurance for OCS Lease and Grant Obligations.	1010–AE14	Final Rule Stage.
141	Emergency Preparedness for Impoundments	1029–AC82	Proposed Rule Stage.
142	Ten-Day Notices	1029–AC81	Final Rule Stage.
143	Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies	1006–AA58	Final Rule Stage.
144	Closure and Restriction Orders	1004–AE89	Proposed Rule Stage.
145	Management and Protection of the National Petroleum Reserve in Alaska	1004–AE95	Proposed Rule Stage.
146	Update of the Communications Uses Program, Right-of-Way Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way.	1004–AE60	Final Rule Stage.
147	Rights-of-Way, Leasing and Operations for Renewable Energy	1004–AE78	Final Rule Stage.
148	Waste Prevention, Production Subject to Royalties, and Resource Conservation	1004–AE79	Final Rule Stage.
149	Fluid Mineral Leases and Leasing Process	1004–AE80	Final Rule Stage.
150	Conservation and Landscape Health	1004–AE92	Final Rule Stage.

DEPARTMENT OF JUSTICE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
151	Implementation of the ADA Amendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973).	1190–AA73	Proposed Rule Stage.
152	Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way.	1190–AA77	Proposed Rule Stage.
153	Nondiscrimination on the Basis of Disability by State and Local Governments: Medical Diagnostic Equipment.	1190–AA78	Proposed Rule Stage.
154	Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities.	1190–AA79	Final Rule Stage.
155	Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have not had a Prior In-Person Medical Evaluation.	1117–AB40	Proposed Rule Stage.
156	Import/Export and Domestic Transactions of Tableting and Encapsulating Machines.	1117–AB80	Proposed Rule Stage.
157	Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations.	1125–AB13	Proposed Rule Stage.
158	Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure.	1125–AB18	Proposed Rule Stage.
159	Hearing Requirements and Application Procedures for Asylum and Related Protection.	1125–AB22	Proposed Rule Stage.
160	Clarifying and Revising Custody Determination Procedures for Noncitizens Subject to Discretionary Detention (INA 236(a)/8 U.S.C. 1226 detention).	1125–AB27	Proposed Rule Stage.

DEPARTMENT OF LABOR

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
161	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.	1235–AA39	Proposed Rule Stage.
162	Nondisplacement of Qualified Workers Under Service Contracts	1235–AA42	Final Rule Stage.
163	Employee or Independent Contractor Classification Under the Fair Labor Standards Act.	1235–AA43	Final Rule Stage.
164	Improving Protections For Workers in Temporary Agricultural Employment in the United States.	1205–AC12	Proposed Rule Stage.
165	National Apprenticeship System Enhancements	1205–AC13	Proposed Rule Stage.
166	Wagner-Peyser Act Staffing	1205–AC02	Final Rule Stage.
167	Retirement Security Rule: Definition of an Investment Advice Fiduciary	1210–AC02	Proposed Rule Stage.

DEPARTMENT OF LABOR—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
168	Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021.	1210–AC11	Proposed Rule Stage.
169	Definition of 'Employer' Under Section 3(5) of ERISA-Association Health Plans	1210–AC16	Proposed Rule Stage.
170	Coverage of Certain Preventive Services Under the Affordable Care Act	1210–AC13	Final Rule Stage.
171	Respirable Crystalline Silica	1219–AB36	Final Rule Stage.
172	Safety Program for Surface Mobile Equipment	1219–AB91	Final Rule Stage.
173	Heat Illness Prevention in Outdoor and Indoor Work Settings	1218–AD39	Prerule Stage.
174	Infectious Diseases	1218–AC46	Proposed Rule Stage.
175	Emergency Response	1218–AC91	Proposed Rule Stage.

DEPARTMENT OF TRANSPORTATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
176	Safety Management Systems	2120–AL60	Final Rule Stage.

DEPARTMENT OF VETERANS AFFAIRS

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
177	Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure.	2900–AR10	Proposed Rule Stage.
178	Expanding Veterans Cemetery Grant Program (VCGP) Grants to Include Training Costs.	2900–AR47	Proposed Rule Stage.
179	Technical Revisions to Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service.	2900–AR73	Proposed Rule Stage.
180	Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure.	2900–AR75	Proposed Rule Stage.
181	Evidence Requirements for Direct Service Connection of Covered Mental Health Conditions Based on In-Service Personal Trauma.	2900–AR91	Proposed Rule Stage.
182	Amendments to the Caregivers Program	2900–AR96	Proposed Rule Stage.
183	Revision of Veterans Community Care Program (VCCP) Access Standards	2900–AS00	Proposed Rule Stage.
184	Modifying Copayments for Veterans at High Risk for Suicide	2900–AQ30	Final Rule Stage.
185	Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge	2900–AQ95	Final Rule Stage.
186	Veteran and Spouse Transitional Assistance Grant Program	2900–AR68	Final Rule Stage.
187	Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117–168.	2900–AR76	Final Rule Stage.
188	Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter.	2900–AR25	Completed Actions.
189	Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate Matter.	2900–AR44	Completed Actions.

ENVIRONMENTAL PROTECTION AGENCY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
190	Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter.	2060–AS35	Proposed Rule Stage.
191	NSPS for GHG Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired EGUs; Emission Guidelines for GHG Emissions From Existing Fossil Fuel-Fired EGUs; and Repeal of the ACE Rule.	2060–AV09	Proposed Rule Stage.
192	Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.	2060–AV20	Proposed Rule Stage.
193	Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020.	2060–AV84	Proposed Rule Stage.
194	Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-specific Allowances.	2060–AV98	Proposed Rule Stage.
195	1-Bromopropane (1–BP); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK73	Proposed Rule Stage.
196	Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA)	2070–AK83	Proposed Rule Stage.
197	N-Methylpyrrolidone (NMP); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK85	Proposed Rule Stage.
198	Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA).	2070–AK90	Proposed Rule Stage.

ENVIRONMENTAL PROTECTION AGENCY—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
199	Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives.	2050–AH24	Proposed Rule Stage.
200	Listing of PFOA, PFOS, PFBS, and GenX as Resource Conservation and Recovery Act (RCRA) Hazardous Constituents.	2050–AH26	Proposed Rule Stage.
201	Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units.	2050–AH27	Proposed Rule Stage.
202	National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI).	2040–AG16	Proposed Rule Stage.
203	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.	2060–AU37	Final Rule Stage.
204	New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review.	2060–AV16	Final Rule Stage.
205	Revisions to the Air Emission Reporting Requirements (AERR)	2060–AV41	Final Rule Stage.
206	Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles.	2060–AV49	Final Rule Stage.
207	Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3	2060–AV50	Final Rule Stage.
208	Reconsideration of the National Ambient Air Quality Standards for Particulate Matter.	2060–AV52	Final Rule Stage.
209	NESHAP: Coal-and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review.	2060–AV53	Final Rule Stage.
210	NSPS for the Synthetic Organic Chemical Manufacturing Industry and NESHAP for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry.	2060–AV71	Final Rule Stage.
211	Methylene Chloride (MC); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK70	Final Rule Stage.
212	Carbon Tetrachloride (CTC); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK82	Final Rule Stage.
213	Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK84	Final Rule Stage.
214	Asbestos Part 1 (Chrysotile Asbestos); Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA).	2070–AK86	Final Rule Stage.
215	Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels.	2070–AK91	Final Rule Stage.
216	Designating PFOA and PFOS as CERCLA Hazardous Substances	2050–AH09	Final Rule Stage.
217	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments.	2050–AH14	Final Rule Stage.
218	Clean Water Act Hazardous Substance Facility Response Plans	2050–AH17	Final Rule Stage.
219	Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention.	2050–AH22	Final Rule Stage.
220	Federal Baseline Water Quality Standards for Indian Reservations	2040–AF62	Final Rule Stage.
221	Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights	2040–AG17	Final Rule Stage.
222	PFAS National Primary Drinking Water Regulation Rulemaking	2040–AG18	Final Rule Stage.
223	Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.	2040–AG23	Final Rule Stage.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
224	Regulations to Implement the Pregnant Workers Fairness Act	3046–AB30	Final Rule Stage.

PENSION BENEFIT GUARANTY CORPORATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
225	Actuarial Assumptions for Determining an Employer's Withdrawal Liability	1212–AB54	Final Rule Stage.

SOCIAL SECURITY ADMINISTRATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
226	Omitting Food From In-Kind Support and Maintenance Calculations	0960–AI60	Final Rule Stage.
227	Expand the Definition of a Public Assistance (PA) Household	0960–AI81	Final Rule Stage.
228	Nationwide Expansion of the Rental Subsidy Policy for SSI Recipients	0960–AI82	Final Rule Stage.

SOCIAL SECURITY ADMINISTRATION—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
229	Intermediate Improvement to the Disability Adjudication Process, Including How we Consider Past Work.	0960–AI83	Final Rule Stage.

CONSUMER PRODUCT SAFETY COMMISSION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
230	Regulatory Options for Table Saws	3041–AC31	Proposed Rule Stage.
231	Safety Standard for Residential Gas Furnaces and Boilers	3041–AD70	Proposed Rule Stage.
232	Portable Generators	3041–AC36	Final Rule Stage.

Introduction to the Fall 2023 Regulatory Plan

Executive Order 12866, issued in 1993, requires the annual production of a Unified Regulatory Agenda and Regulatory Plan. It does so in order to promote transparency—or in the words of the Executive Order itself, ''to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order.'' Executive Order 13563, issued in 2011, and Executive Order 14094, issued in 2023, reaffirmed and amended the requirements of Executive Order 12866.

We are now providing the Fall 2023 Regulatory Plan. The regulatory plans and agendas submitted by agencies and included here offer a window into how the Administration plans to continue delivering on the President's agenda to advance economic prosperity and equity, tackle the climate crisis, advance public health, and much more to improve the lives of the American people. Agencies will be continuing their work to implement landmark legislation passed during this Administration, including the implementation of the PACT Act, (Pub. L. 117–168); the Inflation Reduction Act, (Pub. L. 117–169); and the CHIPS and Science Act, (Pub. L. 117–167); as well as ongoing efforts to implement the Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), Public Law 117–58. Agencies have also highlighted in their plans and agendas how they have engaged with the public in developing regulatory priorities, as well as future opportunities for engagement.

DEPARTMENT OF AGRICULTURE

Statement of Regulatory Priorities

In 2024, the U.S. Department of Agriculture (USDA) plans to prioritize initiatives that promote growth and new market opportunity in Rural America for our farmers, ranchers, small businesses, and communities, particularly among historically underserved communities, while implementing an expected new 5 year Farm Bill reauthorization for our major agricultural and food programs. USDA further anticipates a Farm Bill reauthorization as an opportunity to strengthen and improve our customer service and delivery combined with IT modernization that fosters 21st century innovation. USDA will use available outreach and communication tools to seek input and engagement from our traditional stakeholders as well as those communities whom we may not have been able to reach in the past but who, like our traditional stakeholders, offer critical implementation input and feedback. In short, we want to know what works, and what doesn't work, from everyone.

In 2024, USDA will seek and promote 21st century innovation initiatives like carbon capture and storage, addressing the effects of climate change such as drought and wildfire risks, and other climate-smart agriculture initiatives. As in the past, USDA will continue to tackle food and nutrition insecurity while maintaining a safe food supply and responding to any disaster and emergency threats impacting the American Farm economy, schools, individual households, and our National Forests. Finally, all of USDA's programs, including the priorities contained in this Regulatory Plan, will be structured to advance the cause of equity by removing barriers and opening new opportunities for our customers.

In 2023, the USDA:

Agricultural Marketing Service published the *Strengthening Organic Enforcement* (SOE) final rule (January 19, 2023, 88 FR 3548) that became effective on March 20, 2023. As required by the 2018 Farm Bill, SOE protects organic integrity and bolsters farmer and consumer confidence in the USDA organic seal by supporting strong organic control systems, improving farm to market traceability, increasing import oversight authority, and providing robust enforcement of the organic regulations. Topics addressed in this rulemaking include: National Organic Program Import Certificates; recordkeeping and product traceability; certifying agent personnel qualifications and training; standardized certificates of organic operation; unannounced on-site inspections of certified operations; oversight of certification activities; foreign conformity assessment systems; certification of producer group operations; labeling of nonretail containers; and, calculating organic content of multi-ingredient products.

Forest Service implemented a final rule on *Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska* (January 27, 2023, 88 FR 5252) that repealed a final rule promulgated in 2020 exempting the Tongass National Forest from the 2001 Roadless Area Conservation Rule (2001 Roadless Rule). The 2001 Roadless Rule prohibited timber harvest and road construction or reconstruction within designated inventoried Roadless Areas, with limited exceptions. The rule is consistent with President Biden's Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.

In late 2023, the Forest Service plans to publish a proposed rule on Carbon Capture, Utilization, and Storage that would allow exclusive or perpetual right of use or occupancy of National Forest System lands that will allow for permanent carbon dioxide sequestration in order to reduce the impacts of climate

change. Furthermore, the Forest Service plans to publish a Financial Assurance for Locatable Minerals Interim Final rule that will allow equities and private investment-rated securities within trust funds as financial assurance for long-term post-closure obligations, which is crucial for the stewardship and restoration of National Forest System lands affected by mining. Finally, the Forest Service is making several updates to its directives that will strengthen its ability to combat climate change and improve access to, and delivery of, public programs and services by reducing administrative burden—including equitable access to recreation, mitigation of adverse impacts, climate resilience, and its Tribal action plan.

In late 2023, Food and Nutrition Service (FNS) plans to publish an interim final rule (December 2023) that codifies flexibility for rural program operators to provide non-congregate meal service in the Summer Food Service Program (SFSP) and establishes a permanent *Summer Electronic Benefits Transfer for Children Program (Summer EBT).* To gather information for this rulemaking, between April–August 2023, FNS hosted more than 100 listening sessions and information meetings with State agencies, advocacy groups, program operators, and industry partners. For more information about this rule, see RIN 0584–AE96.

In December 2023, FNS also plans to publish a final rule codifying the provisions of the *Access to Baby Formula Act of 2022.* Amongst other things, the rule codifies requirements for State agencies to include language in their Women, Infants and Children (WIC) infant formula rebate contracts that describes remedies in the event of an infant formula recall. This rule was informed by lessons learned and feedback received from State and local agencies, advocacy organizations, and Federal research on the response to recent disasters, the COVID–19 pandemic, and a major WIC product recall. For more information about this rule, see RIN 0584–AE94.

Outlined below are some of USDA's most important upcoming regulatory actions for 2024. These include efforts to restore and expand economic opportunity; address the climate crisis; and support agricultural markets that are free, open, and promote competition. This Regulatory Plan also reflects USDA's continued commitments to ensuring a safe and nutritious food supply and animal welfare protections. As always, our Semiannual Regulatory Agenda contains information on a broad-spectrum of USDA's initiatives and planned upcoming regulatory actions.

Foster Sustainable Economic Growth by Promoting Innovation, Building Resilience to Climate Change, and Expanding Renewable Energy

Higher Blends Infrastructure Incentive Program: Rural Business Cooperative Service (RBCS) Higher Blends Infrastructure Incentive Program (HBIIP): HBIIP is a program designed to increase the sales and use of higher blends of ethanol and biodiesel by expanding the infrastructure for renewable fuels derived from U.S. agricultural products. The program is also intended to encourage a more comprehensive approach to market higher blends by sharing the costs related to building out biofuel-related infrastructure. The program should increase availability of domestic biofuels and give Americans additional cleaner fuel options at the pump. RBCS is proposing a rule to codify the policies and procedures for the program in the Code of Federal Regulations, as this program has a significant impact on climate change which is an Administration priority. Public engagement will occur in early fall of 2023. A virtual listening session will be announced in the **Federal Register**. For more information about this rule, see RIN 0570–AB11.

Foster an Equitable and Competitive Marketplace for All Agricultural Producers

Inclusive Competition and Market Integrity Rules Under the Packers and Stockyards Act: USDA plans to supplement a recent revision to regulations under the Packers and Stockyards (P&S) Act to prohibit certain prejudices and disadvantages and unjustly discriminatory conduct against covered producers in the livestock, meat, and poultry markets. The proposal (October 3, 2022, 87 FR 60010) set forth prohibited discrimination on the bases of the producer's personal characteristics and identified as prohibited certain retaliatory practices that interfere with lawful communications, assertion of rights, and participation in associations, among other protected activities. The proposal also identified unlawfully deceptive practices that violate the P&S Act with respect to contract formation, contract performance, contract termination and contract refusal. The purpose of the final rule is to promote inclusive competition and market integrity in the livestock, meats, and poultry markets. For more information about this rule, see RIN 0581–AE05.

Unfair Practices, Undue Preferences, and Harm to Competition under the Packers and Stockyards Act: The proposal would revise regulations under the Packers and Stockyards Act (Act), providing clarity regarding conduct that may violate the Act, including addressing harm to competition. This proposal reflects feedback received from public input generated by previous proposed and interim final rules. On June 22, 2010, USDA published in the **Federal Register** (75 FR 35338–35354) a proposed rule recommending several changes to the regulations issued under the Packers and Stockyards Act, 1921, as amended (P&S Act). On December 20, 2016, USDA published a new ''Scope'' paragraph in the **Federal Register** as an Interim Final Rule ''IFR'' with a request for comments (81 FR 92566–92594). On October 18, 2017, USDA withdrew the IFR (82 FR 48594–01). Though neither of these proposed rules became a final rule, USDA received, reviewed, and considered public comments. For more information about this rule, see RIN 0581–AE04.

Provide All Americans Safe, Nutritious Food

USDA's Food Safety and Inspection Service (FSIS) continues to ensure that meat, poultry, and egg products are safe, wholesome and properly marked, labeled, and packaged, and prohibits the distribution in-commerce of meat, poultry, and egg products that are adulterated or misbranded.

Salmonella Framework: One of FSIS' top priorities is to develop a more comprehensive and effective strategy to reduce Salmonella illnesses associated with poultry products. The agency gathered data and information and solicited stakeholder input on Salmonella in poultry. FSIS proposed in 2023 to declare that not-ready-to- eat breaded stuffed chicken products that contain Salmonella at levels of 1 colony forming unit per gram or higher in the chicken components are adulterated within the meaning of the Poultry Products Inspection Act (April 28, 2023, 82 FR 26249) and will finalize this determination in 2024. FSIS also plans to propose a new regulatory framework targeted at reducing Salmonella illnesses associated with poultry products and moving closer to the national target of a 25 percent reduction in Salmonella illnesses. For more information about the proposed new regulatory framework, see RIN 0583–AD96.

In addition, FSIS intends to publish several rules to improve regulatory certainty, which assure consumers that

meat, poultry, and egg products are safe and truthfully labeled.

Voluntary Labeling of Meat Products With ''Product of USA'' and Similar Statements: FSIS plans to publish a final rule to address concerns that the voluntary ''Product of USA'' label claim may confuse consumers about the origin of FSIS regulated products. FSIS received 3,364 comments on the proposed rule during a 60-day comment period that FSIS extended to 90 days based on requests from stakeholders. In response to the Agency's consumer research and comments received on the proposed rule, FSIS will define voluntary U.S.-origin label claims so that they are more meaningful to consumers. For more information about this rule, see RIN 0583–AD87.

Labeling of Meat or Poultry Products Comprised of or Containing Cultured Animal Cells; and Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed: FSIS will propose to establish new requirements for the labeling of meat and poultry food products made using animal cell culture technology (*i.e.,* ''cell-cultured'' food products). In advance of the proposed rule, FSIS and FDA held a joint public meeting in October 2018 to discuss the potential hazards, oversight considerations, and labeling of cell-cultured food products derived from livestock and poultry tissue (September 13, 2018, 83 FR 46476). In addition, FSIS published an advanced notice of proposed rulemaking in the **Federal Register**, soliciting public input on the labeling of cell-cultured seafood, meat, and poultry food products (September 3, 2021, 86 FR 49491). FSIS also plans to finalize a labeling rule to update nutrition labeling for meat and poultry products. The two rules would provide additional certainty about what is required for meat and poultry labeling while ensuring that consumers have accurate information about the food they buy. For more information about these rules, see RINs 0583–AD56 and 0583–AD89.

FNS' Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Guidelines for Americans: The final rule would revise meal patterns in the National School Lunch Program and School Breakfast Program to make school meals healthier and more consistent with the most recent Dietary Guidelines for Americans while reflecting the nutrient needs of children at risk for food insecurity. Throughout 2022, USDA held over 50 listening sessions with State agencies, school food authorities, advocacy organizations, Tribal dietitians and schools, professional associations, food manufacturers, and other Federal agencies to inform the proposed rule (February 7, 2023, 88 FR 8050). USDA also received extensive input through over 136,000 public comments on the proposed rule during a 60-day comment period that USDA extended to 90 days based on requests from stakeholders. Through this stakeholder engagement, USDA gained valuable insights into the successes and challenges that schools experience implementing the school meal nutrition standards and will use this information to develop a practical and durable final rule. For more information about this rule, see RIN 0584–AE88.

FNS' Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages: Consistent with recommendations from the National Academies of Sciences, Engineering, and Medicine and the latest Dietary Guidelines for Americans, the final rule would provide participants with greater choices in variety and food package sizes and align the WIC food packages with available nutrition science. When developing the proposed rule (November 21, 2022, 87 FR 71090), FNS solicited feedback from WIC participants, state and tribal partners, and other government agencies. FNSpublished the proposed rule with a 90-day comment period and will consider comments received in development of this final rule. For more information about this rule, see RIN 0584–AE82.

National Organic Program; Organic Livestock and Poultry Standards: The final rule would establish standards that support additional practice standards for organic livestock and poultry production. This final action would add provisions to the USDA organic regulations to address and clarify livestock and poultry living conditions (for example, outdoor access, housing environment and stocking densities), health care practices (for example physical alterations, administering medical treatment, euthanasia), and animal handling and transport to and during slaughter. For more information about this rule, see RIN 0581–AE06.

Improve Access to, and Delivery of, Public Programs and Services by Reducing Administrative Burden

Forest Service Amendment to Locatable Minerals: The locatable minerals regulations have remained mostly unchanged since they were first promulgated in 1974. Court cases, government audits, and implementation experience have identified many shortcomings in the current regulations that challenge the agency's ability to efficiently and effectively administer locatable mineral activity on National Forest System lands. The Forest Service is proposing to revise its regulations for administering hard-rock mining activities on National Forest System lands, providing permitting certainty; strong, responsible mining standards; enhanced community and Tribal engagement; and proactive environmental management. To gather public input into this proposed rule, it was preceded by a Locatable Minerals advance notice of proposed rulemaking (ANPR) (September 13, 2018, 83 FR 46451). Following the completion of the comment period for the ANPR, the Forest Service analyzed the comments received and used the information to draft the proposed regulation. For more information about this rule, see RIN: 0596–AD32.

USDA—AGRICULTURAL MARKETING SERVICE (AMS)

Proposed Rule Stage

1. Unfair Practices, Undue Preferences, and Harm to Competition Under the Packers and Stockyards Act (AMS–FTPP–21–0046) [0581–AE04]

Priority: Other Significant.
Legal Authority: 7 U.S.C. 181 to 229c
CFR Citation: 9 CFR 201.
Legal Deadline: None.
Abstract: This action proposes to revise regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C. 181 229c), providing clarity regarding conduct that may violate the Act. Revisions are intended to support market growth, assure fair trade practices and competition, and protect livestock and poultry growers and producers. The action addresses long-standing issues related to competitiveness and showings of harm or likely harm to competition.

Statement of Need: Revisions to regulations pertaining to the Packers and Stockyards Act (Act) clarify the types of conduct by packers, swine contractors, or live poultry dealers that the Agricultural Marketing Service (AMS) considers unfair practices or undue preferences and a violation of sections 202(a) or 202(b) of the Act.

Sections 202(a) and 202(b) of the P&S Act are broadly written to prohibit unjustly practices and undue preferences. Industry members have complained that the regulations effectuating the Act are too vague and do not provide adequate clarity about

the types of conduct or action that are likely to violate theAct. This rule is needed to provide essential clarity about what would be considered violations of the Act.

Revisions to regulations pertaining to the Packers and Stockyards Act (Act) that would also clarify the scope of the Act are needed to establish what conduct or action, depending on their nature and the circumstances, violate the Act without a finding of harm or likely harm to competition or as they may relate to harm or likely harm to competition as such terms were contemplated under the Act. Such revisions reflect the Department of Agriculture's (USDA) longstanding position in this regard.

Summary of Legal Basis: The Packers and Stockyards Act (Act) authorizes AMS to determine if conduct within the poultry and livestock industries constitutes unfair practices or undue preferences and, therefore a violation of the Act.

The Act provides USDA with the authority to assure fair competition and trade practices and to safeguard farmers against receiving less than the true market value of their livestock. Sections 202(c), (d), and (e) of the Act limit the application of those sections to acts or practices that have an adverse effect on competition, such as acts restraining commerce, creating a monopoly, or producing another type of antitrust injury. However, provisions in sections 202(a) and (b) restrict practices that are deceptive, unfair, unjust, undue, and unreasonable; terms that are understood to encompass more than anticompetitive conduct. USDA's position is that Congress did not intend application of sections 202(a) and (b) to be limited to instances in which there is harm to competition.

Alternatives: USDA considered doing nothing. However, courts are not unanimous in their findings. Further, several courts disagree with USDA's position. Lack of clarity hinders the agency's ability to consistently administer and enforce the Act.

Anticipated Cost and Benefits: USDA estimate annual costs related to this rule of $9 million for the first five years, decreasing in subsequent years, for total ten-year costs of $66 million. We believe the primary benefit of the proposed regulation is the increased ability to protect producers and growers through enforcement of the Act for violations of section 202(a) and/or (b) that do not result in harm, or a likelihood of harm, to competition.

Risks: Courts have recognized that the proper analysis of alleged violations of these two sections depends on the facts of each case. However, four courts of appeals have disagreed with USDA's interpretation of the Act and have concluded that plaintiffs could not prove their claims under those sections without proving harm to competition or likely harm to competition. There is a risk if future legal challenge of USDA interpretation of sections 202(c), (d), and (e) of the Act.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0237, *Phone:* 202 720–0219.

RIN: 0581–AE04

USDA—AMS

Final Rule Stage

2. Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045) [0581–AE05]

Priority: Other Significant.

Legal Authority: 7 U.S.C. 181 to 229c

CFR Citation: 9 CFR 201.

Legal Deadline: None.

Abstract: This final rule would supplement a recent revision to regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C. 181 229c) that provided criteria for the Secretary to consider when determining whether certain conduct or action by packers, swine contractors, or live poultry dealers is unduly or unreasonably or advantageous. Supplemental amendments clarify the conduct the Department considers unfair, preferential, unjustly discriminatory, or deceptive and a violation of sections 202(a) and (b) of the Act. The rule would also clarify the criteria and types of conduct that would be considered unduly or unreasonably preferential, advantageous, prejudicial, or disadvantageous and violations of the Act, including retaliatory practices that interfere with lawful communications, assertion of rights, and associational participation.

Statement of Need: Revisions to regulations pertaining to the Packers and Stockyards Act (Act) clarify the types of conduct by packers, swine contractors, or live poultry dealers that the Agricultural Marketing Service (AMS) considers unfair, unjustly discriminatory, or deceptive and a violation of section 202(a) of the Act, regardless of whether such action harms or is likely to harm competition. The rule also clarifies the criteria and/or types of conduct that would be considered unduly or unreasonably preferential, advantageous, prejudicial, or disadvantageous and a violation of section 202(b) of the Act.

Sections 202(a) and 202(b) of the P&S Act are broadly written to prohibit unjustly discriminatory practices and undue preferences and prejudices. Industry members have complained that the regulations effectuating the Act are too vague and do not provide adequate clarity about the types of conduct or action that are likely to violate the Act. This rule is needed to provide essential clarity about what would be considered violations of the Act, regardless of whether such violations harm or are likely to harm competition.

Summary of Legal Basis: The Packers and Stockyards Act (Act) authorizes AMS to determine if conduct within the poultry and livestock industries are unfair, unjustly discriminatory, or deceptive and, therefore a violation of the Act.

Alternatives: AMS considered taking no further action, allowing 100 years of case law to determine precedent in making determinations about whether certain behaviors violate the Act. AMS also considered revisiting the withdrawn 2016 rulemaking approach that would have identified criteria with which to determine whether certain behaviors violate the Act.

Anticipated Cost and Benefits: USDA estimates first-year costs associated with this rule to be $517 thousand, with decreased costs each year thereafter, resulting in a ten-year total cost of $2.88 million. AMS expects this rule to benefit all segments of the industry, providing greater clarity about what would be considered violations of the Act. AMS expects this rule, coupled with a concurrent rule on the scope of the Act, to strengthen enforcement of the Act, resulting in fairer and more competitive markets for producers and poultry growers.

Risks: Industry is divided about adding lists or examples of specific prohibited conduct to the regulations. Some argue such lists would inhibit freedom to forge contracts that fit individual situations, while others contend greater specificity is required so that affected parties can more readily identify violative behavior. Industry is also split on the question of whether

identified prohibited behaviors must be found to harm or likely harm competition to be considered violations of the Act. AMS expects to resolve some of the controversy by being proactive and transparent with the industry to allow for critical discussions and decisions on the rule.

Timetable:

Action	Date	FR Cite
NPRM	10/03/22	87 FR 60010
NPRM Comment Period Extended.	11/30/22	87 FR 73507
NPRM Comment Period End.	12/02/22	
NPRM Comment Period Extended End.	01/17/23	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0237, *Phone:* 202 720–0219.

RIN: 0581–AE05

USDA—FOOD AND NUTRITION SERVICE (FNS)

Final Rule Stage

3. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages [0584–AE82]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1786, sec. 17(f)(11)(C)

CFR Citation: 7 CFR 246.10.

Legal Deadline: None.

Abstract: This final rulemaking will amend regulations governing the WIC food packages to: (1) incorporate recommendations of the National Academies of Science, Engineering, and Medicine 2017 scientific report, Review of WIC Food Packages: Improving Balance and Choice; (2) align with 2020 Dietary Guidelines for Americans; and (3) make other administrative revisions or clarifications to food package requirements. In the development of the proposed rule, FNS solicited feedback from WIC participants, state and tribal partners, and other government agencies. FNS published the proposed rule with a 90-day comment period and will consider comments received in development of this final rule.

Statement of Need: The National Academies of Sciences, Engineering, and Medicine (NASEM) issued a 2017 report with recommendations to align the WIC food packages with the available nutrition science and to reflect the supplemental nature of the Program. In December 2020, the USDA and the Department of Health and Human Services released the 2020–2025 Dietary Guidelines for Americans (DGAs). USDA FNS will propose rulemaking to incorporate NASEM recommendations and align the food package with the latest DGAs.

Summary of Legal Basis: 42 U.S.C. 1786, sec. 17(f)(11)(C).

Alternatives: N/A.

Anticipated Cost and Benefits: This is discussed in the proposed rulemaking's Regulatory Impact Analysis which was published on November 21, 2022 as an appendix to the rule, available at 87 FR 71090.

Risks: N/A.

Timetable:

Action	Date	FR Cite
NPRM	11/21/22	87 FR 71090
NPRM Comment Period End.	02/21/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

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RIN: 0584–AE82

USDA—FNS

4. Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans [0584–AE88]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1758, sec. 9(f)(1)

CFR Citation: 7 CFR 210.10; 7 CFR 210.11; 7 CFR 215.7a; 7 CFR 220.8; 7 CFR 226.20; . . .

Legal Deadline: None.

Abstract: This rule would finalize long-term school nutrition standards based on the Dietary Guidelines for Americans, 2020–2025, and feedback that USDA received from child nutrition program stakeholders through an extensive stakeholder engagement campaign. The revisions are expected to make school meals more nutritious and more consistent with the goals of the most recent Dietary Guidelines, as required by statute. In addition, this rule would address the Buy American provision, which requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products for use in the school meal programs. This rulemaking would impact schools that participate in the school meal programs, and for certain rule provisions, facilities and institutions that participate in the Child and Adult Care Food Program and sponsors that participate in the Summer Food Service Program. This rulemaking would also impact participants who receive meals and snacks through the child nutrition programs. USDA received stakeholder input on this rulemaking prior to publishing the proposed rule. Throughout 2022, USDA held over 50 listening sessions with State agencies, school food authorities, advocacy organizations, Tribal stakeholders, professional associations, food manufacturers, and other Federal agencies to inform the proposed rule. USDA also received extensive input through public comments on the proposed rule. Through this stakeholder engagement, USDA gained valuable insights into the successes and challenges that schools experience implementing the school meal nutrition standards and will use this information to develop a practical and durable final rule.

Statement of Need: The revisions are needed to make school meals more nutritious and more consistent with the goals of the most recent Dietary Guidelines, as required by statute.

Summary of Legal Basis: 42 U.S.C. 1758, sec. 9(f)(1).

Alternatives: In the proposed rule, USDA considered two alternative proposals for the milk requirements in school meals, one that would maintain the current requirements and an alternative that would not allow flavored milk for children in grades K–8. USDA also considered two alternatives for the grain requirements in school meals, one that would maintain the current requirements and an alternative that would require all grains to be whole grain-rich, except that one day per week, schools may offer enriched grains. In addition, USDA

considered proposing product-specific total sugars limits (to align with existing CACFP requirements) rather than added sugars limits.

Anticipated Cost and Benefits: USDA estimated that the proposed rule would cost schools between $0.03 and $0.04 per breakfast and lunch served or between $220 and $274 million annually including both the School Breakfast Program and National School Lunch Program starting in School Year 2024–2025. The costs to schools would mainly be due to a shift in purchasing patterns to products with reduced levels of added sugars and sodium, administrative costs, and increased labor costs for continued sodium reduction over time.

Risks: None known at this time.

Timetable:

Action	Date	FR Cite
NPRM	02/07/23	88 FR 8050
NPRM	03/31/23	88 FR 19229
NPRM Comment Period End.	04/10/23	
NPRM Comment Period Extension.	05/10/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Michael DePiro, Specialist, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 305–2876, *Email: michael.depiro@usda.gov.*

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Related RIN: Merged with 0584–AE91

RIN: 0584–AE88

USDA—FNS

5. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions [0584–AE94]

Priority: Other Significant.

Legal Authority: Pub. L. 117–129

CFR Citation: 7 CFR 246.

Legal Deadline: None.

Abstract: This rule would amend 7 CFR 246 to codify the provisions of the Access to Baby Formula Act of 2022 (ABFA). ABFA amends section 17 of the Child Nutrition Act of 1966 to (1) add requirements to State agency infant formula cost containment contracts; (2) establish waiver authority to the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting WIC; and (3) require WIC State agencies to develop a plan of alternate operating procedures, commonly referred to as a disaster plan. FNS would make other related technical corrections and updates as necessary to modernize applicable WIC Program regulations. This rule was informed by lessons learned and feedback received from State and local agencies, advocacy organizations, and Federal research on the response to recent disasters, the COVID–19 pandemic, and a major WIC product recall.

Statement of Need: This rule would codify requirements for State agencies to include language in their WIC infant formula rebate contracts that describes remedies in the event of an infant formula recall, including how an infant formula manufacturer would protect against disruption to program participants in the State (*i.e.,* ensure that WIC participants can purchase formula using WIC benefits). The rule would also codify permanent expanded waiver authority to aid participants in obtaining and redeeming WIC benefits during certain emergencies, disasters, and supply chain disruptions impacting WIC. The required plan of alternate operating procedures would ensure WIC State agencies have plans in place to support the critical need for continuity of operations in the event of a disruption of WIC services, including but not limited to emergency periods, supplemental food recalls, and other supply chain disruptions. Finally, the rule would make other miscellaneous technical corrections and updates as necessary to update WIC regulations.

Summary of Legal Basis: The Access to Baby Formula Act of 2022 (ABFA, Pub. L. 117–129) amends section 17 of the Child Nutrition Act of 1966 (Pub. L. 89–642).

Alternatives: No alternatives have been identified at this time.

Anticipated Cost and Benefits: The costs associated with implementing the rule's regulatory requirements are not expected to significantly add to current program costs at the State and local levels.

Risks: No risks have been identified at this time.

Timetable:

Action	Date	FR Cite
Final Rule With Comment.	12/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State.

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RIN: 0584–AE94

USDA—FNS

6. Interim Final Rule—Implementing Provisions From the Consolidated Appropriations Act, 2023: Establishing the Summer EBT Program and Non-Congregate Option in the Summer Food Service Program [0584–AE96]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Pub. L. 117–328

CFR Citation: 7 CFR 225.

Legal Deadline: Other, Statutory, December 29, 2023, Interim Final Rule.

The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) requires FNS to promulgate regulations to carry out the provisions under section 502 of the Act no later than 1 year after the date of enactment. Public Law 117–328 was enacted on December 29, 2022; therefore, FNS is required to publish an interim final rule by December 29, 2023. However, FNS is aiming for publication by December 15, 2023, in order to ensure the statutory deadline is met.

Abstract: This interim final rule (IFR) will amend 7 CFR part 225 to codify the flexibility for rural program operators to provide non-congregate meal service in the Summer Food Service program (SFSP). This rule will also establish a new 7 CFR part and codify a new Summer Electronic Benefits Transfer (EBT) for Children Program in this part. The mandate for these changes is found in section 502 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), which added new section 13a of the Richard B. Russell Nation School Lunch Act (NSLA) to allow rural non-congregate meal service in the SFSP and NSLP Seamless Summer Option (SSO) and created a new section 13a to

establish a permanent Summer EBT Program.

To gather information in support of this rulemaking, between April–August 2023, FNS has hosted more than 100 listening sessions and information meetings to date with State agencies, advocacy groups, Program operators, and industry partners. These listening sessions focused primarily, but not exclusively, on the rural non-congregate meal service option. Additional listening sessions related to Summer EBT are forthcoming. Since the enactment of The Consolidated Appropriations Act, 2023, FNS published guidance that serves as the instructions for state agencies and program operators on how to implement SFSP and SSO rural non-congregate meal service during summer 2023, including guidance on oversight and monitoring pertaining to non-congregate operations to assist program operators. In addition, FNS has published early implementation guidance on Summer EBT for Indian Tribal Organizations and State agencies.

Statement of Need: The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) established a permanent Summer EBT Program and authorized a rural non-congregate meal service option in the Summer Food Service Program (SFSP), to be promulgated through interim final regulations no later than 1 year after the date of enactment. Accordingly, this interim final rulemaking will amend the SFSP regulations in 7 CFR part 225 and create a new 7 CFR section to allow State agencies and program operators to carry out the statutory provisions of Public Law 117–328. Implementation of this legislation will expand the reach of FNS' summer nutrition programs, providing greater access for communities and families whom the traditional SFSP cannot reliably reach, which in turn will have a lasting impact on how the nutritional needs of children are met during the summer months.

Summary of Legal Basis: Richard B. Russell National School Lunch Act (NSLA) at 42 U.S.C. 1761 and 1762a.

Alternatives: The Agency considered alternatives pertaining to the non-congregate meal service provisions in the Summer Food Service Program include the definition of rural, measures to ensure program integrity, meal service models, and State discretion on implementation approaches. For Summer EBT, in addition to the policies included in the interim final rule, the Agency considered alternatives in the areas of State administration, enrollment, EBT issuance and expungement, and program operations for Indian Tribal Organizations.

Anticipated Cost and Benefits: Implementing the rule's regulatory requirements is expected to add to current program costs at the Federal, State, and local levels, with the majority of costs going towards the establishment and implementation a permanent Summer EBT program. The implementation of this legislation is anticipated to benefit families with children by enabling more such families access to critical nutrition assistance for their children. FNS anticipates that 29 million children currently receiving free or reduced price meals will be eligible for Summer EBT annually. Participation in the SFSP will increase over time by 4.4 million, lifting the number of meals served to children in the summer by more than 380 million.

Risks: Summer EBT will be the first new FNS nutrition program in decades and will reach millions of children each summer. Crafting implementing regulations will be a complex process as FNS will need to consider and make determinations with regards to a large number of policy decisions. FNS will also need to engage a wide spectrum of stakeholders early in this process to gather input on best practices and effective approaches to implementation. Given the short timeframe to promulgate this IFR, there is a risk that regulations will not publish in time.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Local, State.

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RIN: 0584–AE96

USDA—FOOD SAFETY AND INSPECTION SERVICE (FSIS)

Proposed Rule Stage

7. Labeling of Meat and Poultry Products Made Using Animal Cell Culture Technology [0583–AD89]

Priority: Other Significant.
Legal Authority: 21 U.S.C. 451 *et seq.*
CFR Citation: 9 CFR ch. III.
Legal Deadline: None.
Abstract: The Food Safety and Inspection Service (FSIS) is proposing to establish new requirements for the labeling of meat or poultry products made using animal cell-culture technology.

Statement of Need: Many companies, both domestic and foreign, are currently developing cultured products derived from the cells of food animals amenable to the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) (cattle, sheep, swine, goats, and fish of the order Siluriformes, *e.g.,* catfish) or the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) (chickens, turkeys, ducks, geese, guineas, ratites, and squabs). Human food products derived from these species fall under FSIS jurisdiction.

Based on FSIS' review of comments on the Advanced Notice of Proposed Rulemaking, the available literature, and the Agency's ongoing interactions with the U.S. Food and Drug Administration (FDA) and industry, FSIS has determined that new regulatory requirements for labeling are necessary to ensure that cell-cultured meat and poultry products are truthfully and accurately labeled. Due to the novel method of production utilized to produce these products, the biological, chemical, nutritional, or organoleptic properties of some cell-cultured products may substantively differ from conventionally produced meat and poultry in a manner that is relevant to consumers. Moreover, these meat and poultry products, unlike any others on the U.S. market, are not derived from slaughter. It is imperative, therefore, that such products display unique labeling terminology that enables consumers to accurately identify the nature and source of such products.

Summary of Legal Basis: The Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) require that meat and poultry products be truthfully and accurately labeled and that their labels be pre-approved by FSIS (21 U.S.C. 607(d) and 457(c), respectively), prior to movement in commerce. FSIS issues labeling regulations and reviews and approves

meat and poultry product labels pursuant to these statutory labeling requirements. Food products made using animal cell culture technology and derived from the cells of livestock subject to the FMIA or the PPIA are subject to the labeling (and other applicable) requirements of these Acts and the regulations issued thereunder.

Alternatives: In addition to the option proposed, the Agency would consider alternatives for the requirements for labeling of meat or poultry products made using animal cell culture technology.

Anticipated Cost and Benefits: This proposed rule would benefit the public by providing truthful and accurate labeling of meat and poultry products produced using animal cell-culture technology. Consumers would be able to clearly differentiate cell-cultured products from other meat and poultry products to make better informed choices. The proposed rule would benefit industry because all producers would have consistent labels for their products made using animal cell-culture technology. It would also allow producers to design their labels with more certainty because producers would already be aware of FSIS labeling requirements for these products, reducing potential label modification costs.

FSIS expects its costs to be minimal and that current FSIS staffing would meet sketch approval needs.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	09/03/21	86 FR 49491
ANPRM Comment Period End.	12/02/21	
NPRM	05/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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RIN: 0583–AD89

USDA—FSIS

8. • Salmonella Framework [0583–AD96]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 21 U.S.C. 451 *et seq.*

CFR Citation: 9 CFR 381.65.

Legal Deadline: None.

Abstract: FSIS is proposing a new regulatory framework targeted at reducing *Salmonella* illnesses associated with poultry products. First, FSIS is proposing final product standards that would define whether certain raw poultry products contaminated with certain *Salmonella* levels and serotypes are adulterated and thus prohibited from entering commerce. FSIS is also proposing to revise the regulations that require that all poultry slaughter establishments develop, implement, and maintain written procedures to prevent contamination by enteric pathogens throughout the entire slaughter and dressing operation, by establishing new requirements pertaining to how establishments monitor and document whether their processes for preventing microbial contamination are in control. The proposal also focuses on a non-regulatory approach for controlling *Salmonella* on incoming flocks.

Statement of Need: While the results of FSIS' *Salmonella* verification sampling show that the Agency's current prevalence-based performance standards approach has been effective in reducing the proportion of poultry products contaminated with *Salmonella,* these measures have not had an observable impact on human illness rates, estimated to be over 1 million annual *Salmonella* illnesses from all sources. Poultry is the leading source of *Salmonella* foodborne illness acquired domestically in the United States. Therefore, in October 2021, FSIS announced that it was mobilizing a stronger, and more comprehensive effort to reduce *Salmonella* illnesses associated with poultry products. As part of this effort, FSIS initiated several activities designed to gather data and information to inform and support future actions related to this new effort. FSIS also held a public meeting in November 2022 to solicit stakeholder input on a draft regulatory framework that the Agency was considering for a new strategy to control *Salmonella* in poultry products and provided an opportunity for stakeholders to submit written comments. After carefully evaluating the written comments and other stakeholder input, along with studies and information that have become available after FSIS made the framework under consideration available to the public, FSIS is proposing a new regulatory framework targeted at reducing *Salmonella* illnesses associated with poultry products.

Summary of Legal Basis: FSIS regulates the production of poultry prepared for distribution in interstate commerce under the authority of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). 21 U.S.C. 455(b) provides that the Secretary shall cause to be made by inspector's post-mortem inspection of the carcass of each bird processed, and at any time reinspection as he deems necessary of poultry and poultry products capable of use as human food. 21 U.S.C. 455(c) requires that all poultry carcasses and other poultry products found to be adulterated be condemned. Under the PPIA, a poultry product is adulterated, among other circumstances, if it bears or contains any poisonous or deleterious substance that may render it injurious to health; it is unhealthful, unwholesome, or otherwise unfit for human consumption; or it was prepared, packaged, or held under unsanitary conditions whereby it may have been rendered injurious to health (21 U.S.C. 453(g)(1), (3), and (4)). Finally, 21 U.S.C. 463(b) provides that the Secretary shall promulgate such other rules and regulations as are necessary to carry out the provisions of the PPIA.

Alternatives: In addition to the proposed option, FSIS considered an alternative that would keep the current *Salmonella* performance standards. The Agency also considered alternatives for various *Salmonella* levels and serotypes for the proposed final product standards.

Anticipated Cost and Benefits: FSIS estimates this proposal would benefit society by preventing Salmonella illnesses associated with poultry products. The proposal is also estimated to benefit industry by reducing the risk of illness outbreak-related recalls. The main cost associated with this proposal is the cost to industry associated with maintaining control of products sampled by FSIS for adulterants pending test results.

Risks: FSIS estimates this proposal would benefit society by preventing Salmonella illnesses associated with poultry products. The proposal is also estimated to benefit industry by reducing the risk of out-break- related recalls. The main cost associated with this proposal is the cost to industry associated with maintaining control of products sampled by FSIS for adulterants pending test results.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

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RIN: 0583–AD96

USDA—FSIS

Final Rule Stage

9. Revision of the Nutrition Facts Labels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed [0583–AD56]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.*

CFR Citation: 9 CFR 317; 9 CFR 381; 9 CFR 413.

Legal Deadline: None.

Abstract: Consistent with the changes that the Food and Drug Administration (FDA) finalized, the Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to update and revise the nutrition labeling requirements for meat and poultry products to reflect recent scientific research and dietary recommendations and to improve the presentation of nutrition information to assist consumers in maintaining healthy dietary practices.

Statement of Need: On May 27, 2016, the Food and Drug Administration (FDA) published two final rules: (1) ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels'' (81 FR 33742); and (2) ''Food Labeling: Serving Sizes of Foods that Can Reasonably be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments'' (81 FR 34000). FDA finalized these rules to update the Nutrition Facts label to reflect new nutrition and public health research, to reflect recent dietary recommendations from expert groups, and to improve the presentation of nutrition information to help consumers make more informed choices and maintain healthy dietary practices. FSIS has reviewed FDA's analysis and, to ensure that nutrition information is presented consistently across the food supply, FSIS is amending the nutrition labeling regulations for meat and poultry products to parallel, to the extent possible, FDA's regulations. This approach will help increase clarity of information for consumers and will improve efficiency in the marketplace.

Summary of Legal Basis: Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695, at 607), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470, at 457), and the Egg Products Inspection Act (21 U.S.C. 1031–1056, at 1036) (the Acts), the labels of meat, poultry, and egg products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products can enter commerce. The Acts prohibit the sale or offer for sale by any person, firm, or corporation of any article in commerce under any name or other marking or labeling that is false or misleading or in any container of a misleading form or size (21 U.S.C. 607(d); 21 U.S.C. 457(c)). The Acts also prohibit the distribution in commerce of meat or poultry products that are adulterated or misbranded. The FMIA and PPIA give FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Acts (21 U.S.C. 621 and 463(b)).

To prevent meat and poultry products from being misbranded, the meat and poultry product inspection regulations require that the labels of meat and poultry products include specific information, such as nutrition labels, and that such information be displayed as prescribed in the regulations (9 CFR parts 317 and 381). The nutrition labeling requirements for meat and meat food products are in 9 CFR 317.300–317.400, and the nutrition labeling requirements for poultry products are in 9 CFR 381.400–381.500.

Alternatives: FSIS considered three alternatives for the final rule: (1) No action; (2) A 24-month compliance period for large businesses and a 36-month compliance period for small businesses (as proposed); or (3) A 12-month compliance period for large businesses and a 24-month compliance period for small businesses for faster label harmonization.

Anticipated Cost and Benefits: These regulations are expected to benefit consumers by increasing and improving dietary information available in the market. Firms will incur a one-time cost for relabeling, recordkeeping costs, and costs associated with voluntary reformulation. Many firms have voluntarily begun using the FDA format, which will reduce costs.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/19/17	82 FR 6732
NPRM Comment Period End.	04/19/17	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

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RIN: 0583–AD56

USDA—FSIS

10. Voluntary Labeling of FSIS-Regulated Products With U.S. Origin Claims [0583–AD87]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.;* 21 U.S.C. 1031 *et seq.;* 7 U.S.C. 1622 and 1624

CFR Citation: 9 CFR 412.3.

Legal Deadline: None.

Abstract: The Food Safety and Inspection Service (FSIS) is amending its regulations to define the conditions under which the labeling of meat, poultry, and egg products, as well as voluntarily-inspected products, can bear voluntary statements indicating that the product is of United States (U.S.) origin.

Statement of Need: FSIS conducted a comprehensive review of the Agency's current voluntary Product of USA labeling policy to help determine what the Product of USA label claim means to consumers of FSIS-regulated products in the U.S. marketplace. FSIS started this review after receiving several petitions stating that the voluntary label claim Product of USA is confusing to consumers. FSIS' review of the policy included a consumer survey on Product of USA labeling on beef and pork products. Based on the consumer survey results, reviews of consumer research, and comments received on the petitions, FSIS is revising its regulations to reduce consumer confusion surrounding current voluntary U.S.-origin labeling policy.

Summary of Legal Basis: Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695, at 607), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470, at 457), and the Egg Products Inspection Act (21 U.S.C. 1031–1056, at 1036), the labels of meat, poultry, and egg products must be approved by the Secretary of

Agriculture, who has delegated this authority to FSIS, before these products can enter commerce. FSIS also provides voluntary reimbursable inspection services, including label approval, under the Agricultural Marketing Act (AMA) (7 U.S.C. 1622 and 1624) for eligible products not requiring mandatory inspection under the FMIA, PPIA, and EPIA. Under the mandates of the FMIA, PPIA, and EPIA, any meat, poultry, or egg product is misbranded if its labeling is false or misleading in any particular (21 U.S.C. 601(n)(1); 21 U.S.C. 453(h)(1); 21 U.S.C. 1036(b)). FSIS has similar authority under the AMA concerning labels of products receiving voluntary inspection services (7 U.S.C. 1622(h)(1)).

Alternatives: In addition to the option proposed, the Agency considered the following alternatives: (1) Keeping the current regulatory requirements for U.S.-origin product labeling and taking no proposed regulatory action; and (2) Taking the proposed regulatory action but extending the compliance period for the regulatory changes after publication of the final rule.

Anticipated Cost and Benefits: Establishments may incur costs associated with voluntarily changing their labels as a result of any revised regulatory requirements. The finale rule is expected to result in quantified industry relabeling, recordkeeping, and market testing costs, which combined are estimated to cost approximately $3 million, annualized at a 7 percent discount rate over 10 years. The changes will benefit consumers by matching the voluntary Product of USA and Made in the USA label claims with the definition that consumers' likely expected, *i.e.,* as product being derived from animals born, raised, slaughtered, and processed in the United States. The final rule will reduce false or misleading U.S. origin labeling and will reduce the market failures associated with incorrect and imperfect information.

Risks: N/A.

Timetable:

Action	Date	FR Cite
NPRM	03/13/23	88 FR 15290
NPRM Comment Period End.	06/11/23	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

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RIN: 0583–AD87

USDA—FOREST SERVICE (FS)

Proposed Rule Stage

11. Update and Clarification of the Locatable Minerals Regulations [0596–AD32]

Priority: Other Significant.

Legal Authority: 30 U.S.C. 612

CFR Citation: 36 CFR 228 (A).

Legal Deadline: None.

Abstract: The Forest Service proposes the revision of its locatable mineral regulations to better reflect the needs of our national defense, economic prosperity, and environmental stewardship. The agency has identified many challenges in the current regulations, and revising the regulations to address these would allow the Forest Service to better implement its mining regulations. Specifically, the Forest Service is considering in this proposed rule to (1) better meet the purpose of the rule, which is to minimize, to the fullest extent practicable, adverse impacts to surface resources which may result from locatable mineral operations; (2) increase efficiency and transparency in the review process for proposed mineral operations; and (3) increase consistency with the Department of the Interior, Bureau of Land Management (BLM) surface management regulations. This rule will meet the Administration's goals of improving environmental stewardship while also providing more timely response, especially to proposed critical minerals operations.

Statement of Need: The Forest Service proposes the amendment of its locatable mineral regulations to better reflect the needs of both the Forest Service and mining industry. Despite major changes in the mining industry and many lessons learned through administering minerals activity on National Forest System (NFS) lands, the Forest Service locatable mineral regulations at 36 CFR 228 subpart A (228A) have remained largely unchanged since first published in 1974. Moreover, specific recommendations to revise and update the 228A regulations have been made in two prominent external reports: the 1999 National Research Council publication Hard Rock Mining on Federal Lands and the 2016 Government Accountability Office report Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More (GAO–16–165). By addressing recent issues and remedying existing weakness in current regulations that have been identified, the Forest Service would be consistent with the Biden-Harris Administration Fundamental Principles for Domestic Mining Reform by establishing strong responsible mining standards, increasing efficiency in permitting times, and improving environmental, social, and economic outcomes.

Summary of Legal Basis: The Mining Law of 1872, as amended, confers a statutory right to enter upon certain National Forest System lands to search for locatable minerals. The Organic Act of 1897 authorized the Forest Service to make rules to regulate occupancy and use of the land and preserve the forests from destruction. The Forest Service's existing regulations for administering locatable minerals activity on National Forest System (NFS) lands are found at 36 CFR part 228 subpart A. These rules govern prospecting, exploration, development, mining, and processing operations conducted on National Forest System lands. Under these rules, the Forest Service requires operators proposing to conduct locatable mineral activity which would likely cause significant disturbance of surface resources to obtain prior approval file a plan of operations.

Alternatives: Proposed Action: Publish a proposed rule and seek public comment on updates to 228A that will significantly improve and clarify requirements related to processing plans of operation, reclamation, and operator financial assurance in the event of default. These changes would support the following Administration priorities:

- *Provide Permitting Certainty:* The proposed rule will modernize Forest Service administration of surface use and occupancy of NFS lands for locatable mining operations, provide additional clarity for operators subject to these regulations, continue to minimize adverse impacts to surface resources on NFS lands, and increase alignment with BLM's mining law regulations which will facilitate coordination for projects that span both agency jurisdictions. Increased detail and clarity in agency regulations will reduce the need for time consuming, back-and-forth information requests to obtain a complete operating plan from proponents.
- *Climate:* The proposed rule requires more detail in operating plan submittals to put greater emphasis on up-front planning and subsequent operational monitoring of mining activity to address potential environmental and public safety impacts of more frequent extreme weather events, and decrease the

likelihood of catastrophic events, such as tailings impoundment failures.

• *Critical Minerals and American Supply Chains:* The demand for minerals produced from federal lands is expected to increase to address green energy and carbon-neutral goals. Many critical minerals are only economic to recover when combined with the recovery of a host mineral. The proposed rule clarifies many aspects of administering locatable mining activity on NFS land which is expected to increase agency efficiency, reduce processing time, and facilitate sustainable exploration and development of all locatable mineral deposits, including those containing critical minerals.

• *Meaningful Consultation with Tribal Nations:* The proposed rule's detailed requirements for operating plan submittals will enhance consultation with Tribal Nations through the availability of more information earlier in the process to better assess potential impacts to sacred sites and treaty rights.

• *Conserving Lands and Waters (30 by 30):* The proposed rule expands surface resource protection requirements, agency enforcement options, and financial guarantee provisions to minimize the impact of hardrock mining activity to NFS land and water and will reduce the risk and consequences of legacy pollution.

• *Economy:* Hardrock exploration and mining activity generates jobs in many rural communities adjacent to NFS lands. Mining companies pay income and many other taxes to federal and state governments. For every job at a mine, there's another job in the regional economy that exists because of the mining operation. The locatable mining industry in 2018 supported more than 7,800 direct and indirect jobs. Through more efficient administration of hardrock activity, the Forest Service can better implement federal policy to foster and encourage private enterprise in the sustainable development of domestic resources which would benefit local economies as well as decrease vulnerability to national supply chains.

No Action: A no action alternative would leave the regulations unchanged, thus maintaining the status-quo.

Anticipated Cost and Benefits: Anticipated costs include increased costs to industry in providing more detail in submitting plans of operation. However, a substantial cost savings for the Forest Service is expected from more modern and efficient agency review and approval of plans of operations.

Anticipated benefits of the updates to 228A would stem from more modern and efficient agency review and approval of plans of operations. The benefits to industry derive from timelier development of, access to, and use of locatable minerals on National Forest System lands. Expedited access and development of locatable mineral resources is expected to result in an increase in the time value of revenues generated by locatable operations. A potential benefit to the public of facilitating access to National Forest System lands is the increased opportunity to develop domestic sources of strategic and critical minerals which would decrease vulnerability to American supply chains. Most importantly, benefits to the public from the proposed rule are the continued protection, and in some cases, increased assurance about protection of ecosystems and corresponding goods and services from the potential damages of locatable mining activities.

Risks: Not applicable.

Timetable:

Action	Date	FR Cite
ANPRM	09/13/18	83 FR 46451
ANPRM Comment Period End.	10/15/18	
NPRM	08/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

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RIN: 0596–AD32

USDA—RURAL BUSINESS—COOPERATIVE SERVICE (RBS)

Proposed Rule Stage

12. • Higher Blends Infrastructure Incentive Program [0570–AB11]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 5 U.S.C. 301; 7 U.S.C. 1989

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The Higher Blends Infrastructure Program (HBIIP) is a program designed to increase the sales and use of higher blends of ethanol and biodiesel by expanding the infrastructure for renewable fuels derived from U.S. agricultural products. The program is also intended to encourage a more comprehensive approach to market higher blends by sharing the costs related to building out biofuel-related infrastructure. The program should increase availability of domestic biofuels and give Americans additional cleaner fuel options at the pump.

RBCS is proposing a rule to codify the policies and procedures for the program in the Code of Federal Regulations, as this program has a significant impact on climate change which is an administration priority. The proposed rule is intended to seek comment on codification of existing authorities provided through statutory language on eligibility requirements, types and terms of funding, program requirements and processing procedures.

RBCS intends to conduct public engagement to hear from stakeholders and potential applicants about what they would like to see in the regulation as well as what has worked and what has not worked in the past. This program has been implemented for multiple years, so the public should have some input on what has worked and what has not in the past. RBCS is looking for suggestions and input both from those who have applied in the past and those that did not, why they opted not to and if the program could do anything to encourage new applicants.

Targeted primary stakeholders include owners of fueling station owners, convenience store, and fleets, including auto, truck, rail and marine, and their industry associations. Secondary stakeholders include equipment manufacturers, distributors, and installers; State Energy Offices and State Departments of Agriculture; biofuel producers and farmers/agricultural producers and their industry associations; EPA, DOT, DOE, and other Federal agencies; and other stakeholders and groups with related interests such as environmental and health.

Statement of Need: The purpose HBIIP is to increase significantly the sales and use of higher blends of ethanol and bio diesel by expanding the infrastructure for renewable fuels derived from U.S. agricultural products. The program is also intended to encourage a more comprehensive approach to market higher blends by sharing the costs related to building out biofuel-related infrastructure. Currently, the Rural Business-Cooperative Service (RBCS) implements the program through a Notice of Funding Opportunity. This program was initially implemented in fiscal year 2020 through a Notice of Funding Opportunity and under the Commodity Credit Corporation (CCC) authority. In fiscal

year 2023 this was included in IRA and under RBCS authority and a Notice of Funding Opportunity was yet again issued. RBCS is proposing a rule to codify the policies and procedures for the program in the Code of Federal Regulations as this program has a significant impact on climate change which is an administration priority.

Summary of Legal Basis: This regulatory action is not required by statute or court order; however, the underlying statutes authorizing RBCS to create these regulations are 5 U.S.C. 301 and 7 U.S.C. 1989.

Alternatives: The alternative to rulemaking is to continue to operate the program through issuance of a Notice of Funding Opportunity to announce application windows and applicable requirements for the program.

Anticipated Cost and Benefits: The Agency does not expect the new regulation to result in additional costs to applicants or the government.

Risks: At this time, the Agency has not completed risk analysis for this action.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

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RIN: 0570–AB11

BILLING CODE 3410–90–P

DEPARTMENT OF COMMERCE

Statement of Regulatory Priorities

Established in 1903, the Department of Commerce (Commerce or Department) is one of the oldest Cabinet-level agencies in the Federal Government. Commerce's mission is to create the conditions for economic growth and opportunity across all American communities by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which manage a diverse portfolio of programs and services ranging from trade promotion and economic development assistance to improved broadband access and the National Weather Service, and from standards development and statistical data production, including the decennial census, to patents and fisheries management. Across these varied activities, the Department seeks to provide a foundation for a more equitable, resilient, and globally competitive economy.

To fulfill its mission, Commerce works in partnership with businesses, educational institutions, community organizations, government agencies, and individuals to:

- *Innovate* by supporting the creation of new ideas through cutting-edge science and technology, from advances in nanotechnology to ocean exploration to broadband deployment, and by protecting American innovations through the patent and trademark system;
- Support *entrepreneurship and commercialization* by enabling community development and strengthening opportunities for minority and other underserved businesses and small businesses;
- Maintain U.S. economic *competitiveness* in the global marketplace by promoting exports and foreign direct investment, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our nation's economic and security interests;
- Provide effective *management and stewardship* of our nation's resources and assets to ensure sustainable economic opportunities; and
- Make informed policy decisions and enable better understanding of the economy and our communities by providing timely, accessible, and accurate economic and demographic data.

Commerce's Regulatory Plan tracks the most important regulations that the Department anticipates issuing to implement these policy and program priorities and foster sustainable and equitable growth. Of Commerce's 12 primary operating units, three bureaus—the National Oceanic and Atmospheric Administration (NOAA), the United States Patent and Trademark Office (USPTO), and the Bureau of Industry and Security (BIS)—issue the vast majority of the Department's regulations, and these three bureaus account for all the planned actions that are considered the Department's highest priority pre-regulatory or regulatory actions for FY 2024.

Consistent with Executive Order 14094, moreover, the Department and its bureaus routinely seek to inform their rulemaking with meaningful opportunities for public input. The efforts of NOAA, USPTO, and BIS to promote public engagement are discussed in their respective sections, below.

National Oceanic and Atmospheric Administration

NOAA's mission is built on three pillars: science, service, and stewardship—to understand and predict changes in climate, weather, oceans, and coasts; to share that knowledge and information with others; and to conserve and manage coastal and marine ecosystems and resources.

At its core, NOAA is a scientific agency. It observes, measures, monitors, and collects data from the depths of the ocean to the surface of the sun, and it does so following principles of scientific integrity. These data are turned into weather and climate models and forecasts that are then used for everything from local weather forecasts to predicting the movement of wildfire smoke to identifying the impacts of climate change on fisheries and living marine resources.

With respect to service, NOAA not only collects data but seeks to make it operational. By providing Federal, State, local, Tribal government partners, the private sector, and the public with actionable environmental information, NOAA can facilitate decision-making in the face of climate change. Such decisions can range from businesses planning the location of offices; insurance companies trying to incorporate climate risk into their insurance policies; and municipalities looking to ensure that plans for construction of new housing developments will be resilient to the effects of climate change.

The final pillar of NOAA's mission is stewardship. NOAA seeks to conserve our lands, waters, and natural resources, protecting people and the environment now and for future generations. As part of Commerce, moreover, NOAA recognizes that economic growth must go hand-in-hand with environmental stewardship. For example, the nation's fisheries enhance the nation's productivity and long-term economic growth while ensuring sustainability. Similarly, national marine sanctuaries both protect important natural resources and are significant drivers of eco-tourism and local recreation.

Within NOAA, the National Marine Fisheries Services (NMFS) and the National Ocean Service (NOS) are the components that most often exercise regulatory authority to implement NOAA's mission. NMFS oversees the management and conservation of the nation's marine fisheries; protects marine mammals and Endangered

Species Act (ESA)-listed marine and anadromous species; and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy.

Many of NOAA's rulemakings are issued pursuant to the following key statutes:

Magnuson-Stevens Fishery Conservation and Management Act

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3–200 nautical miles from shore). As itemized in the Unified Agenda, NOAA plans to take several hundred actions in FY 2024 under Magnuson-Stevens Act authority. With certain exceptions, rulemakings under the Magnuson-Stevens Act are usually initiated by the actions of eight regional Fishery Management Councils (Councils). The Magnuson-Stevens Act provides a robust public process for managing our nation's fisheries through the work of the Councils. Throughout the Council process, there is significant opportunity for public engagement, including participating on advisory panels, providing testimony at public hearings, and commenting on Council actions. These Councils are comprised of representatives from the commercial and recreational fishing sectors, environmental groups, academia, and Federal and State government, and they are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for recommending implementing regulations for each managed fishery. This unique management system gives fishery managers the flexibility to use local level input to develop management strategies appropriate for each region's unique fisheries, challenges, and opportunities. FMPs address a variety of issues, including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. After considering the Councils' recommendations in light of the standards and requirements set forth in the Magnuson-Stevens Act and in other applicable laws, NOAA may issue regulations to implement the proposed FMPs and FMP amendments.

Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA) provides authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the intentional take of marine mammals. The MMPA allows, upon request and subsequent authorization, the incidental take of marine mammals by U.S. citizens who engage in a specified activity (*e.g.,* oil and gas development, pile driving) within a specified geographic region. NMFS authorizes incidental take under the MMPA if it finds that the taking would be of small numbers, have no more than a ''negligible impact'' on those marine mammal species or stock, and would not have an ''unmitigable adverse impact'' on the availability of the species or stock for ''subsistence'' uses. NMFS also initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. In addition, the MMPA allows NMFS to permit the take or import of wild animals for scientific research or public display or to enhance the survival of a species or stock.

Endangered Species Act

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be ''endangered'' or ''threatened,'' and the conservation of the ecosystems on which these species depend. NMFS and the Department of Interior's Fish and Wildlife Service (FWS) jointly administer the provisions of the ESA: NMFS manages marine and several anadromous species, and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. NMFS rulemaking actions under the ESA are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing and revising critical habitat for any listed species. In addition, as indicated in the list of highlighted actions below, NMFS and FWS may also issue rules clarifying how particular provisions of the ESA will be implemented.

The National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels, or unique habitats.

NOAA's Office of National Marine Sanctuaries (ONMS), within NOS, has responsibility for management of national marine sanctuaries. ONMS regulations, issued pursuant to NMSA, prohibit specific kinds of activities, describe and define the boundaries of the designated national marine sanctuaries, and set up a system of permits to allow the conduct of certain types of activities that would otherwise not be allowed.

These regulations can, among other things, regulate and restrict activities that may injure natural resources, including all extractive and destructive activities, consistent with community-specific needs and NMSA's purpose to ''facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas.'' In FY 2024, NOAA is expected to have at least three regulatory actions under NMSA.

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) was passed in 1972 to preserve, protect, and develop and, where possible, to restore and enhance the resources of the nation's coastal zone. The CZMA creates a voluntary state-federal partnership, where coastal states (States in, or bordering on, the Atlantic, Pacific or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes), may elect to develop comprehensive programs that meet federal approval standards. Currently, 34 of the 35 eligible entities are implementing a federally approved coastal management plan approved by the Secretary of Commerce.

NOAA's Regulatory Plan Actions

Of the numerous regulatory actions that NOAA is planning for this year, of which approximately 21 are expected to be determined to be significant rulemaking under E.O. 12866, there are four, described below, that the Department considers to be of particular importance.

1. *Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act (0648–BG11):* This proposed rule makes conforming amendments to regulations

implementing various statutes amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015. The Act provides the authority to implement two new international agreements under the Antigua Convention and the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement, or PMSA) The PMSA is aimed at combating illegal, unreported and unregulated (IUU) fishing activities through increased port inspection of foreign fishing vessels and thereby closing seafood markets to IUU fish and fish products. This proposed rule would require the collection of certain information from foreign fishing vessels requesting permission to use U.S. ports. It will also include procedures to designate and publicize the ports to which foreign fishing vessels may seek entry and procedures for conducting inspections of these foreign vessels accessing U.S. ports. In addition, this proposed rule will identify and certify nations for IUU fishing and other adverse fishing activities, bycatch of protected living marine resources, and shark catch under the authority of the High Seas Driftnet Fishing Moratorium Protection Act that need to be updated in light of amendments made by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.

2. *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (0648–BI88):* This final rule makes changes to existing vessel speed regulations in an effort to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions and prevent the species' extinction. Vessel collisions are a leading cause of the species' decline and contributor to the ongoing Unusual Mortality Event (2017–present). The North Atlantic right whale (Eubalaena glacialis) was severely depleted by commercial whaling and, despite protection from commercial harvest since 1935, has not recovered. Following two decades of growth between 1990 and 2010, the species has been in decline over the past decade with a best population estimate of fewer than 350 individuals.

3. *Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat (0648–BK47):* The Secretaries of Interior and Commerce share responsibility for implementing most of the provisions of the Endangered Species Act (ESA). Together, the Department of Interior's Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Services (collectively, the Services) have promulgated regulations that implement aspects of the listing and critical habitat designation provisions of section 4 of the ESA. Pursuant to the January 20, 2021 Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), the Services initiated a review of a 2019 rule that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. Following the review, the Services issued a proposed rule and now seek to finalize a rule that revises the regulations to clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for listing, reclassifying, and delisting species on the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat.

4. *Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation (0648–BK48):* Pursuant to E.O. 13990, the Services also initiated a review of a 2019 rule that implemented the interagency consultation provisions in section 7 of the ESA. Following the review, the Services issued a proposed rule and now seek to finalize a rule that revises the regulations to further clarify and improve the interagency consultation process, while continuing to provide for the conservation of listed species.

The United States Patent and Trademark Office

The USPTO's mission is to foster innovation, competitiveness, and economic growth, domestically and abroad, by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide.

Major Programs and Activities

The USPTO is responsible for granting U.S. patents and registering trademarks. This system of secured property rights, which has its foundation in Article I, Section 8, Clause 8, of the Constitution (providing that Congress shall have the power to ''promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries'') has enabled American industry to flourish. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The continued demand for patents and trademarks underscores the importance to the U.S. economy of effective mechanisms to protect new ideas and investments in innovation, as well as the ingenuity of American inventors and entrepreneurs.

In addition to granting patents and trademarks, the USPTO advises the President of the United States, the Secretary of Commerce, and U.S. government agencies on intellectual property (IP) policy, protection, and enforcement; and promotes strong and effective IP protection around the world. The USPTO furthers effective IP protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements. It also provides training, education, and capacity building programs designed to foster respect for IP and encourage the development of strong IP enforcement regimes by U.S. trading partners.

As part of its work, the USPTO administers regulations located at title 37 of the Code of Federal Regulations concerning its patent and trademark services and the other functions it performs. In the development of its regulations, the USPTO seeks to increase participation and engagement from members of the public affected by our regulations, including in the development of our regulatory priorities. During the past year, we have increased our engagement efforts to help inform our priorities to date, as well as future priorities. We have held public hearings, as well as published requests for comments, on several of our regulatory actions not only to better understand our stakeholders' needs, but to ensure robust and transparent engagement throughout the rulemaking process. For example, public hearings were held in two rulemakings where the USPTO will be setting and adjusting patent and trademark fees. See ''Setting and Adjusting Patent Fees'' (0651–AD64) and ''Setting and Adjusting Trademark Fees'' (0651–AD65). In addition, the USPTO published notices requesting comments on several rulemakings to inform the agency as it develops its proposals. See ''Changes Under Consideration to Discretionary Institution Practices, Petition Word-count Limits, and Settlement Practices for America Invents Act Trial Proceedings Before the Patent Trial and Appeal Board'' (0651–AD47); ''Motion to Amend Practice and Procedures in

Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board'' (0651–AD50); ''Changes to the Representation of Others in Design Patent Matters Before the United States Patent and Trademark Office'' (0651–AD67), and ''Rules Governing Pre-Issuance Internal Circulation and Review of Decisions Within the Patent Trial and Appeal Board'' (0651–AD68). More information about the specific public engagement activity conducted by the USPTO for each of these rulemakings is found in their respective abstract. The USPTO is currently considering all public feedback as it develops its rulemakings. Throughout our engagement, the USPTO is ensuring that in the regulatory process, we hear from a wide array of members of the public to help the USPTO shape the provisions proposed in its proposed rule or ultimately implemented in the final rule.

Outlined below are the USPTO's most important upcoming regulatory actions for this year.

The USPTO's Regulatory Plan Actions

1. *Setting and Adjusting Patent Fees (0651–AD64):* This proposed rule would set and adjust Patent fee amounts to provide USPTO with sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts would provide USPTO with additional resources to decrease patent pendency and ensure robust and reliable patents are granted while continuing to promote access to the patent system for underresourced individuals. The proposed fee amounts reflect feedback received from members of the Patent Public Advisory Committee and the public, including organizations, practitioners, and independent inventors, during a public hearing held on May 18, 2023.

2. *Setting and Adjusting Trademark Fees (0651–AD65):* This proposed rule would set and adjust Trademark fee amounts to provide USPTO with sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts would provide USPTO with additional resources to ensure the integrity of the Trademark register and promote efficiency of processes while continuing to offer affordable options to stakeholders. The proposed fee amounts reflect feedback received from members of the Trademark Public Advisory Committee and the public, including organizations, practitioners, and small business owners, during a public hearing held on June 5, 2023.

Bureau of Industry and Security

BIS advances U.S. national security, foreign policy, and economic objectives by maintaining and strengthening adaptable, efficient, and effective export control and treaty compliance systems as well as by administering programs to prioritize certain contracts to promote the national defense and to protect and enhance the defense industrial base.

BIS Public Engagement

BIS seeks to increase participation and engagement from members of the public affected by our regulations, including in the development of our regulatory priorities. Within the regulatory process itself, BIS often requests public comments even when not legally required to do so. BIS's acceptance of comments submitted anonymously or accompanied by requests for protection of business confidential information helps bolster public trust. For nearly all rules, even those that do not include requests for public comment, BIS obtains input from its Technical Advisory Committees (TACs), constituted under the Federal Advisory Committee Act. The TACs are composed of industry experts from a variety of fields. In addition to providing technical and compliance advice on draft rules, the TACs provide technical guidance on developing proposals to multilateral export control regimes, thereby supporting control policy development even prior to rulemaking.

BIS also engages with the public outside of the rulemaking process. BIS has an Office of Exporter Services (OExS), with a Division of Outreach and Educational Services and a Regulatory Policy Division, which support public compliance with and understanding of BIS regulations, including by interacting personally in meetings or on phone calls and responding to written inquiries. BIS itself puts on multiple training seminars per year, many of them outside of the Washington, DC area or online. In addition to these smaller seminars, BIS has a large annual conference (called ''Update''), at which it provides an overview of changes to policies and regulations over the past year. The Update Conference involves review and discussion of large, complex regulatory concepts pertaining to BIS, inviting follow-on discussion and interaction from participants, which in turn informs BIS's deliberations. Many BIS staffers also participate in seminars and conferences hosted by other government agencies or private partners. Public engagement is a vital part of BIS's operations.

Major Programs and Activities

BIS administers four sets of regulations:

- The Export Administration Regulations (EAR) regulate exports and reexports to protect national security, foreign policy, and short supply interests. The EAR includes the Commerce Control List, which describes commodities, software, and technology that are subject to licensing requirements for specific reasons for control. The EAR also regulates U.S. persons' participation in certain boycotts administered by foreign governments.
- The National Security Industrial Base Regulations provide for prioritization of certain contracts and allocations of resources to promote the national defense, require reporting of foreign government-imposed offsets in defense sales, provide for surveys to assess the capabilities of the industrial base to support the national defense, and address the effect of imports on the defense industrial base.
- The Chemical Weapons Convention Regulations implement declaration, reporting, and on-site inspection requirements in the private sector necessary to meet United States treaty obligations under the Chemical Weapons Convention treaty.
- The Additional Protocol Regulations implement similar requirements for certain civil nuclear and nuclear-related items with respect to an agreement between the United States and the International Atomic Energy Agency.

BIS also has an enforcement component with nine offices covering the United States, as well as BIS export control officers stationed at several U.S. embassies and consulates abroad. BIS works with other U.S. Government agencies to promote coordinated U.S. Government efforts in export controls and other programs. BIS participates in U.S. Government efforts to strengthen multilateral export control regimes and promote effective export controls through cooperation with other governments.

In FY 2024, BIS plans to publish a number of proposed and final rules amending the EAR. These rules will cover a range of issues, including countering Russia's ongoing aggression against Ukraine and China's military modernization; imposing controls on military, intelligence, and security end uses and end users that are contrary to the national security or foreign policy interests of the United States, including

human rights values; and increasing the effectiveness of U.S. actions by substantially aligning controls with ally and partner countries. BIS also continues to identify and propose controls for emerging and foundational technologies.

Outlined below are BIS's most important upcoming regulatory actions for this year.

BIS's Regulatory Plan Actions

1. *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use (0694–AI94):* The interim final rule (IFR), *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor End Use; Entity List Modification,* which went into effect on October 7, 2022, amended the EAR to implement controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. This interim final rule addresses comments received and makes changes to the original October 7 IFR in response to those comments related to advanced computing integrated circuits and computer commodities that contain such ICs.

2. *Section 1758 Technology Export Controls on Instruments for the Automated Chemical Synthesis of Peptides (0694–AI84):* Section 1758 of the Export Control Reform Act of 2018 authorizes BIS to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies essential to the national security of the United States. Certain instruments for the automated synthesis of peptides (automated peptide synthesizers) have been identified by BIS for evaluation as a Section 1758 emerging and foundational technology. This final rule implements controls for these automated peptide synthesizers.

3. *Authorization of Certain ''Items'' to Entities on the Entity List in the Context of Specific Standards Activities (0694–AI06):* This final rule amends the EAR to authorize the release of specified items subject to the EAR without a license when that release occurs in the context of a ''standards-related activity.'' BIS published an interim final rule in September 2022 that revised the terms used in the EAR to describe the actions permissible under the authorization rather than defining the organizations to which it applies. This final rule responds to comments received in response to the interim final rule.

DOC—NATIONAL OCEANIC AND ATMOSTPHERIC ADMINISTRATION (NOAA)

Proposed Rule Stage

13. Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act [0648–BG11]

Priority: Other Significant.
Legal Authority: Pub. L. 114–81
CFR Citation: 50 CFR 300.
Legal Deadline: Final, Statutory, December 31, 2023, National Defense Authorization Act, 2023 amended the Moratorium Protection Act and requires that not later than 1 year after the date of enactment of this Act all other updates be enacted.

Abstract: This proposed rule would make conforming amendments to regulations implementing the various statutes amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114–81). The Act amends several regional fishery management organization implementing statutes as well as the High Seas Driftnet Fishing Moratorium Protection Act. It also provides authority to implement two new international agreements under the Antigua Convention, which amends the Convention for the establishment of an Inter-American Tropical Tuna Commission, and the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement), which restricts the entry into U.S. ports by foreign fishing vessels that are known to be or are suspected of engaging in illegal, unreported, and unregulated fishing. This proposed rule would also implement the Port State Measures Agreement. To that end, this proposed rule would require the collection of certain information from foreign fishing vessels requesting permission to use U.S. ports. It also includes procedures to designate and publicize the ports to which foreign fishing vessels may seek entry and procedures for conducting inspections of these foreign vessels accessing U.S. ports. Further, the rule would establish procedures for notification of: the denial of port entry or port services for a foreign vessel, the withdrawal of the denial of port services if applicable, the taking of enforcement action with respect to a foreign vessel, or the results of any inspection of a foreign vessel to the flag nation of the vessel and other competent authorities as appropriate.

Statement of Need: The United States is a signatory to the Port State Measures Agreement (PSMA). The agreement is aimed at combating illegal, unreported and unregulated (IUU) fishing activities through increased port inspection of foreign fishing vessels and thereby closing seafood markets to IUU fish and fish products. In addition, regulations to identify and certify nations for IUU fishing and other adverse fishing activities, bycatch of protected living marine resources, and shark catch under the authority of the High Seas Driftnet Fishing Moratorium Protection Act must be updated in light of amendments made by the James M. Inhofe National Defense Authorization Act for Fiscal year 2023. NMFS proposes to streamline the Moratorium Protection Act regulations by removing provisions that only repeat statutory text, including those provisions regarding identification, notification, and consultation with identified nations.

Summary of Legal Basis: This action is required under several statutes: Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114–81); Ensuring Access to Pacific Fisheries Act (Pub. L. 114–327); High Seas Driftnet Fishing Moratorium Protection Act (Pub. L. 104–43); and, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263). The Secretary of Commerce is authorized to issue regulations to implement the statutory obligations to counter IUU fishing by foreign fishing vessels and to prevent the importation of illegally harvested seafood.

Alternatives: Alternatives to taking action at the port would include taking action at sea against IUU fishing vessels and in the supply chain against detected IUU fish or fish products. At-sea monitoring and inspection is part of an overall strategy to combat IUU fishing, but it is extremely expensive, resources are limited, and the United States has limited jurisdiction to board foreign flag vessels at sea. Likewise, tracing and removing illegal products already released into the U.S. seafood market would be difficult and resource intensive. Preventing entry of IUU fishing vessels into ports or investigating fishing vessels at the port is an efficient and effective approach to combat illegal activity and to prevent illegal products from entering the supply chain. There are no alternatives to the conforming amendments to the High Seas Driftnet Fishing Moratorium Protection Act. Without these changes, the implementing regulations would not be consistent with the revised statute.

Anticipated Cost and Benefits: The anticipated costs will be minimal in that foreign vessels requesting permission to visit U.S. ports are already required to report. Under this rule, fishing vessel masters will have to include more information about the vessel and its fishing activities directly to the National Marine Fisheries Service (NMFS) Office of Law Enforcement after they submit an electronic notice of arrival to the U.S. Coast Guard. Based on the information submitted, NMFS may deny port privileges for vessels known to have engaged in IUU fishing or may meet the vessel in port to conduct an inspection. The minimal additional data elements required of foreign fishing vessels will be collected through an email to the NMFS Office of Law Enforcement. The additional reporting costs are not anticipated to affect shipping patterns, port usage, or international commerce. In addition, vessel inspections will be coordinated and planned based on the advance notice of arrival information submitted to the U.S. Coast Guard prior to entry into port, thus delays for inspection will be minimal and not result in significant costs to legitimate vessels. Benefits of the rule will accrue when IUU fishing vessels are denied entry, and illegal seafood products are precluded from the U.S. supply chain, thereby maintaining higher prices and market share for legitimate producers of fishery products. In addition, benefits will accrue from reduced costs of inspection and monitoring at ports of entry due to the advance notice provided and the ability of NMFS and Coast Guard to take a risk- management approach to vessel inspection. Should the United States impose trade restrictions on foreign nations due to the amendments to the High Seas Driftnet Fishing Moratorium Protection Act, some costs would be borne by U.S. importers who would have to adjust their supply chains. However, many U.S. importers and seafood dealers are already adjusting supply chains to respond to consumer demand for lawfully-acquired, sustainable and environmentally responsible seafood. The benefits of additional steps to counter IUU fishing will accrue to law-abiding harvesters, processors and traders as fish stocks are recovered and they no longer must compete with illegitimate products in the supply chain.

Risks: If the port entry reporting and inspection provisions of this rule were not implemented, there is an increased risk of IUU fishing vessels entering U.S. ports and/or the products of IUU fishing infiltrating the U.S. supply chain. In addition, the United States would be out of compliance with its international obligations under the PSMA. If the revisions to the High Seas Driftnet Fishing Moratorium Protection Act are not implemented through conforming amendments to the regulations, nations might not be identified under the statute, therefore diminishing the likelihood of corrective actions to counter IUU fishing and to address the bycatch of protected living marine resources and the catch of sharks.

Timetable:

Action	Date	FR Cite
NPRM	07/08/22	87 FR 40763
NPRM Comment Period End.	09/06/22	
Supplemental NPRM.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Alexa Cole, Director, Office of International Affairs, Trade, and Commerce, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8286, *Email: alexa.cole@noaa.gov.*

RIN: 0648–BG11

DOC—NOAA

Final Rule Stage

14. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [0648–BI88]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 224.

Legal Deadline: None.

Abstract: NMFS published a proposed rule to amend the North Atlantic Right Whale Vessel Strike Reduction Rule (per 50 CFR 224.105; 87 FR 46921, August 1, 2022). NMFS proposed this action to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event. The proposed rule would (1) modify the spatial and temporal boundaries of current speed restriction areas, currently referred to as Seasonal Management Areas (SMAs), (2) include most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to speed restriction, (3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs, and (4) update the speed rule's safety deviation provision. The proposed amendments to current speed regulations reduce vessel strike risk based on a coast wide collision mortality risk assessment and updated information on right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events. NMFS solicited public comment on the proposed action and received over 90,000 public comments. The agency plans to take final action on the proposed rule in 2023.

Statement of Need: This action is needed to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a leading cause of the species' decline and contributing to the ongoing Unusual Mortality Event (2017-present). Following two decades of growth, the species has been in decline over the past decade with a best population estimate of fewer than 350 individuals. Entanglement in fishing gear and vessel strikes are the two primary causes of North Atlantic right whale mortality and serious injury across their range, and human-caused mortality to adult females, in particular, is limiting recovery of the species.

Summary of Legal Basis: NMFS is implementing this rule pursuant to its rulemaking authority under MMPA section 112(a) (16 U.S.C. 1382(a)), and ESA section 11(f) (16 U.S.C. 1540(f)).

Alternatives: In January 2021, NMFS released, and solicited public comment on, an assessment of the current right whale vessel speed rule (50 CFR 224.105). The assessment highlighted the need to address collision risk from vessels less than 65 ft in length and modify the boundaries and timing of Seasonal Management Areas (SMAs) to better reflect current whale and vessel traffic distribution, along with other recommendations to improve vessel strike mitigation efforts. In 2022, NMFS completed a coastwide right whale vessel strike risk model (Garrison et al. 2022), which informed development of proposed modifications to the existing speed rule. The proposed rule considered number of alternatives in the draft Regulatory Impact Review and

draft Environmental Assessment. The Preferred Alternative would modify the spatial and temporal boundaries of the existing SMAs to create newly proposed Seasonal Speed Zones (SSZs), add smaller vessels down to 35 ft in length, and establish a mandatory Dynamic Speed Zone program.

Anticipated Cost and Benefits: Under the Preferred Alternative, NMFS estimated modifications to the speed rule would cost just over $46 million per year. Estimated costs would be borne primarily by the owners and operators of vessels currently transiting within newly expanded portions of SSZs along the U.S. East Coast. Owners and operators of vessels of applicable size classes that regularly transit within active SSZs at speeds in excess of 10 knots would be most affected. Vessels operating in the Northeast and Mid-Atlantic regions are expected to bear the majority of costs (89 percent) if the proposed modifications are finalized. Potential benefits stemming from this action include a reduction in North Atlantic right whale mortalities and serious injuries resulting from collisions with vessels, with potential reduction in vessel strike risk for other large whale species.

Risks: This action is essential to ensure long-term recovery of North Atlantic right whales. The proposed modifications to the current speed rule are designed to: (1) address a misalignment between existing Seasonal Management Areas and places/times with elevated strike risk, and (2) mitigate currently unregulated lethal strike risk from vessels 35–65 ft in length. Given the endangered status of the North Atlantic right whale, the large geographic area, and the number of stakeholders and potentially regulated entities, final modifications to the current speed rule is of high interest.

Timetable:

Action	Date	FR Cite
NPRM	08/01/22	87 FR 46921
NPRM Comment Period End.	09/30/22	
NPRM Comment Period Extension.	09/16/22	87 FR 56925
NPRM Comment Period Extension End.	10/31/22	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

Related RIN: Related to 0648–AS36

RIN: 0648–BI88

DOC—NOAA

15. Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat [0648–BK47]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 424.

Legal Deadline: None.

Abstract: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat'' (84 FR 45020; August 27, 2019) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. As a result of that review, the Departments proposed to revise those regulations (88 FR 40764, June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, Federally recognized tribes, Native Hawaiian community leaders, Non-governmental organizations, conservation partners, Industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website *https://fws.gov/project/endangered-species-act-regulation-revisions.*

Statement of Need: This action responds to the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990) and the associated Fact Sheet (List of Agency Actions for Review).

Summary of Legal Basis: This action is authorized under 16 U.S.C. 1531 *et seq.*

Alternatives: This is a joint rulemaking by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS; the Services) to revise joint regulations implementing the Endangered Species Act (ESA). Pursuant to E.O. 13990, the Services reviewed the 2019 final rule with the title, ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat'' (84 FR 45020; August 27, 2019), which revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. Following a review of the 2019 rule, the Services proposed to revise portions of the regulations that the 2019 rule addressed (see 88 FR 40764, June 22, 2023). The Services have since held a series of seven informational webinars for stakeholders and are seeking public comment on the proposed rule as well as all aspects of the 2019 final rule.

Anticipated Cost and Benefits: Potential costs directly stemming from this rule would be borne by the Services and would be non-significant. Potential benefits stemming from this rule would be improved clarity and effectiveness of the implementing regulations that guide the Services when classifying species and designating critical habitat under the ESA.

Risks: This action addresses several different provisions in the Services' joint ESA-implementing regulations. Overall, the proposed changes will reduce the risk associated with making listing, delisting, and reclassification decisions; however, those actions will continue to have independent levels of risk that vary depending on the particular species. The proposed changes will also reduce risk associated with some but not necessarily all, critical habitat determinations and designations, which will continue to have independent risk levels that vary based on the particular species and habitats involved.

Timetable:

Action	Date	FR Cite
NPRM	06/22/23	88 FR 40764
NPRM Comment Period End.	08/21/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910,

Phone: 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

Related RIN: Related to 0648–BH42, Related to 1018–BC88

RIN: 0648–BK47

DOC—NOAA

16. Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation [0648–BK48]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 402.

Legal Deadline: None.

Abstract: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation'' (84 FR 44976; August 27, 2019) that revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. As a result of that review, the Departments proposed to revise those regulations (88 FR 40753; June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, Federally recognized tribes, Native Hawaiian community leaders, Non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website *https://fws.gov/project/endangered-species-act-regulation-revisions.*

Statement of Need: This action responds to the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990) and the associated Fact Sheet (List of Agency Actions for Review).

Summary of Legal Basis: This action is authorized under 16 U.S.C. 1531 *et seq.*

Alternatives: This is a joint rulemaking by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS; the Services) to revise joint regulations implementing the Endangered Species Act (ESA). Pursuant to E.O. 13990, the Services reviewed the 2019 final rule with the title, Endangered and Threatened Wildlife and Plants: Regulations for Interagency Cooperation (84 FR 44976; August 27, 2019), which revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. Following a review of the 2019 rule, the Services proposed to revise portions of the regulations that the 2019 rule addressed (see 88 FR 40753; June 22, 2023). The Services have since held a series of seven informational webinars for stakeholders and are seeking public comments on the proposed rule as well as all aspects of the 2019 finale rule.

Anticipated Cost and Benefits: The rulemaking revises and clarifies existing requirements for Federal agencies, including the Services, under section 7 of the ESA. Federal agencies are the only entities affected by this rule. We do not anticipate significant costs associated with the rule. This rule is meant to provide clarity to the standards with which we evaluate proposed Federal agency actions pursuant to section 7 of the ESA, which will be a benefit to the Services and Federal action agencies.

Risks: This action addresses the ESA Interagency Cooperation provisions in the Services' joint ESA-implementing regulations. Overall, the proposed changes will reduce the risk to ESA-listed species and designated critical habitat associated with ensuring Federal action agencies do not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat by clarifying and improving the interagency consultation process and continuing to provide for the conservation of ESA resources.

Timetable:

Action	Date	FR Cite
NPRM	06/22/23	88 FR 40753
NPRM Comment Period End.	08/21/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

Related RIN: Related to 0648–BH41, Related to 1018–BC87

RIN: 0648–BK48

DOC—PATENT AND TRADEMARK OFFICE (PTO)

Proposed Rule Stage

17. Setting and Adjusting Patent Fees [0651–AD64]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Pub. L. 112–29

CFR Citation: 37 CFR 1; 37 CFR 41.

Legal Deadline: None.

Abstract: The United States Patent and Trademark Office (USPTO or Office) takes this action to set and adjust Patent fee amounts to provide the Office with a sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts will provide the Office with additional resources to decrease patent pendency and ensure robust and reliable patents are allowed while continuing to promote access to the patent system for underresourced individuals. This proposal reflects feedback we have received from members of the Patent Public Advisory Committee and the public, including organizations, practitioners, and independent inventors, during a public hearing held on May 18, 2023. As we develop this regulation, we will be seeking additional public comment through the rulemaking process.

Statement of Need: The purpose of this rule is to set and adjust patent fee amounts to provide sufficient aggregate revenue to cover the agency's aggregate cost of operations. To this end, this rule creates new or changes existing fees for patent services, and does so without imposing any new costs.

Summary of Legal Basis: The Leahy-Smith America Invents Act (AIA), enacted in 2011, provided USPTO with the authority to set and adjust its fees for patent and trademark services. Since then, USPTO has conducted an internal biennial fee review, in which it undertook internal consideration of the current fee structure, and considered ways that the structure might be improved, including rulemaking pursuant to the USPTO's fee setting authority. This fee review process involves public outreach, including, as required by the Act, public hearings held by the USPTO's Public Advisory Committees, as well as public comment and other outreach to the user community and public in general.

Alternatives: This rulemaking action is currently in development and alternatives have not yet been determined.

Anticipated Cost and Benefits: This rulemaking action is currently in

development and aggregate annual economic impacts have not yet been determined. The user fees charged by the USPTO for its services are considered transfer payments that do not affect the total resources available to society, and therefore the changes to patent fees being developed by this rulemaking are transfers, and are not costs of this rulemaking. It is anticipated that the final rule would become effective with the new fee schedule in 2024.

Risks: The USPTO will set and adjust Patent fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, reduce the current patent application backlog, decrease patent pendency, and improve the reliability of issued patents. Therefore, one risk of taking no action could be that USPTO might not be able to recover its aggregate costs of operations in the long run.

Timetable:

Action	Date	FR Cite
Notice of Public Hearing and Request for Comments.	04/20/23	88 FR 24392
Comment Period End.	05/25/23	
NPRM	01/00/24	
NPRM Comment Period End.	04/00/24	
Final Action	10/00/24	
Final Action Effective.	11/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Organizations.

Government Levels Affected: None.

Agency Contact: Brendan Hourigan, Director, Office of Planning and Budget, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, *Phone:* 571 272–8966, *Fax:* 571 273–8966, *Email: brendan.hourigan@uspto.gov.*

RIN: 0651–AD64

DOC—PTO

18. Setting and Adjusting Trademark Fees [0651–AD65]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Pub. L. 112–29

CFR Citation: 37 CFR 2.

Legal Deadline: None.

Abstract: The United States Patent and Trademark Office (USPTO or Office) takes this action to set and adjust Trademark fee amounts to provide the Office with a sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts will provide the Office with additional resources to ensure the integrity of the Trademark register and promote efficiency of processes while continuing to offer affordable options to stakeholders. This proposal reflects feedback we have received from members of the Trademark Public Advisory Committee and the public, including organizations, practitioners, and small business owners, during a public hearing held on June 5, 2023. As we develop this regulation, we will be seeking additional public comment through the rulemaking process.

Statement of Need: The purpose of this rule is to set and adjust trademark fee amounts to provide sufficient aggregate revenue to cover the agency's aggregate cost of operations. To this end, this rule creates new or changes existing fees for trademark services.

Summary of Legal Basis: The Leahy-Smith America Invents Act (AIA), enacted in 2011, provided USPTO with the authority to set and adjust its fees for patent and trademark services. This authority was extended by the Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act of 2018. Since then, USPTO has conducted an internal biennial fee review, in which it undertook internal consideration of the current fee structure, and considered ways that the structure might be improved, including rulemaking pursuant to the USPTO's fee-setting authority. This fee review process involves public outreach, including, as required by the Act, a public hearing held by the USPTO's Trademark Public Advisory Committee, as well as public comment and other outreach to the user community and public in general.

Alternatives: This rulemaking action is currently in development and alternatives have not yet been determined.

Anticipated Cost and Benefits: This rulemaking action is currently in development and aggregate annual economic impacts have not yet been determined. The user fees charged by the USPTO for its services are considered transfer payments that do not affect the total resources available to society, and therefore the changes to trademark fees proposed by this rulemaking are transfers, and are not costs of this rulemaking.

Risks: The USPTO will set and adjust trademark fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, ensure the integrity of the Trademark register, and promote efficiency of processes. Therefore, one risk of taking no action could be that USPTO might not be able to recover its aggregate costs of operations in the long run.

Timetable:

Action	Date	FR Cite
Notice of Public Hearing and Request for Comments.	04/27/23	88 FR 25623
Comment Period End.	06/12/23	
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	
Final Action	07/00/24	
Final Action Effective.	09/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Organizations.

Government Levels Affected: None.

Agency Contact: Brendan Hourigan, Director, Office of Planning and Budget, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, *Phone:* 571 272–8966, *Fax:* 571 273–8966, *Email: brendan.hourigan@uspto.gov.*

RIN: 0651–AD65

BILLING CODE 3410–12–P

DEPARTMENT OF DEFENSE

Statement of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal department, employing over 1.6 million military personnel and 750,000 civilians with operations all over the world. DoD's enduring mission is to provide combat-credible military forces needed to deter war and protect the security of our nation. To guide this mission, the Secretary of Defense has outlined three top priorities, which are to defend the nation, take care of our people, and succeed through teamwork. In addition, the National Defense Strategy sets out how DoD will contribute to advancing and safeguarding vital U.S. national interests—protecting the American people, expanding America's prosperity, promoting global security, seizing new strategic opportunities, and realizing and defending our democratic values.

Because of this expansive and diversified mission and reach, DoD regulations can address a broad range of matters and have an impact on varied members of the public, as well as other federal agencies.

Pursuant to Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993) and Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), the DoD issues this Regulatory Plan and Agenda to provide notice about the DoD's regulatory and deregulatory actions.

Retrospective Review of Existing Regulations

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (January 18, 2011), the Department continues to review existing regulations with a goal to eliminate outdated, unnecessary, or ineffective regulations; account for the currency and legitimacy of each of the Department's regulations; and ultimately reduce regulatory burden and costs.

Public Participation and Community Outreach

As the DoD develops our regulations, we seek to increase public participation and community outreach to be better informed of and address issues from members of the public affected by our regulations. The following provides examples of our specific outreach and public participation efforts.

The Office of the Assistant to the Secretary of Defense for Public Affairs/Community Engagement Directorate, via its Opinion Leader Engagement portfolio, provides public affairs support to leaders throughout the Office of the Secretary of Defense (OSD) who are responsible for regulatory activities. This support includes convening roundtables and similar engagements for national stakeholder organizations to meet with OSD leaders to discuss and share information about DoD policies and programs that are governed by Federal regulations. For example, regular engagements with leaders of national military and veteran supporting organizations include topics such as military benefits, housing, healthcare, compensation, and sexual assault prevention and response, which are governed by law and Federal regulation. These meetings allow the regulating authorities in OSD an opportunity to dialogue with national organizations with a stakeholder interest in the impact and effect of DoD regulations.

DoD engages with the public on procurement-related regulations that will affect the Defense Federal Acquisition Regulation Supplement (DFARS) in several ways. In addition to publishing abstracts of and anticipated publication dates for upcoming rules in the biannual Unified Agenda, members of the public can track the progress of any open and pending DFARS regulation via the Open DFARS Cases Report, which is publicly available at *https://www.acq.osd.mil/dpap/dars/case_status.html.* The report is updated on a weekly basis and includes the following information: a case number, title, DFARS parts anticipated to be impacted by the regulation, a summary of the basis for the regulation, and the status of the regulation. Members of the public who are interested in a particular DFARS case are encouraged to monitor the Open DFARS Cases Report to track the progress of a particular regulation through the rulemaking process.

DoD also meets with industry associations on a quarterly basis. Industry associations that regularly participate in these quarterly discussions include the Council of Defense and Space Industry Associations, the Professional Services Council, the Aerospace Industries Association, and the National Defense Industrial Association. During these meetings, DoD often provides updates on open DFARS cases.

While developing certain DFARS regulations, DoD may seek input from the public by publishing in the **Federal Register** an early engagement opportunity, an advance notice of proposed rulemaking (ANPR), or a general request for information (RFI). Notices for early engagement opportunities usually pertain to a recent law, such as the annual National Defense Authorization Act, and request input on implementation of the law in the DFARS. ANPRs and RFIs may include a summary of the overarching policy objectives of the regulation and a list of questions seeking input that will help DoD develop a proposed regulation. Information on whether DoD plans to publish an ANPR or RFI is included in both the Open DFARS Cases Report and the biannual Unified Agenda.

Occasionally, while an ANPR, proposed DFARS regulation, or interim DFARS regulation is out for public comment, DoD may hold a public meeting to allow the public to provide feedback to the Government in an open forum. Information about whether DoD plans on holding a public meeting for an ANPR or a regulation is normally included in the ANPR, proposed regulation, or interim regulation when it is published for public comment. Presentations made during the public meeting are made publicly available.

The U.S. Army Corps of Engineers (USACE) often utilizes listening sessions prior to proposing a rule to obtain public input that is then used to inform the contents of the proposed rule. Additionally, **Federal Register** notices, website postings, press releases, and social media releases are used to notify the public of the dates and times for the listening sessions. When a **Federal Register** notice is used to provide notification of the listening sessions, the use of an open docket is employed for the submission public comments in addition to receipt of public comments during the listening sessions. Also, the USACE may publish an advanced notice of proposed rulemaking to engage the public on the development of a proposed rule. **Federal Register** notices, website postings, press releases, and social media releases are used to notify the public of the publication of the proposed rule and how they can provide comments and engage in the rulemaking effort.

Finally, the USACE has meetings with industry associations, NGOs, or similar stakeholders to provide updates on proposed policies or actions to solicit informal feedback that is used to help inform the path forward for the development of a proposed rule.

DOD Priority Regulatory Actions

The regulatory and deregulatory actions identified in this Regulatory Plan embody the core of DoD's regulatory priorities for Fiscal Year (FY) 2024 and help support President Biden's regulatory priorities, the Secretary of Defense's top priorities, and those priorities set out in the National Defense Strategy. The DoD regulatory prioritization is focused on initiatives that:

- Promote the country's economic resilience, including by addressing COVID-related and other healthcare issues.
- Support underserved communities and improve small business opportunities.
- Promote competition in the American economy.
- Promote diversity, equity, inclusion, and accessibility in the Federal workforce.
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.
- Tackle the climate crisis and protect the environment.
- Address military family matters.

Rules That Promote the Country's Economic Resilience

Pandemic COVID–19 Rules

Pursuant to Executive Order 13987, ''Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID–19 and to Provide United States Leadership on Global Health and Security,'' January 20, 2021; Executive Order 13995, ''Ensuring an Equitable Pandemic Response and Recovery,'' January 21, 2021; Executive Order 13997, ''Improving and Expanding Access to Care and Treatments for COVID–19,'' January 21, 2021; and Executive Order 13999, ''Protecting Worker Health and Safety,'' January 21, 2021, the Department temporarily modified its TRICARE regulation so TRICARE beneficiaries have access to the most up-to-date care required for the diagnosis and treatment of COVID–19. TRICARE continues to reimburse like Medicare, to the extent practicable, as required by statute. The Department is researching the impacts of making some of those modifications permanent and may pursue such future action. These modifications include:

TRICARE Coverage of National Institute of Allergy and Infectious Disease—Coronavirus Disease 2019 Clinical Trials. RIN 0720–AB83

The Department of Defense is finalizing an interim final rule to amend 32 CFR part 199 to include coverage that was temporarily added for National Institute of Allergy and Infectious Disease-sponsored clinical trials for the treatment or prevention of COVID–19. This rule will also finalize the temporary addition of the treatment use of investigation drugs under U.S. Food and Drug Administration-approved expanded access programs for the treatment of coronavirus disease 2019 (COVID–19) from the interim final rule titled ''TRICARE Coverage of Certain Medical Benefits in Response to the COVID–19 Pandemic'' (32 CFR part 199, 0720–AB82), which published in the **Federal Register** on September 3, 2020 (85 FR 54914–54924).

Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic. RIN 0720–AB85

This rule finalizes an interim final rule that amended 32 CFR part 199 by: (1) adding freestanding End Stage Renal Disease (ESRD) facilities as a category of TRICARE-authorized institutional provider and modifying the reimbursement for such facilities; and (2) temporarily adopting Medicare's New COVID–19 Treatments Add-on Payment (NCTAP). The ESRD provisions are permanent, and the temporary NCTAP provisions expire at the end of the fiscal year in which the Secretary of Health and Human Services' declared coronavirus disease 2019 (COVID- 19) public health emergency ends.

Medical Debt Relief

Medical Billing for Healthcare Services Provided by Department of Defense Medical Treatment Facilities to Civilian Non-Beneficiaries. RIN 0720–AB87

This rule is aimed at preventing severe financial harm to civilians who are not covered beneficiaries of the Military Health System, and who receive healthcare services at military medical treatment facilities. The rule implements the requirement to apply a sliding fee and/or a catastrophic waiver to medical invoices of non-beneficiaries; to accept payments from health insurers as full payment; to not balance bill non-beneficiaries except for copays, coinsurance, deductibles, nominal fees, and non-covered services; and grants the Director of Defense Health Agency (DHA) discretionary authority to waive medical debts of non-beneficiaries when the healthcare provided enhances the knowledge, skills, and abilities of healthcare providers, as determined by the Director of DHA.

Rules That Promote Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce

Nondiscrimination on the Basis of Disability in Program or Activities Assisted or Conducted by the DoD and in Equal Access to Information and Communication Technology Used by DoD, and Procedures for Resolving Complaints. RIN: 0790–AJ04

Revisions to this regulation: (1) update and clarify the obligations that Section 504 of the Rehabilitation Act of 1973 (section 504) imposes on recipients of Federal financial assistance and the Military Departments and Components (DoD Components); (2) reflect the most current Federal statutes and regulations, as well as developments in Supreme Court jurisprudence, regarding unlawful discrimination on the basis of disability and promotes consistency with comparable provisions implementing title II of the Americans with Disabilities Act (ADA); (3) implement section 508 of the Rehabilitation Act of 1973 (section 508), requiring DoD make its electronic and information technology accessible to individuals with disabilities; (4) establish and clarify obligations under the Architectural Barriers Act of 1968 (ABA), which requires that DoD make facilities accessible to individuals with disabilities; and (5) Provide complaint resolution and enforcement procedures pursuant to section 504 and the complaint resolution and enforcement procedures pursuant to section 508. These revisions incorporate the directive of Executive Order 14035, ''Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce'' by defining, clarifying, advancing accessibility throughout DoD programs and activities.

Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government' January 20, 2021

USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources. RIN 0710–AB41

Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) called for revisions to the 1983 Principles and Guidelines for Water and Land Related Resources Implementation Studies, resulting in the issuance of the Principles and Requirements (P&R) guidance document in March 2013 and the Interagency Guidelines in December 2014, which together comprise the Principles, Requirements, and Guidelines (PR&G). The PR&G are intended to provide a common framework and comprehensive policy and guidance for analyzing a diverse range of water resources projects, programs, activities, and related actions involving Federal investment in water resources. The U.S. Army Corps of Engineers (Corps) proposes a regulation to show how it would apply the PR&G to the Corps' mission and authorities. In this proposed regulation, the Corps intends to increase consistency and compatibility in Federal water resources investment decision making to include considerations such as analyzing a broader range of long-term costs and benefits, enhancing collaboration, including a more thorough and transparent risk and uncertainty analyses, and improving resilience for dealing with emerging challenges, including climate change.

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision. RIN: 0710–AB34

Section 103(m) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213(m)), authorizes the USACE to reduce the non-Federal share of the cost of a study

or project for certain communities that are not able financially to afford the standard cost-share. Part 241 of title 33 in the Code of Federal Regulations provides the criteria that the USACE uses in making these determinations where the primary purpose of the study or project is flood damage reduction. The proposed rule would update this regulation, by broadening its applicability to include projects with other purposes (instead of just flood damage reduction) and the feasibility study of a project (instead of just design and construction). The WRDA 2000 modified section 103(m) to include projects with the following purposes: environmental protection and restoration, flood control, navigation, storm damage protection, shoreline erosion, hurricane protection, and recreation or an agricultural water supply project which have not yet been added to the regulation. It also included the opportunity to cost share all phases of a USACE project to also include feasibility studies in addition to the already covered design and construction. This rule would update the framework for determining whether a project is eligible for consideration for a reduction in the non-Federal cost share based on ability to pay.

Rules That Support Underserved Communities and Improve Small Business Opportunities Rules of Particular Interest to Small Business

Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043). RIN 0750–AK84

This rule implements changes made by the Small Business Administration (SBA) related to data rights in the Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directive, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The SBIR and STTR programs fund a diverse portfolio of startups and small businesses across technology areas and markets to stimulate technological innovation, meet Federal research and development (R&D) needs, and increase commercialization to transition R&D into impact. The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the Defense Federal Acquisition Regulation Supplement (DFARS). These changes include harmonizing definitions, lengthening the SBIR/STTR protection period from 5 years to 20 years, and providing for the granting of Government-purpose rights license in place of an unlimited rights license upon expiration of the SBIR/STTR protection period. DoD hosted public meetings to obtain the views of interested parties regarding the advance notice of proposed rulemaking and the proposed rule published in the **Federal Register** on August 31, 2020 (85 FR 53758) and December 19, 2022 (87 FR 77680), respectively.

Executive Order 14036, ''Promoting Competition in the American Economy'' July 9, 2021 Rule That Promotes Competition in the American Economy

Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055). RIN 0750–AK16

This rule implements section 823 of the National Defense Authorization Act for Fiscal Year 2019, which establishes a requirement for use of the best available information regarding past performance of subcontractors and joint venture partners when awarding DoD construction and architect-engineer contracts. Section 823 requires annual performance evaluations for first-tier subcontractors and individual parties to joint ventures performing construction and architect-engineer contracts valued at either $750,000 or more, or 20 percent of the value of the prime contract (whichever is higher), in accordance with specified conditions. In addition, processes for exceptions from the annual evaluation requirement will be established for construction and architect-engineer contracts where submission of annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners under specified conditions. This rule will make it easier for subcontractors and individual parties to joint ventures to establish a record of their past performance. These entities will be able to take credit for the work they performed on contracts and subcontracts, which will help them be more competitive when bidding on future DoD contracts. This will help increase competition for DoD contracts.

Modification of Prize Authority for Advanced Technology Achievements (DFARS Case 2022–D014). RIN 0750–AL65

This rule implements section 822 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). Section 822 revises 10 U.S.C. 2374a, redesignated as 10 U.S.C. 4025, regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements ''as another type of prize'' (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of $10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds $10 million. This rule will help to expand the Defense Industrial Base, thereby increasing competition for future DoD contracts.

DFARS Buy American Act Requirements (DFARS Case 2022–D019). RIN 0750–AL74

This rule implements the requirements of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Changes to the Federal Acquisition Regulation (FAR) were made via RIN 9000–AO22 (FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements). This rule makes conforming changes to the DFARS.

Rules That Support National Security Efforts

Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041). RIN 0750–AK81

The purpose of this rule is to ensure that Defense Industrial Base (DIB) contractors will adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Cybersecurity Maturity Model Certification (CMMC) Program. RIN 0790–AL49

This rule establishes a requirement for Defense Industrial Base (DIB) contractors to be assessed against the Cybersecurity Maturity Model Certification (CMMC) requirements at Level 1, 2 or 3 to be eligible for award of designated future DoD contracts. The CMMC Program is designed to provide increased assurance to the DoD that defense contractors and subcontractors are compliant with information protection requirements for Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) and are protecting such information at a level commensurate with risk from cybersecurity threats.

Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities. RIN: 0790–AK86

This rule will allow a broader community of defense contractors to access to relevant cyber threat

information the Department believes is critical in defending unclassified networks and information systems and protecting DoD warfighting capabilities. These revisions seek to address the increasing cyber threat targeting all defense contractors by expanding eligibility to defense contractors that process, store, develop, or transmit DoD Controlled Unclassified Information (CUI). This rule is part of DoD's approach to collaborate with industry to counter cyber threats through information sharing.

Rules That Tackle the Climate Crisis and Protect the Environment

Policy and Procedures for Processing Requests To Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408. RIN: 0710–AB22

Where a party other than the USACE seeks to use or alter a Civil Works project that USACE constructed, the proposed use or alteration is subject to the prior approval of the USACE. Some examples of such alterations include an improvement to the project; relocation of part of the project; or installing utilities or other non-project features. These alterations may be proposed by local or state governments, other federal agencies, private corporations, or private citizens, for example. This requirement was established in section 14 of the Rivers and Harbors Act of 1899 and is codified at 33 U.S.C. 408 (section 408). Section 408 provides that the USACE may grant permission for another party to alter a Civil Works project, upon a determination that the alteration proposed will not be injurious to the public interest and will not impair the usefulness of the Civil Works project. The USACE is proposing to convert its policy that governs the section 408 program to a binding regulation. This policy, Engineer Circular 1165–2–220, Policy, and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408, was issued in September 2018.

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers. RIN 0710–AA78

The U.S. Army Corps of Engineers (Corps) is proposing to update the Federal regulation that covers the procedures that the Corps uses under section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as Public Law 84–99. The Corps relies on this program to prepare for, respond to, and help communities recover from a flood, hurricane, or other natural disaster, including the repair of damage to eligible flood risk reduction infrastructure. The Corps initiated this rulemaking process through an advanced notice of proposed rulemaking (ANPRM) on February 13, 2015. As a next step, the Corps issued a notice of proposed rulemaking (NPRM) on November 11, 2022, which proposed to repeal the existing regulation and replace it with a new regulation that addresses statutory changes under various Water Resources Development Act provisions, reflects lessons learned over the past 20 years, and incorporates agency policies now in guidance relating to natural disaster procedures. Hurricane Katrina (2005), Hurricane Sandy (2012), flooding on the Mississippi and Missouri Rivers (2008, 2011, and 2013), and Hurricanes Harvey, Irma, and Maria (2017) have provided a more detailed understanding of the nature and severity of risk associated with flood control projects. In addition, the maturation of risk-informed decision-making approaches and technological advancements influenced the outlook on the implementation of Public Law 84–99 activities, with a shift toward better alignment with Corps Levee Safety and National Flood Risk Management Programs, as well as the National Preparedness and Response Frameworks. Through these programs, the Corps works with non-Federal sponsors and stakeholders to assess, communicate, and manage the risks to people, property, and the environment associated with levee systems and flood risks.

Appendix C Procedures for the Protection of Historic Properties. RIN 0710–AB46

The U.S. Army Corps of Engineers (Corps) considers the effects of its actions on historic properties pursuant to section 106 of the National Historic Preservation Act (NHPA). The Corps' Regulatory Program's regulations for complying with the NHPA are outlined at 33 CFR 325 Appendix C. Since these regulations were promulgated in 1990, there have been amendments to the NHPA and revisions to the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800. In response, the Corps issued interim guidance until rulemaking could be completed in order to ensure full compliance with the NHPA and ACHP's regulations. To demonstrate the greatest possible consistency between the procedures used by the Corps Regulatory Program to comply with NHPA when processing permit applications and the ACHP's NHPA implementing regulations, the Corps is proposing to remove the Regulatory Program's implementing regulations from its permitting regulations. The Corps will instead follow the ACHP's NHPA implementing regulations, relying on the flexibility in those regulations. The Corps is also proposing to make conforming changes to its nationwide permit program regulations.

Amendments to the Revised Definition of ''Waters of the United States''. RIN: 0710–AB55

In April 2020, the EPA and the Department of the Army (''the agencies'') published the Navigable Waters Protection Rule that revised the previously codified definition of ''waters of the United States'' (85 FR 22250, April 21, 2020). The Navigable Waters Protection Rule was vacated by courts. On January 18, 2023, the agencies issued a final rule, ''Revised Definition of 'Waters of the United States''' (88 FR 3004) which became effective on March 20, 2023. On May 25, 2023, the U.S. Supreme Court issued its decision in the case of *Sackett* v. *Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase waters of the United States consistent with the Supreme Court's decision in Sackett. The agencies are developing a rule to amend the final ''Revised Definition of 'Waters of the United States''' rule, published in the **Federal Register** on January 18, 2023, consistent with the U.S. Supreme Court's decision in Sackett.

Rules That Address Military Family Matters

Definitions of Gold Star Family and Gold Star Survivor. RIN 0790–AL56

This rule implements section 626 of the FY 2022 NDAA to define the terms ''gold star family'' and ''gold star survivor'' for consistent use across all military departments. The Defense Department treats all surviving family members equally and survivor benefits are the same across the board unless their Service member is killed or dies from causes under dishonorable conditions.

DOD—OFFICE OF THE SECRETARY (OS)

Proposed Rule Stage

19. Cybersecurity Maturity Model Certification (CMMC) Program [0790–AL49]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 5 U.S.C. 301; Pub. L. 116–92, sec. 1648

CFR Citation: 32 CFR 170.

Legal Deadline: None.

Abstract: DoD is proposing to implement the Cybersecurity Maturity Model Certification (CMMC) Framework, to help assess a Defense Industrial Base (DIB) contractor's compliance with implementation of cybersecurity requirements to safeguard Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) transiting non-federal systems to help mitigate the treats posed by Advanced Persistent Threats—adversaries with sophisticated levels of expertise and significant resources.

Office of the DoD CIO/CMMC Program Management Office plans to host a public meeting on the 32 CFR CMMC Program proposed rule after it is published in the **Federal Register** for public review and comment.

Statement of Need: CMMC is designed to provide increased assurance to the DoD that a DIB contractor can adequately protect sensitive unclassified information (*i.e.,* FCI and CUI) at a level commensurate with the risk, and accounting for necessary information flow down to its subcontractors in a multi-tier supply chain.

Summary of Legal Basis: 5 U.S.C. 301 authorizes the head of an Executive department or military department to prescribe regulations for the government of his or her department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

41 U.S.C 1303; Public Law 116–92, sec. 1648 directs the Secretary of Defense to develop a consistent, comprehensive framework to enhance cybersecurity for the U.S. defense industrial base. Developing the CMMC Program was as an important first step toward meeting these requirements. *

Alternatives: DoD considered and adopted several alternatives during the development of this rule that reduce the burden on the DIB community and still meet the objectives of the rule. These alternatives include: (1) maintaining status quo, leveraging only the current requirements implemented in DFARS provision 252.204–7019 and DFARS clause 252.204–7020 requiring DIB contractors and offerors to self-assess utilizing the DoD Assessment Methodology and entering a Basic Summary Score; (2) revising CMMC to reduce the burden for small businesses and contractors who do not process, store or transmit critical CUI by eliminating the requirement to hire a C3PAO and instead allow self-assessment with affirmation to maintain compliance at CMMC Level 1, and allowing triennial self-assessment with annual affirmation to maintain compliance for some CMMC Level 2 programs; (3) exempting contracts and orders exclusively for the acquisition of commercially available off-the-shelf items; and, (4) implementing a phased implementation for CMMC.

In addition, the Department took into consideration the timing of the requirement to achieve a specified CMMC level: (1) at time of proposal or offer submission, (2) after contract award, (3) at the time of contract award, or (4) permitting government program managers to seek approval to waive inclusion of a CMMC requirement in a solicitation, subject to DoD internal policies, procedures, and waiver approval requirements.

Anticipated Cost and Benefits: The theft of intellectual property and sensitive information, including FCI and CUI, from all U.S. industrial sectors due to malicious cyber activity threatens U.S. economic and national security. The Council of Economic Advisors estimates that malicious cyber activity cost the U.S. economy between $57 billion and $109 billion in 2016. By incorporating heightened cybersecurity standards into acquisition programs, the CMMC Program provides the Department assurance that contractors and subcontractors are meeting DoD's cybersecurity requirements and provides a key mechanism to adapt to an evolving threat landscape.

Risks: The aggregate loss of intellectual property and certain unclassified information from the DoD supply chain can undercut U.S. technical advantages and innovation, as well as significantly increase risk to national security.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Agency Contact: Diane L. Knight, Senior Management and Program Analyst, Department of Defense, Office of the Secretary, 4800 Mark Center Drive, Suite 12E08, Alexandria, VA 22350, *Phone:* 202 770–9100, *Email: diane.l.knight10.civ@mail.mil.*

RIN: 0790–AL49

DOD—OS

Final Rule Stage

20. Department of Defense (DOD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities [0790–AK86]

Priority: Other Significant.

Legal Authority: 10 U.S.C. 391; 10 U.S.C. 2224; 44 U.S.C. 3541; 10 U.S.C. 393

CFR Citation: 32 CFR 236.

Legal Deadline: None.

Abstract: The DIB CS Program currently provides cyber threat information to cleared defense contractors. Proposed revisions would allow all defense contractors who process, store, develop, or transit DoD controlled unclassified information to be eligible for the program and to receive cyber threat information. Expanding participation will allow a broader community of defense contractors to participate in the DIB CS Program and is in alignment with the National Defense Strategy.

Statement of Need: The unauthorized access and compromise of DoD unclassified information and operations poses an imminent threat to U.S. national security and economic security interests and contractors are being targeted on a daily basis. Many of these contractors are small and medium size contractors that can benefit from partnering with DoD to enhance and supplement their cybersecurity capabilities.

Summary of Legal Basis: This revised regulation supports the Administration's effort to promote public-private cyber collaboration by expanding eligibility for the DIB CS voluntary cyber threat information sharing program to all defense contractors contractors who process, store, develop, or transmit DoD controlled unclassified information. This regulation aligns with DoD's statutory responsibilities for cybersecurity engagement with those contractors supporting the Department.

Alternatives: (1) No action alternative: Maintain status quo with the ongoing voluntary cybersecurity program for cleared contractors. (2) Next best alternative: DoD posts generic cyber threat information and cybersecurity best practices on a public accessible

website without directly engaging participating companies.

Anticipated Cost and Benefits: Participation in the voluntary DIB CS Program enables DoD contractors to access Government Furnished Information and collaborate with the DoD Cyber Crime Center (DC3) to better respond to and mitigate cyber threats. In order to join the DIB CS Program, there is an initial labor burden to apply to the program and provide point of contact information which is estimated to take 20 minutes per company. In addition, there is a cost for defense contractors to voluntarily share cyber indicator information. DoD estimates that each response will take a respondent two hours to complete. The costs are under review as part of 0704–0489 and 0704–0490. For DIB participants, this program provides cyber threat information and technical assistance through analyst-to-analyst exchanges, mitigation and remediation strategies, and cybersecurity best practices in a collaborative environment for participating companies.

Risks: Threats to unclassified information systems represent a risk of compromise of DoD information and mission. This threat is particularly acute for small and medium size companies with less mature cybersecurity capabilities. Through collaboration with DoD and the sharing with other contractors in the DIB CS Program, defense contractors will be better prepared to mitigate the cyber risk they face today and in the future.

Timetable:

Action	Date	FR Cite
NPRM	05/03/23	88 FR 27832
NPRM Comment Period End.	06/20/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Agency Contact: Ms. Stacy Bostjanick, Director of CMMC, Department of Defense, Office of the Secretary, 1550 Cystal Drive, Suite 1000–A, Arlington, VA 22202, *Phone:* 703 604–3167, *Email: osd.dibcsia@mail.mil.*

RIN: 0790–AK86

DOD—08

21. Definitions of Gold Star Family and Gold Star Survivor [0790–AL56]

Priority: Other Significant.

Legal Authority: Pub. L. 117–81

CFR Citation: 32 CFR 46.

Legal Deadline: Final, Statutory, December 27, 2022, Sec. 626 of the NDAA 2022 (Pub. L. 117–81). Section 626 of the NDAA 2022 (Pub, L. 117–81) requires publication of an interim final rule no later than one year after the date of the enactment of this Act.

Abstract: This rule implements section 626 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81) to establish standard definitions, for use across the military departments, of the terms ''gold star family'' and ''gold star survivor.''

Statement of Need: The objective of the rule is to establish standard definitions, for use across the military departments, of the terms gold star family and gold star survivor.

Summary of Legal Basis: This rule is proposed under the authorities of section 626(c) of Public Law 117–81, FY 2022 NDAA.

Alternatives: The alternative is to take no action.

Anticipated Cost and Benefits: The cost to publish this new rule and update the Defense Department's policies is estimated at $900,000. This includes the public's time to review the proposed rule and resources needed to respond to any public comments, publish the interim rule, revise policies, and possibly revamp the Navy and Coast Guard's long-term case management programs.

Risks: This action does not reduce risks to public health, safety, or the environment, or effect other risks within the jurisdiction of the Defense Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Lisiane Valentine, Department of Defense, Office of the Secretary, 4000 Defense Pentagon, Room 1C546, Washington, DC 20301, *Phone:* 571 372–5319, *Email: lisiane.m.valentine.civ@mail.mil*

RIN: 0790–AL56

DOD—OS

Long-Term Actions

22. Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DOD and in Equal Access to Information and Communication Technology Used by DOD [0790–AJ04]

Priority: Other Significant.

CFR Citation: 32 CFR 56.

Abstract: The Department of Defense (DoD) is finalizing revisions to implement Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance from DoD and those programs or activities conducted by DoD. The regulation also implements section 508 of the Rehabilitation Act, which requires DoD make its electronic and information technology accessible to individuals with disabilities. Additionally, the regulation implements the Architectural Barriers Act of 1968, which requires that DoD make facilities accessible to individuals with disabilities. Finally, the regulation updates the complaint resolution and enforcement procedures pursuant to section 504 and the complaint resolution and enforcement procedures pursuant to section 508.

Statement of Need: Finalization of this Department-wide rule will clarify the longstanding policy of the Department. It will modernize the Department's practices in addressing issues of discrimination. This rule amends the Department's prior regulation to include updated accessibility standards for recipients of Federal financial assistance to be more user-friendly and to support individuals with disabilities. This update incorporates the directive of Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the* Federal Workforce by defining, clarifying, advancing accessibility throughout DoD programs and activities.

Summary of Legal Basis: Title 28, Code of Federal Regulations, part 41, implementing Executive Order 12250, assigns the DOJ responsibility to coordinate implementation of section 504 of the Rehabilitation Act.

This rule is being finalized under the authorities of title 29, U.S.C., chapter 16, subchapter V, sections 794 through 794d, codifying legislation prohibiting discrimination on the basis of disability under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Federal agency, including

provisions establishing the United States Access Board and requiring Federal agencies to ensure that information and communication technology is accessible to and usable by individuals with disabilities.

Alternatives: The Department considered taking no new action and continuing to rely on the existing regulation. The Department considered issuing sub-regulatory guidance to clarify existing regulation. Both options were rejected because of the need to update and clarify the Department's obligations pursuant to section 504 and section 508 of the Rehabilitation Act of 1973, as amended.

Anticipated Cost and Benefits: TBD.

Risks: Without this final rule, the Department's current regulation is inconsistent with current Federal statutes and regulations, as well as developments in Supreme Court jurisprudence, regarding unlawful discrimination on the basis of disability. Consistent with congressional intent, the provisions in the final rule are consistent with the nondiscrimination provisions in DOJ regulations implementing title II of the ADA Amendments Act (applicable to state and local government entities).

Timetable:

Action	Date	FR Cite
NPRM	07/16/20	85 FR 43168
NPRM Comment Period End.	09/14/20	
Final Action	11/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Dr. Lisa Arfaa, Department of Defense, Office of the Secretary, 9999 Joint Staff Pentagon, Washington, DC 20318, *Phone:* 703 692–6878, *Email: lisa.l.arfaa.civ@mail.mil.*

RIN: 0790–AJ04

DOD—DEFENSE ACQUISITION REGULATIONS COUNCIL (DARC)

Proposed Rule Stage

23. Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041) [0750–AK81]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 41 U.S.C. 1303; Pub. L. 116–92, sec. 1648

CFR Citation: 48 CFR 204; 48 CFR 212; 48 CFR 217; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is amending an interim rule to implement the CMMC framework 2.0 in order to protect against the theft of intellectual property and sensitive information from the Defense Industrial Base (DIB) sector. The CMMC framework, as defined in Title 32 of the Code of Federal Regulations (CFR), assesses compliance with applicable information security requirements. This rule provides the Department with assurances that a DIB contractor can adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Statement of Need: The purpose of this DFARS rule is to ensure that Defense Industrial Base (DIB) contractors will adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Summary of Legal Basis: This rule is being implemented under the authority of 41 U.S.C. 1303 and section 1648 of the National Defense Authorization Act for Fiscal Year (FY) 2020 (Pub. L. 116–92). The USD (A&S) has the authority and responsibility for promulgating DoD procurement rules under the OFPP statute, codified at title 41 of the U.S. Code. Section 1648 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) directs the Secretary of Defense to develop a risk-based cybersecurity framework for the DIB sector, such as CMMC, as the basis for a mandatory DoD standard.

Alternatives: DoD considered and adopted several alternatives during the development of the interim rule that reduced the burden on small entities and still meet the objectives of the rule. DoD will consider similar alternatives for the amendment rule. One alternative considered includes exempting contracts and orders exclusively for the acquisition of commercially available off-the-shelf items.

Anticipated Cost and Benefits: The annualized value of costs beginning in fiscal year 2021 (calculated in perpetuity in 2016 dollars at a 7 percent discount rate) associated with implementing the CMMC Framework in the published interim rule is $4 billion. The cost analysis for CMMC 2.0 is being handled in the Title 32 CFR rule (RIN 0790–AL49). The primary benefit of this rule is improving the protection of the Department's sensitive information and reducing the threat to DIB sector intellectual property by:

- Enabling assessments at the entity-level of contractor implementation of cyber security processes and practices that should already be in place;
- Requiring comprehensive implementation of cybersecurity requirements rather than plans of action to accomplish implementation;
- Verifying DIB sector contractor and subcontractor cybersecurity postures; and
- Reducing duplicative or repetitive assessments of our industry partners through standardization.

Risks: The theft of intellectual property and sensitive information from all U.S. industrial sectors due to malicious cyber activity threatens economic security and national security. Malicious cyber actors have and continue to target the DIB sector and the supply chain of the Department of Defense. These attacks not only focus on the large prime contractors, but also target subcontractors that make up the lower tiers of the DoD supply chain. Many of these subcontractors are small entities that provide critical support and innovation. The aggregate loss of intellectual property and certain unclassified information from the DoD supply chain can undercut U.S. technical advantages and innovation, as well as significantly increase risk to national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule ...	09/29/20	85 FR 48513
Interim Final Rule Effective.	11/30/20	
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Public Compliance Cost: Base Year for Dollar Estimates: $2,021.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email: jennifer.d.johnson1.civ@mail.mil.*

Related RIN: Split from 0750–AL68, Related to 0790–AL49

RIN: 0750–AK81

DOD—DARC

24. Modification of Prize Authority for Advanced Technology Achievements (DFARS Case 2022–D014) [0750–AL65]

Priority: Other Significant.
Legal Authority: 41 U.S.C. 1303; 10 U.S.C. 4025; Pub. L. 117–81, sec. 822
CFR Citation: 48 CFR 235.
Legal Deadline: None.
Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 822 of the National Defense Authorization Act for Fiscal Year 2022, which revises 10 U.S.C. 2374a, redesignated as 10 U.S.C. 4025, regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements ''as in other type of prize'' (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of $10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds $10 million.
Statement of Need: This rule is necessary to implement section 822 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). Section 822 revises 10 U.S.C. 2374a, redesignated as 10 U.S.C. 4025, regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements as an other type of prize (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of $10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds $10 million.
Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and section 822 of Public Law 117–81.
Alternatives: There are no alternatives that would meet the requirements of section 822 of Public Law 117–81.
Anticipated Cost and Benefits: This rule will help to expand the Defense Industrial Base, thereby increasing competition for future DoD contracts.
Risks: The difficulty of accessing advanced technologies creates a risk for DoD with regard to finding solutions and obtaining products and services that meet the Department's needs.
Timetable:

Action	Date	FR Cite
NPRM	05/00/24	

Regulatory Flexibility Analysis Required: Undetermined.
Government Levels Affected: Federal.
Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email: jennifer.d.johnson1.civ@mail.mil.*
RIN: 0750–AL65

DOD—DARC

Final Rule Stage

25. Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055) [0750–AK16]

Priority: Other Significant.
Legal Authority: 41 U.S.C. 1303; Pub. L. 115–232, sec. 823
CFR Citation: 48 CFR 215; 48 CFR 236; 48 CFR 242; 48 CFR 252.
Legal Deadline: Final, Statutory, February 9, 2019, 180 days after enactment.
Abstract: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 823 of the National Defense Authorization Act for Fiscal Year 2019, which establishes a requirement for use of the best available information regarding past performance of subcontractors and joint venture partners when awarding DoD construction and architect-engineer (A&E) contracts. Section 823 requires annual performance evaluations for first-tier subcontractors and individual partners of joint venture construction and A&E contracts valued at either $750,000 or more, or 20 percent of the value of the prime contract (whichever is higher), in accordance with specified conditions. In addition, processes for exceptions from the annual evaluation requirement will be established for construction and A&E contracts where submission of annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners under specified conditions. This rule will amend DFARS part 242 to incorporate these new requirements and processes.
Statement of Need: This rule is necessary to implement section 823 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), which establishes a requirement for use of the best available information regarding past performance of subcontractors and joint venture partners when awarding DoD construction and architect-engineer contracts. Section 823 requires annual performance evaluations for first-tier subcontractors and individual parties to joint ventures performing construction and architect-engineer contracts valued at either $750,000 or more, or 20 percent of the value of the prime contract (whichever is higher), in accordance with specified conditions. In addition, processes for exceptions from the annual evaluation requirement will be established for construction and architect-engineer contracts where submission of annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners under specified conditions.
Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and section 823 of Public Law 115–232.
Alternatives: There are no alternatives that would meet the requirements of section 823 of Public Law 115–232.
Anticipated Cost and Benefits: This rule will make it easier for subcontractors and individual parties to joint ventures to establish a record of their past performance. These entities will be able to take credit for the work they performed on contracts and subcontracts, which will help them be more competitive when bidding on future DoD contracts. This will help increase competition for DoD contracts.
Risks: Due to the difficulty of establishing a record of past performance on DoD contracts, there is a risk of reduced competitiveness for subcontractors and individual parties to joint ventures.
Timetable:

Action	Date	FR Cite
NPRM	05/20/21	86 FR 27358
NPRM Comment Period End.	07/19/21	
Final Action	07/00/24	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: Businesses.
Government Levels Affected: Federal.
Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting,

Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK16

DOD—DARC

26. Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043) [0750–AK84]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303

CFR Citation: 48 CFR 227; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement changes related to data rights in the Small Business Administration's Policy Directive for the Small Business Innovation Research (SBIR) Program, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the DFARS.

Statement of Need: This rule is necessary to implement the Small Business Administration (SBA) policies related to data rights in the Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directive, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the DFARS.

Summary of Legal Basis: The legal basis for this rule is 15 U.S.C. 638, which provides the authorization, policy, and framework for SBIR/STTR programs.

Alternatives: There are no alternatives that would meet the stated objective of this rule.

Anticipated Cost and Benefits: While specific costs and savings have not been quantified, this rule is expected to have significant benefit for small businesses participating in the DoD SBIR and STTR programs. SBIR and STTR enable small businesses to explore their technological potential and provide the incentive to profit from its commercialization. By including qualified small businesses in the nation's research and development arena, high-tech innovation is stimulated, and the United States gains entrepreneurial spirit as it meets its specific research and development needs.

Risks: The continuous protection of a contractor's SBIR/STTR data while actively pursuing or commercializing its technology with the Federal Government, provides a significant incentive for innovative small businesses to participate in these programs.

Timetable:

Action	Date	FR Cite
ANPRM	08/31/20	85 FR 53758
Correction	09/21/20	85 FR 59258
ANPRM Comment Period End.	10/30/20	
Comment Period Extended.	12/04/20	85 FR 78300
ANPRM Comment Period End.	01/31/21	
NPRM	12/19/22	87 FR 77680
Correction	12/23/22	87 FR 78911
Comment Period Extended.	02/14/23	88 FR 9420
NPRM Comment Period End.	02/17/23	
NPRM Comment Period End.	03/20/23	
Final Action	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK84

DOD—DARC

27. DFARS Buy American Act Requirements (DFARS Case 2022–D019) [0750–AL74]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303

CFR Citation: 48 CFR 225; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the requirements of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Changes to the Federal Acquisition Regulation (FAR) are being made via RIN 9000–AO22 (FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements). This rule makes conforming changes to the DFARS.

Statement of Need: This rule is necessary to implement Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers, which increases the required percentage of domestic content for end products and construction material. Changes to the Federal Acquisition Regulation (FAR) are being made via RIN 9000–AO22 (FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements). This rule proposes conforming changes to the DFARS.

Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

Alternatives: There are no alternatives that would meet the requirements of Executive Order 14005.

Anticipated Cost and Benefits: This rule increases the percentage for use in the domestic content text applied to offers of end products and construction materials to determine domestic or foreign origin. The rule will strengthen domestic preferences under the Buy American statute. It is expected that this rule will benefit large and small U.S. manufacturers supplying domestic end products and materials.

Risks: There is a risk that U.S. manufacturers would experience a competitive disadvantage without the increase in the required domestic content.

Timetable:

Action	Date	FR Cite
NPRM	06/09/23	88 FR 37942
NPRM Comment Period End.	08/08/23	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AL74

DOD—U.S. ARMY CORPS OF ENGINEERS (COE)

Proposed Rule Stage

28. Policy and Procedures for Processing Requests To Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408 [0710–AB22]

Priority: Other Significant.
Legal Authority: 33 U.S.C. 408
CFR Citation: 33 CFR 350.
Legal Deadline: None.
Abstract: Where a party other than the U.S. Army Corps of Engineers (Corps) seeks to use or alter a Civil Works project that the Corps constructed, the proposed use or alteration is subject to the prior approval of the Corps. Some examples of such alterations include an improvement to the project; relocation of part of the project; or installing utilities or other non-project features. This requirement was established in section 14 of the Rivers and Harbors Act of 1899 and is codified at 33 U.S.C. 408 (section 408). Section 408 provides that the Corps may grant permission for another party to alter a Civil Works project upon a determination that the alteration proposed will not be injurious to the public interest and will not impair the usefulness of the Civil Works project. The Corps is proposing to convert its policy that governs the section 408 program to a binding regulation. This policy, Engineer Circular 1165–2–220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408, was issued in September 2018.

The Corps conducted six virtual listening sessions in the summer of 2022 to solicit feedback on the Section 408 program from Section 408 applicants and Non-federal partners. The feedback was helpful to understanding the challenges, best practices, and future opportunities with the Section 408 program and helped inform development of the proposed rule. Additional sessions will be conducted once the draft rule is published in the **Federal Register**. The Corps will widely publicize the dates and times of the additional listening sessions to Section 408 applicants, non-federal sponsors and partners by posting on Corps websites (the Corps HQ website can be found here: *https://www.usace.army.mil/Missions/Civil-Works/Section408/*) and utilize existing email distribution lists of interested parties.

Statement of Need: Through the Civil Works program, the U.S. Army Corps of Engineers (Corps), in partnership with stakeholders, has constructed many Civil Works projects across the Nation's landscape. Given the widespread locations of these projects, others outside of the Corps sometimes want to alter or occupy these projects or the associated lands. Reasons for alterations could include activities such as improvements to the project; relocation of part of the project; or installing utilities or other non-project features. In order to ensure that these projects continue to provide their intended benefits to the public, Congress provided that any use or alteration of a Civil Works project by another party is subject to the prior approval of the Corps. This requirement was established in section 14 of the Rivers and Harbors Act of 1899 and is codified at 33 U.S.C. 408 (section 408). Specifically, section 408 provides that the Corps may grant permission for another party to alter a Civil Works project upon a determination that the alteration proposed will not be injurious to the public interest and will not impair the usefulness of the Civil Works project. The Corps is proposing to convert its policy that governs the section 408 program to a binding regulation. Engineer Circular 1165–2–220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408 was issued in September 2018.

Summary of Legal Basis: The Corps operates the section 408 program under 33 U.S.C. 408.

Alternatives: The preferred alternative is to conduct rulemaking to issue the requirements governing the section 408 review process in the form of a binding regulation. The current Corps policy appears in an Engineer Circular that has expired. The next best alternative would involve issuing these requirements in the form of an Engineer Regulation. That alternative would not fulfill the intent of the law because it would not be binding on the regulated public.

Anticipated Cost and Benefits: The proposed rule would reduce costs to the regulated public by clarifying the applicable requirements and providing consistent implementation of these requirements nationwide across the Corps program. It is anticipated that a form would be developed for submission of requests which could help to reduce the cost to prepare a section 408 request.

Risks: The proposed action is not anticipated to affect the risk to public health, safety, or the environment. It would outline the procedures the Corps will follow when evaluating requests for section 408 permissions. The Corps will comply with all statutory requirements when reviewing requests.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
Agency Contact: Virginia Rynk, Department of Defense, U.S. Army Corps of Engineers, Attn: CECW–EC, 441 G Street NW, Washington, DC 20314, *Phone:* 202 761–4741.
RIN: 0710–AB22

DOD–COE

29. Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision [0710–AB34]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Unfunded Mandates: Undetermined.
Legal Authority: 33 U.S.C. 2213(m)
CFR Citation: 33 CFR 241.
Legal Deadline: None.
Abstract: Section 103(m) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213(m)), authorizes the U.S. Army Corps of Engineers (Corps) to reduce the non-Federal share of the cost of a study or project for certain communities that are not able financially to afford the standard non-Federal cost-share. Part 241 of Title 33 in the Code of Federal Regulations provides the criteria that the Corps uses in making these determinations where the primary purpose of the study or project is flood damage reduction. The proposed rule would update this regulation, by broadening its applicability to include projects with other purposes (instead of just flood damage reduction) and the feasibility study of a project (instead of just design and construction).

Statement of Need: The Corps will conduct rulemaking to propose amendments to the Corps' regulations at 33 CFR part 241 for Corps projects. The WRDA 2000 modified section 103(m) to include the projects with the following purposes: environmental protection and restoration, flood control, navigation, storm damage protection, shoreline erosion, hurricane protection, and recreation or an agricultural water supply project which have not yet been added to the regulation. It also included the opportunity to cost share all phases of a USACE project to also include feasibility studies in addition to the

already covered design and construction. This rule would update the framework for determining whether a project is eligible for consideration for a reduction in the non-Federal cost share based on ability to pay.

Summary of Legal Basis: 33 U.S.C. 2213(m).

Alternatives: The preferred alternative is to conduct rulemaking to amend 33 CFR 241 by broadening the project purposes for which the Corps could reduce the non-Federal cost-share based on ability to pay and by allowing such a reduction for feasibility studies. The next best alternative would be to provide additional guidance instead of amending the existing regulation. This alternative could lead to confusion for the regulated public.

Anticipated Cost and Benefits: The proposed rule would add Corps procedures on the ability to pay provision allowing for consistent implementation across the Corps and clear understanding of the program and its requirements by the regulated public.

Risks: The proposed action is not anticipated to affect risk to public health, safety, or the environment. It would outline the procedures the Corps will follow when evaluating the ability to pay provision for cost-sharing with the non-Federal sponsor.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Amy Frantz, Program Manager, Department of Defense, U.S. Army Corps of Engineers, CECW–P, 441 G Street NW, Washington, DC 20314, *Phone:* 202 761–0106, *Email: amy.k.frantz@usace.army.mil.*

Related RIN: Previously reported as 0710–AA91

RIN: 0710–AB34

DOD—COE

30. USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources [0710–AB41]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: sec. 2031 of Pub. L. 110–114

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) called for revisions to the 1983 Principles and Guidelines for Water and Land Related Resources Implementation Studies, resulting in the issuance of the Principles and Requirements (P&R) guidance document in March 2013 and the Interagency Guidelines in December 2014, which together comprise the Principles, Requirements, and Guidelines (PR&G). The PR&G are intended to provide a common framework and policy guidance for analyzing a diverse range of water resources projects, programs, activities, and related actions involving Federal investment in water resources. The U.S. Army Corps of Engineers (Corps) plans to propose a regulation to show how it would apply the PR&G to the Corps' civil works program and authorities. In this proposed regulation, the Corps intends to increase consistency and compatibility in its Federal water resources investment decision making to include considerations such as analyzing a broader range of long-term costs and benefits, enhancing collaboration, including a more thorough and transparent risk and uncertainty analyses, and improving resilience for dealing with emerging challenges, including climate change.

The Department of the Army completed an outreach strategy and engagement effort through publication of a **Federal Register** notice in June 2022 on the PR&G. This engagement effort included an open docket for submission of comments, a series of virtual meetings with the public, and a series of virtual meetings with Tribes to solicit early input prior to embarking on a rulemaking action on agency specific procedures outlining how the Corps can best meet the policy goals of PR&G. The Corps will consider the input received during these engagements to inform the development of the proposed rule.

Statement of Need: The Corps is developing implementing procedures for the Principles, Requirements, and Guidelines (PR&G) under section 110 of the Water Resources Development Act of 2020.

Summary of Legal Basis: Section 110 of the Water Resources Development Act of 2020 provided for the Secretary of the Army to issue agency specific guidelines to implement the PR&G. Also see section 2031 of Public Law 110–114.

Alternatives: The Corps could implement PR&G with guidance rather than through rulemaking; however, such procedures would not be binding. As an alternative, the Corps could seek to rely solely on the PR&G documents to implement PR&G in lieu of developing its own procedures. This could result in confusion and a lack of consistency for the Corps as to how and when it would apply the PR&G in the Civil Works program. The Corps decided to conduct this rulemaking to ensure the PR&G implementing procedures are clear for the Corps and the public as well as binding.

Anticipated Cost and Benefits: As this rulemaking is developing procedures for the Corps to implement to ensure compliance with the PR&G, there may be some administrative costs incurred to the Corps for implementation-related training. There also would be benefits that accrue to the public in some cases in the form of improved outcomes in Corps decisions related to proposed and ongoing water resource development projects.

Risks: The proposed action is not anticipated to increase risk to public health, safety, or the environment, but could potentially help to reduce such risks in some cases.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Stacey M. Jensen, Office of the Assistant Secretary of the Army, Department of Defense, U.S. Army Corps of Engineers, 108 Army Pentagon, Washington, DC 22202, *Phone:* 703 695–6791, *Email: stacey.m.jensen.civ@army.mil.*

RIN: 0710–AB41

DOD—COE

31. Appendix C Procedures for the Protection of Historic Properties [0710–AB46]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 401; 33 U.S.C. 1344; 33 U.S.C. 1413

CFR Citation: 33 CFR 325.

Legal Deadline: None.

Abstract: The U.S. Army Corps of Engineers (Corps) considers the effects of its actions on historic properties pursuant to section 106 of the National Historic Preservation Act (NHPA). The Corps' Regulatory Program's regulations for complying with the NHPA are outlined at 33 CFR 325 appendix C. Since these regulations were promulgated in 1990, there have been

amendments to the NHPA and revisions to the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800. In response, the Corps issued interim guidance until rulemaking could be completed in order to ensure full compliance with the NHPA and ACHP's regulations. The Corps proposes to revise its regulations to conform to the ACHP regulations.

The Department of the Army completed an outreach strategy and engagement effort through publication of a **Federal Register** notice in June 2022 to solicit comment on the best approach to modernize Appendix C. This engagement effort included an open docket for submission of comments, a series of virtual meetings with the public, and a series of virtual meetings with Tribes to solicit early input prior to embarking on a rulemaking action on Appendix C. The input received from these efforts will help inform this action.

Statement of Need: Appendix C provides the implementing procedures for the Regulatory Program's compliance with section 106 of the National Historic Preservation Act. Rulemaking is required to ensure the Regulatory Program is compliant with the NHPA and ACHP's implementing regulations at 36 CFR 800 for federal agency compliance with Section 106. The NHPA and the ACHP regulations have been revised since Appendix C was promulgated.

Summary of Legal Basis: Appendix C was promulgated through an APA rulemaking process intended to provide compliance with section 106 of the NHPA specific to the Regulatory Program.

Alternatives: The preferred alternative is to remove the Regulatory Program's implementing regulations (*i.e.,* appendix C) from its permitting regulations and instead follow the ACHP's NHPA implementing regulations. Other alternatives considered include retaining the current appendix C, which does not reflect the current versions of the NHPA or the ACHP implementing regulations for federal agencies or current Federal policies regarding Tribal Nations. Another alternative is to modify Appendix C by incorporating changes made since 1990 to the NHPA and the ACHP implementing regulations.

Anticipated Cost and Benefits: As this rulemaking action is implementing procedures for the Corps to ensure compliance with the NHPA, there may be some administrative costs incurred to the Corps for training. There would be benefits accrued to the public in the form of reduced confusion and assurance of consideration of potential adverse effects to historic properties and items and areas of cultural/religious significance.

Risks: The proposed action is not anticipated to increase risk to public health, safety, or the environment because it outlines the procedures the Corps will follow for implementing a federal statutory requirement. The Corps will comply with all statutory requirements when reviewing permit applications.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Federalism: Undetermined.

Agency Contact: Margaret Gaffney-Smith, Regulatory Program Manager, Department of Defense, U.S. Army Corps of Engineers, Attn: CECW–CO, 441 G Street NW, Washington, DC 20314, *Phone:* 202 761–4229.

RIN: 0710–AB46

DOD—COE

Final Rule Stage

32. Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers [0710–AA78]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 701n

CFR Citation: 33 CFR 203.

Legal Deadline: None.

Abstract: The U.S. Army Corps of Engineers (Corps) is finalizing an update to the Federal regulation that covers the procedures that the Corps uses under section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as Public Law 84–99. The Corps relies on this program to prepare for, respond to, and help communities recover from a flood, hurricane, or other natural disaster, including the repair of damage to eligible flood risk reduction infrastructure. The Corps initiated this rulemaking process through an advanced notice of proposed rulemaking (ANPRM) on February 13, 2015. The Corps published a notice of proposed rulemaking (NPRM) on November 15, 2022. The NPRM included a summary of the comments to the ANPRM. The NPRM proposed to repeal the existing regulation and replace it with a new regulation that addresses statutory changes under various Water Resources Development Act provisions, reflects lessons learned over the past 20 years, and incorporates agency policies now in guidance relating to natural disaster procedures.

In 2015, the Corps published an Advance Notice of Proposed Rule Making (ANPR) in the **Federal Register** for a 60 day public comment period on policy revision concepts being considered for 33 CFR part 203. The Corps then published proposed revisions to 33 CFR part 203 in the **Federal Register** with a public comment period from November 15, 2022 to January 17, 2023. The Corps hosted nine regional workshops in Kansas City, MO; Fort Worth, TX; Seattle, WA; Sacramento, CA; Chicago, IL; Rock Island, IL; New Orleans, LA; and Wilmington, NC; Concord, MA; and two webinars to solicit input from interested parties. The Corps also met with two Tribal Nations for direct consultation and input. The final rule will address the input received by the Corps through the comment and public engagement process.

Statement of Need: Since the last revision in 2003, significant disasters, including Hurricane Katrina (2005), Hurricane Sandy (2012), flooding on the Mississippi and Missouri Rivers (2008, 2011, and 2013), and Hurricanes Harvey, Irma, and Maria (2017) led to a great understanding of the nature and severity of risk associated with flood and storm damage reduction projects. In addition, the maturation of risk-informed decision making approaches and technological advancements have influenced the outlook on the implementation of Public Law 84–99 activities, with a shift toward better alignment with Corps Levee Safety and National Flood Risk Management Programs, as well as the National Preparedness and Response Frameworks. Through these programs, the Corps works with non-Federal sponsors and stakeholders to assess, communicate, and manage the risks to people, property, and the environment associated with levee systems and flood risks. Revisions to part 203 also would implement certain statutes that amended or otherwise affected Public Law 84–99, as explained in the next section.

Summary of Legal Basis: Public Law 84–99 authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for preparation for natural disasters, flood fighting, rescue operations, repairing or restoring flood control works, emergency protection of federally authorized hurricane or shore protection projects, and the repair and restoration of federally authorized

hurricane and shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature.

1. Subsection 3029(a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) (Pub. L. 113–121) authorized the Chief of Engineers, under certain circumstances, to make modifications to flood control and hurricane or shore protections works damaged during flood or coastal storms events, as well as the authority to implement nonstructural alternatives in the repair and restoration of hurricane or shore protection works.

2. Subsection 3029(b) of WRRDA 2014 authorized the Secretary of the Army to undertake a review of implementation of Public Law 84–99 to improve the safety of affected communities to future flooding and storm events; the resiliency of water resources development projects to future flooding and storm events; the long-term cost-effectiveness of water resources development projects that provide flood control and hurricane and storm damage reduction benefits; and achieve certain other policy goals and objectives.

3. Section 3011 of WRRDA 2014 states that a levee system shall remain eligible for rehabilitation assistance under Public Law 84–99, as long as the system sponsor continues to make satisfactory progress, as determined by the Secretary of the Army, on an approved system wide improvement framework or letter of intent.

4. Section 1176 of the Water Resources Development Act of 2016 (WRDA 2016) (Pub. L. 114–322, title I) provided an express definition of nonstructural alternatives, as that term is used in Public Law 84–99, and authorized the Chief of Engineers, under certain circumstances, to increase the level of protection of flood control or hurricane or shore protection works or increase the capacity of a pumping station when conducting repair or restoration activities to such works under Public Law 84–99.

Alternatives:

1. *No rule update:* Continue to implement all changes through agency guidance documents and agency discretion.

2. *Modify:* Incorporate in the rule only those changes related to changes in the program that the Congress has mandated in law.

3. *Repeal and replace (Selected Alternative):* Incorporate and integrate the current state of practice for flood risk management principles and concepts through the provision of agency policy codified in a federal rule. The intended benefit is to encourage broader community flood risk management activities, as undertaken by non-Federal project sponsors. The rule alternative also consolidates recent Public Law 84–99 amendments into one comprehensive rule, ensuring the public understands how the Corps would implement them.

Anticipated Cost and Benefits: Overall, the purpose of the proposed changes to this regulation is to improve the effectiveness of Federal and local investments to reduce flood risks in both riverine and coastal settings. These proposed changes take advantage of our increased understanding of flood and storm risks, moving from an assessment of how the project is expected to perform to a focus on a broader set of actions to reduce risk to life, including operations, maintenance, planning, and execution actions to improve emergency warning and evacuation and other activities to improve the ability of communities and individuals to understand and manage project-related risks. Informed by more detailed understanding of risk for levee systems, the Federal Government and non-Federal sponsors should be able to apply the available resources to the risk management activities that most effectively reduce riverine flood risk and avoid expenditures that have little risk reduction benefit.

Risks: The rule would repeal and replace the current 33 CFR 203 in order to reflect the current state of practice for flood risk management principles and concepts. It would also amend and clarify the current role of the Corps in preparing for, and responding a natural disaster, and in helping in the recovery effort. The rule may also encourage broader community flood risk management activities, as undertaken by non-Federal project sponsors.

Timetable:

Action	Date	FR Cite
ANPRM	02/13/15	80 FR 8014
ANPRM Comment Period End.	04/14/15	
NPRM	11/15/22	87 FR 68386
NPRM Comment Period End.	02/16/23	
Final Action	02/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Willem Helms, Department of Defense, U.S. Army Corps of Engineers, CECW–HS, 441 G Street NW, Washington, DC 20314, *Phone:* 202 761–5909, *Email: willem.h.helms@usace.army.mil.*

RIN: 0710–AA78

DOD—COE

Completed Actions

33. Credit Assistance for Water Resources Infrastructure Projects [0710–AB31]

Priority: Other Significant.

Legal Authority: Pub. L. 114–94; Pub. L. 114–322; Pub. L. 115–270; 33 U.S.C. 3901

CFR Citation: 33 CFR 386.

Legal Deadline: None.

Abstract: The U.S. Army Corps of Engineers (Corps) issued a final rule to implement a new credit assistance program for dam safety work at non-Federal dams. The program is authorized under the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) and Division D, title 1 of the Consolidated Appropriations Act of 2020. WIFIA authorizes the Corps to provide secured (direct) loans and loan guarantees (Federal Credit instruments) to eligible water resources infrastructure projects and to charge fees to recover all or a portion of the Corps' cost of providing credit assistance and the costs of conducting engineering reviews and retaining expert firms, including financial and legal services, to assist in the underwriting and servicing of Federal credit instruments. Projects will be evaluated and selected by the Secretary of the Army (the Secretary) based on the requirements and the criteria described in this rule.

Statement of Need: The Corps' WIFIA program is focused on providing Federal loans, and potentially to also include loan guarantees, to projects for maintaining, upgrading, and repairing dams identified in the National Inventory of Dams owned by non-federal entities. These loans will be repaid with non-Federal funding.

Summary of Legal Basis: The Corps WIFIA program was authorized under subtitle C of title V of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), which authorizes the Corps to provide secured (direct) loans, and potentially to also include loan guarantees, to eligible water resources infrastructure projects (needed further authorization was provided by Division D, title 1 of the Consolidated Appropriations Act of 2020). The statute also authorizes the Corps to charge fees to recover all or a portion of the Corps' cost of providing credit assistance and the costs of conducting engineering reviews and retaining expert firms, including financial and legal services, to assist in the underwriting and servicing of Federal credit instruments.

The Fiscal 2021 Consolidated Appropriations Act, provided the Corps WIFIA appropriations of $2.2M admin, and $12M credit subsidy and a loan volume limit of $950M. These appropriated funds are limited to fund projects focused on maintaining, upgrading, and repairing dams identified in the National Inventory of Dams owned by non-federal entities, essentially dams where the primary owner is a state, local government, public utility, or private owner.

Alternatives: The preferred alternative would be to conduct proposed rulemaking to implement a new credit program for dam safety work at non-Federal dams in the form of a binding regulation in compliance with the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) and Division D, title 1 of the Consolidated Appropriations Act of 2020. The next best alternative would involve issuing these implementing procedures in the form of an Engineer Regulation. That alternative would not fulfill the intent of the law because it would not be binding on the regulated public. The no action alternative would be to not conduct rulemaking which would not fulfill the authorization provided by Congress.

Anticipated Cost and Benefits: The rule adds Corps procedures to the CFR on the implementation of a new credit program for dam safety work at non-Federal dams to allow for consistent implementation across the Corps and clear understanding of the program and its requirements by the regulated public. The USACE will incur costs to administer the loan program while benefits are expected for the public in the form of benefits from projects enabled by WIFIA loans. WIFIA compliance costs will likely include costs associated with application and transaction processing fees, which are waived or reduced for small and disadvantaged communities, obtaining a credit rating letter, any consultant fees (not required), completing applications, reporting requirements, and record keeping. These costs are not anticipated to represent a significant economic impact, especially given that participation in the program is voluntary.

Risks: The action is not anticipated to increase risk to public health, safety, or the environment because it outlines the procedures the Corps will follow for implementing a federal loan program. The Corps will comply with all statutory requirements when reviewing requests.

Timetable:

Action	Date	FR Cite
NPRM	06/10/22	87 FR 35473
NPRM Comment Period End.	08/09/22	
Final Action	05/22/23	88 FR 32661
Final Action Effective.	06/21/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Aaron Snyder, Department of Defense, U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314, *Phone:* 651 290–5489, *Email: aaron.m.snyder@usace.army.mil.*

Related RIN: Merged with 0710–AB32

RIN: 0710–AB31

DOD—COE

34. • Revised Definition of ''Waters of the United States''; Conforming [0710–AB55]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1251 *et seq.*

CFR Citation: 40 CFR part 120; 33 CFR part 328.

Legal Deadline: None.

Abstract: On September 8, 2023, the Environmental Protection Agency (EPA) and the Department of the Army (the agencies'') finalized a rule to amend the Code of Federal Regulations (CFR) to conform the definition of ''waters of the United States'' to a 2023 Supreme Court decision. This conforming rule amends the provisions of the agencies' definition of ''waters of the United States'' that are invalid under the Supreme Court's interpretation of the Clean Water Act in the 2023 decision.

Statement of Need: In April 2020, the EPA and the Department of the Army (''the agencies'') published the Navigable Waters Protection Rule that revised the previously codified definition of ''waters of the United States (85 FR 22250, April 21, 2020). The Navigable Waters Protection Rule was vacated by courts. On January 18, 2023, the agencies issued a final rule, ''Revised Definition of ''Waters of the United States' '' (88 FR 3004) which became effective on March 20, 2023. On May 25, 2023, the U.S. Supreme Court issued its decision in the case of *Sackett* v. *Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase waters of the United States consistent with the Supreme Court's decision in Sackett. The agencies are developing a rule to amend the final ''Revised Definition of 'Waters of the United States' '' rule, published in the **Federal Register** on January 18, 2023, consistent with the U.S. Supreme Court's decision in Sackett.

Summary of Legal Basis: The Clean Water Act (33 U.S.C. 1251 *et seq.*).

Alternatives: Please see EPA's alternatives. EPA is the lead for this rulemaking action.

Anticipated Cost and Benefits: Please see EPA's statement of anticipated costs and benefits. EPA is the lead for this rulemaking action.

Risks: Please see EPA's risks. EPA is the lead for this rulemaking action.

Timetable:

Action	Date	FR Cite
Final Action	09/08/23	88 FR 61964
Final Action Effective.	09/08/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Stacey M. Jensen, Office of the Assistant Secretary of the Army, Department of Defense, U.S. Army Corps of Engineers, 108 Army Pentagon, Washington, DC 22202, *Phone:* 703 695–6791, *Email: stacey.m.jensen.civ@army.mil.*

Related RIN: Related to 2040–AG32

RIN: 0710–AB55

DOD—OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS (DODOASHA)

Final Rule Stage

35. TRICARE Coverage of Clinical Trials and Termination of Expanded Access Treatments [0720–AB83]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch 55

CFR Citation: 32 CFR 199.

Legal Deadline: None.

Abstract: The Department of Defense is finalizing an interim final rule to amend 32 CFR part 199 to include coverage that was temporarily added for National Institute of Allergy and Infectious Disease-sponsored clinical trials for the treatment or prevention of COVID–19. This rule will also finalize the temporary addition of the treatment use of investigation drugs under U.S. Food and Drug Administration-approved expanded access programs for the treatment of coronavirus disease 2019 (COVID–19) from the interim final rule titled ''TRICARE Coverage of Certain Medical Benefits in Response to the COVID–19 Pandemic'' (32 CFR part

199, 0720–AB82), which published in the **Federal Register** on September 3, 2020 (85 FR 54914–54924).

Statement of Need: This final rule is required to finalize certain temporary flexibilities enacted in interim final rules published in 2020 in response to the COVID–19 pandemic.

Pursuant to the President's national emergency declaration and as a result of the worldwide COVID–19 pandemic, the Assistant Secretary of Defense for Health Affairs hereby temporarily modified the regulation at 32 CFR 199.4(e)(26) to permit TRICARE coverage for National Institute of Allergy and Infectious Disease (NIAID)-sponsored COVID–19 phase I, II, III, and IV clinical trials for the treatment or prevention of coronavirus disease 2019 (COVID–19). This provision supports increased access to emerging therapies for TRICARE beneficiaries.

Summary of Legal Basis: This rule is issued under 10 U.S.C. 1073(a)(2) giving authority and responsibility to the Secretary of Defense to administer the TRICARE program.

Alternatives:

(1) No action.

(2) The second alternative the DoD considered was implementing a more limited benefit change for COVID–19 patients by not covering phase I clinical trials. Although this would have the benefit of reimbursing only care that has more established evidence in its favor, this alternative is not preferred because early access to treatments is critical for TRICARE beneficiaries given the rapid progression of the disease and the lack of available approved treatments.

Anticipated Cost and Benefits: Any cost to beneficiaries would be consistent with existing costs under the TRICARE Program (such as cost-shares and copayments). Finalizing TRICARE coverage of clinical trials will benefit TRICARE beneficiaries by ensuring they continue to have access to emerging therapies in the safest setting possible.

In the interim final rule, DoD estimated the total cost for TRICARE participation in NIAID-sponsored COVID–19 clinical trials would be $3.2M for the duration of the national emergency, with an additional $4.0M for continued care for beneficiaries enrolled in clinical trials prior to termination of the national emergency. There were several assumptions we made in developing this estimate. The duration of the COVID–19 national emergency is uncertain; however, for the purposes of this estimate, we assumed the national emergency would expire on September 30, 2021. As of the drafting of the IFR, there were 27 NIAID-sponsored COVID–19 clinical trials begun since the start of the national emergency. We assumed 6.2 new trials every 30 days, for a total of 126 trials by September 2021. We assumed, based on average trial enrollment and that TRICARE beneficiaries would participate in trials at the same rate as the general population, that 4,549 TRICARE beneficiaries would participate through September 2021. Each of the assumptions in this estimate is highly uncertain, and our estimate could be higher or lower depending on real world events (more or fewer trials, a longer or shorter national emergency, and/or higher or lower participation in clinical trials by TRICARE beneficiaries).

Benefits: These changes expand the therapies available to TRICARE beneficiaries in settings that ensure informed consent of the beneficiary, and where the benefits of treatment outweigh the potential risks. Participation in clinical trials may provide beneficiaries with benefits such as reduced hospitalizations and/or use of a mechanical ventilator. Although we cannot estimate the value of avoiding these outcomes quantitatively, the potential long-term consequences of serious COVID–19 illness, including permanent cardiac or lung damage, are not insignificant. Beneficiary access to emerging therapies that reduce these long-term consequences or even death can be considered to be high-value for those able to participate.

TRICARE providers will be positively affected by being able to provide their patients with a broader range of treatment options. The general public will benefit from an increased pool of available participants for the development of treatments and vaccines for COVID–19, as well as the evidence (favorable or otherwise) that results from this participation.

Risks: None. This rule will not directly affect the efficient functioning of the economy or private markets. However, increasing the pool of available participants for clinical trials may help speed the development of treatments or vaccines for COVID–19. Once effective treatments or vaccines for COVID–19 exist, individuals are likely to be more confident interacting in the public sphere, resulting in a positive impact on the economy and private markets.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/20	85 FR 68753
Interim Final Rule Effective.	10/30/20	
Interim Final Rule Comment Period End.	11/30/20	
Final Action	02/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Additional Information: The interim final rule was titled ''TRICARE Coverage of National Institute of Allergy and Infectious Disease Coronavirus Disease 2019 Clinical Trials.'' The final rule will be titled ''TRICARE Coverage of Clinical Trials and Termination of Expanded Access Treatments.''

Agency Contact: Jennifer Stankovic, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 E Centretech Parkway, Aurora, CO 80011–9066, *Phone:* 303 676–3742, *Email: jennifer.l.stankovic.civ@health.mil.*

Related RIN: Related to 0720–AB81, Related to 0720–AB82

RIN: 0720–AB83

DOD—DODOASHA

36. Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic [0720–AB85]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch. 55

CFR Citation: 32 CFR 199.

Legal Deadline: None.

Abstract: This rule finalizes an interim final rule that amended 32 CFR part 199 by: (1) adding freestanding End Stage Renal Disease (ESRD) facilities as a category of TRICARE-authorized institutional provider and modifying the reimbursement for such facilities; and (2) temporarily adopting Medicare's New COVID–19 Treatments Add-on Payment (NCTAP). The ESRD provisions are permanent, and the temporary NCTAP provisions expire at the end of the fiscal year in which the Secretary of Health and Human Services' declared coronavirus disease 2019 (COVID–19) public health emergency ends.

Statement of Need: Pursuant to the President's emergency declaration and as a result of the COVID–19 pandemic, the Assistant Secretary of Defense for Health Affairs is temporarily modifying the following regulations (except for the modifications to paragraphs 199.6(b)(4)(xxi) and 199.14(a)(1)(iii)(E)(*7*), which will not expire), but, in each case, only to the extent necessary to ensure that

TRICARE beneficiaries have access to the most up-to-date care required for the prevention, diagnosis, and treatment of COVID–19, and that TRICARE continues to reimburse like Medicare, to the extent practicable, as required by statute.

The modifications to paragraphs 199.6(b)(4)(xxi) and 199.14(a)(1)(iii)(E)(*7*) establish freestanding End Stage Renal Disease (ESRD) facilities as a category of TRICARE-authorized institutional provider and modify TRICARE reimbursement of freestanding ESRD facilities. These provisions will improve TRICARE beneficiary access to medically necessary dialysis and other ESRD services and supplies. These provisions also support the requirement that TRICARE reimburse like Medicare, and will help to alleviate regional health care shortages due to the COVID–19 pandemic by ensuring access to dialysis care in freestanding ESRD facilities rather than hospital outpatient departments.

The modification to paragraph 199.14(a)(iii)(E) adopts Medicare's New COVID–19 Treatments Add-on Payment (NCTAP) for COVID–19 cases that meet Medicare's criteria. This provision increases access to emerging COVID–19 treatments and supports the requirement that TRICARE reimburse like Medicare.

Summary of Legal Basis: This rule is issued under 10 U.S.C. 1073 (a)(2) giving authority and responsibility to the Secretary of Defense to administer the TRICARE program.

Alternatives: (1) No action.

(2) The second alternative the Department of Defense considered was to adopt Medicare's ESRD reimbursement methodology, the ESRD Prospective Payment System (PPS), in total. While this would have been completely consistent with the statutory provision to pay institutional providers using the same reimbursement methodology as Medicare, this alternative is not preferred because there is still a relatively low volume of TRICARE beneficiaries who receive dialysis services from freestanding ESRDs and who are not enrolled to Medicare. The cost of implementing the full ESRD PPS system is estimated to be at least $600,000.00 in start-up costs, plus ongoing administrative costs, to ensure all adjustments were made for each claim, plus additional special pricing software or algorithms. In contrast, we estimate that the option provided in this IFR can be implemented relatively quickly (within six months of publication), and for approximately $300,000.00 in start-up costs with lower ongoing administrative costs. Further, the flat rate will provide the ESRD facilities with predictability with regard to TRICARE payments and will reduce uncertainty and specialized coding or case-mix documentation requirements that may be required by the ESRD PPS, reducing the administrative burden on the provider.

To summarize, adopting the ESRD PPS was considered, but was deemed impracticable and overly burdensome to both the Government and providers due to the relative low volume of claims that will be priced and paid by TRICARE as primary under this system.

Anticipated Cost and Benefits: $8.08 million. Only the ESRD provisions are expected to result in recurring incremental health care costs; the remaining two provisions are expected to result in one-time cost increases.

This estimate includes approximately $0.9M in administrative costs and $5.9M in direct health care costs. $1.8M of the total cost impact is expected to be a one-time start-up cost for both the temporary and permanent provisions, while the permanent ESRD provisions are expected to result in $5M in incremental annual costs.

Risks: None. This rule will promote the efficient functioning of the economy and markets by modifying the regulations to better reimburse health care providers for care provided during the COVID–19 pandemic, particularly as strain on the health care economy is being felt due to reductions in higher cost elective procedures. Additionally, this rule will increase the access of TRICARE beneficiaries to more providers administering COVID–19 vaccinations, which promotes the efficient functioning of the U.S. economy by quickening the pace at which the public receives COVID–19 vaccinations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/12/23	88 FR 1992
Interim Final Rule Effective.	01/12/23	
Interim Final Rule Comment Period End.	03/13/23	
Final Action	06/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Elan Green, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 East Centretech Parkway, Aurora, CO 80011, *Phone:* 303 676–3907, *Email: elan.p.green.civ@mail.mil.*

RIN: 0720–AB85

DOD—DODOASHA

37. Collection From Third Party Payers of Reasonable Charges for Healthcare Services; Amendment [0720–AB87]

Priority: Other Significant.

Legal Authority: NDAA 2021, sec. 716

CFR Citation: 32 CFR 220.

Legal Deadline: NPRM, Statutory, June 21, 2023.

Abstract: The Department of Defense, Defense Health Agency (DHA), is proposing a rule to implement Section 716 of the Fiscal Year 2023 National Defense Authorization Act (Pub. L. 117–263). Section 716, which provides new statutory language that supersedes language previously enacted in Section 702 of the Fiscal Year 2021 National Defense Authorization Act (Pub. L. 116–283), directs the Director of the DHA to implement a modified payment plan for certain civilians (who are not covered beneficiaries). This Section also provides the Director with the authority to waive fees for medical care provided to such civilians, when the provision of care enhances the knowledge, skills and abilities of health care providers.

Statement of Need: Due to the high cost of healthcare in the United States and the mandate to aggressively pursue collection of debts, some civilian non-beneficiaries who were provided emergency or trauma healthcare services in DoD MTFs have incurred financial harm after receiving MTF medical invoices. Other than the requirements of FCCS, the DoD did not have authority to provide FAPs like those offered by for-profit and non-profit hospitals which include elements such as sliding fees and catastrophic waivers. In consequence, Congress wholly amended 10 U.S.C. 1079b via section 716 of the FY 2023 NDAA. Section 716 directs DoD to apply a sliding fee and/or a catastrophic waiver to medical invoices of non-beneficiaries. For non-beneficiaries who have health insurance, section 716 directs DoD to accept payments from health insurers as full payment and to not balance bill non-beneficiaries except for copays, coinsurance, deductibles, nominal fees, and non-covered services. It also grants the Director of DHA discretionary authority, to waive medical debts of non-beneficiaries when the healthcare provided enhances the knowledge, skills, and abilities of healthcare providers, as determined by the Director of DHA.

Summary of Legal Basis: DoD's authority to compute reasonable charges for inpatient and ambulatory (outpatient) care provided by MTFs, including charges for pharmaceuticals, durable medical equipment, supplies,

immunizations, injections or other medications, is found at 32 CFR part 220, last updated on August 20, 2020 (55 FR 21742–21750). Medical billing is structured under three existing healthcare cost recovery programs: Third Party Collections (10 U.S.C. 1095); Medical Services Account (10 U.S.C. 1079b, 1085, and 1104); and Medical Affirmative Claims (42 U.S.C. 26512653). The rates used for billing are modeled after the rates published by the Centers for Medicare and Medicaid Services. The rates are approved annually by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) and published on the DoD Comptroller's website at *https://comptroller.defense.gov/Financial-Management/Reports/rates2023/*. Funds collected through the healthcare cost recovery programs are used to enhance healthcare delivery at MTFs.

In carrying out the DoD's healthcare cost recovery programs, DoD abides by the Federal Claims Collection Standards (FCCS), under 31 CFR parts 900–904, which are published jointly by the Department of the Treasury and the Department of Justice. The FCCS require that Federal agencies aggressively collect all debts arising out of activities of that agency. Collection activities must be undertaken promptly with follow-up action taken as necessary. Accordingly, DoD MTFs generate medical claims and invoices for care rendered within MTFs and execute the FCCS requirements.

Other Applicable Authority: In accordance with 26 CFR 1.6050P–1(b)(2)(G), if DoD waives fees under 10 U.S.C. 1079b(b), then it would trigger information reporting requirements to the Internal Revenue Service (IRS) and the furnishing of Form 1099–C, Cancellation of Debt, to the patient since the discharge of indebtedness under 10 U.S.C. 1079b(b) qualifies as an identifiable event. Consequently, the waived medical fees could result in the debt being attributed to the patient as taxable income; and have the effect of causing severe financial harm. Therefore, DHA will consider a waiver of fees under 10 U.S.C. 1079b(b), only after any discounts according to the sliding scale and catastrophic cap have been applied. Any fees waived will be from the discounted amount, which will mitigate some of the financial impact of attributing the waived amount as income. Additionally, the DoD will seek to use that authority judiciously, on a case-by-case basis, and when other efforts such as application of a sliding and catastrophic waiver fail to mitigate the risk of severe financial harm to the civilian non-beneficiary.

Alternatives: The amended 10 U.S.C. 1079b mandates that DoD implement the amended statute within 180 days of the amendment being enacted. With this constrained timeline, the Department launched research efforts to discern whether private sector hospitals offered programs similar to what the statute mandates and which could potentially serve as a model for the Department. This research was necessary because prior to enactment of the amended 10 U.S.C. 1079b, the DoD did not have the authority to apply sliding scale or catastrophic waiver discounts to medical bills generated by MTFs, nor did the Director of DHA have discretionary authority to waive medical bills. Market research on charity care and FAPs offered by both for-profit and non-profit hospitals throughout the United States and eligibility requirements for those programs were reviewed. Of note, while for-profit and non-profit hospitals derive a tax benefit from the provision of charity care and FAPs, the DoD's hospitals do not. Research conducted yielded that while there are generally accepted accounting standards applicable to the financial reporting of charity and FAPs, there is no single standard, statute, or regulation that outlines the content and structure of those programs. Programs vary widely. The market research also included a review of the rules pertaining to eligibility for Federal and State FAPs such as Medicaid. The research provided a few alternatives for consideration in establishing the MHS FAP, including:

- *Alternative #1:* Generally, for-profit and non-profit hospitals determine a patient's eligibility for FAPs by measuring the applicant's annual household income against the Federal Poverty Guidelines (FPGs). The FPGs are published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). There is one set of FPGs for the contiguous 48 states and Washington DC, one set for Alaska, and another for Hawaii. The Census Bureau annually publishes FPG thresholds. The threshold is a statistical calculation used to identify the number of people living in poverty. There is no geographic variation; the same figures are used for all 50 states and Washington, DC. The Office of Management and Budget (OMB) designates the Census Bureau poverty thresholds as the Federal Government's official statistical definition of poverty. The FPGs are also used by State and Federal agencies for determining an individual's eligibility for Federal programs such as Medicaid.
- *Alternative #2:* Both for-profit and non-profit hospitals typically offer a sliding fee discount based upon the patient's household income when compared to the FPGs. Predominantly, discounts are offered to individuals whose household income falls within the range of 125% to 400% of the FPGs, with most hospitals offering discounts to patients whose income is at or below 200% of the FPGs.
- *Alternative #3:* Most private sector hospitals do not offer a catastrophic waiver policy, but a few will limit a patient's bill to a maximum percentage of the patient's household income (range of 10 to 20 percent of monthly income). In addition, we examined the Department of the Treasury's Administrative Wage Garnishment policy to determine the maximum percentage that the Treasury garnishes from an individual's monthly income (15 percent).

The three alternatives uncovered through market research represent fair and reasonable approaches that could readily be adopted for use in the administration of the MHS FAP, with some modifications, and without incurring significant costs to implement. Specifically:

Alternative #1: Adopted. Since 10 U.S.C. 1079b mandates the application of a sliding scale and catastrophic waivers, the FPGs will be used as the measure to determine a patient's eligibility for these discounts.

Alternative #2: Adopted. The FPG range for eligibility for the sliding scale discount will be set annually by policy issued by the ASD(HA). The range will be published on the DoD Comptroller's Reimbursement Rates website. Reserving the ability to set the range via policy gives DoD maximum flexibility to mitigate financial harm.

Alternative #3: Adopted. The catastrophic waiver will be limited to a percentage of a patient's monthly household income. The percentage will be established by policy issued annually by the ASD(HA). The percentage will be published on the DoD Comptroller's Reimbursement Rates website. Reserving the ability to set the percentage via policy gives DoD maximum flexibility to mitigate financial harm.

Anticipated Cost and Benefits:

Benefit Cost Analysis: The anticipated costs for the MHS Financial Assistance and Waiver Program include only the time required for a patient's application to be reviewed. This includes time required for a civilian non-beneficiary patient to complete the associated DD Form 3857, Application for Military Health System Financial Assistance

Program/Waiver Program, declaring their income, DHA UBO and associated agencies to receive and assess the application, followed by the determination of the eligibility for a sliding scale discount, catastrophic waiver, or debt cancellation waiver, and the response time for the decision. The total estimated time is less than 90 days.

Risks: Currently, Federal debt collection legislation and policies can lead to serious financial harm to some civilian non-beneficiary patients who receive treatment at MTFs. Delays in implementation of this rule could potentially exacerbate these problems.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: DeLisa Prater, DHA Uniform Business Office Program Manager, Department of Defense, Office of Assistant Secretary for Health Affairs, 8111 Gatehouse Road, Suite #221, Falls Church, VA 22042–5101, *Phone:* 703 275–6380, *Email: delisa.e.prater.civ@mail.mil.*

RIN: 0720–AB87

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Statement of Regulatory Priorities

I. Introduction

The U.S. Department of Education (Department) supports States, local communities, institutions of higher education, and families in improving education and other services nationwide to ensure that all Americans, including those with disabilities and who have been underserved, receive a high-quality and safe education and are prepared for employment that provides a livable wage. We provide leadership and financial assistance pertaining to education and related services at all levels to a wide range of stakeholders and individuals, including State educational and other agencies, local school districts, providers of early learning programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, students, members of the public, families, and many others. These efforts are helping to advance equity, recover from the COVID–19 pandemic, and ensure that all children and students from pre-kindergarten through grade 12 will be ready for, and succeed in, postsecondary education and employment, and that students attending postsecondary institutions, or participating in other postsecondary education options, are prepared for a profession or career.

We also vigorously monitor and enforce the implementation of Federal civil rights laws in educational programs and activities that receive Federal financial assistance from the Department, and support innovative and promising programs, research and evaluation activities, technical assistance, and the dissemination of data, research, and evaluation findings to improve the quality of education.

In developing and implementing regulations, guidance, technical assistance, evaluations, data gathering and reporting, and monitoring related to our programs, we are committed to working closely with affected persons and groups. Our core mission includes serving the most vulnerable, and facilitating equal access for all, to ensure all students receive a high-quality and safe education and complete it with a well-considered and attainable path to a sustainable career. Toward these ends, we work with a broad range of interested parties and the general public, including families, students, and educators; State, local, and Tribal governments; other Federal agencies; and neighborhood groups, community-based early learning programs, elementary and secondary schools, postsecondary institutions, rehabilitation service providers, adult education providers, professional associations, civil rights organizations, nonprofits, advocacy organizations, businesses, and labor organizations.

If we determine that it is necessary to develop regulations, we can seek public participation at the key stages in the rulemaking process. We invite the public to submit comments on all proposed regulations through the internet or by regular mail. We also continue to seek greater public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies. For example, on June 7–11, 2021, we sought public input through a virtual public hearing on Title IX of the Education Amendments of 1972. We hosted this hearing to provide a forum for all of our stakeholders and other members of the public, including those from underserved communities, to share their experiences, insights, and expertise on Title IX. The information shared during this helped us determine changes to propose to the regulations regarding Title IX. Additionally, on January 11, 2023, we published a Request for Information (RFI) on Regarding Public Transparency for Low-Financial-Value Postsecondary Programs. For this RFI, we solicited public comments from stakeholders and members of the public, including those from underserved communities, on how to identify the best ways to calculate the metrics that may be used to identify low-financial-value programs and inform technical considerations. We also note that the Higher Education Act of 1965 requires the Department to use the negotiated rulemaking process for a majority of its higher education rulemakings, which is a process that necessitates public participation from a broad range of stakeholders. Additionally, at the end of each day during the negotiated rulemaking sessions, the Department provides an opportunity for members of the public who are not at the negotiating table to speak and provide input. The Department has exclusively used virtual negotiated rulemaking sessions for these higher education regulations since 2021. Hosting virtual meetings instead of in-person sessions has significantly expanded the ability to draw in robust public comment from across the country, as the time commitment is more manageable and does not require traveling in order to participate.

The Department has also taken steps to seek public input on the development of guidance documents. On February 15, 2023, we announced that we would conduct a review of existing guidance related to a statutory provision about how institutions of higher education may compensate recruiters. To engage public participation we held a virtual public hearing on this topic on March 8 and 9, 2023. This gave dozens of members of the public a chance to express their opinions before the Department took any formal steps through guidance. We also sought public comment on this topic, which yielded nearly 270 comments. This approach allowed the Department to get thoughts from the public at the pre-drafting stage and will assist in gauging what changes, if any, to make to this guidance.

To facilitate the public's involvement, we participate in the Federal Docket Management System (FDMS), an electronic single Government-wide access point (*www.regulations.gov*) that enables the public to submit comments on different types of Federal regulatory documents and read and respond to comments submitted by other members of the public during the public comment period. This system provides the public

with the opportunity to submit comments electronically on any notice of proposed rulemaking or interim final regulations open for comment as well as read and print any supporting regulatory documents.

II. Regulatory Priorities

The following are the key rulemaking actions the Department is planning for the coming year. These rulemaking actions advance the Department's mission of ''promot[ing] student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.'' These rulemaking actions also advance the President's priorities of ensuring that every American has access to a high-quality education, regardless of background, and that government should affirmatively work to expand educational opportunities for underserved communities. During his time in office, the President has repeatedly made clear the importance of advancing equity and opportunity for those who have historically been underserved, both as a general matter and with regard to the education system in particular. See Executive Order 13985 (On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government); Executive Order 14021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity); Executive Order 14041 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities); Executive Order 14045 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics); Executive Order 14049 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities); and Executive Order 14050 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans). The rulemaking actions on the Department's agenda seek to advance the President's priorities, as set out in these executive orders and more broadly. Our regulatory agenda covers a wide range of topics, and a wide range of educational institutions—from those serving our youngest children to colleges, universities, and adult education programs. In each of these contexts, promoting equity and opportunity for students who have been historically underserved is central to the Department's regulatory plan.

Postsecondary Education/Federal Student Aid

The Department plans to propose regulations to provide debt relief to student loan borrowers. Specifically, the Department is working on regulations to better clarify the use of the Secretary's authority to waive some or all of a borrower's outstanding balance on a Federal student loan, pursuant to Section 432(a)(6) of the Higher Education Act of 1965, as amended. Negotiation sessions are taking place during the fall of 2023, with draft and final rules expected next year.

Civil Rights/Title IX

The Secretary proposed to amend its regulations implementing Title IX of the Education Amendments of 1972, as amended, consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity.

Student Privacy

The Department is considering policy options to amend the Family Educational Rights and Privacy Act (FERPA) regulations, to update, clarify, and improve the current regulations. The proposed regulations are also needed to implement statutory amendments to FERPA contained in the Uninterrupted Scholars Act of 2013 and the Healthy, Hunger-Free Kids Act of 2010, to reflect a change in the name of the office designated to administer FERPA, and to make changes related to the enforcement responsibilities of the office concerning FERPA.

Grants

The Department plans to propose revisions to the Education Department General Administrative Regulations (EDGAR) to make a variety of updates and revisions, including to update and clarify evidence-related components, to clarify how the Department makes determinations related to continuation awards under competitive grant programs, and to expand flexibility for grantees by clarifying that, where not prohibited by law or the terms and conditions of the grant award, subgranting authority rests with States. These proposed changes would ensure that the EDGAR regulations are consistent with current law and would reduce or eliminate unnecessary burdens and restrictions.

Recently Completed Rulemakings

Additionally, the Department has recently concluded its Improving Income Driven Repayment and Gainful Employment rulemakings. For Improving Income Driven Repayment, the Department issued final regulations governing income-contingent repayment plans by amending the Revised Pay as You Earn repayment plan and restructuring and renaming the repayment plan regulations under the William D. Ford Federal Direct Loan Program, including combining the Income Contingent Repayment and the Income-Based Repayment plans under the umbrella term of ''Income-Driven Repayment'' plans, and providing conforming edits to the FFEL Program. For Gainful Employment, the Department published final regulations that determine whether postsecondary educational programs prepare students for gainful employment in recognized occupations, and the conditions under which programs remain eligible for student financial assistance programs under Title IV of the HEA. The Department also published final regulations on Financial Responsibility, Administrative Capability, Certification, and Ability to Benefit.

III. Principles for Regulating

Over the next year, we may need to issue other regulations because of new legislation or programmatic changes. In doing so, we will follow the Principles for Regulating, which determine when and how we will regulate. Through consistent application of those principles, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without regulations or with limited regulatory action.

In deciding when to regulate, we consider the following:

- Whether regulations are essential to promote quality and equality of opportunity in education.
- Whether a demonstrated problem cannot be resolved without regulation.
- Whether regulations are necessary to provide a legally binding interpretation to resolve ambiguity.
- Whether entities or situations subject to regulation are similar enough that a uniform approach through regulation would be meaningful and do more good than harm.
- Whether regulations are needed to protect the Federal interest, that is, to ensure that Federal funds are used for

their intended purpose and to eliminate fraud, waste, and abuse.

In deciding how to regulate, we are mindful of the following principles:

- Regulate no more than necessary.
- Minimize burden to the extent possible and promote multiple approaches to meeting statutory requirements if possible.
- Encourage coordination of federally funded activities with State and local reform activities.
- Ensure that the benefits justify the costs of regulating.
- To the extent possible, establish performance objectives rather than specify the behavior or manner of compliance a regulated entity must adopt.
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to achieve desired results.

ED—OFFICE FOR CIVIL RIGHTS (OCR)

Final Rule Stage

38. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance [1870–AA16]

Priority: Other Significant.
Unfunded Mandates: Undetermined.
Legal Authority: 20 U.S.C. 1681 *et seq.*
CFR Citation: 34 CFR 106.
Legal Deadline: None.

Abstract: The Department plans to issue a final rule amending its regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.,* consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity. The proposed amendments include, among others, revisions to 34 CFR 106.2 (Definitions), 106.6 (Effect of other requirements and preservation of rights), 106.8 (Designation of coordinator, dissemination of policy, and adoption of grievance procedures), 106.10 (Scope), 106.11 (Application), 106.30 (Definitions), 106.31 (Education programs or activities), 106.40 (Parental, family, or marital status; pregnancy or related conditions), 106.44 (Action by a recipient to operate its education program or activity free from sex discrimination), 106.45 (Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination), 106.46 (Grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions); 106.51 (Employment), 106.57 (Parental, family, or marital status; pregnancy or related conditions), 106.60 (Pre-employment inquiries), and 106.71 (Retaliation).

Statement of Need: This rulemaking is necessary to align the Title IX regulations with the priorities of the Biden-Harris Administration, including those set forth in the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (E.O. 13988) and the Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity (E.O. 14021).

Summary of Legal Basis: We are conducting this rulemaking under 20 U.S.C. 1681 *et seq.*

Alternatives: This was discussed in the notice of proposed rulemaking (NPRM) and will be discussed in the final regulations.

Anticipated Cost and Benefits: This was discussed in the notice of proposed rulemaking (NPRM) and will be discussed in the final regulations.

Risks: This was discussed in the notice of proposed rulemaking (NPRM) and will be discussed in the final regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/12/22	87 FR 41390
NPRM Comment Period End.	09/12/22	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Alejandro Reyes, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, 5A–137, Washington, DC 20202, *Phone:* 202 245–7705, *Email: t9nprm@ed.gov.*

RIN: 1870–AA16

ED—OCR

39. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams [1870–AA19]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 20 U.S.C. 1681 *et seq.*
CFR Citation: 34 CFR 106.
Legal Deadline: None.

Abstract: The Department issued a proposed rule amending its regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.,* consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity.

Statement of Need: This rulemaking is necessary to align the Title IX regulations to fully implement the statute.

Summary of Legal Basis: We are conducting this rulemaking under 20 U.S.C. 1681 *et seq.*

Alternatives: We have limited information about the alternatives at this time.

Anticipated Cost and Benefits: We have limited information about the costs and benefits at this time.

Risks: We have limited information about the risks at this time.

Timetable:

Action	Date	FR Cite
NPRM	04/13/23	88 FR 22860
NPRM Comment Period End.	05/15/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Alejandro Reyes, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, Room 5A–137, Washington, DC 20202, *Phone:* 202 245–7705, *Email: t9nprm@ed.gov.*

RIN: 1870–AA19

ED—OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT (OPEPD)

Proposed Rule Stage

40. EDGAR Revisions (Rulemaking Resulting From a Section 610 Review) [1875–AA14]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 20 U.S.C. 1221e–3 and 3474, and 6511(a); E.O. 13559; 20 U.S.C. 1101 *et seq.;* 20 U.S.C. 1057 *et seq.;* 20 U.S.C. 1062; 20 U.S.C. 1063a; 20 U.S.C. 1065; 20 U.S.C. 1069c; 20 U.S.C. 1134 to 1134d

CFR Citation: 34 CFR 75; 34 CFR 76; 34 CFR 77; 34 CFR 299; and other sections as applicable; 34 CFR 79; . . .

Legal Deadline: None.

Abstract: The Education Department General Administrative Regulations (EDGAR) will be revised to make a variety of updates and revisions, including to update and clarify evidence-related components, to clarify how the Department makes determinations related to continuation awards under competitive grant programs, and to expand flexibility for grantees by clarifying that, where not prohibited by law or the terms and conditions of the grant award, subgranting authority rests with States. In addition, the Department plans to amend these regulations where they are outdated in order to be consistent with current law.

Statement of Need: It is necessary to review and revise these regulations to ensure they are consistent with current law and to reduce or eliminate unnecessary burdens and restrictions.

Summary of Legal Basis: We are conducting this rulemaking under the following authorities: 20 U.S.C. 1221e–3 and 3474, and 6511(a); E.O. 13559; 20 U.S.C. 1101 *et seq.;* 20 U.S.C. 1057 *et seq.;* 20 U.S.C. 1062, 1063a, 1065, and 1069c; 20 U.S.C. 1134–1134d.

Alternatives: We have limited information about the alternatives at this time.

Anticipated Cost and Benefits: We have limited information about the potential cost and benefits and cannot estimate at this time.

Risks: We have limited information about the risks at this time.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Undetermined.

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Kelly Terpak, Department of Education, Office of Planning, Evaluation and Policy Development, 400 Maryland Avenue SW, Washington, DC 20202, *Phone:* 202 205–5321, *Email: kelly.terpak@ed.gov.*

RIN: 1875–AA14

ED—OPEPD

41. Family Educational Rights and Privacy Act [1875–AA15]

Priority: Other Significant.

Legal Authority: 20 U.S.C. 1232g; 20 U.S.C. 1221e–3; 20 U.S.C. 3474

CFR Citation: 34 CFR 99.

Legal Deadline: None.

Abstract: The Department plans to propose to amend the Family Educational Rights and Privacy Act (FERPA) regulations, 34 CFR part 99, to update, clarify, and improve the current regulations by addressing outstanding policy issues, such as clarifying the definition of ''education records'' and clarifying provisions regarding disclosures to comply with a judicial order or subpoena. The proposed regulations are also needed to implement statutory amendments to FERPA contained in the Uninterrupted Scholars Act of 2013 and the Healthy, Hunger-Free Kids Act of 2010, to reflect a change in the name of the office designated to administer FERPA, and to make changes related to the enforcement responsibilities of the office concerning FERPA.

Statement of Need: These regulations are needed to implement amendments to FERPA contained in the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111296) and the Uninterrupted Scholars Act (USA) of 2013 (Pub. L. 112278); to provide needed clarity regarding the definitions of terms and other key provisions of FERPA; and to make necessary changes identified as a result of the Department's experience administering FERPA and the current regulations. A number of the proposed changes reflect the Department's existing guidance and interpretations of FERPA.

Summary of Legal Basis: These regulations are being issued under the authority provided in 20 U.S.C. 1221e–3, 20 U.S.C. 3474, and 20 U.S.C. 1232g.

Alternatives: These are discussed in the preamble to the proposed regulations.

Anticipated Cost and Benefits: These are discussed in the preamble to the proposed regulations.

Risks: These are discussed in the preamble to the proposed regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For Public Comments: www.regulations.gov.

Agency Contact: Dale King, Department of Education, Office of Planning, Evaluation and Policy Development, 400 Maryland Avenue SW, Room 6C100, Washington, DC 20202, *Phone:* 202 453–5943, *Email: dale.king2@ed.gov.*

RIN: 1875–AA15

ED—OFFICE OF POSTSECONDARY EDUCATION (OPE)

Proposed Rule Stage

42. • Student Loan Relief [1840–AD93]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 20 U.S.C. 1082(a)

CFR Citation: 34 CFR 30.1(c)(6); 34 CFR 30; 34 CFR 682; 34 CFR 685.

Legal Deadline: None.

Abstract: The Department intends to amend regulations related to the authorities granted to the Secretary under 20 U.S.C. 1082(a) of the Higher Education Act of 1965, as amended, to provide relief to Federal student loan borrowers.

Statement of Need: This rulemaking is necessary to provide debt relief to the numerous working and middle class student loan borrowers.

Summary of Legal Basis: We are conducting this rulemaking under the authority in 20 U.S.C. 1082(a).

Alternatives: We have limited information about the alternatives at this time.

Anticipated Cost and Benefits: We have limited information about the anticipated costs and benefits at this time.

Risks: We have limited information about the risks at this time.

Timetable:

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rulemaking.	08/31/23	88 FR 60163
NPRM	05/00/24	

Regulatory Flexibility Analysis Required: Undetermined.
Government Levels Affected: Undetermined.
Federalism: Undetermined.
URL For Public Comments: www.regulations.gov.
Agency Contact: Tamy Abernathy, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 2C–232, Washington, DC 20202, *Phone:* 202 987–0385, *Email: tamy.abernathy@ed.gov.*
RIN: 1840–AD93

ED—OPE

Completed Actions

43. Gainful Employment [1840–AD57]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.
Unfunded Mandates: This action may affect the private sector under Public Law 104–4.
Legal Authority: 20 U.S.C. 1001; 20 U.S.C. 1002; 20 U.S.C. 1003; 20 U.S.C. 1088; 20 U.S.C. 1091; 20 U.S.C. 1094; 20 U.S.C. 1099(b); 20 U.S.C. 1099(c); 20 U.S.C. 1082; . . .
CFR Citation: 34 CFR 668; 34 CFR 600.
Legal Deadline: None.
Abstract: The Secretary proposed regulations related to GE to address ongoing concerns about educational programs designed to prepare students for gainful employment in a recognized occupation, but that instead leave them with unaffordable amounts of student loan debt in relation to their earnings. We further seek to provide additional transparency by providing information about all academic programs at postsecondary institutions that are eligible under title IV of the Higher Education Act of 1965, as amended (HEA).
Statement of Need: This rulemaking is necessary to determine whether postsecondary educational programs prepare students for gainful employment and the conditions under which institutions and programs remain eligible for student financial assistance programs under Title IV of the HEA.
Summary of Legal Basis: We are conducting this rulemaking under the following authorities: 20 U.S.C. 1001; 20 U.S.C. 1002; 20 U.S.C. 1003; 20 U.S.C. 1088; 20 U.S.C. 1091; 20 U.S.C. 1094; 20 U.S.C. 1099(b); 20 U.S.C. 1099(c); and 20 U.S.C. 1082.
Alternatives: We have limited information about the alternatives at this time.
Anticipated Cost and Benefits: We have limited information about the anticipated costs and benefits at this time.
Risks: We have limited information about the risks at this time.
Timetable:

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rulemaking.	05/26/21	86 FR 28299
NPRM	05/19/23	88 FR 32300
NPRM Comment Period End.	06/20/23	
Final Action	10/10/23	88 FR 70004
Final Action Effective.	07/01/24	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: Organizations.
Government Levels Affected: None.
URL For Public Comments: www.regulations.gov.
Agency Contact: Joe Massman, Program Manager, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, Washington, DC 20202, *Phone:* 202 453–7771, *Email: joe.massman@ed.gov.*
Gregory Martin, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 2C136, Washington, DC 20202, *Phone:* 202 453–7535, *Email: gregory.martin@ed.gov.*
RIN: 1840–AD57

ED—OPE

44. Improving Income Driven Repayment [1840–AD81]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.
Legal Authority: 20 U.S.C. 1070g; 20 U.S.C. 1087a *et seq.*
CFR Citation: 34 CFR 685.
Legal Deadline: None.
Abstract: The Secretary plans to propose amendments to the regulations governing income-contingent repayment plans by amending the Revised Pay as You Earn (REPAYE) repayment plan, and to restructure and rename the repayment plan regulations under the William D. Ford Federal Direct Loan (Direct Loan) Program, including combining the Income Contingent Repayment (ICR) and the Income-Based Repayment (IBR) plans under the umbrella term of Income-Driven Repayment (IDR) plans.
Statement of Need: This rulemaking is necessary to make improvements to the income-driven repayment plans created under the ICR authority in the Higher Education Act of 1965 that allows the Secretary to cap payments at a set share of a borrower's income.
Summary of Legal Basis: 20 U.S.C. 1070g, 1087a *et seq.,* unless otherwise noted.
Alternatives: We have limited information about the alternatives at this time.
Anticipated Cost and Benefits: We have limited information about the anticipated costs and benefits at this time.
Risks: We have limited information about the risks at this time.
Timetable:

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rulemaking.	05/26/21	86 FR 28299
NPRM	01/11/23	88 FR 1894
NPRM Comment Period End.	02/10/23	
Final Action	07/10/23	88 FR 43820
Final Action Effective.	07/01/24	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: Businesses.
Government Levels Affected: None.
URL For Public Comments: www.regulations.gov.
Agency Contact: Tamy Abernathy, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 2C–232, Washington, DC 20202, *Phone:* 202 987–0385, *Email: tamy.abernathy@ed.gov.*
RIN: 1840–AD81

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Statement of Regulatory and Deregulatory Priorities

The Department of Energy (Department or DOE) makes vital contributions to the Nation's welfare through its activities focused on improving national security, energy supply, energy efficiency, environmental remediation, and energy research. The Department's mission is to:

- Promote dependable, affordable and environmentally sound production and distribution of energy;
- Advance energy efficiency and conservation;
- Provide responsible stewardship of the Nation's nuclear weapons;
- Provide a responsible resolution to the environmental legacy of nuclear weapons production; and
- Strengthen U.S. scientific discovery, economic competitiveness,

and improve quality of life through innovations in science and technology.

The Department's regulatory activities are essential to achieving its critical mission and to implementing the President's clean energy and climate initiatives. Among other things, the Regulatory Plan and the Unified Agenda contain the rulemakings the Department will be engaged in during the coming year to fulfill the Department's commitment to meeting deadlines for issuance of energy conservation standards and related test procedures. The Regulatory Plan and Unified Agenda also reflect the Department's continuing commitment to cut costs, reduce regulatory burden, and increase responsiveness to the public. Additionally, DOE recognizes that public participation and community engagement are a crucial aspect of the Department's rulemaking process, as well as an important vehicle to assist the Department in streamlining its regulatory priorities. DOE's existing ex parte communication process provides an avenue for stakeholders and members of the public to meet with the Department to discuss regulatory practices, either during or not during a rulemaking. This process is intended to encourage the public to provide the Department with all information necessary to develop rules that advance public interest. The process serves to increase public participation in the Department's rulemaking activities and adds transparency to the development of any regulatory action.

Energy Efficiency Program for Consumer Products and Commercial Equipment

The Energy Policy and Conservation Act (EPCA) requires DOE to set appliance efficiency standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. The Department continues to follow its schedule for setting new appliance efficiency standards by both tackling its backlog of rulemakings with missed statutory deadlines and advancing rulemakings with upcoming statutory deadlines. In 2023, DOE published 40 actions relating to energy conservation standards, including 11 final actions; and 25 actions relating to test procedures, including 19 final rules. DOE tentatively plans to publish 20 additional actions relating to energy conservation standards and test procedures by the end of the year. These rulemakings are expected to save American consumers billions of dollars in energy costs over a 30-year timeframe.

Additionally, EPCA directs DOE to provide interested persons an opportunity to present oral and written comments on matters related to any energy conservation standard or test procedure proposed rule. DOE fulfills this obligation by organizing public meetings, held as webinars, as part of the rulemaking process. The meetings take place during the comment period, which provides the public time to review the proposed action prior to attending. During the meeting, a DOE representative presents an overview of the proposed action that may include a general discussion of the rulemaking background, legal authority for the action being taken, and a robust discussion of the proposed action. Participants are offered an opportunity to ask the DOE representative questions about the proposal in real time and may present a prepared statement during the meeting if requested. After the meeting, DOE releases a meeting transcript and considers any question or information presented by the public during the meeting in the next stage of the rulemaking along with the written comments submitted during the comment period. Interested members of the public may participate in these meetings by registering online.

The Department is highlighting one important energy conservation standard rule titled ''Energy Conservation Standards for Consumer Water Heaters.'' For consumer water heaters, DOE estimates that energy savings for active mode operation (in terms of uniform energy factor) will be 27 quads over 30 years and that the cumulative net present value to total consumer benefits of the proposed standards for consumer water heaters will be between $56 billion at a 7-percent discount rate and $161 billion at a 3-percent discount rate. Additionally, the Department notes that two public meeting were held to satisfy EPCA's requirements that interested persons are provided an opportunity to present oral and written comments on matters related to this rulemaking. In April 2022, DOE held a public meeting to discuss a preliminary technical support document and participants included members from relevant trade organizations, representatives of investor-owned electric companies, energy efficiency organizations, and advocates for appliance standards. DOE held a second public meeting to discuss the proposed rule in September 2023. During both meetings, DOE provided an overview of the published rulemaking materials and took questions from attendees in real time. As part of the rulemaking process, DOE intends to address any comment raised during the September meeting in a subsequent rulemaking material, along with all written comments submitted for the proposal.

Federal Agency Leadership in Climate Change

Beyond the appliance program, DOE is supporting Federal agency leadership in climate change in various ways, including in its ''Clean Energy Rule for New Federal Buildings and Major Renovations'' (Clean Energy Rule), which implements a provision of the Energy Independence and Security Act of 2007 (EISA) that requires the Department to establish revised-performance standards for the construction of all new Federal buildings, including commercial buildings, multi-family high-rise residential buildings, and low-rise residential buildings. As directed by EISA, this rule would require reductions in Federal agencies' on-site use of fossil fuels, and provides processes by which agencies can petition DOE for the downward adjustment of these targets for their buildings. For covered buildings for which design for construction or whole building renovation begins in fiscal year 2030 or beyond, the onsite fossil fuel-generated energy consumption of the building must be zero for all building types and climate zones, based on the calculation established in the regulations, and consistent with the requirements of EISA. DOE initiated this rulemaking in 2010, and published its current proposal through a supplemental notice of proposed rulemaking (SNOPR) published in the **Federal Register** in December of 2022. DOE hosted a public stakeholder meeting (January 2022) to present its updated proposal and accept feedback from stakeholders. DOE also solicited formal public comments from stakeholders through March (2023), receiving 49 comment submissions, which will be addressed in DOE's Final Rule (anticipated March 2024).

Federal Authorizations for Interstate Electric Transmission Facilities

This rulemaking proposes to provide an updated process for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA) (16 U.S.C. 824p(h)). The U.S. Department of Energy (DOE) is proposing to establish an integrated and comprehensive Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program), to ensure electric transmission projects are

developed expeditiously and consistent with the nation's environmental laws, including laws that protect endangered and threatened species, critical habitats, and historic properties. The CITAP Program improves the Integrated Interagency Pre-Application (IIP) Process by ensuring timely submission of materials necessary for Federal authorizations and related environmental reviews. Under the program, project proponents develop resource reports and public engagement plans for communities that would be affected by a proposed qualifying project through an iterative and collaborative process with Federal agencies, while providing that those Federal agencies would remain responsible for completion of environmental review. DOE will coordinate submission of the materials necessary for federal authorizations and related environmental reviews required under Federal law to site the qualified electric transmission facilities.

Throughout the rulemaking process, DOE has taken steps to encourage public participation in the rulemaking. On August 23, 2023, DOE held a public meeting for the proposed rulemaking in which DOE provided a briefing of the proposed regulatory text and gave participants the opportunity to provide comments on the proposed rule. Throughout the comment period, DOE has also provided briefings to various stakeholder groups and encouraged the submission of comments through the processes outlined in the notice of proposed rulemaking. Likewise, after the comment period closes on October 2, 2023, DOE intends to continue providing stakeholder briefings to groups wishing to learn more about the proposed rule.

DOE—ENERGY EFFICIENCY AND RENEWABLE ENERGY (EE)

Final Rule Stage

45. Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings [1904–AB96]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 6834(a)(3)(D)

CFR Citation: 10 CFR 433; 10 CFR 435.

Legal Deadline: Other, Statutory, Subject to the requirements in 42 U.S.C. 6834(a)(3)(D).

Abstract: This rulemaking implements provisions of the Energy Independence and Security Act of 2007 (EISA) that require the U.S. Department of Energy (DOE) to establish revised-performance standards for the construction of all new Federal buildings, including commercial, multi-family high-rise residential and low-rise residential buildings. This rulemaking will specifically address the reduction of fossil fuel-generated energy consumption in new buildings and buildings undergoing major renovations, as well as how agencies may petition DOE for a downward adjustment of the requirements if they believe meeting required energy reduction levels would be technically impracticable. DOE has published a supplemental proposal with a new focus that accounts for the needs of Federal agencies and the goals of President Biden's Administration and responds to comments received on prior rulemaking documents. This document proposes standards that would require reductions in Federal agencies' on-site use of fossil fuels (which include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils) consistent with the targets of ECPA and EISA and provides processes by which agencies can petition DOE for the downward adjustment of said targets for buildings. DOE issued this effort was previously reported as the Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings rulemaking.

Statement of Need: The Energy Independence and Security Act of 2007 (EISA 2007) requires certain new Federal buildings and Federal buildings undergoing major renovations to meet fossil fuel-generated consumption reduction targets based on fiscal year.

Summary of Legal Basis: Section 433(a) of EISA 2007 2007 (Pub. L. 110–140) amended section 305 of the Energy Conservation and Production Act (ECPA) and directed the DOE to establish regulations that require fossil fuel-generated energy consumption reductions for certain new Federal buildings and Federal buildings undergoing major renovations. (42 U.S.C. 6834(a)(3)(D)(i)) For these buildings, section 305 of ECPA, as amended by EISA 2007, mandates that the buildings be designed so that a building's fossil fuel-generated energy consumption is reduced as compared with such energy consumption by a similar building in fiscal year (FY) 2003 (as measured by Commercial Buildings Energy Consumption Survey (CBECS) or Residential Energy Consumption Survey (RECS) data from the DOE's Energy Information Administration (EIA)) by 55 percent beginning in FY2010, 65 percent beginning in FY2015, 80 percent beginning in FY2020, 90 percent beginning in FY2025, and 100 percent beginning in FY2030. (42 U.S.C. 6834(a)(3)(D)(i)(I))

Alternatives: The statute requires DOE to establish regulations implementing the specific fossil fuel-generated energy consumption targets for certain new Federal buildings and Federal buildings undergoing major renovations. The targets may be adjusted with respect to a specific building upon petition from an agency, with agreement from the DOE Secretary. In implementing these regulations, DOE considers the technologies available to achieve the statutory targets and those relevant for petitions submitted by agencies.

Anticipated Cost and Benefits: The cumulative net present value (NPV) of the proposed Clean Energy Rule compliant buildings ranges from −$16.0 million (at a 7-percent discount rate) to −$85.3 million (at a 3-percent discount rate). DOE also analyzed an additional case where the future grid emission factors were assumed to follow a 95% reduction by 2035 (95 by 2035) profile as defined in the National Renewable Energy Laboratory's (NREL) 2021 Standard Scenarios Report: A U.S. Electricity Sector Outlook. This case represents a change in national electricity generation which assumes national power sector CO_2 emissions reach 95% below 2005 levels by 2035 and are eliminated on a net basis by 2050. The cumulative NPV of the proposed Clean Energy Rule compliant buildings in the 95 by 2035 case ranges from $104.6 million (at a 7-percent discount rate) to $83.4 million (at a 3-percent discount rate).

Risks: Optional field—no response.

Timetable:

Action	Date	FR Cite
NPRM	10/15/10	75 FR 63404
NPRM Comment Period End.	12/14/10	
Supplemental NPRM.	10/14/14	79 FR 61693
Supplemental NPRM Comment Period End.	12/15/14	
Supplemental NPRM.	12/21/22	87 FR 78382
Public Meeting (webinar) held January 5, 2023.	12/21/22	87 FR 78382
Supplemental NPRM Comment Period End.	02/21/23	
Supplemental NPRM Comment Period Reopened.	02/27/23	88 FR 12267

Action	Date	FR Cite
Supplemental NPRM Comment Period Reopened End.	03/23/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

URL For More Information: *www.energy.gov/eere/femp/notices-and-rules.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Laura Zuber, Attorney, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 306–7651, *Email:* *laura.zuber@hq.doe.gov.*

RIN: 1904–AB96

DOE—EE

46. Energy Conservation Standards for Consumer Water Heaters [1904–AD91]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 42 U.S.C. 6295(m)(1)

CFR Citation: 10 CFR 430.

Legal Deadline: Other, Statutory, Subject to 6-year-look-back in 42 U.S.C. 6295(m)(1).

Abstract: Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as amended, the U.S. Department of Energy (DOE) is examining whether to amend the current energy conservation standards for consumer water heaters found at 10 CFR 430.32(d). Once completed, this rulemaking will fulfill DOE's statutory obligation to either propose amended standards for this product or determine that the standards do not need to be amended. In this rulemaking, DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these proposed standard levels are already commercially available for all product classes covered by the proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standards exceed the burdens of the proposed standards.

Statement of Need: The Energy Policy and Conservation Act requires minimum energy efficiency standards for certain appliances and commercial equipment, including consumer water heaters. (42 U.S.C. 6292(a)(4))

Summary of Legal Basis: Title III of the Energy Policy and Conservation Act (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that the U.S. Department of Energy (DOE) prescribes for certain products, such as consumer water heaters, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)) and to result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B)). EPCA provides that not later the six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

Alternatives: The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of alternative standard levels, including the existing standard, based on the criteria specified in the statute.

Anticipated Cost and Benefits: DOE finds that the benefits to the Nation of the proposed energy conservation standards for Consumer Water Heaters (such as energy savings, consumer average life-cycle cost savings, an increase in national net present value, and emissions reductions) outweigh the burdens (such as loss of industry net present value). For consumer water heaters, DOE estimates that energy savings (in terms of uniform energy factor (UEF)) will be 27 quads over 30 years and that the cumulative net present value (NPV) of total consumer benefits of the proposed standards for consumer water heaters will be between $56 billion at a 7-percent discount rate and $161 billion at a 3-percent discount rate.

Risks: Optional field—no response.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	05/21/20	85 FR 30853
RFI Comment Period End.	07/06/20	
Notice of Webinar and Availability of Preliminary Technical Support Document.	03/01/22	87 FR 11327
Public Meeting	04/12/22	
Preliminary Technical Support Document Comment Period End.	05/02/22	
RFI Comment Period Reopened.	05/04/22	87 FR 26303
RFI Comment Period Reopened End.	05/16/22	
NPRM	07/28/23	88 FR 49058
Public Meeting	09/13/23	
NPRM Comment Period End.	09/26/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Agency Contact: Julia Hegarty, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 597–6737, *Email:* *julia.hegarty@ee.doe.gov.*

RIN: 1904–AD91

DOE—DEPARTMENTAL AND OTHERS (ENDEP)

Final Rule Stage

47. Coordination of Federal Authorizations for Electric Transmission Facilities [1901–AB62]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 824p(h)

CFR Citation: 10 CFR part 900.

Legal Deadline: None.

Abstract: This rulemaking proposes to provide an updated process for the timely submission of information needed for Federal authorizations for proposed electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA) (16 U.S.C. 824p(h)). It seeks to ensure electric transmission projects are developed consistent with the nation's environmental laws, including laws that protect endangered and threatened species, critical habitats, and historic properties. It provides a framework, called the Integrated Interagency Pre-Application (IIP) Process, by which the U.S. Department of Energy (DOE) will coordinate submission of materials necessary for

federal authorizations and related environmental reviews required under Federal law to site qualified electric transmission facilities, and integrates that IIP Process into the Federal Electric Transmission Authorization Coordination Program.

Statement of Need: To address capacity constraints and congestion on the nation's electric transmission grid, DOE is amending 10 CFR part 900 to establish a Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program) to reduce the time required for transmission project developers to receive decisions on Federal authorizations for interstate transmission projects.

Summary of Legal Basis: The Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct) established a national policy to enhance coordination and communication among Federal agencies with authority to site electric transmission facilities. Section 1221(a) of EPAct added a new section 216 to part II of the Federal Power Act (16 U.S.C. 824p) (FPA), which sets forth provisions relevant to the siting of interstate electric transmission facilities. Section 216(h) of the FPA (16 U.S.C. 824p(h)), Coordination of Federal Authorizations for Transmission Facilities, requires the DOE to coordinate all Federal authorizations and related environmental reviews needed for siting interstate electric transmission projects, including National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.*) (NEPA) reviews. In response to the investments made in clean energy by the infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58) and the Inflation Reduction Act (IRA) (Pub. L. 117–169), DOE is proposing to amend its section 216(h) implementing regulations, found in 10 CFR part 900, to implement this authority and better coordinate review of Federal authorizations to expediently increase interstate electric transmission infrastructure.

Alternatives: The U.S. Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, the Environmental Protection Agency, the Council on Environmental Quality, the Federal Permitting Improvement Steering Council, Department of the Interior, and the Office of Management and Budget Regarding Facilitating Federal Authorizations for Electric Transmission Facilities entered into a Memorandum of Understanding, executed May 2023, to expedite the siting, permitting, and construction of electric transmission infrastructure in the United States under section 216(h) of the Federal Power Act (FPA), 16 U.S.C. 824p(h), as enacted by section 1221(a) of the Energy Policy Act of 2005, as such, alternatives were not considered.

Anticipated Cost and Benefits: The societal costs of the action are the direct costs incurred by project proponents during the IIP Process. Most of the information required to be submitted during the IIP Process would likely be required absent this proposal and therefore the investment of time and resources required by this proposed process are unlikely to be an additional burden on respondents. However, the full costs are considered for transparency. These costs of $399,083 per year are detailed in the Paperwork Reduction Act burden analysis. The 10-year and 20-year net present value of those annual costs, assuming 2% annual inflation, are $3.8 million and 7.2 million under a 3% discount rate, and $3.1 million and 5.0 million under a 7% discount rate.

The benefits of the CITAP Program, designed to reduce the Federal authorization timelines for interstate electric transmission facilities and enable more rapid deployment of transmission infrastructure, include direct benefits to the project proponents in decreased time and expenditure on authorizations and a series of indirect social benefits. Increasing the current pace of transmission infrastructure deployment will generate benefits to the public in multiple ways that can be categorized into grid operations, system planning, and non-market benefits. Grid operation benefits include a reduction in the congestion costs for generating and delivering energy; mitigation of weather and variable generation uncertainty enhanced diversity of supply, which increases market competition and reduces the need for regional backup power options; and increased market liquidity and competition. From a system planning standpoint, accelerated transmission investments will allow the development of new, low-cost power plants in areas of high congestion which might not otherwise see investment due to capacity constraints, and additional grid hardening or resilience. Finally, non-market benefits to the public include reduced costs for meeting public policy goals related to emissions and equitable energy access, as well as emissions reductions system wide.

Risks: Optional field—no response.

Timetable:

Action	Date	FR Cite
NPRM	08/16/23	88 FR 55826
Notice of Public Meeting.	08/22/23	88 FR 57011
Public Meeting	08/23/23	
NPRM Comment Period End.	10/02/23	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

Agency Contact: Gabriel Daly, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 597–6973, *Email: gabriel.daly@hq.doe.gov.*

RIN: 1901–AB62

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH & HUMAN SERVICES

Statement of Regulatory Priorities for Fiscal Year 2024

As the Federal agency with principal responsibility for protecting the health of all Americans and providing essential human services, the Department of Health and Human Services (HHS or the Department) implements programs that strengthen the health care system; advance scientific knowledge and innovation; and improve the health, safety, and wellbeing of the American people.

The Department's Regulatory Plan for Fiscal Year (FY) 2024 focuses on lowering costs and expanding coverage, reducing disparities and advancing equity, increasing public health preparedness, and supporting the wellbeing of families and communities. Highlights from the FY2024 Regulatory Plan include:

- Policies to expand access to affordable care and protect health coverage following the end of the COVID–19 public health emergency.
- Policies to strengthen Federal early care and education programs that enhance quality of services to children and families, lower child care costs for working families, and provide needed support to early educators.
- Advancing health and safety across the health care delivery system through policies and programs that promote health equity.
- Expanding access to the full continuum of mental health and substance use prevention, treatment, and recovery.
- Bolstering the Department's ability to identify and prevent future public health threats.

• Improving the Department's ability to identify foodborne illnesses and advancing work to improve consumers' ability to access nutritious food to prevent disease and protect public health.

• Strengthening services for older Americans to allow them to remain in their communities.

• Ensuring that children and youth receive safe and appropriate care and support in order to thrive.

In short, the Department's Regulatory Plan reflects the Biden-Harris Administration's commitment to continue building a better, healthier America, through rules designed to protect and enhance the lives of every person touched by HHS programs.

I. Lowering Health Care Costs and Expanding Access to Coverage

The Biden-Harris Administration has worked to expand and strengthen coverage for millions of Americans enrolled in Medicare, Medicaid, or ACA Marketplace plans. In implementing key provisions of the Inflation Reduction Act, HHS rules will help lower the cost of prescription drugs in Medicare. HHS has prioritized efforts to protect health coverage following the end of the COVID–19 public health emergency, working with State partners to make it easier for beneficiaries and consumers to stay covered.

a. Enhancing Coverage and Access in the ACA Marketplaces, Medicaid, CHIP, and Medicare

Rulemaking related to Medicare, Medicaid, and the ACA Marketplaces will strengthen coverage under these programs and help make it easier for Americans to stay covered. In response to the President's Executive Orders to strengthen Medicaid and the ACA, HHS rules will simplify the enrollment process to help maintain continuous coverage for vulnerable populations and reduce administrative burdens for States, while improving access to care, quality, and health outcomes across delivery systems. HHS rules will set a minimum access standard in Medicaid and CHIP programs, advancing access to care for adult and pediatric populations in primary care, behavioral health, home and community-based services and maternal health.

In collaboration with the Departments of Labor and Treasury, HHS has issued proposed rules to improve the comprehensiveness of coverage and protect consumers from low-quality coverage. These rules will help to expand access to mental health and substance use care and preventive services as well as ensure that consumers protected from buying coverage through Short-Term, Limited-Duration Insurance (STLDI) that provide little to no coverage and can discriminate against those with pre-existing conditions.

In addition, CMS will issue annual payment rules and notices over the next year that affect federal health programs, including Medicare and the ACA Marketplace. Though they are not included in the HHS Regulatory Plan, these rules will include policies that further the Secretary's priority of expanding access to affordable, high-quality health care.

b. Expanding the Accessibility and Affordability of Drugs and Medical Products

Under the Inflation Reduction Act (IRA), HHS policy will allow Medicare to negotiate the cost of some drugs and provide coverage without cost sharing for recommended vaccines in the Medicare program. The IRA will require rebates if the cost of some Medicare Part B physician-administered drugs rise faster than the rate of inflation—reducing costs and increasing peace of mind for millions of older Americans and those with disabilities.

Consistent with the President's drug pricing priorities, revisions to the 340B Drug Pricing Program's (340B Program) Administrative Dispute Resolution (ADR) rule would establish new requirements and procedures for the Program's ADR process, making the process more equitable and accessible for participation, while supporting the Program's mission to expand access to health care for underserved communities.

c. Streamlining the Secure Exchange of Health Information

The secure exchange of health information and interoperability among health care providers and other entities improves patient care, promotes competition, reduces costs, and provides more accurate public health data. Upcoming HHS rulemaking will implement provisions of the 21st Century Cures Act to set out disincentives for health care providers who engage in information blocking, ensuring effective health information exchange and patient access to quality care. HHS will also issue proposed modifications to the HIPAA Security Rule to improve cybersecurity in the health care sector by strengthening requirements for HIPAA regulated entities to safeguard individuals' electronic protected health information to prevent, detect, contain, mitigate, and recover from cybersecurity threats.

II. Reducing Disparities and Advancing Equity

Equity is the focus of over a dozen Executive Orders issued by President Biden, and it remains a cornerstone of the Biden-Harris Administration's agenda. The Department recognizes that people of color; people with disabilities; lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) people; and other underserved groups in the U.S. have been systematically denied a full and fair opportunity to participate in economic, social, and civic life. Among its other manifestations, this history of inequality shows up as persistent disparities in health and social outcomes and in access to care.

As the Federal agency responsible for ensuring the health and wellbeing of Americans, the Department, under Secretary Becerra's leadership, is committed to tackling these entrenched inequities and their root causes throughout its programs and policies. The Department's regulatory priority of reducing disparities and advancing equity includes rules aimed at preventing and remedying discrimination, strengthening health and safety standards for consumer products that impact underserved communities, and promoting equity in federally supported health care services.

In addition to the specific rulemakings identified in this section, HHS is committed to advancing equity in all aspects of the Department's work. Consistent with President Biden's Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985), the Department's efforts in this area include an ongoing assessment of whether underserved communities face barriers in accessing benefits and opportunities in HHS programs and whether policy changes are necessary to advance equity. This process continues to inform the Department's broader regulatory agenda.

Further, HHS continues to seek out meaningful and equitable opportunities for public input by a range of interested or affected individuals and communities, including underserved communities, to inform our regulatory actions consistent with Executive Order 14094, Modernizing Regulatory Review.

a. Preventing and Remedying Discrimination

The HHS Regulatory Plan includes actions to eliminate discrimination as a barrier for historically marginalized communities seeking access to HHS programs and activities. For instance,

the Department plans to finalize its rule on nondiscrimination in health programs and activities, which would amend the existing regulations implementing Section 1557 of the ACA, ensuring that the regulations reflect the proper scope of the statute's protections. Because discrimination in the U.S. health care system is a driver of health disparities, the Section 1557 regulations present a key opportunity for the Department to promote equity and ensure protection of health care as a right.

Additionally, the Department has issued a proposed rule addressing discrimination on the basis of disability in health and human services programs or activities. This rule would revise regulations under section 504 of the Rehabilitation Act of 1973 to address unlawful discrimination on the basis of disability in HHS-funded health and human services programs. The proposed rule includes new requirements prohibiting discrimination in the areas of medical treatment; the use of value assessments; web, mobile, and kiosk accessibility; and requirements for accessible medical equipment, so that persons with disabilities have an opportunity to participate in or benefit from health care programs and activities that is equal to the opportunity afforded others. It also adds a section on child welfare to expand on and clarify the obligation to provide nondiscriminatory child welfare services. The proposed rule would also update the definition of disability and other provisions to ensure consistency with statutory amendments to the Rehabilitation Act, enactment of the Americans with Disabilities Act and the Americans with Disabilities Amendments Act of 2008, the Affordable Care Act, as well as Supreme Court and other significant court cases. It also further clarifies the obligation to provide services in the most integrated setting.

b. Strengthening Health and Safety Standards for Consumer Products, Including Those That Disproportionately Impact Underserved Communities

To protect the public health and advance equity, the Department continues to pursue regulatory action with respect to consumer products that harm the health of underserved groups.

Further, the Department plans to finalize two rules that prohibit menthol as a characterizing flavor in cigarettes and prohibit all characterizing flavors (other than tobacco) in cigars. These and other potential future regulatory actions would significantly reduce disease and death from combusted tobacco product use, the leading cause of preventable death in the United States.

The regulations are also expected to promote better health outcomes across population groups. Evidence shows that menthol cigarettes are disproportionately marketed to specific communities—such as disproportionate storefront and outdoor marketing, as well as point-of-sale marketing, in Black, Hispanic, and low-income communities. The disparities in tobacco marketing and use shape disparities in tobacco-related disease and death. These planned regulatory actions on tobacco are expected not only to benefit the population as a whole, but in doing so, also substantially decrease tobacco-related health disparities.

c. Promoting Equity in Federally Supported Health Care Services

The Department continues to seek out opportunities to embed equity throughout HHS programs and policies, including in federally supported health care services, and through upcoming rulemaking aimed at identifying appropriate culturally competent and person-centered care requirements for Medicare and Medicaid participating providers. The Department will continue to provide comprehensive, culturally appropriate and quality personal and public health services to American Indian and Alaskan Native people through the Indian Health Service (IHS).

III. Increasing Public Health Preparedness

Protecting the nation's public health is a primary responsibility of the Department. This responsibility includes ensuring that the right protections and infrastructure are in place to help the nation to respond to public health threats and outbreaks quickly and effectively. It also includes ensuring healthy and safe food for every American through protections against foodborne illness in the food supply chain. In service of this regulatory priority, over the next year, the Department is pursuing rules that would bolster the nation's resilience to better manage the long-term effects of COVID–19 and future public health threats and improve Americans' access to safe and nutritious food.

a. Bolstering the Nation's Resilience To Manage COVID–19 and Future Public Health Threats

In the context of COVID–19 and other disease outbreaks, it is crucial for public health authorities to be able to identify and evaluate persons who may have been exposed to a communicable disease. Currently, the Centers for Disease Control and Prevention (CDC) is authorized to require airlines to collect certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including contact tracing and travel restrictions. The Department intends to finalize a rulemaking in FY 2024 that allows the Department to continue to receive data in a timely manner and more effectively provide critical public health services in response to COVID–19 and other communicable diseases that may put Americans' health at risk.

HHS will also propose rulemaking that incorporates learnings from the public health emergency into updates to national emergency preparedness requirements for participating Medicare and Medicaid providers, to assure adequate planning for natural and man-made disasters, including climate-related disasters, and coordination with official emergency preparedness systems.

b. Improving Access to Safe and Nutritious Food

To help ensure healthy and safe food for every American, the HHS Regulatory Plan includes rules that improve the Department's ability to identify foodborne illnesses, prevent them from reoccurring, and remove unsafe products from the market. For example, the Department intends to finalize a rule intended to improve the safety of produce by requiring farms to conduct comprehensive assessments of pre-harvest agricultural water that would help farms identify and mitigate hazards in water used to grow produce.

The HHS Regulatory Plan also supports the goals of the White House Conference and Strategy on Hunger, Nutrition, and Health, by advancing work to improve consumers' ability to access nutritious food to prevent disease and protect public health. The Department seeks to improve dietary patterns in the United States to help reduce the burden of diet-related chronic diseases. Another way HHS is working towards creating a healthier food supply is by proposing a rule that would permit use of salt substitutes, rather than salt, to help reduce the amount of sodium in standardized foods. Moreover, proposed rulemaking that would standardize food package labeling and finalization of a rule updating the definition of the term ''healthy'' would help consumers more easily identify nutritious foods and maintain healthy diets.

IV. Supporting the Wellbeing of Families and Communities

The Department strives to support the wellbeing of Americans by funding and providing access to a range of critical social services. Millions of people benefit from HHS programs that help older adults and people with disabilities participate fully in their communities, promote opportunity and economic security for families, help refugees and other eligible newcomers integrate and thrive, and provide care for unaccompanied children. The Secretary recognizes that these programs and forms of assistance are more important than ever due to ongoing consequences of the pandemic, which have had an outsized impact on people of color and other underserved communities.

To sustain and strengthen these essential benefits and services, the Department is prioritizing regulations that would improve their quality and accessibility while reducing burdens and increasing the efficiency of service delivery. The Secretary's regulatory priority in this area includes rules aimed at strengthening high-quality services for older adults, expanding opportunities for children and youth to thrive, and providing pathways to economic success.

a. Strengthening High-Quality Services for Older Adults

The HHS Regulatory Plan includes rules aimed at enhancing the ability of Administration for Community Living (ACL) programs to protect the rights and wellbeing of older adults. For instance, the Department plans to finalize regulations for Adult Protective Services (APS) programs that will strengthen services for older adults and adults with disabilities that may experience elder abuse.

Furthermore, consistent with the Biden-Harris Administration's Nursing Home Reform Action Plan, the Department's Regulatory Plan includes efforts to improve the safety and quality of care in the nation's nursing homes. For example, the Department plans to finalize rules that institute minimum staffing standards in nursing homes, protect residents, and prevent fraud, waste, and abuse, and mandate transparency of ownership, management, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities. These efforts complement the Department's ongoing efforts to also strengthen long term services and supports delivered to older adults and people with disabilities in their homes and communities.

Notably, consistent with the Administration's commitment to maximize transparency and public engagement, and to allow communities greater opportunities to provide input in the regulatory process, HHS sought the expertise of colleagues in the Office of Management and Budget, the General Services Administration, and the Consumer Financial Protection Bureau to inform an alternative approach to public comments for the proposed nursing home minimum staffing rule. The Department ultimately established and disseminated in public materials a direct web link to allow a more accessible comment submission path to the public, lowering the barriers to participation for the nursing home residents, families, and facility staff who will be directly impacted by this regulation.

b. Expanding Opportunities for Children and Youth To Thrive

The Department's mission to provide effective human services includes a focus on protecting the wellbeing of children and youth. This focus has special significance given the ongoing consequences of the pandemic, which have deeply affected the lives of children and youth—particularly Black, Latino, Indigenous, Native American, and other underserved youth with disproportionate involvement in the child welfare system. Several rules planned for FY 2024 are aimed at enhancing programs and protections for youth and families experiencing foster care, unaccompanied children in the Department's care, and individuals entitled to child support.

As part of its focus on the foster care and the child welfare system, the Department plans to clarify requirements for title IV–E/IV–B agencies to effectively serve LGBTQI+ children and families by ensuring safe and appropriate foster care placements and ensure a process that is responsive to children's concerns. The Department recently issued a final rule allowing licensing standards for relative or kinship foster family homes that are different from non-relative or non-kinship homes. These changes reduce barriers to licensing for relatives and kin who can provide continuity and a safe and loving home for children when they cannot be with their parents. Additionally, the Department recently issued a proposed rule to facilitate the provision of independent legal representation to a child who is a candidate for foster care, or in foster care, and to a parent preparing for participation in foster care legal proceedings. Improving access to independent legal representation may help prevent the removal of a child from the home or, for a child in foster care, achieve permanence faster.

The Department will also finalize a rule to amend the Child Care and Development Fund (CCDF) regulations with changes that will lower child care costs for families, increase parent's child care options, reduce barriers to receiving child care assistance, increase payments to providers, support higher program quality, and improve child care stability.

Moreover, the Department will propose a rule that aims to improve the quality, stability, and continuity of comprehensive Head Start services for thousands of children and their families by adding provisions to the Head Start Program Performance standards to better support the Head Start workforce.

The Department also plans to finalize a rule to strengthen services and protections for unaccompanied children in its care.

c. Providing Pathways to Economic Success

In administering the Temporary Assistance for Needy Families (TANF) program, the Department works with States, territories, and tribes to help children and families achieve economic success. The COVID–19 pandemic highlighted the importance of using Federal investments and existing program flexibilities strategically to reduce family poverty and alleviate economic crises, especially for families of color and underserved communities. In the next year, the Department plans to finalize a rule to reform the TANF program to strengthen its role as a safety net and for families and individuals with the lowest incomes. The proposed rule would strengthen TANF's role in supporting family well-being and work, as well as creating additional accountability for States to ensure TANF funds serve their intended purpose, while maintaining State flexibility. These changes are intended to improve the overall wellbeing of families while addressing inequities in program services and policies.

Additionally, the Department is proposing Federal support for employment and training services for non-custodial parents as a supplement to traditional enforcement tools, to make the child support program more effective and help noncustodial parents find and sustain work to be able to support their children.

HHS—OFFICE FOR CIVIL RIGHTS (OCR)

Proposed Rule Stage

48. Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities [0945–AA15]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: sec. 504 of the Rehabilitation Act of 1973; 29 U.S.C. 794

CFR Citation: 45 CFR 84.

Legal Deadline: None.

Abstract: This proposed rule would revise regulations under section 504 of the Rehabilitation Act of 1973 to address discrimination on the basis of disability in HHS-funded programs and activities. Covered topics include nondiscrimination in medical treatment; child welfare programs and activities; value assessment methods; accessible medical equipment; accessible web content, mobile apps, and kiosks; and other relevant health and human services activities.

Statement of Need: To robustly enforce the prohibition of discrimination on the basis of disability, OCR will update the section 504 of the Rehabilitation Act regulations to clarify obligations and address issues that have emerged in our enforcement experience (including complaints OCR has received), case law, and statutory changes under the Americans with Disabilities Act and other relevant laws, in the forty-plus years since the regulation was promulgated. OCR has heard from complainants and many other stakeholders, as well as Federal partners, including the National Council on Disability, on the need for updated regulations in a number of important areas.

Summary of Legal Basis: The current regulations have not been updated to be consistent with the Americans with Disabilities Act, the Americans with Disabilities Amendments Act, or the 1992 Amendments to the Rehabilitation Act, all of which made changes that should be reflected in the HHS section 504 regulations. Under Executive Order 12250, the Department of Justice has provided a template for HHS to update this regulation.

Alternatives: OCR considered issuing guidance, and/or investigating individual complaints and compliance reviews. However, we concluded that not taking regulatory action could result in continued discrimination, inequitable treatment and even untimely deaths of people with disabilities. OCR continues to receive complaints alleging serious acts of disability discrimination each year. While we continue to engage in enforcement, we believe that our enforcement and recipients' overall compliance with the law will be better supported by the presence of a clearly articulated regulatory framework than continuing the status quo. Continuing to conduct case-by-case investigations without a broader framework risks lack of clarity on the part of providers and violations of section 504 that could have been avoided and may go unaddressed. By issuing a proposed rule, we are undertaking the most efficient and effective means of promoting compliance with section 504.

Anticipated Cost and Benefits: The Department anticipates that this rulemaking will result in significant benefits, namely by providing clear guidance to the covered entity community regarding requirements to administer their health programs and activities in a non-discriminatory manner. In turn, the Department anticipates cost savings as individuals with disabilities can access a range of health care services. The Department expects that the rule, when finalized, will generate some changes in action and behavior that may generate some costs. The rule will address a wide range of issues, with varying impacts and a comprehensive analysis is underway. Total anticipated costs are approximately $1,843.2 million (7% discount) or $1,782 million (3% discount) and total anticipated benefits are approximately $1,864.3 million (7% discount) or 1,927.7 million (3% discount). There are additional but necessary costs to make web content and mobile applications accessible and to purchase accessible medical diagnostic equipment (MDE). DOJ has issued/will issue substantially similar rulemaking under Title II of the ADA, those costs are widely understood to be necessary to ensure people with disabilities have equal or comparable access to health and human services.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	09/14/23	88 FR 63392
NPRM Comment Period End.	11/13/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Local, State.

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RIN: 0945–AA15

HHS—OCR

49. • Proposed Modifications to the HIPAA Security Rule To Strengthen the Cybersecurity of Electronic Protected Health Information [0945–AA22]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: Health Insurance Portability and Accountability Act of 1996 (HIPAA), sec. 262 (42 U.S.C. 1320d–2); Health Information Technology for Economic and Clinical Health (HITECH) Act, sec. 13401 (42 U.S.C. 17931)

CFR Citation: 45 CFR 160; 45 CFR 164.

Legal Deadline: None.

Abstract: This rule will propose modifications to the Security Standards for the Protection of Electronic Protected Health Information (the Security Rule) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act). These modifications will improve cybersecurity in the health care sector by strengthening requirements for HIPAA regulated entities to safeguard electronic protected health information to prevent, detect, contain, mitigate, and recover from cybersecurity threats.

Statement of Need: In February 2003, the HIPAA Security Rule established standards for the security of electronic protected health information (ePHI) to be implemented by HIPAA covered entities and, by amendment of the HITECH Act, their business associates (collectively, ''regulated entities''). Prior to the HIPAA Security Rule, standard security measures did not exist in the health care industry to address the security of ePHI while stored and exchanged between entities. Since 2003, the Department has received recommendations from the National Committee on Vital and Health Statistics (NCVHS), an advisory committee to the Secretary of HHS, and the public to update and strengthen security standards to protect ePHI, especially in light of newer threats not previously contemplated in 2003 such as ransomware. Additionally, the

Department has reviewed media reports advocating the strengthening of protections provided by the HIPAA Security Rule as well as a report from a U.S. Senator advocating for modernizing HIPAA to increase protections of ePHI in the face of current cyber threats.

Summary of Legal Basis: The current HIPAA Security Rule has not been updated to address the recent dramatic increase in cyber-attacks on the health care sector that are undermining the security of individuals' ePHI. Section 1173(d) of the Social Security Act requires the Secretary of HHS to adopt security standards that take into account the technical capabilities of record systems used to maintain health information, the costs of security measures, the need to train persons who have access to health information, the value of audit trails in computerized record systems, and the needs and capabilities of small health care providers and rural health care providers. Since publication of the HIPAA Security Rule in 2003, there has been an evolution in technical capabilities of record systems used to maintain health information and costs of security measures that support updating the HIPAA Security Rule to help ensure that it can continue to provide a baseline of security standards to meet current and emerging security risks and threats to ePHI.

Alternatives: HHS considered whether these policy updates could be implemented through guidance. However, the Department determined that this would be insufficient to prevent and address cybersecurity threats and vulnerabilities facing the U.S. health care system. Revisions to the existing HIPAA Security Rule will help ensure the cybersecurity of individuals' ePHI.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	09/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Marissa Gordon-Nguyen, Senior Advisor for Health Information Privacy, Data, and Cybersecurity Policy, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368–1019, *TDD Phone:* 800 537–7697, *Email: ocrprivacy@hhs.gov.*

RIN: 0945–AA22

HHS—OCR

Final Rule Stage

50. Confidentiality of Substance Use Disorder Patient Records [0945–AA16]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 290dd–2 amended by the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Pub. L. 116–136, sec. 3221 (March 27, 2020); Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. 111–5, sec. 13402 and 13405 (February 17, 2009); Health Insurance Portability and Accountability Act of 1996 (HIPAA) Pub. L. 104–191, sec. 264 (August 21, 1996); Social Security Act, Pub. L. 74–271 (August 14, 1935) (see secs. 1171 to 1179 of the Social Security Act, 42 U.S.C. 1320d to 1320d–8)

CFR Citation: 42 CFR 2; 45 CFR 160; 45 CFR 164.

Legal Deadline: NPRM, Statutory, March 27, 2021. The CARES Act requires revisions to regulations with respect to uses and disclosures of information occurring on or after the date that is 12 months after the date of enactment of the Act (March 27, 2021); and not later than one year after the date of enactment, an update to the Notice of Privacy Practices (NPP) provisions of the HIPAA Privacy Rule at 45 CFR 164.520.

Abstract: This final rule, to be issued in coordination with the Substance Abuse and Mental Health Services Administration (SAMHSA), would implement provisions of section 3221 of the CARES Act. Section 3221 amended 42 U.S.C. 290dd–2 to better harmonize the 42 CFR part 2 (part 2) confidentiality requirements with certain permissions and requirements of the HIPAA Rules and the HITECH Act.

Statement of Need: Rulemaking is needed to implement section 3221 of the CARES Act, which modified the statute that establishes protections for the confidentiality of substance use disorder (SUD) treatment records and authorizes the implementing regulations at 42 CFR part 2 (part 2). As required by the CARES Act, this regulation will: (1) Align certain provisions of part 2 with aspects of the HIPAA Privacy, Breach Notification, and Enforcement Rules. (2) Strengthen part 2 protections against uses and disclosures of patients' SUD records for civil, criminal, administrative, and legislative proceedings. (3) Require that a HIPAA Notice of Privacy Practices address privacy practices with respect to part 2 records.

Summary of Legal Basis: Section 3221(i) of the CARES Act requires rulemaking as may be necessary to implement and enforce section 3221.

Alternatives: HHS considered whether the CARES Act provisions could be implemented through guidance. However, rulemaking is required because the current part 2 regulations are inconsistent with the authorizing statute, as amended by the CARES Act. HHS considered whether to include the anti-discrimination provisions of section 3221(g) in this rulemaking. However, because implementation of the anti-discrimination provisions implicates numerous civil rights authorities, which require collaboration with the Department of Justice, HHS will address the anti-discrimination provisions in a separate rulemaking.

Anticipated Cost and Benefits: HHS estimates that the effects of the requirements for regulated entities would result in new costs of $64,299,891 within 12 months of implementing the final rule, followed by $2,514,756 of recurring annual costs in years two through five. HHS estimates these first-year costs would be partially offset by $12,755,378 annual cost savings, resulting in overall net costs of $10,582,027 over 5 years.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	12/02/22	87 FR 74216
NPRM Comment Period End.	01/31/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State, Tribal.

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RIN: 0945–AA16

HHS—OCR

51. Nondiscrimination in Health Programs and Activities [0945–AA17]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: sec. 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. 18116); 42 U.S.C. 1302; 42 U.S.C. 1395; 42 U.S.C. 1395eee(f); 42 U.S.C. 1396u–4(f); 42 U.S.C. 2000d–1; 20 U.S.C. 1405; 29 U.S.C. 794; 42 U.S.C. 290dd–2; 21 U.S.C. 1174; 42 U.S.C. 300gg to 300gg–63; 42 U.S.C. 300gg–91; 42 U.S.C. 300gg–92; 42 U.S.C. 300gg–111 to 300gg–139 as amended, sec. 3203; Pub. L. 116–136, 134 Stat. 281; 42 U.S.C. 18021 to 18024; 42 U.S.C. 18031 to 18033; 42 U.S.C. 18041 to 18042; 42 U.S.C. 18044; 42 U.S.C. 18051; 42 U.S.C. 18054; 42 U.S.C. 18061; 42 U.S.C. 18063; 42 U.S.C. 18071; 42 U.S.C. 18081 to 18083; 26 U.S.C. 36B

CFR Citation: 42 CFR 438; 42 CFR 440; 42 CFR 457; 42 CFR 460; 45 CFR 80; 45 CFR 84; 45 CFR 86; 45 CFR 91; 45 CFR 92; 45 CFR 147; 45 CFR 155; 45 CFR 156; . . .

Legal Deadline: None.

Abstract: This rule proposed to address changes to the 2020 Final Rule implementing section 1557 of the Patient Protection and Affordable Care Act (PPACA). Section 1557 of PPACA prohibits discrimination on the basis of race, color, national origin, sex, age, or disability under any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency, or any entity established under title l of the PPACA.

Statement of Need: The Biden-Harris Administration has made advancing health equity and nondiscrimination in health care a cornerstone of its policy agenda. The current section 1557 implementing regulation significantly curtails the scope of application of section 1557 protections and creates uncertainty and ambiguity as to what constitutes prohibited discrimination in covered health programs and activities. Issuance of a revised section 1557 implementing regulation is important because it would provide clear and concise regulations that are consistent with the statutory text and protect historically marginalized communities as they seek access to health programs and activities.

Summary of Legal Basis: The Secretary of the Department is statutorily authorized to promulgate regulations to implement section 1557. 42 U.S.C. 18116(c). The current section 1557 Final Rule (issued in 2020) is in litigation.

Alternatives: The Department has considered the alternative of maintaining the section 1557 implementing regulation in its current form; however, the Department believes it is appropriate to undertake rulemaking given the Administration's commitment to advancing equity and access to health care and in light of the issues raised in litigation challenges to the current rule.

Anticipated Cost and Benefits: In enacting section 1557 of the ACA, Congress recognized the benefits of equal access to health services and health insurance that all individuals should have, regardless of their race, color, national origin, sex, age, or disability. The Department anticipates that this rulemaking will result in significant benefits that are difficult to quantify, namely by providing clear guidance to the covered entity community regarding requirements to administer their health programs and activities in a non-discriminatory manner. In turn, the Department anticipates cost savings as individuals are able to access a range of health care services that will result in decreased health disparities among historically marginalized groups and increased health benefits. The Department estimates annualized costs over a 5-year time horizon of about $551 million or $560 million; however, it is important to recognize that this rule applies pre-existing nondiscrimination requirements in Federal civil rights laws to various entities, the great majority of which have been covered by these requirements for years.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	08/04/22	87 FR 47751
NPRM Comment Period End.	10/03/22	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

URL For More Information: https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html.

URL For Public Comments: https://www.regulations.gov/document/HHS-OS-2022-0012-0001.

Agency Contact: Daniel Shieh, Associate Deputy Director, Policy Division, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368–1019, *Email: 1557@hhs.gov.*

Related RIN: Related to 0945–AA02, Related to 0945–AA11

RIN: 0945–AA17

HHS—OCR

52. Safeguarding the Rights of Conscience as Protected by Federal Statutes [0945–AA18]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 5 U.S.C. 301

CFR Citation: 44 CFR 88.

Legal Deadline: None.

Abstract: The Department proposed to partially rescind the May 21, 2019, final rule entitled, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (2019 Final Rule), while leaving in effect the framework created by the February 23, 2011, final rule, entitled, Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws. The Department also proposed to retain, with some modifications, certain provisions of the 2019 Final Rule regarding federal conscience protections but eliminate others.

Statement of Need: The Biden-Harris Administration takes seriously its obligations to comply with Federal conscience laws and the balance that Congress struck through these statutes. This rule demonstrates the Department's commitment to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes and to ensure compliance with those authorities.

Summary of Legal Basis: The Secretary of the Department of Health & Human Services is statutorily authorized to promulgate regulations to prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. 5 U.S.C. 301. The current Conscience Final Rule (issued in 2019) is in pending litigation.

Alternatives: The Department has considered the alternative of maintaining the current regulation in its current form; however, the Department believes it is appropriate to undertake rulemaking in light of the issues raised

in litigation challenges to the current rule.

Anticipated Cost and Benefits: The Department estimates that the final rule would generate cost savings of $725.5 million using a 3-percent discount rate and $586.4 million using a 7-percent discount rate over the next five years.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	01/05/23	88 FR 820
NPRM Comment Period End.	03/06/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Organizations.

Government Levels Affected: Federal, Local, State

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Related RIN: Related to 0945–AA10

RIN: 0945–AA18

HHS—OCR

53. Health and Human Services Grants Regulation [0945–AA19]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301

CFR Citation: 45 CFR 75.

Legal Deadline: None.

Abstract: This final rule will repromulgate certain nondiscrimination provisions of the Uniform Administrative Requirements, 45 CFR part 75, under the Department's Housekeeping Authority, 5 U.S.C. 301. The rule will clarify the Department's public policy requirement that no person otherwise eligible will be discriminated against in the administration of HHS grants, consistent with applicable federal statute and applicable Supreme Court precedent. It will also set forth a list of thirteen Federal statutes which prohibit discrimination on the basis of sex to include on the basis of sexual orientation and gender identity, consistent with the Supreme Court's decision in *Bostock* v. *Clayton County.*

Statement of Need: This rule is needed to provide the Department with uniform regulations governing HHS grants, put the Department in the best position to defend HHS from ongoing litigation risk, and provide certainty to participants in HHS grant programs.

Summary of Legal Basis: This rule is promulgated under 5 U.S.C. 301 and the December 26, 2013 OMB requirements, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 79 FR 75867.

Alternatives: The Department published a final rule in 2021, 86 FR 2257. That rule was vacated by a federal district court because it had not been promulgated in compliance with the Administrative Procedure Act. Thus, HHS effectively reverts to the prior Final Rule (2016 Grants Rule), 81 FR 89393, which is currently not being enforced due to a 2019 Notice of Nonenforcement, 84 FR 63809. Both the 2016 Grants Rule and the 2019 Notice of Nonenforcement are subject to litigation risk. If OCR did not promulgate this new Grants Rule, HHS could lift the 2019 Notice of Nonenforcement and defend the 2016 Grants Rule. However, we believe that issuing the proposed rule is the most effective way to provide the Department with uniform grants regulations in a manner that avoids costly litigation.

Anticipated Cost and Benefits: The Department expects the benefits of regulatory clarity will simplify compliance and ensure fair and nondiscriminatory administration of covered programs under this rule. Costs associated with implementing this administrative change include costs for grantees to become familiar with the rule and for some covered entities to seek an exemption from the rule.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	07/13/23	88 FR 44750
NPRM Comment Period End.	09/11/23	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: David Hyams, Section Chief, Policy Division, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368–1019, *Email: 1557@hhs.gov.*

Related RIN: Related to 0991–AC06, Related to 0991–AC16

RIN: 0945–AA19

HHS—OCR

54. Proposed Modifications to the HIPAA Privacy Rule To Support Reproductive Health Care Privacy [0945–AA20]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: Health Insurance Portability and Accountability Act (PL 104–191); Executive Order 14076, Protecting Access to Reproductive Healthcare Services

CFR Citation: 45 CFR 160; 45 CFR 164.

Legal Deadline: None.

Abstract: This final rule will modify the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act). These modifications will modify existing standards permitting uses and disclosures of protected health information (PHI) by limiting uses and disclosures of PHI for certain purposes.

Statement of Need: HIPAA and the HIPAA Rules promote access to health care by establishing standards for the privacy of PHI to protect the confidentiality of individuals' health information. These protections promote the development and maintenance of confidence and trust between individuals and covered entities, and help to improve the completeness and accuracy of individual medical records. The Privacy Rule, as it has been amended over time, carefully balances the interests of individuals and society in identifiable health information by establishing when and how such information may be used and disclosed, with and without the individual's permission. The Department has received communications from members of Congress and the public and reviewed media reports indicating concerns and confusion regarding the role of the Privacy Rule in protecting the privacy of individual's health information, given the evolution of state law in the area of reproductive health care.

Summary of Legal Basis: The current HIPAA Privacy Rule has not been updated to reflect the evolution in state law that undermines the privacy of individuals' protected health information, particularly for use in investigations into or legal proceedings against persons in connection with reproductive health care. The final rule is consistent with Executive Order 14076, which directed the Secretary of

Health and Human Services to consider actions to strengthen the protection of sensitive information related to reproductive healthcare services and bolster patient-provider confidentiality.

Alternatives: HHS considered whether these policy changes could be implemented through guidance. However, the Department determined that this would be insufficient to address the concerns that have arisen in the wake of the recent evolution in state law pertaining to reproductive health care that has jeopardize the privacy of individuals' protected health information and affected individuals' relationship with their health care providers and the U.S. health care system. Revisions to the existing HIPAA Privacy Rule are necessary to reestablish that trust and to ensure the privacy of individuals' protected health information.

Anticipated Cost and Benefits: HHS estimates that the effects of the requirements for regulated entities would result in new costs of $611,831,396 within 12 months of implementing the final rule, followed by approximately $67,831,396 of recurring annual costs in years two through five. The Department anticipates that this rulemaking will result in significant benefits that are difficult to quantify because the area of health care the proposed rule addresses is among the most sensitive for patients and providers if privacy is violated. Additionally, the value of privacy, which cannot be recovered once lost, and trust that privacy will be protected by others, is difficult to quantify fully. The rule would prevent or reduce numerous harms, resulting in non-quantifiable benefits to patient and providers.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	04/17/23	88 FR 23506
NPRM Comment Period End.	06/16/23	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Marissa Gordon-Nguyen, Senior Advisor for Health Information Privacy, Data, and Cybersecurity Policy, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368–1019, *TDD Phone:* 800 537–7697, *Email: ocrprivacy@hhs.gov*.

RIN: 0945–AA20

HHS—OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY (ONC)

Proposed Rule Stage

55. Establishment of Disincentives for Health Care Providers Who Have Committed Information Blocking [0955–AA05]

Priority: Substantive, Nonsignificant.

Legal Authority: 42 U.S.C. 300jj–52; 42 U.S.C. 1302; 42 U.S.C. 1306; 42 U.S.C. 1395hh; 42 U.S.C. 1395jjj; 42 U.S.C. 1395rr(1); 5 U.S.C. 552.2

CFR Citation: 45 CFR 171; 42 CFR 414; 42 CFR 425; 42 CFR 495.

Legal Deadline: None.

Abstract: The rulemaking implements certain provisions of the 21st Century Cures Act (Cures Act) to establish appropriate disincentives for health care providers determined by the HHS Inspector General to have committed information blocking. Consistent with the Cures Act, the rulemaking establishes a first set of disincentives using HHS authorities under applicable Federal law, including authorities delegated to the Centers for Medicare & Medicaid Services.

Statement of Need: The rulemaking would implement a provision of the Cures Act which requires the HHS Office of the Inspector General (OIG) to refer health care providers that OIG determines to have committed information blocking to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking. Release of the proposed rule is needed to implement this critical component of the Cures Act and ensure effective enforcement of information blocking rules.

Summary of Legal Basis: The provisions would be implemented under the authority of the Public Health Service Act, as amended by the Cures Act.

Alternatives: ONC will consider different available authorities under which appropriate disincentives could be established deter information blocking and still minimize regulatory burden for health care providers.

Anticipated Cost and Benefits: The costs of this proposed rule would be minimal. Investigated parties may incur some costs in response to an OIG investigation or the application of a disincentive by an HHS agency, however, this would depend on the frequency of prohibited conduct. The expected benefits of the regulation are deterring information and its negative impacts on many important aspects of health care, including effective health information exchange, patient access, duplicative testing and costs, and the availability and quality of care.

Risks: We anticipate that health care providers will express concern with the potential complexity of the approach (*i.e.,* the application of a range of disincentives based on available authorities) as compared to a range of civil monetary penalties or fines. ONC will continue to consider additional potential risks, identify them for stakeholders, and seek comment from stakeholders during the comment period for the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/01/23	88 FR 74947
NPRM Comment Period End.	01/02/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Alex Baker, Federal Policy Branch Chief, Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, 330 C Street SW, 7th Fl, Washington, DC 20201, *Phone:* 202 690–7151, *Email: alexander.baker@hhs.gov*.

RIN: 0955–AA05

HHS—CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

Final Rule Stage

56. Control of Communicable Diseases; Foreign Quarantine [0920–AA75]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 264; 42 U.S.C. 265

CFR Citation: 42 CFR 71.

Legal Deadline: None.

Abstract: This rulemaking amends current regulation to enable CDC to require airlines to collect and provide to CDC certain data elements regarding passengers and crew arriving from foreign countries under certain circumstances.

Statement of Need: In order to control the introduction, transmission, and

spread of communicable diseases such as COVID–19 into the United States, the collection of traveler contact information helps ensure that CDC and state and local health authorities are able to identify and locate persons arriving in, or transiting through, the United States from a foreign country who may have been exposed to a communicable disease abroad.

Summary of Legal Basis: The Public Health Service Act (42 U.S.C. 264 and 268) authorizes the Secretary of the Department of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one State or possession into any other State or possession. Regulations that implement federal quarantine authority are currently promulgated in 42 CFR parts 70 and 71. CDC's authority for collecting these data fields is contained in 42 CFR 71.4.

Alternatives: The transmission of disease, as seen during the COVID–19 pandemic, has the potential to lead to thousands or millions of deaths in addition to the significant healthcare and economic costs. Follow-up with passengers arriving from foreign countries who may be infectious or exposed to a communicable disease is critical. The alternative to collecting traveler contact information before their flight is to collect the information from airlines following the passenger's flight. When this was done in the past, some airlines took several days to respond to a single request if the information was available. In addition, there is significant time and labor required for CDC to obtain additional information from federal databases and process the received information into a format suitable for distribution to state and local health authorities in the United States. As a result, obtaining contact information after a flight, assuming that information is available, can lead to a delay of several days before health authorities can start contacting potentially exposed travelers. This time delay allows for travelers to be lost to follow-up or become symptomatic or infectious. The time required and costs incurred under this alternative increase exponentially with multiple post-flight manifest requests to airlines.

Anticipated Cost and Benefits: The annual, ongoing costs to collect traveler contact information, in the form of airline and travel agency staff time and passenger time, are estimated to be approximately $285 million. This does not include the initial costs for updating IT systems and employee training, which have already been incurred. The costs to the government are minimal, as the vast majority of passenger information that is being collected is transmitted to the government via established data systems that are already in use for other purposes.

The benefits to this rulemaking include rapid follow-up by public health authorities with passengers who may be infectious or exposed to a communicable disease, resulting in less spread and transmission of disease into and throughout the United States, helping to prevent public health and economic costs. The availability of passenger contact data may be used by public health authorities to slow the introduction and transmission of novel infectious diseases, including new variants of the SARS–CoV–2 virus, which causes COVID–19 disease.

Risks: The risk to not collecting this information is that CDC would have to revert to previous ways of obtaining this information for public health follow up. Some of those methods were time intensive and resulted in delays in follow up.

The risk, although minimal, in collecting this information is that airlines and international passengers often do not want to comply (or may not want to comply) with the requirement. To date, however, CDC has found instances of noncompliance have been very limited.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective.	02/07/20	
Interim Final Rule	02/12/20	85 FR 7874
Interim Final Rule Comment Period End.	03/13/20	
Final Action	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Ashley C. Altenburger JD, Regulatory Analyst, Department of Health and Human Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS: H 16–4, Atlanta, GA 30307, *Phone:* 800 232–4636, *Email: dgmqpolicyoffice@cdc.gov*.

RIN: 0920–AA75

HHS—FOOD AND DRUG ADMINISTRATION (FDA)

Proposed Rule Stage

57. Tobacco Product Standard for Nicotine Level of Certain Tobacco Products [0910–AI76]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 21 U.S.C. 387g

CFR Citation: 21 CFR 1160.

Legal Deadline: None.

Abstract: The proposed rule is a tobacco product standard that would establish a maximum nicotine level in cigarettes and certain other finished tobacco products.

Statement of Need: Each year, 480,000 people die prematurely from a smoking-attributed disease, making tobacco use the leading cause of preventable disease and death in the United States. Nearly all these adverse health effects are ultimately the result of addiction to the nicotine in combusted tobacco products, leading to repeated exposure to toxicants from those products. Nicotine is powerfully addictive. The U.S. Surgeon General has reported that 87 percent of adult smokers start smoking before age 18, and half of adult smokers become addicted before age 18. This proposed rule is a tobacco product standard that would establish a maximum nicotine level in cigarettes and certain other finished tobacco products. Because tobacco-related harms primarily result from addiction to products that repeatedly expose users to toxins, FDA would take this action to reduce addictiveness of certain tobacco products, thus giving addicted users a greater ability to quit. This product standard would also help to prevent experimenters (mainly youth) from initiating regular use, and, therefore, from becoming regular smokers. The proposed product standard is anticipated to benefit the population as a whole, while also advancing health equity by addressing disparities associated with cigarette smoking, dependence, and cessation.

Summary of Legal Basis: Section 907 of the FD&C Act authorizes the adoption of tobacco product standards if the Secretary finds that a tobacco product standard is appropriate for the protection of public health, and includes authority related to provisions for nicotine yields in tobacco product standards.

Alternatives: In addition to the costs and benefits of the product standard as proposed, FDA plans to assess the costs and benefits of a different effective date for the rule and the impact of including

additional tobacco products in the product standard.

Anticipated Cost and Benefits: The anticipated benefits of the product standard include benefits from reduced death and disease resulting from decreased tobacco use among adult consumers, reduced death and disease from secondhand smoke, and reduced death and disease among youth who are deterred from initiating under the product standard. The qualitative benefits of the proposed rule include impacts such as reduced illness and increased productivity for smokers and nonsmokers, as well as reduced smoking-related fires, cigarette litter, and other environmental impacts.

The proposed rule is expected to generate compliance costs on affected entities, such as one-time costs to read and understand the rule and alter manufacturing and importing practices; costs to some consumers, such as search costs to research substitute products and temporary withdrawal costs, and enforcement costs to the government.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Courtney Smith, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, Document Control Center, Building 71, Room G335, 10903 New Hampshire Avenue, Silver Spring, MD 20993 *Phone:* 877 287–1373, *Fax:* 877 287–1426, *Email: ctpregulations@fda.hhs.gov*.

RIN: 0910–AI76

HHS—FDA

58. Front-of-Package Nutrition Labeling [0910–AI80]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 21 CFR 101.6 (new).

Legal Deadline: None.

Abstract: This proposed rule would require the front of food labels to display certain nutrition information to help consumers, especially those with lower nutrition knowledge, make more informed dietary choices. Front-of-package (FOP) nutrition labeling is intended to complement the Nutrition Facts label on packaged foods by giving consumers additional context to help them quickly and easily identify foods that can help them build a healthy eating pattern. A variety of FOP labeling systems have been adopted in countries world-wide and the experience in these countries suggests that FOP labeling may aid the ability to make healthier choices. FDA plays a key role within a broader, whole-of-government approach to help reduce the burden of chronic diseases and advance health equity by helping to improve dietary patterns in the U.S. This proposed rule is part of FDA's nutrition efforts to empower consumers with nutrition information to help them more easily identify healthier choices and may result in industry innovation to produce healthier foods. FDA will conduct public outreach on this project. FDA has held, and will continue to hold, listening sessions with a wide range of stakeholders, including consumer groups, public health organizations, academia, health care groups, and industry. Additionally, the Reagan-Udall Foundation will host a public meeting in November in collaboration with FDA to hear input from a broad array of stakeholders, and we are launching a series of Tribal Listening Sessions to begin a conversation with federally recognized tribes on, among other things, our FOP initiative.

Statement of Need: HHS implemented its first mandatory nutrition labeling 32 years ago. The resulting Nutrition Facts label is iconic and 87% of American consumers report using the label. However, many consumers, particularly those with lower nutrition literacy, may find additional information on food packaging helpful in identifying foods that are part of constructing a healthy diet. This proposed rule, if finalized, could empower consumers with information to help them quickly identify foods that can help them build a healthy eating pattern.

Summary of Legal Basis: In general, our legal authority rests on the 1990 Nutrition Labeling and Education Act, which gave the Secretary the authority to require that certain nutrition information be conveyed to allow the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet. (Nutrition Labeling and Education Act of 1990. Public Law 101–535, 104 Stat 2353, Sec. 2(b)(1)(A)). Authority for certain aspects may also be found in section 403(q), 403(a)(1), and 201(n) of the Federal Food, Drug, and Cosmetic Act (FD&C Act). In addition, section 701(a) of the FD&C Act authorizes the promulgation of regulations for the efficient enforcement of the FD&C Act.

Alternatives: FDA will consider different options so that we maximize benefits to consumers.

Anticipated Cost and Benefits: The proposed rule, if finalized, is expected to generate compliance costs on affected entities, such as the cost to label packaged foods and the one-time costs to read and understand the rule. Estimated benefits to consumers TBD.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Mark Kantor Nutritionist, Department of Health and Human Services Food and Drug Administration, CPK1 RM 3D034, HFS–830, 5001 Campus Drive, College Park, MD 20740, *Phone:* 240 402–2082, *Email: mark.kantor@fda.hhs.gov.*

RIN: 0910–AI80

HHS—FDA

59. Medical Devices; Laboratory Developed Tests [0910–AI85]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 360c; . . .

CFR Citation: 21 CFR 809.

Legal Deadline: None.

Abstract: This rule would amend the Food and Drug Administration's regulations to make explicit that laboratory developed tests (LDTs) are devices under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

Statement of Need: In 1976, the Medical Device Amendments of 1976 (the MDA) amended the FD&C Act to create a comprehensive system for the

regulation of devices intended for human use. In implementing the MDA, FDA has generally exercised enforcement discretion such that it generally has not enforced applicable requirements with respect to most LDTs. However, the risks associated with LDTs are much greater today than they were at the time of enactment of the MDA, and today's LDTs are more similar to other in vitro diagnostic products (IVDs) that have not been under FDA's general enforcement discretion approach. This rulemaking would amend FDA's regulations to reflect that the device definition in the FD&C Act does not differentiate between entities manufacturing the device. In conjunction with this amendment, FDA is advancing a policy under which FDA intends to phase out its general enforcement discretion approach for LDTs, so that IVDs manufactured by a laboratory would generally fall under the same enforcement approach as other IVDs. This action is necessary to redress the imbalance in oversight of LDTs and other IVDs and to protect the public health by helping to assure the safety and effectiveness of LDTs.

Summary of Legal Basis: FDA is issuing this rule under the Agency's general rulemaking authorities and statutory authorities relating to devices in the FD&C Act, including the definition of a device under section 201(h)(1) of the FD&C Act and FDA's authority to issue regulations for the efficient enforcement of the FD&C Act under section 701(a) of the FD&C Act.

Alternatives: The Agency has considered various options to protect the public health by helping to assure the safety and effectiveness of LDTs while avoiding undue disruption to the testing market.

Anticipated Cost and Benefits: This rule would result in compliance costs for laboratories that are ensuring their IVDs are compliant with applicable statutory and regulatory requirements. We anticipate that the benefits would include a reduction in healthcare costs associated with unsafe or ineffective tests, including tests promoted with false or misleading claims, and from therapeutic decisions based on the results of those tests.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	10/03/23	88 FR 68006
NPRM Comment Period End.	12/04/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Eitan Bernstein, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 66, Silver Spring, MD 20993, *Phone:* 240 402–9812, *Email: eitan.bernstein@fda.hhs.gov.*

RIN: 0910–AI85

HHS—FDA

Final Rule Stage

60. Nonprescription Drug Product With an Additional Condition for Nonprescription Use [0910–AH62]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 371; 42 U.S.C. 262; 42 U.S.C. 264; . . .

CFR Citation: 21 CFR 201.67; 21 CFR 314.56; 21 CFR 314.81; 21 CFR 314.125; 21 CFR 314.127.

Legal Deadline: None.

Abstract: The final rule is intended to increase options for applicants to develop and market safe and effective nonprescription drug products, which could improve public health by broadening the types of nonprescription drug products available to consumers. The final rule would establish requirements for a drug product that could be marketed as a nonprescription drug product with an additional condition for nonprescription use (ACNU) that an applicant must implement to ensure appropriate self-selection, appropriate actual use, or both by consumers.

Statement of Need: Currently, nonprescription drug products are limited to drugs that can be labeled with sufficient information for consumers to appropriately self-select and use the drug product. For certain drug products, limitations of labeling present challenges for adequate communication of information needed for consumers to appropriately self-select or use the drug product without the supervision of a healthcare practitioner. FDA is finalizing regulations that would establish the requirements for a drug product that could be marketed as a nonprescription drug product with an ACNU that an applicant must implement to ensure appropriate self-selection, appropriate actual use or both by consumers.

Summary of Legal Basis: FDA's revisions to the regulations regarding labeling and applications for nonprescription drug products are authorized by the FD&C Act (21 U.S.C. 321 *et seq.*) and by the Public Health Service Act (42 U.S.C. 262 and 264).

Alternatives: FDA evaluated various requirements for new drug applications to assess flexibility of nonprescription drug product design through drug labeling for appropriate self-selection and appropriate use.

Anticipated Cost and Benefits: The benefits of the final rule would include increased consumer access to drug products and reduced access costs to these products as compared to their prescription alternatives. Benefits to industry would arise from the flexibility in drug product approval and the potential expansion of market revenue. Other benefits would include a reduction in repetitive meetings with industry and the Agency regarding this approval pathway. In addition, private and government-sponsored drug coverage plans may experience cost savings. Although applicants would incur the costs to develop and submit an application for a nonprescription drug with an ACNU, they would likely submit applications only when they expect that the profits from the approval would exceed the costs of the application. Lastly, we anticipate one-time costs of reading and understanding the rule that potential applicants would incur.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	06/28/22	87 FR 38313
NPRM Comment Period End.	10/26/22	
NPRM Comment Period Extended.	10/24/22	87 FR 64178
NPRM Comment Period Extended End.	11/25/22	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Angela Mtungwa, Program Coordinator, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 4393, Silver Spring, MD 20993 *Phone:* 301 796–9329, *Email: angela.mtungwa@fda.hhs.gov.*

RIN: 0910–AH62

HHS—FDA

61. Nutrient Content Claims, Definition of Term: Healthy [0910–AI13]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 343; 21 U.S.C. 371

CFR Citation: 10 CFR 101.65 (revision).

Legal Deadline: None.

Abstract: The rule would update the definition for the implied nutrient content claim ''healthy'' to be consistent with current nutrition science and federal dietary guidelines. The rule would revise the requirements for when the claim ''healthy'' can be voluntarily used in the labeling of human food products to indicate that a food, because of its nutrient content, may be useful in achieving a total diet that conforms to current dietary recommendations and helps consumers maintain healthy dietary practices.

Statement of Need: This rule would update the ''healthy'' claim to make it more consistent with advances in nutrition science and public health recommendations, including those captured in recent changes to the Nutrition Facts label. The existing definition of ''healthy'' is based on nutrition recommendations regarding intake of fat, saturated fat, and cholesterol, and specific nutrients Americans were not getting enough of in the early 1990s. Nutrition recommendations have evolved since that time and now emphasize healthy dietary patterns, which include getting enough of certain foods from food groups such as fruits, vegetables, low-fat dairy, and whole grains. Diet is a contributing factor to chronic diseases, such as heart disease, cancer, and stroke, which are the leading causes of death and disability in the United States. Claims on food packages such as ''healthy'' can provide quick signals to busy consumers about the healthfulness of a food or beverage.

FDA is updating the existing definition of the ''healthy'' claim based on the food groups recommended by the Dietary Guidelines for Americans by requiring that food products bearing the claim contain a certain amount of food from such food groups or subgroups. The rule would also require a food product to be limited in saturated fat, sodium, and added sugar. These updates would ensure that foods bearing the claim are ones that are part of a healthy dietary pattern and are recommended by current dietary guidelines. The rule is also part of FDA's ongoing effort to empower consumers with information to help them improve their nutrition and dietary patterns and reduce their risk of diet-related chronic disease.

Summary of Legal Basis: FDA is issuing this rule under sections 201(n), 301(a), 403(a), 403(r), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(n), 331(a), 343(a), 343(r), and 371(a)). These sections authorize the agency to adopt regulations that prohibit labeling that bears claims that characterize the level of a nutrient which is of a type required to be declared in nutrition labeling unless the claim is made in accordance with a regulatory definition established by FDA. Pursuant to this authority, FDA issued a regulation defining the ''healthy'' implied nutrient content claim, which is codified at 21 CFR 101.65. This rule would update the existing definition to be consistent with current nutrition science and federal dietary guidance.

Alternatives:

Alternative 1: Codify the alternative criteria in the current enforcement discretion guidance.

In 2016, FDA published ''Use of the Term 'Healthy' in the Labeling of Human Food Products: Guidance for Industry.'' This guidance was intended to advise food manufacturers of FDA's intent to exercise enforcement discretion relative to foods that use the implied nutrient content claim ''healthy'' on their labels which: (1) Are not low in total fat, but have a fat profile makeup of predominantly mono and polyunsaturated fats; or (2) contain at least 10 percent of the Daily Value (DV) per reference amount customarily consumed (RACC) of potassium or vitamin D.

One alternative is to codify the alternative criteria in this guidance rather than the proposed update to the definition. Although guidance is non-binding, we assume that most packaged food manufacturers are aware of the guidance and, over the past 2 years, have already made any adjustments to their products or product packaging. Therefore, we assume that this alternative would have no costs to industry and no benefits to consumers.

Alternative 2: Extend the compliance date by 1 year.

Extending the anticipated compliance date on the rule updating the definition of healthy by 1 year would reduce costs to industry as they would have more time to change products that may be affected by the rule or potentially coordinate label changes with already scheduled label changes. On the other hand, an extended compliance date runs the risk of not being helpful to consumers because they may not know whether a packaged food product labeled ''healthy'' follows the existing definition or the updated one.

Anticipated Cost and Benefits: Food products bearing the ''healthy'' claim currently make up a small percentage (5%) of total packaged foods. Quantified costs to manufacturers include labeling, reformulating, and recordkeeping. Discounted at seven percent over 20 years, the mean present value of costs of the rule is $237 million, with a lower bound of $110 million and an upper bound of $434 million.

Updating the definition of ''healthy'' to align with current dietary recommendations can provide information to help consumers build more healthful diets to help reduce their risk of diet-related chronic diseases. Discounted at seven percent over 20 years, the mean present value of benefits of the rule is $290 million, with a lower bound estimate of $9 million and an upper bound estimate of $857 million.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	09/29/22	87 FR 59168
NPRM Comment Period End.	12/28/22	
NPRM Comment Period Extended.	11/29/22	87 FR 73267
NPRM Comment Period Extended End.	02/16/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Agency Contact: Vincent De Jesus, Nutritionist, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–830), Room 3D–031, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1774, *Fax:* 301 436–1191, *Email: vincent.dejesus@fda.hhs.gov.*

RIN: 0910–AI13

HHS—FDA

62. Tobacco Product Standard for Characterizing Flavors in Cigars [0910–AI28]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 21 U.S.C. 331; 21 U.S.C. 333; 21 U.S.C. 371(a); 21 U.S.C. 387b and 387c; 21 U.S.C. 387f(d) and 387g; . . .

CFR Citation: 21 CFR 1166.

Legal Deadline: None.

Abstract: This rule is a tobacco product standard that would prohibit characterizing flavors (other than tobacco) in all cigars. We are taking this action with the intention of reducing the tobacco-related death and disease associated with cigar use. Evidence shows that flavored tobacco products appeal to youth and also shows that youth may be more likely to initiate tobacco use with such products. Characterizing flavors in cigars, such as strawberry, grape, orange, and cocoa, enhance taste and make these products easier to use. Over a half million youth in the United States use flavored cigars, placing these youth at risk for cigar-related death and disease.

Statement of Need: The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), authorizes FDA to adopt tobacco product standards under section 907 if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This product standard will prohibit characterizing flavors (other than tobacco) in all cigars. Characterizing flavors in cigars, such as strawberry, grape, cocoa, and fruit punch, increase appeal and make the cigars easier to use, particularly among youth and young adults. This product standard will reduce the appeal of cigars, particularly to youth and young adults, and thereby decrease the likelihood of experimentation, development of nicotine dependence, and progression to regular use. This product standard will improve public health by increasing the likelihood of cessation among existing cigar smokers; this product standard will also improve health outcomes within groups that experience disproportionate levels of tobacco use, including certain vulnerable populations.

Summary of Legal Basis: Section 907 of the FD&C Act authorizes the adoption of tobacco product standards if the Secretary finds that a tobacco product standard is appropriate for the protection of public health. Section 907 also authorizes FDA to include in a product standard a provision that restricts the sale and distribution of a tobacco product to the extent that it may be restricted by a regulation under section 906(d) of the FD&C Act. Section 906(d) of the FD&C Act authorizes the Secretary to issue regulations requiring restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. Section 701(a) of the FD&C Act authorizes the promulgation of regulations for the efficient enforcement of the FD&C Act.

Alternatives: In addition to the costs and benefits of the product standard, FDA will assess the costs and benefits of, among other things, a different effective date for the rule, and including pipe tobacco in the product standard.

Anticipated Cost and Benefits: The anticipated benefits of the product standard include those coming from reduced death and disease that are the result of cigar use among adult cigar smokers, reduced death and disease from secondhand smoke, and reduced death and disease among youth who are deterred from initiating under the product standard. The anticipated costs of the product standard are those to firms to comply with the rule, to consumers impacted by the rule, and to the government.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	03/21/18	83 FR 12294
ANPRM Comment Period End.	07/19/18	
NPRM	05/04/22	87 FR 26396
NPRM Comment Period Extended.	06/21/22	87 FR 36786
NPRM Comment Period End.	07/05/22	
NPRM Comment Period Extended End.	08/02/22	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Nathan Mease, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Center for Tobacco Products, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AI28

HHS—FDA

63. Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water [0910–AI49]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 342; 21 U.S.C. 350h; 21 U.S.C. 371; 42 U.S.C. 243; 42 U.S.C. 264; 42 U.S.C. 271; . . .

CFR Citation: 21 CFR 112.

Legal Deadline: None.

Abstract: This rulemaking will revise certain requirements for agricultural water for covered produce other than sprouts in the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (produce safety) regulation for covered produce other than sprouts.

Statement of Need: Agricultural water can be a major conduit of pathogens that can contaminate produce. Recent produce outbreaks potentially linked to agricultural water have emphasized the importance of ensuring that FDA's agricultural water standards are workable across the diversity of domestic and foreign farms and account for the variety of factors that impact water sources and uses. FDA plans to amend its produce safety regulation to address concerns about the practical challenges of implementing certain agricultural water requirements for covered produce other than sprouts, while protecting the public health.

Summary of Legal Basis: FDA's authority for issuing this rule is provided by sections 402, 419, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342, 350h, and 371(a)) and sections 311, 361, and 368 of the Public Health Service Act (PHS Act) (42 U.S.C. 243, 264, and 271).

Specifically, this rulemaking will amend certain agricultural water requirements in the produce safety regulation, codified at 21 CFR part 112, and issued under the following authorities: Section 419(c)(1)(A) of the FD&C Act (21 U.S.C. 350h(c)(1)(A)) authorizes FDA to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables that are raw agricultural commodities for which such standards minimize the risk of serious adverse health consequences or death. Section 419(c)(1)(B) of the FD&C Act (21 U.S.C. 350h(c)(1)(B)) further

requires that these minimum standards provide sufficient flexibility to be practicable for all sizes and types of businesses. Section 402(a)(3) of the FD&C Act (21 U.S.C. 342(a)(3)) provides that a food is adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. Section 402(a)(4) of the FD&C Act (21 U.S.C. 342(a)(4)) provides that a food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. Additionally, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) grants the authority to promulgate regulations for the efficient enforcement of the FD&C Act. Sections 311, 361, and 368 of the PHS Act (21 U.S.C. 243, 264, and 271), provide authority for FDA to issue regulations to prevent the spread of communicable diseases from one State to another.

Alternatives: None.

Anticipated Cost and Benefits: FDA anticipates costs associated with complying with the water risk assessment provisions for non-sprout covered produce.

This final rule will generate unquantified benefits stemming from increasing flexibility and addressing practical implementation challenges associated with certain agricultural water provisions for covered produce other than sprouts in the produce safety regulation and quantified benefits resulting from fewer illnesses caused by pre-harvest agricultural water.

Risks: In a 2019 Report, the Interagency Food Safety Analytics Collaboration (IFSAC) estimated that produce commodities cause 65 percent of foodborne E. coli O157 illnesses and over 40 percent of foodborne Salmonella illnesses. Agricultural water can be a major conduit for produce contamination. This rule is intended to address the practical implementation challenges of certain agricultural water requirements for covered produce other than sprouts, while protecting public health by setting forth standards to minimize the risk of serious adverse health consequences or death, including those reasonably necessary to prevent the introduction of known or reasonably foreseeable biological hazards into or onto produce, and provide reasonable assurances that the produce is not adulterated on account of those hazards.

Timetable:

Action	Date	FR Cite
NPRM	12/06/21	86 FR 69120
NPRM Comment Period End.	04/05/22	
Supplemental NPRM.	07/19/22	87 FR 42973
Supplemental NPRM Comment Period End.	09/19/22	
Final Rule	02/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Samir Assar, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Safety, 5001 Campus Drive, College Park, MD 20740, *Phone:* 240 402–1636, *Email: samir.assar@fda.hhs.gov.*

RIN: 0910–AI49

HHS—FDA

64. Tobacco Product Standard for Menthol in Cigarettes [0910–AI60]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 21 U.S.C. 387g; 21 U.S.C. 371; 21 U.S.C. 387f

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This rule is a tobacco product standard to prohibit the use of menthol as a characterizing flavor in cigarettes.

Statement of Need: The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), authorizes FDA to adopt tobacco product standards under section 907 if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This product standard would prohibit menthol as a characterizing flavor in cigarettes. The standard would reduce the appeal of cigarettes, particularly to youth and young adults, and thereby decrease the likelihood that nonusers who would otherwise experiment with menthol cigarettes would progress to regular cigarette smoking. In addition, the tobacco product standard would improve the health and reduce the mortality risk of current menthol cigarette smokers by decreasing cigarette consumption and increasing the likelihood of cessation.

Summary of Legal Basis: Section 907 of the FD&C Act authorizes the adoption of tobacco product standards if the Secretary finds that a tobacco product standard is appropriate for the protection of public health.

Alternatives: In addition to the costs and benefits of the rule, FDA will assess the costs and benefits of extending the effective date of the rule, creating a process by which some products may apply for an exemption or variance from the product standard, and prohibiting menthol as an intentional additive in cigarette products rather than prohibiting menthol as a characterizing flavor.

Anticipated Cost and Benefits: The rule is expected to generate compliance costs on affected entities, such as one-time costs to read and understand the rule and alter manufacturing/importing practices. The quantified benefits of the rule stem from improved health and diminished exposure to tobacco smoke for users of cigarettes from decreased experimentation, progression to regular use, and consumption of menthol cigarettes. The qualitative benefits of the rule include impacts such as reduced illness for smokers and non-smokers.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	07/24/13	78 FR 44484
ANPRM Comment Period End.	09/23/13	
NPRM	05/04/22	87 FR 26454
NPRM Comment Period Extended.	06/21/22	87 FR 36786
NPRM Comment Period End.	07/05/22	
NPRM Comment Period Extended End.	08/02/22	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Beth Buckler, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AI60

HHS—HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)

Proposed Rule Stage

65. Countermeasures Injury Compensation Program: COVID–19 Countermeasures Injury Table [0906–AB31]

Priority: Other Significant.
Legal Authority: 42 U.S.C. 247d–6e
CFR Citation: 42 CFR 110.
Legal Deadline: None.
Abstract: This proposed rule would establish the COVID–19 Countermeasures Injury Table for the Countermeasures Injury Compensation Program (CICP). The Public Readiness and Emergency Preparedness Act (PREP Act) authorized the Secretary of HHS to establish the CICP to provide benefits to certain persons who sustain serious physical injury or death as a direct result of the administration or use of covered countermeasures identified by the Secretary in declarations issued under the PREP Act. In addition, the Secretary may provide death benefits to certain survivors of individuals who died as a direct result of covered injuries or their health complications. One way that an individual who was administered or used a covered countermeasure can show that they sustained a covered injury is by demonstrating that they sustained an injury listed on a Countermeasures Injury Table (Table) within the time interval set forth on the Table. The Table will list and explain injuries that, based on compelling, reliable, valid, medical, and scientific evidence, are presumed to be caused by covered COVID–19 countermeasures, and set forth the time periods in which the onset of these injuries must occur after the administration or use of these covered COVID–19 countermeasures.

Statement of Need: The PREP Act directs the Secretary to establish, through regulations, a Table identifying serious physical injuries that are presumed to be directly caused by the administration or use of a covered countermeasure. The Secretary may only identify such injuries if it is determined based on compelling, reliable, valid, medical and scientific evidence'' that the administration or use of the covered countermeasure directly causes such covered injuries. A Table creates a rebuttable presumption of causation, for compensation purposes, for eligible individuals whose injuries are listed on and meet the requirements of the Table.

Summary of Legal Basis: Section 319F–4 of the Public Health Service Act, as amended, directs the Secretary, following issuance of a declaration under Section 319F–3(b), to establish procedures for the CICP to provide medical and lost employment benefits to certain individuals who sustained a covered injury as the direct result of the administration or use of a covered countermeasure consistent with a declaration issued pursuant to section 319F–3(b), or in good faith belief that administration or use of the covered countermeasure was consistent with a declaration. The CICP's regulations are set forth in 42 CFR part 110. 42 CFR 110.20(a) states that individuals must establish that a covered injury occurred to be eligible for benefits under the Program. A covered injury is death or a serious injury determined by the Secretary to be: (1) An injury meeting the requirements of a Table, which is presumed to be the direct result of the administration or use of a covered countermeasure unless the Secretary determines there is another more likely cause; or (2) an injury (or its health complications) that is the direct result of the administration or use of a covered countermeasure. Through this NPRM, the Secretary proposes to add the COVID–19 Countermeasures Injury Table to subpart K of 42 CFR part 110, which lists Injury Tables for covered countermeasures, by adding sections (e) and (f).

Alternatives: An alternative is to continue to review each claim and the associated medical records individually to ensure the requester has demonstrated that the injury occurred as the direct result of the administration or use of a covered countermeasure. This approach would be more time- and resource-intensive than providing an evidence-based presumption of causation by publishing a COVID–19 Countermeasures Injury Table for the CICP.

Anticipated Cost and Benefits: This NPRM will allow requesters who were administered or used a covered COVID–19 countermeasure and whose alleged injuries are listed on the Table, but who missed the one-year filing deadline, to be able to file their claim within one year from the publication of the Table. Also, future requesters, and previous requesters who were denied compensation, will be able to benefit from the presumption of causation afforded by their injuries being included on the Table, rather than needing to prove causation on a case- by-case basis. This will likely increase the number of claims filed and compensated. However, in rare instances that a COVID–19 countermeasure injury has occurred, this will decrease the burden on requesters allowing them to more easily receive compensation that may include reasonable unreimbursed medical expenses, lost employment income, and survivor death benefit.

Risks: None.
Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
Agency Contact: CDR George Grimes, Director, Division of Injury Compensation Programs, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857, *Phone:* 855 266–2427, *Email: cicp@hrsa.gov.*
RIN: 0906–AB31

HHS—HRSA

Final Rule Stage

66. 340B Drug Pricing Program; Administrative Dispute Resolution [0906–AB28]

Priority: Other Significant.
Legal Authority: Not Yet Determined
CFR Citation: 42 CFR 10.
Legal Deadline: None.
Abstract: This final rule will revise the Administrative Dispute Resolution (ADR) final rule currently in effect and apply to all drug manufacturers and covered entities that participate in the 340B Drug Pricing Program (340B Program). It will establish new requirements and procedures for the 340B Program's ADR process. This administrative process will allow covered entities and manufacturers to file claims for specific compliance areas outlined in the statute after good faith efforts have been exhausted by the parties.

Statement of Need: This final rule will revise the December 2020 340B Administrative Dispute Resolution (ADR) final rule, which became effective January 13, 2021. The final rule will implement new requirements and procedures for the 340B Program's ADR process. The final rule applies to drug manufacturers and covered entities participating in the 340B Drug Pricing Program (340B Program) by allowing these entities to file claims for specific compliance areas outlined in the 340B statute after good faith efforts have been exhausted by the parties. It aligns with the President's priorities on drug pricing, better reflects the current state

of the 340B Program, and seeks to correct procedural deficiencies in the current 340B ADR process.

Summary of Legal Basis: Section 340B(d)(3) of the Public Health Service Act (PHS Act) requires the Secretary to promulgate regulations establishing and implementing an ADR process for certain disputes arising under the 340B Program. Under the 340B statute, the purpose of the ADR process is to resolve (1) claims by covered entities that they have been overcharged for covered outpatient drugs by manufacturers and (2) claims by manufacturers, after a manufacturer has conducted an audit as authorized by section 340B(a)(5)(C) of the PHS Act, that a covered entity has violated the prohibition on diversion or duplicate discounts.

Alternatives: The 2020 340B ADR final rule would remain in effect. This final rule is designed to be more accessible to stakeholders and will use fewer stakeholder and government resources to resolve disputes as opposed to the 2020 340B ADR final rule.

Anticipated Cost and Benefits: The ADR process will not have a significant financial impact on stakeholders nor result in significant costs. The final rule will enable stakeholders to resolve disputes in a fair, efficient, and expeditious manner in accordance with section 340B(d)(3) of the Public Health Service Act.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	11/30/22	87 FR 73516
NPRM Comment Period End.	01/30/23	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Michelle Herzog, Deputy Director, Office of Pharmacy Affairs, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, 08W12, Rockville, MD 20857, *Phone:* 301 443–4353, *Email: mherzog@hrsa.gov.*

RIN: 0906–AB28

HHS—CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

Proposed Rule Stage

67. Healthcare System Resiliency and Modernization (CMS–3426) [0938–AU91]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 U.S.C. 1395hh; 42 U.S.C 1302; 42 U.S.C. 1821; 42 U.S.C. 1832(a)(2)(F)(I); 42 U.S.C. 1861(dd)(1); 42 U.S.C. 1905(a)

CFR Citation: 42 CFR 403; 42 CFR 416; 42 CFR 418; 42 CFR 441; . . .

Legal Deadline: None.

Abstract: This rule proposes revisions to the regulations for all Medicare- and Medicaid-participating providers and suppliers to ensure continuous, ongoing access to safe and effective health care services.

Statement of Need: This proposed rule would revise and update national emergency preparedness requirements for Medicare- and Medicaid-participating providers and suppliers to plan adequately for both natural and man-made disasters, including climate-related disasters, and coordinate with federal, state, tribal, regional, and local emergency preparedness systems based on lessons learned during the COVID–19 public health emergency and other recent events. This rule also proposes revisions that support health care system resiliency. The need for this rule is based on feedback and public consultations with healthcare providers, public health organizations and professionals, and researchers, including multiple listening sessions. Participants described how some organizations were unprepared for extended, wide- spread, and concurrent emergencies. They expressed that improvements to CMS requirements would support better care and outcomes for patients during and after emergencies. In addition, this rule would advance equity, increase access to culturally and linguistically appropriate services, and address and improve outcomes and disparities in maternal health care. Lastly, this rule would also advance equity and reduce disparities across the continuum of care for patients by improving transparency, patient education, and health literacy on the organ donation and transplantation process. The proposals are in accordance with Executive Orders 13985, 13988, 13995, and 14301 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Ensuring an Equitable Pandemic Response and Recovery, and on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, respectively.

Summary of Legal Basis: There are various sections of the Social Security Act (the Act) that define the types of providers and suppliers that may participate in Medicare and Medicaid and list the requirements that each provider and supplier must meet to be eligible for Medicare and Medicaid participation. The Act also authorizes the Secretary to establish other requirements as necessary to protect the health and safety of patients, although the wording of such authority differs slightly between provider and supplier types. Such requirements may include the CoPs for providers, CfCs for suppliers, and requirements for long term care facilities. The CoPs and CfCs are intended to protect public health and safety and promote high quality care for all persons. The Public Health Service (PHS) Act sets forth additional regulatory requirements that certain Medicare providers and suppliers are required to meet in order to participate. The statutory authority to revise the health and safety standards for Medicare and Medicaid participating providers and suppliers is contained within Section 1102 (42 U.S.C. 1302) of the Social Security Act. In addition, this rule revises the health and safety regulations to advance health equity and reduce disparities for all individuals in accordance with Executive Orders 13985, 13988, 13995, and 14301 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Ensuring an Equitable Pandemic Response and Recovery, and on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, respectively.

Alternatives: In developing the policies contained in this rule, we considered numerous alternatives, including maintaining existing requirements. These alternatives will be described in the rule.

Anticipated Cost and Benefits: The provisions in this rule aim to improve emergency preparedness, increase system resiliency, advance health equity, improve maternal health care, increase access to care, improve quality of care, and reduce health disparities for

all individuals. This regulation will ultimately remove barriers and ensure continuous access to health care and improve quality of care for all. As we move toward publication, estimates of the cost and benefits of these provisions will be included in the rule.

Risks: This action furthers the goals of the Executive Orders on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985), Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (E.O. 13988), Executive Order on Ensuring an Equitable Pandemic Response and Recovery (E.O. 13995), and Executive Order on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders (E.O. 14301). While there may be some risks associated with an increased burden on providers as a result of these regulations, we believe benefits related to culturally and linguistically appropriate services and improved maternal health care would far outweigh any risks.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Lauren Oviatt, Acting Director, Division of Non-Institutional Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: C2–21–16, 7500 Security Boulevard, Baltimore, MD 21244–1850, *Phone:* 410 786–4683, *Email: lauren.oviatt@cms.hhs.gov*

Related RIN: Merged with 0938–AV21

RIN: 0938–AU91

HHS—CMS

68. Appeal Rights for Certain Changes in Patient Status (CMS–4204) [0938–AV16]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 1395ff

CFR Citation: 42 CFR 405; 42 CFR 476; 42 CFR 489.

Legal Deadline: None.

Abstract: Pursuant to a court order, this proposed rule would establish new appeals processes for Medicare beneficiaries who have an inpatient hospital admission changed to outpatient by a hospital, and meet other conditions set forth in the order.

Statement of Need: This proposed rule sets forth new appeals processes to implement a court order. In this order, the Department of Health and Human Services (HHS) is directed to establish appeal process for certain beneficiaries in Original Medicare who are initially admitted to a hospital as an inpatient by a physician but whose status during their stay is changed to outpatient receiving observation services by the hospital, thereby effectively denying Part A coverage for their hospital stay.

Summary of Legal Basis: This rule sets forth new appeals procedures to implement the court order in *Alexander* v. *Azar,* 613 F. Supp. 3d 559 (D. Conn. 2020)), aff'd sub nom., *Barrows* v. *Becerra,* 24 F.4th 116 (2d Cir. 2022). The authority for these changes is under various sections of the Social Security Act (the Act).

Alternatives: None. This rule implements a court order.

Anticipated Cost and Benefits: This rule is not considered a significant rule.

Risks: No risks are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: David Danek, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: 2325, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–8249, *Email: david.danek@cms.hhs.gov.*

RIN: 0938–AV16

HHS—CMS

69. Contract Year 2025 Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, and Medicare Cost Plan Programs, and Pace (CMS–4205) [0938–AV24]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 115–271

CFR Citation: 42 CFR 422; 42 CFR 423; 42 CFR 460.

Legal Deadline: None.

Abstract: This proposed rule would make changes to strengthen and improve the Medicare Advantage (Part C) and prescription drug benefit (Part D) programs, and Programs of All-Inclusive Care for the Elderly (PACE), and implement any legislative changes that are required by January 1, 2025.

Statement of Need: This proposed rule is necessary to amend the regulations for the Medicare Advantage (Part C) program, Medicare Prescription Drug Benefit (Part D) program, Medicare cost plan program, and Program of All-Inclusive Care for the Elderly (PACE) to implement certain statutory requirements, to codify existing subregulatory guidance, and based on our continued experience in the administration of the programs.

Summary of Legal Basis: This rule addresses multiple sections of the Social Security Act and proposes to codify existing Part C and Part D subregulatory guidance. It would also implement certain sections of the Bipartisan Budget Act of 2018 and the Consolidated Appropriations Act (CAA), 2023.

Alternatives: This rule would implement provisions that require public notice and comment and are necessary for the upcoming contract year. We will continue to explore additional alternatives as we develop the rule.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs and benefits of this proposed rule indicate minor costs (under $50 million) associated with increased paperwork as well as some savings to the Medicare Trust Fund. Numerical estimates are pending and as we move toward publication, estimates of costs and benefits will be included in the proposed rule.

Risks: Risks associated with the impact of this rule are under development and will be included in the published rule.

Timetable:

Action	Date	FR Cite
NPRM	11/15/23	88 FR 78476
NPRM Comment Period End.	01/05/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Heather Barkes, Director, Division of Policy, Analysis, and Planning, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–21–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–8615, *Email: heather.barkes@cms.hhs.gov.*

RIN: 0938–AV24

HHS—CMS

70. Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS–3442) [0938–AV25]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 42 U.S.C. 181; 42 U.S.C. 1919; 42 U.S.C. 1902

CFR Citation: 42 CFR 483; 42 CFR 442; 42 CFR 438.

Legal Deadline: Final, Statutory, September 6, 2026, MMA sec. 902 requires Medicare final rules publish within 3 years of a proposed or interim final rule.

Per the CMS notice published December 30, 2004 (69 FR 78442), except for certain Medicare payment regulations and certain other statutorily-mandated regulations, we schedule all Medicare final regulations for publication within the 3-year standardized time limit in the current Unified Agenda. We do not intend to delay publishing a Medicare final regulation for 3 years if we are able to publish it sooner.

Abstract: This rule establishes minimum staffing standards for long-term care facilities, as part of the Biden-Harris Administration's Nursing Home Reform initiative to ensure safe and quality care in long term care facilities. In addition, this rule requires States to report the percent of Medicaid payments for certain Medicaid-covered institutional services that are spent on compensation for direct care workers and support staff. Consistent with the Administration's commitment to maximize transparency and public engagement, and to allow communities greater opportunities to provide input in the regulatory process, HHS sought the expertise of colleagues in the Office of Management and Budget, the General Services Administration, and the Consumer Financial Protection Bureau to inform an alternative approach to public comments for the proposed nursing home minimum staffing rule. The Department ultimately established and disseminated in public materials a direct web link to allow a more accessible comment submission path to the public, lowering the barriers to participation for the nursing home residents, families, and facility staff who will be directly impacted by this regulation.

Statement of Need: Ensuring that beneficiaries receive safe, reliable, and quality nursing home care is a critical function of the Medicare and Medicaid programs and a top priority of CMS. The COVID–19 Public Health Emergency (PHE) tragically caused unprecedented illness and death among nursing home residents and workers. The PHE also exacerbated staffing challenges experienced in many facilities and further highlighted disparities in care and outcomes. Despite existing requirements that facilities provide sufficient levels of staffing in LTC facilities, chronic understaffing remains a significant concern. This rule establishes minimum staffing standards for long-term care facilities, as part of the Biden-Harris Administration's Nursing Home Reform initiative to ensure safe and quality care in long-term care facilities. In addition, this rule requires States to report the percent of Medicaid payments for certain Medicaid-covered institutional services that are spent on compensation for direct care workers and support staff.

Summary of Legal Basis: Sections 1819 and 1919 of the Act authorize the Secretary to issue requirements for participation in Medicare and Medicaid, including such regulations as may be necessary to protect the health and safety of residents (sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act).

Alternatives: In developing the policies contained in this rule, we considered numerous alternatives. The proposed rule solicited comments on alternative policy options that should be considered for establishing minimum nurse staffing standards that would maintain acceptable quality and safety within LTC facilities.

Anticipated Cost and Benefits: The proposed rule included an estimated cost of $40.6 billion over 10 years for the 24/7 RN and the 0.55 RN and 2.45 NA hours per resident day (HPRD) requirements and $147 million for the Medicaid institutional payment transparency reporting requirement. Quantified benefits include an estimated Medicare savings of $2.5 billion over 10 years due to fewer hospitalizations and emergency department visits, as well as increased resident discharges to home or the community.

Risks: This action establishes minimum staffing standards that nursing homes must meet in order to ensure that residents receive safe and quality care in LTC facilities. The minimum staffing standards also provide staff in LTC facilities with the support they need to safely care for residents and reduce staff turnover and burnout, which can lead to improved safety and quality for residents and staff. In addition, the rule promotes public transparency related to the percent of Medicaid payments for certain institutional services that are spent on compensation to direct care workers and support staff. While there may be additional costs to implement these requirements, the proposals strike an appropriate balance between cost and benefit and are necessary at this time to protect resident health and safety and ensure their needs are met.

Timetable:

Action	Date	FR Cite
NPRM	09/06/23	88 FR 61352
NPRM Comment Period End.	11/06/23	
Final Action	09/00/26	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: State.

Agency Contact: Ronisha Blackstone, Director, Division of Institutional Quality Standards, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6882, *Email: ronisha.blackstone@cms.hhs.gov.*

RIN: 0938–AV25

HHS—CMS

Final Rule Stage

71. Streamlining the Medicaid, Chip, and BHP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS–2421) [0938–AU00]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1302

CFR Citation: 42 CFR 431; 42 CFR 435; 42 CFR 457; 42 CFR 600; . . .

Legal Deadline: None.

Abstract: This rule implements changes to simplify the processes for eligible individuals to enroll and retain eligibility in Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program (BHP). The changes will be finalized in two rules. The first final rule removes barriers and facilitates enrollment of new applicants, particularly those dually eligible for Medicare and Medicaid. The second final rule will follow in CY 2024 and implement changes to align enrollment and renewal requirements for most individuals in Medicaid; establish beneficiary protections related to returned mail; create timeliness

requirements for redeterminations of eligibility in Medicaid and CHIP; make transitions between programs easier; eliminate access barriers for children enrolled in CHIP by prohibiting premium lock-out periods, waiting periods, and benefit limitations; and modernize recordkeeping requirements to ensure proper documentation of eligibility and enrollment.

Statement of Need: Since the implementation of the Affordable Care Act (ACA), CMS has made improvements in streamlining the Medicaid and CHIP application, eligibility determination, enrollment, and renewal processes. Simplifying enrollment in Medicaid and CHIP coverage is a foundational step in efforts to address health disparities for low-income individuals. However, gaps remain in States' ability to seamlessly process beneficiaries' eligibility and enrollment in order to maximize coverage. This rule will provide States with the tools they need to reduce unnecessary barriers to enrollment in Medicaid and CHIP and to keep eligible beneficiaries covered. CMS engaged in a series of discussions with state Medicaid and CHIP agencies during development of the proposed rule, to examine enrollment barriers and discuss potential options for relief.

Summary of Legal Basis: This rule responds to the January 28, 2021, Executive Order on Strengthening Medicaid and the Affordable Care Act. It addresses components of title XIX and title XXI of the Social Security Act and several sections of the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act.

Alternatives: In developing the policies contained in this rule, we considered numerous alternatives, including maintaining existing requirements. These alternatives are described in the rule.

Anticipated Cost and Benefits: The provisions in this rule will streamline Medicaid and CHIP enrollment processes and ensure that eligible beneficiaries can maintain coverage. While states and the Federal Government will incur initial costs to implement these changes, this rule aims to reduce administrative barriers to enrollment, which is expected to reduce administrative costs over time. The provisions in this rule are designed to increase access to affordable health coverage, and we believe that the benefits will justify the costs. Additionally, through clear and consistent requirements for the timely renewal of eligibility for all beneficiaries, this rule promotes program integrity, thereby protecting taxpayer funds at both the state and federal levels. As we move toward publication, estimates of the cost and benefits of these provisions will be included in the rule.

Risks: We anticipate that the provisions of this rule will further the administration's goal of strengthening Medicaid and making high-quality health care accessible and affordable for every American. At the same time, through clear and consistent requirements for conducting regular renewals of eligibility, acting on changes reported by beneficiaries and maintaining thorough recordkeeping on these activities, this rule will reduce the risk of improper payments.

Timetable:

Action	Date	FR Cite
NPRM	09/07/22	87 FR 54760
NPRM Comment Period End.	11/07/22	
1st Final Action ...	09/21/23	88 FR 65230
1st Final Action Effective.	11/17/23	
2nd Final Action ..	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

Agency Contact: Sarah Delone, Deputy Director, Children and Adults Health Programs Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, MS: S2–01–16, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–5647, *Email: sarah.delone2@cms.hhs.gov.*

RIN: 0938–AU00

HHS—CMS

72. Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (CMS–9904) [0938–AU67]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 111–148, title I

CFR Citation: 45 CFR 144; 45 CFR 146; 45 CFR 148.

Legal Deadline: None.

Abstract: This final rule amends the definition of short-term, limited duration insurance, which is excluded from the definition of individual health insurance coverage under the Public Health Service Act. This document also sets forth amendments to the requirements for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit in the group and individual health insurance markets. This document further sets forth amendments to clarify the tax treatment of certain benefit payments in fixed amounts received under employer-provided accident and health plans.

Statement of Need: These changes support the goals of the Affordable Care Act (ACA) by increasing access to affordable and comprehensive coverage, strengthening health insurance markets, and promoting consumer understanding of coverage options. Consistent with E.O. 14094, and accompanying OIRA guidance on Broadening Public Participation and Community Engagement in the Regulatory Process, and E.O. 12866, the Departments met with interested parties representing consumer advocacy and supplemental benefits industry representatives at the request of those parties.

Summary of Legal Basis: The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, 2792, 2794, 2799A–1 through 2799B–9 of the PHS Act (42 U.S.C. 300gg–300gg–63, 300gg–91, 300gg–92, 300gg–94, 300gg–300gg139), as amended.

Alternatives: In developing the rule, the Departments considered different approaches, including alternative amendments to the definition of short-term, limited-duration insurance, alternative amendments to the consumer notices for short-term, limited-duration insurance and fixed indemnity excepted benefits coverage, and alternative applicability timelines.

Anticipated Cost and Benefits: These changes are expected to increase consumer understanding of short-term, limited-duration insurance and fixed indemnity excepted benefits coverage as compared to comprehensive health insurance coverage and to strengthen markets for comprehensive health insurance coverage. These changes are also expected to reduce harm caused to consumers who enroll in short-term, limited- duration insurance or fixed indemnity excepted benefits coverage as an alternative to or replacement for comprehensive health insurance coverage. The changes to the definition of short-term, limited-duration insurance are expected to increase enrollment in comprehensive coverage, reduce gross premiums for individuals

enrolled in individual health insurance coverage purchased on an Exchange, and decrease Federal expenditures on the premium tax credit. These changes may increase premium costs for individuals who switch from short-term, limited-duration insurance to comprehensive health insurance coverage and are not eligible for government subsidies. They may also increase the number of uninsured individuals if some individuals with short-term, limited-duration insurance do not switch to comprehensive health insurance coverage or purchase short-term, limited-duration insurance from another issuer.

Risks: Due to a lack of data and information, areas of uncertainty include the forecasting of enrollment changes and the potential impacts to risk pools, premiums, Federal expenditures, and compensation for agents and brokers selling these products.

Timetable:

Action	Date	FR Cite
NPRM	07/12/23	88 FR 44596
NPRM Comment Period End.	09/11/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Lindsey Murtagh, Director, Market-Wide Regulation Division, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492–4106, *Email: lindsey.murtagh@cms.hhs.gov.*

RIN: 0938–AU67

HHS—CMS

73. Ensuring Access to Medicaid Services (CMS–2442) [0938–AU68]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1302

CFR Citation: 42 CFR 431; 42 CFR 438; 42 CFR 441; 42 CFR 447.

Legal Deadline: None.

Abstract: This rule addresses elements related to assuring access in Medicaid and/or the Children's Health Insurance Program (CHIP). These elements include processes that support the implementation of a comprehensive access strategy as well as payment processes, such as those related to specific payment systems.

Statement of Need: In order to assure equitable access to health care for all Medicaid and CHIP beneficiaries across all delivery systems, access regulations need to be multi-factorial and focus beyond payment rates. Barriers to accessing health care services can be as heterogeneous as Medicaid and CHIP populations which can be measured through provider availability and provider accessibility to realized or perceived access barriers which can be measured through utilization and satisfaction with services. The final rule takes a comprehensive approach to improving access to care, quality and health outcomes, and better addressing health equity issues in the Medicaid program across fee-for-service (FFS), managed care delivery systems, and in home and community-based services (HCBS) programs. These improvements seek to increase transparency and accountability, standardize data and monitoring, and create opportunities for States to promote active beneficiary engagement in their Medicaid programs, with the goal of improving access to care.

Summary of Legal Basis: Section 1902(a)(30)(A) of the Act requires states to ''assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.'' In addition, 2402(a) of the Affordable Care Act directs the Secretary to promulgate regulations ensuring that all states develop service systems that: (1) are responsive to the needs of beneficiaries receiving HCBS and enable them to maximize their independence; (2) provide necessary support and coordination for beneficiaries in need of such services and their caregivers; and (3) improve coordination and regulation of providers of such services to oversee and monitor functions, including a complaint system, and ensure that there are an adequate number of qualified direct care workers to provide self-directed services. Further, Section 1902(a)(4) of the Act is a longstanding statutory provision that, as implemented in part in regulations currently codified at 42 CFR 431.12, requires States to have a Medical Care Advisory Committee (MCAC) in place to advise the State Medicaid agency about health and medical care services.

Alternatives: In developing the policies contained in this rule, we considered numerous alternatives, including maintaining existing requirements. These alternatives are described in the rule.

Anticipated Cost and Benefits: This rule is expected to result in potential costs for states to come into and remain in compliance. Estimates for associated costs are unknown at this time and may vary by state. Information about anticipated costs will be included in the rule.

Risks: Risks of this rule are still under development and will be included in the final rule.

Timetable:

Action	Date	FR Cite
NPRM	05/03/23	88 FR 27960
NPRM Comment Period End.	07/03/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: State.

Agency Contact: Karen Llanos, Director, Medicaid Innovation Accelerator Program and Strategy Support, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, MS: S2–04–28, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9071, *Email: karen.llanos@cms.hhs.gov*.

RIN: 0938–AU68

HHS—CMS

74. Coverage of Certain Preventive Services Under the Affordable Care Act (CMS–9903) [0938–AU94]

Priority: Other Significant.

Legal Authority: Pub. L. 111–148, sec. 1001

CFR Citation: 45 CFR 147; 45 CFR 156.

Legal Deadline: None.

Abstract: This rule amends the final rules regarding religious and moral exemptions and accommodations regarding coverage of certain preventive services under title I of the Patient Protection and Affordable Care Act.

Statement of Need: Previous rules, regulations, and court decisions have left many women without contraceptive coverage and access to contraceptive services without cost sharing. This rule seeks to address religious objections to providing contraceptive coverage by honoring the entities' religious objections, while also ensuring that women enrolled in a group health plan established or maintained, or in health insurance coverage offered or arranged,

by an objecting entity described in 45 CFR 147.132(a), which does not invoke the optional accommodation (if eligible), have the opportunity to obtain contraceptive services at no cost. This rule would also eliminate the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs, which prevents access to contraceptive services without cost sharing.

Summary of Legal Basis: The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, 2792, 2794, 2799A–1 through 2799B–9 of the PHS Act (42 U.S.C. 300gg–63, 300gg–91, 300gg–92, 300gg–94, 300gg–139), as amended.

Alternatives: In developing this rule, the Departments considered various alternative approaches. The Departments considered maintaining the exemption (along with the existing accommodations and the proposed individual contraceptive arrangement) with respect to group health plans, health insurance issuers, and institutions of higher education that have a non-religious, moral objection to contraceptive coverage. With respect to individuals enrolled in coverage through entities that have a religious objection to contraceptive coverage, the Departments considered an approach under which contraceptive coverage would be available through separate individual insurance policies that cover only contraceptives and in which participants, beneficiaries, and enrollees would have to separately enroll if they desired contraceptive coverage. The Departments also considered an approach under which, if an objecting entity designs or contracts for a health plan without contraceptive coverage, the contraceptive coverage requirement would apply directly to the issuer in the case of a fully insured plan, or the third party administrator in the case of a self-insured plan. The issuer or third party administrator would then be required to fulfill its separate and independent obligation to provide contraceptive coverage. With respect to the proposed changes to 45 CFR 156.50(d), in addition to the proposed submission requirements on the part of the participating issuer, HHS considered whether to condition a provider of contraceptive services' participation in the individual contraceptive arrangement on the submission to HHS of additional information. In addition to an arrangement with a participating issuer on the Federally-facilitated Exchange or a State-based Exchange on the Federal Platform, HHS considered whether to allow a provider of contraceptive services to arrange with a third party administrator to submit documentation to HHS on their behalf under 45 CFR 156.50(d).

Anticipated Cost and Benefits: This rule is expected to increase access to contraceptive services without cost sharing through the individual contraceptive arrangement for eligible individuals and the elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs. This rule would increase health equity given the disproportionate burden of out-of-pocket spending on contraceptive services currently faced by low-income individuals (as those individuals with lower incomes must spend a greater percentage of their incomes on contraceptive services). This rule would also lead to better health outcomes for eligible individuals by increasing access to contraceptive services and reducing unintended pregnancies Participating providers of contraceptive services (including clinicians, facilities, and pharmacies) and issuers would incur costs associated with entering into signed agreements for reimbursement of costs associated with the provision of contraceptive services to eligible individuals, including costs of verifying consumer eligibility and other associated administrative costs. Eligible individuals would incur costs associated with participating in the individual contraception arrangement, including confirming eligibility to their provider of contraceptive services. HHS estimates the total cost to providers of contraceptive services, issuers, and eligible individuals to be approximately $30.2 million annually. The rule would also lead to a reduction in health care costs for individuals, issuers, group health plan sponsors, and states due to reductions in unintended pregnancies.

Risks: The Departments do not have information on the number of entities and individuals that have claimed a moral exemption to providing contraceptive coverage and are therefore uncertain of the amount of the potential transfer from plans and issuers to participants, beneficiaries, and enrollees due to reduced out- of-pocket spending on contraceptive services associated with the proposed elimination of the exemption for entities and individuals that object to contraceptive coverage based on nonreligious moral beliefs. The Departments estimate that the provision of the individual contraceptive arrangement could lead to a transfer from the Federal Government to individuals (via issuers to providers of contraceptive services) of approximately $49.9 million annually. This estimate is uncertain due to the limited information available in the 2019 user fee adjustment data. The Departments are uncertain as to how the number of participating providers might vary (for example, across rural and urban areas) and how this variation might affect access to services under the individual contraceptive arrangement. Due to the lack of data, the Departments are unable to develop a precise estimate of the number of eligible individuals who might participate in the individual contraceptive arrangement. This overall lack of data leads to uncertainty regarding the magnitudes of the total cost savings to eligible individuals and any resulting potential cost savings to states (associated with reduced spending on State-funded programs that provide contraceptive services or a potential reduction in the number of unintended pregnancies that would otherwise impose costs to states).

Timetable:

Action	Date	FR Cite
NPRM	02/02/23	88 FR 7236
NPRM Comment Period End.	04/03/23	
Final Action	08/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

Agency Contact: Lindsey Murtagh, Director, Market-Wide Regulation Division, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492–4106, *Email: lindsey.murtagh@cms.hhs.gov.*

RIN: 0938–AU94

HHS—CMS

75. Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality (CMS–2439) [0938–AU99]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1302

CFR Citation: 42 CFR 430; 42 CFR 438; 42 CFR 457.

Legal Deadline: None.

Abstract: This rule implements additional parameters under managed care delivery systems related to access to care requirements, States' use of In Lieu of Services or Settings (ILOS), State directed payments, quality rating systems, and other policy and reporting

changes to ensure the efficient operation of State managed care programs.

Statement of Need: This rule advances CMS' efforts to improve access to care, quality and health outcomes, and better address health equity issues for Medicaid and CHIP managed care enrollees. The rule specifically addresses standards for timely access to care and States' monitoring and enforcement efforts, clarifies standards State directed payments and certain quality reporting requirements, adds new standards that would apply when States use ILOSs to promote effective utilization and identify the scope and nature of ILOS, specifies medical loss ratio (MLR) requirements, and establishes a quality rating system (QRS) for Medicaid and CHIP managed care plans.

Summary of Legal Basis: States may implement a Medicaid managed care delivery system using four Federal authorities: sections 1915(a), 1915(b), 1932(a), and 1115(a) of the Social Security Act (the Act), and a CHIP managed care delivery system using two Federal authorities sections 2101(a) and 2107(e)(2)(A) of the Act.

Alternatives: In developing the policies contained in this rule, we considered numerous alternatives, including maintaining existing requirements. These alternatives are described in the rule.

Anticipated Cost and Benefits: We anticipate that most of the provisions in this rule will minimally or moderately increase administrative burden and associated costs. Certain provisions including State directed payments, MLR reporting standards, and ILOS could potentially have a significant impact on the associated and corresponding managed care payments. Information about anticipated costs will be included in the final rule.

Risks: Risks of this rule are still under development and will be included in the published rule.

Timetable:

Action	Date	FR Cite
NPRM	05/03/23	88 FR 28092
NPRM Comment Period End.	07/03/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: State.

Agency Contact: John Giles, Director, Division of Managed Care Policy, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, MS: S2–01–16, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–1255, *Email: john.giles1@cms.hhs.gov.*

RIN: 0938–AU99

HHS—CMS

Long-Term Actions

76. Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities (CMS–6084) [0938–AU90]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

CFR Citation: 42 CFR 424; 42 CFR 455.

Legal Deadline: Final, Statutory, February 15, 2026, MMA sec. 902 requires Medicare final rules publish within 3 years of a proposed or interim final rule.

Per the CMS notice published December 30, 2004 (69 FR 78442), except for certain Medicare payment regulations and certain other statutorily-mandated regulations, we schedule all Medicare final regulations for publication within the 3-year standardized time limit in the current Unified Agenda. We do not intend to delay publishing a Medicare final regulation for 3 years if we are able to publish it sooner.

Abstract: This rule implements portions of section 6101 of the Patient Protection and Affordable Care Act (Affordable Care Act), which requires the disclosure of certain ownership, managerial, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities.

Statement of Need: This rule is necessary for CMS and states to obtain important data about the owners and operators of nursing facilities. This will better enable CMS and states to monitor the ownership and management of these providers; this is an especially critical consideration given documented quality issues and differences in outcomes in nursing facilities with certain types of owners, such as private equity firms. The rule would also serve as an important component of this Administration's initiative to improve the safety, quality, and accountability of nursing homes.

Summary of Legal Basis: Section 6101(a) of the Affordable Care Act (Pub. L. 111–148) added a new section 1124(c) to the Social Security Act (the Act). This provision established requirements for the disclosure of information about the owners and operators of Medicare SNFs and Medicaid nursing facilities.

Alternatives: None. This rule implements a statutory requirement.

Anticipated Cost and Benefits: We believe the data furnished under this regulation will help CMS more closely monitor the ownership and management of nursing facilities. This, in conjunction with the Administration's other initiatives, could help improve beneficiary care, although potential benefits cannot be monetarily quantified. As discussed in the published proposed rule, the lone category of costs associated with this rule involves nursing facilities' submission of the required information. We do not anticipate any direct savings or transfers principally because the rule merely involves the submission of data for CMS or state review.

Risks: No risks are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	02/15/23	88 FR 9820
NPRM Comment Period End.	04/14/23	
Final Action	02/00/26	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, State.

Agency Contact: Frank Whelan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Program Integrity, MS: AR–18–50, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–1302, *Email: frank.whelan@cms.hhs.gov.*

RIN: 0938–AU90

HHS—CMS

Completed Actions

77. Hospital Outpatient Prospective Payment System: Remedy for 340B–Acquired Drugs Purchased in Cost Years 2018–2022 (CMS–1793) (Section 610 Review) [0938–AV18]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

CFR Citation: 42 CFR 419.

Abstract: This final rule describes the agency's actions to comply with the remand from the district court to craft a remedy in light of the United States Supreme Court's decision in *American Hospital Association* v. *Becerra*, 142 S. Ct. 1896 (2022), relating to the adjustment of Medicare payment rates for drugs acquired under the 340B

Program from calendar year (CY) 2018 through September 27th of CY 2022.

Statement of Need: From CY 2018 through September 27th of CY 2022, CMS paid a lower rate (generally ASP minus 22.5 percent) to certain hospitals for drugs acquired through the 340B discount program. The purpose of this policy was to pay these hospitals for 340B drugs at a rate that more accurately reflected the actual costs they incurred to acquire them. This 340B policy was the subject of several years of litigation, which culminated in a decision of the Supreme Court of the United States in *American Hospital Association* v. *Becerra,* 142 S. Ct. 1896 (2022), which held that if CMS has not conducted a survey of hospitals' acquisition costs, it may not vary the payment rates for outpatient prescription drugs by hospital group. The Supreme Court subsequently remanded the case, and the district court ultimately ordered CMS to implement a remedy to address the reduced payment amounts to the plaintiff hospitals from CY 2018 through September 27th of CY 2022.

Summary of Legal Basis: Under the Hospital Outpatient Prospective Payment System (OPPS), we generally set payment rates for separately payable drugs and biologicals (hereinafter referred to collectively as drugs) under section 1833(t)(14)(A) of the Social Security Act (the Act). Section 1833(t)(14)(A)(iii)(II) of the Act provides that, if hospital acquisition cost data are not available, the payment amount is the average price for the drug in a year established under section 1842(o), section 1847A, or section 1847B of the Act, as the case may be. Payment rates for drugs are usually established under section 1847A of the Act, which generally sets a default rate of the average sales price (ASP) plus 6 percent. Section 1833(t)(14)(A)(iii)(II) of the Act also provides that the average price for the drug in the year as established under section 1847A of the Act is calculated and adjusted by the Secretary of the Department of Health and Human Services (Secretary) as necessary for purposes of paragraph (14).

Alternatives: We evaluated several options to determine which remedy would best achieve the objectives of unwinding the unlawful 340B payment policy while making certain OPPS providers as close to whole as is administratively feasible. A discussion of these options, including our reasons for not moving forward with them, will be included in the final rule.

Anticipated Cost and Benefits: To comply with statutory budget neutrality requirements, we plan to annually reduce OPPS payments for non-drug items and services beginning in CY 2025 by decreasing the OPPS conversion factor by 0.5 percent each year, until a total offset of an estimated $7.8 billion is reached.

Risks: Any risks regarding potential impacts will be included in the final rule.

Completed:

Reason	Date	FR Cite
NPRM	07/11/23	88 FR 44078
Final Action	11/08/23	88 FR 77150
Final Action Effective.	01/08/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Federal, Local, State.

Agency Contact: Elise Barringer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9222, *Email: elise.barringer@cms.hhs.gov.*

RIN: 0938–AV18

HHS—ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

Proposed Rule Stage

78. Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net Program [0970–AC97]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 609

CFR Citation: 45 CFR 260.

Legal Deadline: None.

Abstract: This rule would improve the effectiveness and integrity of the Temporary Assistance for Needy Families (TANF) program as a safety net program by clarifying allowable uses of TANF funds and reducing administrative burden. The rule takes into account concerns from Members of Congress from both parties who are focused on ensuring TANF funds are serving their intended purpose, and advances the Biden-Harris Administration's priority for economic growth through investment in American families. The rule aims to ensure TANF funds are used in accordance with the statute, focusing on services that support families to meet their basic needs, get access to opportunities in the job market, and remain together.

Statement of Need: In fiscal year (FY) 2020, combined federal TANF and state maintenance-of-effort (MOE) expenditures and transfers totaled $31.6 billion. Of that amount only 22 percent was spent on basic assistance, compared to 71 percent in FY 1997. As a result, TANF currently serves less than 25 percent of eligible families across the country, as compared to 1997 when TANF served almost 70 percent of eligible families. The rule aims to address these shortcomings and would align with the Administration's efforts to increase opportunities for economic mobility for low-income families. The NPRM may consider changes around use of funds, eligible families, state MOE spending, and work flexibilities.

Summary of Legal Basis: The proposed regulations will relate to allowable spending, eligible work activities and penalties, and administrative simplification. The NPRM would be issued under the Secretary's authority to issue regulations where Congress has charged the Department with enforcing penalties, 42 U.S.C. 609.

Alternatives: In the absence of these regulatory changes, states will not experience any relief in their administrative burden to operate the TANF program and these changes will improve program integrity and access to services.

Anticipated Cost and Benefits: This NPRM imposes no costs on the Federal government nor does it change overall funding amounts for States, territories, and tribes, as TANF is a fixed block grant. We anticipate a benefit in the transfer of funding toward critical supports to families experiencing economic hardships.

Risks: While we expect more low-income families to receive TANF benefits and receive more effective work-related services, this action may result in states having to increase their own spending to fund activities previously funded by federal TANF dollars or previously counted as state MOE spending.

Timetable:

Action	Date	FR Cite
NPRM	10/02/23	88 FR 67697
NPRM Comment Period End.	12/01/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Deborah List, Associate Deputy Director, Office of Family Assistance, Department of Health and Human Services,

Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 401–5488, *Email: deborah.list@acf.hhs.gov.*

RIN: 0970–AC97

HHS—ACF

79. Employment and Training Services for Noncustodial Parents in the Child Support Services Program [0970–AD00]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 1302

CFR Citation: 45 CFR part 302; 45 CFR part 303; 45 CFR part 304.

Legal Deadline: None.

Abstract: In an effort to make the child support program more effective and to increase regular child support payments, the Office of Child Support Services will propose to allow child support agencies to strengthen supportive services for noncustodial parents.

Statement of Need: Currently, IV–D agencies have many enforcement tools to collect child support from noncustodial parents who are able to pay their child support, but these enforcement tools are less effective in collecting support from unemployed noncustodial parents. Many of these parents face significant barriers to employment and could benefit from employment and training services, but rarely receive them. This Notice of Proposed Rulemaking (NPRM) would explore options for providing nonduplicative employment and training services to unemployed noncustodial parents, which will help them become employed and pay their child support.

Summary of Legal Basis: This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (Act), 42 U.S.C. 1302.

Alternatives: There are no satisfactory alternatives to publishing this NPRM that provide improved child support program effectiveness.

Anticipated Cost and Benefits: To Be Determined.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Chad Edinger, Program Specialist, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201. *Phone:* 303 844–1213, *Email: chad.edinger@acf.hhs.gov.*

RIN: 0970–AD00

HHS—ACF

80. Supporting the Head Start Workforce and Other Quality Improvements [0970–AD01]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 9801; 42 U.S.C. 9836a; 42 U.S.C. 9839

CFR Citation: 45 CFR parts 1302 and 1305.

Legal Deadline: None.

Abstract: This NPRM will propose changes to the Head Start Program Performance Standards to better support the Head Start workforce and to maintain the quality of comprehensive Head Start services.

Statement of Need: This notice of proposed rulemaking (NPRM) proposes to add new provisions to the Head Start Program Performance Standards to increase pay and support the Head Start workforce, make improvements to the overall quality of Head Start program services, and strengthen mental health supports. Head Start programs serve hundreds of thousands of children ages birth to five, pregnant women, and their families each year. This NPRM is critical to improving the quality, stability, and continuity of Head Start services for children and families.

Summary of Legal Basis: ACF publishes this NPRM under the authority granted to the Secretary of Health and Human Services by sections 641A, 645, 645A, 648A, and 653 of the Act (42 U.S.C. 9836a, 9840, 9840a, 9843a, and 9848), as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134).

Alternatives: One alternative is to keep the status quo and not put forward this proposed rule. This would likely result in the workforce crisis continuing, which ultimately has a negative impact on the quality of services for the children and families Head Start aims to serve and enrollment levels may continue to decline as programs have difficulty filling vacancies.

Another alternative is to allow this NPRM to be published and move forward to a final rule. This would stabilize the Head Start workforce and enable Head Start programs to provide consistent, high-quality services to children and families.

Anticipated Cost and Benefits: The costs associated with this proposed rule include the funding required for implementing compensation requirements proposed in the rule. Another potential cost is that burden on programs may temporarily increase as they work to implement the proposed requirements.

The benefits associated with the proposed rule include a more stable Head Start workforce and high-quality services consistently provided to all children and families served by Head Start. ACF strongly believes the anticipated benefits of this proposed rule far outweigh the potential costs.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Organizations.

Government Levels Affected: None.

Agency Contact: Lindsey A. Hutchison, Senior Policy Analyst, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, #4305B, Washington, DC 20201, *Phone:* 904 860–7032, *Email: lindsey.hutchison@acf.hhs.gov.*

RIN: 0970–AD01

HHS—ACF

81. • Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B (Section 610 Review) [0970–AD03]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 671(a)(16); 42 U.S.C. 622(b)(8)(A)(ii); 42 U.S.C. 675(1)(B); 42 U.S.C. 675(5))

CFR Citation: CFR 1355.22; CFR 1355.34.

Legal Deadline: None.

Abstract: This rule will propose to clarify that title IV–E/IV–B agencies are required to offer safe and appropriate foster care placements, including processes to ensure children can request such placements and agencies must respond to concerns about those placements, for children in foster care who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex (LGBTQI+). The rule will not interfere with faith-based child welfare providers continue to partner with title IV–E/IV–B agencies in a way that does not interfere with those providers' sincerely held religious beliefs.

Statement of Need: To support States and tribes in complying with Federal laws that require that all children in foster care receive safe and proper care, the proposed rule would clarify the processes and requirements to State child welfare agencies must follow to ensure children in foster care who identity as LGBTQI+ are provided with placements the agency designates as safe and appropriate for an LGBTQI+ child, and with services that are necessary to support their health and wellbeing. These requirements clarify how title IV–E/IV–B agencies must meet IV–E and IV–B statutory requirements, including for the case review system and case plan, to appropriately serve children in foster care who identify as LGBTQI+. While the general requirements for the case review system are not new, ACF is proposing to prescribe how agencies must implement the requirements to provide placements and services to children in foster care who identity as LGBTQI+.

Summary of Legal Basis: Sections 471(a)(16), 422(b), and 475(1)(B) of the Social Security Act.

Alternatives: As an alternative to this NPRM, ACF has already provided sub-regulatory guidance requiring agencies to implement the provisions of the NPRM for children who identify as LGBTQI+. However, this guidance did not have the force of law and thus was not sufficient to effectively ensure that LGBTQI+ children and youth in foster care receive appropriate placements and services.

Anticipated Cost and Benefits: The benefits of this NPRM are that placing children in foster care with providers the agencies designate as safe and appropriate for LGBTQI+ children will reduce the negative experiences of such children by allowing them to have access to needed care and services and to be placed in nurturing placement settings with caregivers who have received appropriate training. Ensuring such placements may also reduce LGBTQI+ foster children's high rates of homelessness, housing instability and food insecurity. ACF acknowledges that there will be a cost to implement changes made by this proposed rule as we anticipate that a majority of states would need to expand their efforts to recruit and identify providers and foster families that the state or tribe could designate as safe and appropriate placements for a LGBTQI+ child. This cost would vary depending on an agency's available resources to implement a final rule, though Federal financial participation is available to agencies for eligible administrative expenses, including expenses for recruiting and identifying providers and foster families that could be designated as safe and appropriate placements for an LGBTQI+ child.

Risks: TBD.

Timetable:

Action	Date	FR Cite
NPRM	09/28/23	88 FR 66752
NPRM Comment Period End..	11/27/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Kathleen McHugh, Director, Division of Policy, Children's Bureau, ACYF/ACF/HHS, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3411, Washington, DC 20201, *Phone:* 202 401–5789, *Fax:* 202 205–8221, *Email: kmchugh@acf.hhs.gov.*

RIN: 0970–AD03

HHS—ACF

Final Rule Stage

82. Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF) [0970–AD02]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: The Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9858 *et seq.*); sec.418 of the Social Security Act (42 U.S.C. 618)

CFR Citation: 45 CFR part 98.

Legal Deadline: None.

Abstract: This final rule would update the Child Care and Development Fund (CCDF) regulations to ease eligible families' enrollment in the child care subsidy system and increase participating families' access to a range of high-quality child care options for which they may use child care subsidies. The changes would address: (1) Family copayments; (2) provider payment rates and practices; (3) child eligibility determination and re-determination; and (4) technical changes.

Statement of Need: This final rule amends Child Care and Development Fund (CCDF) regulations in four areas: (1) family co- payments; (2) provider payment rates and practices; (3) child enrollment and eligibility determination; and, (4) technical changes. These changes will lower child care costs for families, increase parent's child care options, reduce barriers to receiving child care assistance, increase payments to providers, support higher program quality, and improve child care stability.

The Child Care and Development Block Grant (CCDBG) Act, together with Section 418 of the Social Security Act, authorize the CCDF, which is the primary Federal funding source devoted to supporting families with low incomes access child care and to increasing the quality of child care for all children. Fiscal year (FY) 2023 funding was over $11 billion by formula to states, territories, and tribes. CCDF child care subsidies support children's positive and healthy development and family economic wellbeing, enabling parents to pursue employment, education, and training opportunities. More than 900,000 families and 1.5 million children benefit from CCDF financial assistance each month.

Congress last authorized the CCDBG Act in 2014, and the Department of Health and Human Services (HHS) published final regulations clarifying the new provisions of the Act in September 2016. These statutory and regulatory actions included significant changes to the CCDF program. In the years since 2016 Final Rule, CCDF agencies have taken significant steps to implement the requirements, but child care remains a broken system in crisis due to chronic underinvestment. Parents struggle to find affordable high-quality child care that meets their needs, and the system relies on a poorly compensated workforce and unaffordable parent fees.

This final rule builds on the 2016 final rule and to create a stronger child care assistance program that will better meet the needs of children, families, and child care providers. It provides additional clarity around key policies that are needed to provide more help for families so they can find child care that meets their families' needs and for the continued stabilization of the child care sector.

Summary of Legal Basis: ACF publishes this final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857, *et seq.*) and section 418 of the Social Security Act (42 U.S.C. 618).

Alternatives:

Alternative 1: One alternative is to publish this final rule, which will lower family costs, increase parent's options for child care, help families receive more timely assistance, increase payments to child care providers, incentivize child care providers to accept CCDF subsidies, help stabilize the child care sector, and improve child care quality.

Alternative 2: Another alternative is to keep the status quo, which will continue current fees and policies that limit a family's ability to participate in the CCDF program and access child care, payment practices that limit parent choices and undermine child care provider stability, and eligibility processes that create barriers to the child care subsidy.

Anticipated Cost and Benefits: Changes made by this final rule would have the most direct benefit for the over 900,000 families and 1.5 million children who use CCDF assistance to help pay for child care each month. Families who receive CCDF assistance will benefit from lower parent co-payments, more parental options for child care arrangements, expanded and easier access to child care which could improve the ability of families to participate in the labor market, and improved eligibility determination processes.

Providers will benefit from fairer payment practices that support their financial stability, including payments that more accurately reflect the cost of providing high quality care, which can lead to higher wages for providers and their staff.

The cost of implementing these changes would vary based on a state, territory, or Tribe's specific situation and implementation choices. Some states may also need to invest in IT and systems changes.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	07/13/23	88 FR 45022
NPRM Comment Period End.	08/28/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Local, State, Tribal.

Agency Contact: Megan Campbell, Child Care Policy Supervisor, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 690–6499, *Fax:* 202 690–5600, *Email: megan.campbell@acf.hhs.gov.*

RIN: 0970–AD02

HHS—ACF

Completed Actions

83. Separate Licensing Standards for Relative or Kinship Foster Family Homes [0970–AC91]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

CFR Citation: 45 CFR 1355.20.

Abstract: This regulation allows title IV–E agencies to adopt separate licensing standards for relative or kinship foster family homes.

Statement of Need: Currently, the regulation provides that in order to claim title IV–E, all foster family homes must meet the same licensing standards, regardless of whether the foster family home is a relative or non-relative placement. This Notice of Proposed Rulemaking (NPRM) allows a title IV–E agency to adopt licensing or approval standards for all relative foster family homes that are different from the licensing standards used for non-related foster family homes.

Summary of Legal Basis: This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions for which the Secretary is responsible pursuant to the Act. Section 472 of the Act authorizes federal reimbursement for a FCMP for an otherwise eligible child when the child is placed in a fully licensed or approved foster family home.

Alternatives: There are no satisfactory alternatives to publishing this NPRM. This change cannot be made in sub-regulatory guidance.

Anticipated Cost and Benefits: This NPRM impacts state and tribal title IV–E agencies and does not impose a burden. The title IV–E agency has discretion to develop separate licensing standards for relatives and non-relatives and if they do so, they may claim title IV–E funding. ACF estimates that the proposed regulatory change would cost the Federal Government $3.085 billion in title IV–E foster care federal financial participation over 10 years.

Risks: None.

Completed:

Reason	Date	FR Cite
Final Action	09/28/23	88 FR 66700
Final Action Effective.	11/27/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Kathleen McHugh, Director, Division of Policy, Children's Bureau, ACYF/ACF/HHS, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3411, Washington, DC 20201, *Phone:* 202 401–5789, *Fax:* 202 205–8221, *Email: kmchugh@acf.hhs.gov.*

RIN: 0970–AC91

HHS—ADMINISTRATION FOR COMMUNITY LIVING (ACL)

Proposed Rule Stage

84. Adult Protective Services Functions and Grant Programs [0985–AA18]

Priority: Other Significant.

Legal Authority: Elder Justice Act (SSA sec. 2042. [42 U.S.C. 1397m–1] (a) Secretarial Responsibilities)

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The final rule would create federal regulations for Adult Protective Services (APS) programs as authorized by the Elder Justice Act. APS programs were originally recognized by federal law in 1975 under title XX of the Social Security Act via the Social Services Block Grant (SSBG). States have wide discretion whether to allocate any funding to APS via the SSBG program, and there are no regulations pertaining to APS under SSBG. Since 1975, all 50 states, the District of Columbia, and four territories have developed APS programs in accordance with local needs, structures, and laws. Historic investments through the Coronavirus Relief and Response Supplemental Appropriations Act (CRRSA) and the American Rescue Plan Act (ARPA) provided the very first funding for APS program formula funding to states as authorized by the Elder Justice Act (EJA). These regulations would promote an effective APS response across the country so that all older adults and adults with disabilities, regardless of the state or jurisdiction in which they live, have similar protections and service delivery from APS systems. Following release of the NPRM, ACL held a stakeholder call open to all of the public on September 18, 2023, that provided a walkthrough of the proposed rule and background resources and information

on how to comment. ACL also held a separate stakeholder call with Tribal grantees and leadership regarding the same. ACL has created a specific stakeholder web page at *https://acl.gov/APSrule,* which includes a summary of the rule and how to comment.

Statement of Need: The proposed rule would create federal regulations for Adult Protective Services (APS) programs as authorized by the Elder Justice Act (EJA). These regulations are critical in establish consistent national requirements and standards for EJA APS program formula funding to states.

Summary of Legal Basis: Development, promulgation and implementation of this regulation will be carried out consistently with the statute; however, this regulatory action is not required by the statute or a court order.

Alternatives: ACL considers sub-regulatory guidance, information and education outreach, and voluntary approaches as alternatives to regulatory action. Prior to the availability of appropriations for formula funding for this program ACL utilized guidance and voluntary approach for the establishment of a national data system and in supporting the establishment and dissemination of program best practices. However, now that federal funding is available to all states and territories, none of these alternatives are the appropriate option for promulgating and administering the provisions that will be included in the regulations consistent with statute. Economic incentives and instruments are not an option.

Anticipated Cost and Benefits: The proposed rule will require the revision of State policies and procedures, require training on new rules for APS staff, require the submission of new State plans, require data sharing agreements between APS systems and other State entities, require APS systems create a feedback loop to provide information to mandatory reporters, require data reporting to ACL, inform potential APS clients of their rights under State law, and require new or updated record retention systems for certain States. The rule will result in improved consistency in implementation of APS systems within and across States, clarity of obligations associated with Federal funding for administrators of APS systems and will result in better and more effective service delivery within and across States with better quality investigations in turn leading to more person-directed outcomes. The rule is anticipated to cost a total of $3,532,916.99 to fully implement. This cost will be offset by improved investigations and better outcomes for the victims of adult maltreatment. This represents significant value, particularly given the widespread and egregious nature of adult maltreatment in the United States.

Risks: These regulations would establish first ever regulations for APS programs consistent with the Elder Justice Act passed in 2010. Promulgating this NPRM and obtaining public feedback in order to issue a new final rule will result in decreased risk for administering agencies at the federal, state and local level in ensuring the administration of appropriations for APS programs consistent with the statute, and in also supporting the statute's programmatic purpose of detecting, preventing and reducing the abuse, neglect and exploitation of adults, including older adults.

Timetable:

Action	Date	FR Cite
NPRM	09/12/23	88 FR 62503
NPRM Comment Period End.	11/13/23	
Final Action	05/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Richard Nicholls, Chief of Staff and Executive Secretary, Department of Health and Human Services, Administration for Community Living, 330 C Street SW, Room 1004B, Washington, DC 20201, *Phone:* 202 795–7415, *Fax:* 202 205–0399, *Email: rick.nicholls@acl.hhs.gov*

RIN: 0985–AA18

BILLING CODE 4150–03–P

DEPARTMENT OF HOMELAND SECURITY (DHS)

Fall 2023 Statement of Regulatory Priorities

The Department of Homeland Security (DHS or Department) was established in 2003 pursuant to the Homeland Security Act of 2002, Public Law 107–296. The DHS mission statement provides the following: ''With honor and integrity, we will safeguard the American people, our homeland, and our values.''

DHS was created in the aftermath of the horrific attacks of 9/11, and its distinctive mission is defined by those words. The phrase ''homeland security'' refers to the security of the American people, the homeland (understood in the broadest sense), and the nation's defining values. A central part of the mission of protecting ''our values'' includes fidelity to law and the rule of law, reflected above all in the Constitution of the United States, and also in statutes enacted by Congress, including the Administrative Procedure Act. That commitment is also associated with a commitment to individual dignity. Among other things, the attacks of 9/11 were attacks on that value as well.

The regulatory priorities of DHS are founded on an insistence on the rule of law—and also on a belief that individual dignity, symbolized and made real by the opening words of the Constitution (''We the People''), the separation of powers, and the Bill of Rights (including the Due Process Clause), helps to define our mission.

Fulfilling that mission requires the dedication of more than 240,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector, from the economist seeking to identify the consequences of our actions to the scientist and policy analyst seeking to make the nation more resilient against flooding, drought, extreme heat, and wildfires. Our duties are wide-ranging, but our goal is clear: keep America safe.

There are six overarching homeland security missions that make up DHS's strategic plan: (1) Counter terrorism and homeland security threats; (2) secure U.S. borders and approaches; (3) secure cyberspace and critical infrastructure; (4) preserve and uphold the Nation's prosperity and economic security; (5) strengthen preparedness and resilience (including resilience from risks actually or potentially aggravated by climate change); and (6) champion the DHS workforce and strengthen the Department. See also 6 U.S.C. 111(b)(1) (identifying the primary mission of the Department).

In promoting these goals, we attempt to evaluate our practices by reference to evidence and data, and to improve them in real time. We also attempt to deliver our multiple services in a way that, at once, protects the American people and does not impose excessive or unjustified barriers and burdens on those who use them.

In achieving those goals, we are committed to public participation and to listening carefully to the American people (and to noncitizens as well). We are continually strengthening our partnerships with communities, first responders, law enforcement, and Government agencies—at the Federal,

State, local, tribal, and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure against risks old and new—and to perform our services better. We are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. We are reducing administrative burdens and simplifying our processes. For a further discussion of our mission, see the DHS website at *https://www.dhs.gov/mission.*

The regulations we have summarized below in the Department's Fall 2023 regulatory plan and agenda support the Department's mission. We are committed to continuing evaluation of our regulations, consistent with Executive Order 13563, and Executive Order 13707, and in a way that improves them over time. These regulations will improve the Department's ability to accomplish its mission. Also, these regulations address legislative initiatives such as the ones found in the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) and the FAA Extension, Safety, and Security Act of 2016.

We emphasize here our commitments (1) To fidelity to law; (2) to treating people with dignity and respect; (3) to increasing national resilience against multiple risks and hazards, including those actually or potentially associated with climate change; (4) to modernization of existing requirements; and (5) to reducing unjustified barriers and burdens, including administrative burdens.

DHS strives for organizational excellence and uses a centralized and unified approach to managing its regulatory resources. The Office of the General Counsel manages the Department's regulatory program, including the agenda and regulatory plan. In addition, DHS senior leadership reviews each significant regulatory project in order to ensure that the project fosters and supports the Department's mission.

The Department is committed to ensuring that all of its regulatory initiatives are aligned with its guiding principles to remain faithful to law, protect civil rights and civil liberties, integrate our actions, listen to those affected by our actions, build coalitions and partnerships, develop human resources, innovate, and be accountable to the American public.

DHS is strongly committed to the principles described in Executive Orders 13563 and 12866 (as amended). Both Executive Orders 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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 explicitly draws attention to human dignity and to equity.

Finally, the Department values public involvement in the development of its regulatory plan, agenda, and regulations. It is particularly concerned with the impact its regulations have on small businesses and startups, consistent with its commitment to promoting economic growth. DHS is also concerned to ensure that its regulations are equitable, and that they do not have unintended or adverse effects on (for example) women, disabled people, people of color, or the elderly. Its general effort to modernize regulations, and to remove unjustified barriers and burdens, is meant in part to avoid harmful effects on small businesses, startups, and disadvantaged groups of multiple sorts. DHS and its components continue to emphasize the use of plain language in our regulatory documents to promote a better understanding of regulations and to promote increased public participation in the Department's regulations. We want our regulations to be transparent and ''navigable,'' so that people are aware of how to comply with them (and in a position to suggest improvements). DHS and its components regularly seek public input on regulatory plans, including through Requests for Information and Advanced Notices of Proposed Rulemaking, listening sessions, Federal Advisory Committees, and more.

The Fall 2023 regulatory plan for DHS includes regulations from multiple DHS components, including the Federal Emergency Management Agency (FEMA), U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (the Coast Guard), U.S. Customs and Border Protection (CBP), Transportation Security Administration (TSA), U.S. Immigration and Customs Enforcement (ICE), and the Cybersecurity and Infrastructure Security Agency (CISA). We next describe the regulations that comprise the DHS fall 2023 regulatory plan.

Federal Emergency Management Agency

The Federal Emergency Management Agency (FEMA) is the government agency responsible for helping people before, during, and after disasters. FEMA supports the people and communities of our Nation by providing experience, perspective, and resources in emergency management. FEMA is particularly focused on national resilience in the face of the risks of flooding, drought, extreme heat, and wildfire; it is acutely aware that these risks, and others, are actually or potentially aggravated by climate change. FEMA seeks to ensure, to the extent possible, that changing weather conditions do not mean a more vulnerable nation. FEMA is also focused on individual equity, and it is aware that administrative burdens and undue complexity might produce inequitable results in practice.

Consistent with President Biden's Executive Order on Climate Related Financial Risk (Executive Order 14030), FEMA will propose a regulation titled *National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form.* The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. Property owners in participating communities are eligible to purchase NFIP flood insurance. This proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners' insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

FEMA will also publish an Interim Final Rule (IFR) titled *Individual Assistance Program Equity* to further align with Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and Executive Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. FEMA will amend its Individual Assistance (IA) program regulations to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, FEMA will increase eligibility for home repair assistance by amending the definitions

and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allow for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplify the documentation requirements for continued temporary housing assistance; simplify the appeals process; simplify the process to request approval for a late registration; remove the requirement to apply for a Small Business Administration loan as a condition of eligibility for Other Needs Assistance (ONA); and establish additional assistance under ONA for serious needs, displacement, disaster-damaged computing devices, and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multi-family rental housing, child care assistance, maximum assistance limits, and waiver authority.

FEMA informed the development of this IFR by seeking input on regulatory changes to the Individuals and Households Program (IHP) through an Request for Information (RFI) published on April 22, 2021, seeking public input on its programs, regulations, collections of information, and policies to ensure they effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.[1] FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments.[2] All relevant comments received in response to the RFI, including those received during the public meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2021-0011-0001/comment.* Commenters raised equitable concerns that FEMA will address in this IFR, such as by removing the requirement to apply for the SBA for a loan before receipt of ONA, amending FEMA's habitability standards, increasing assistance for essential tools, simplifying its appeal process, and removing documentation requirements for late registrations. FEMA will seek public comment on this IFR and will carefully consider each comment received to determine whether further changes to FEMA's IHP regulations are needed.

In addition, FEMA will propose a regulation titled *Update of FEMA's Public Assistance Regulations.* FEMA proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

Additionally, FEMA will propose a regulation titled *Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard* consistent with Executive Order 14030. FEMA proposes to amend its existing regulations to incorporate amendments that have been made to Executive Order 11988 and the Federal Flood Risk Management Standard (FFRMS). FEMA has engaged the public extensively on these matters. On February 5, 2015, FEMA, acting on behalf of the Mitigation Framework Leadership Group, posted a **Federal Register** notice seeking comments on a draft of the *Revised Guidelines for Implementing Executive Order 11988, Floodplain Management.*[3] The 60-day comment period was extended an additional 30 days.[4] During the public comment period for the Revised Guidelines, FEMA sent advisories to representatives from Governors' offices nationwide inviting comments on the draft Revised Guidelines. Over 25 meetings were held across the country with State, local, and Tribal officials and interested stakeholders to discuss the draft Revised Guidelines as well as 9 public listening sessions across the country attended by over 700 participants to facilitate feedback. All relevant comments received in response to these efforts have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2015-0006-0001/comment.* Comments from meetings and listening sessions can be found at *https://www.regulations.gov/docket/FEMA-2015-0006/document.*

Additionally, FEMA published a Notice of Proposed Rulemaking (NPRM) in 2016[5] seeking public comment on FEMA's proposed implementation of the Revised Guidelines. All relevant comments received in response to the 2016 NPRM have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2015-0006-0373/comment.* The FFRMS is a flexible framework allowing agencies to choose among three approaches to define the floodplain and corresponding flood elevation requirements for federally funded projects. Existing regulations describe FEMA's process for determining whether the proposed location for an action falls within a floodplain and how to complete the action in the floodplain in light of the risk of flooding. The proposed rule would change how FEMA defines a floodplain with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating the proposed action in the floodplain.

Finally, FEMA continues to engage with the public related to its NFIP minimum floodplain management standards. On October 12, 2021, FEMA issued an RFI to receive the public's input on revising the NFIP's floodplain management standards for land management and use regulations to better align with the current understanding of flood risk and flood risk reduction approaches. FEMA's authority under the National Flood Insurance Act requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. During the RFI comment period, FEMA held three public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments.[6] All relevant comments received in response to the RFI have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/docket/FEMA-2021-0024/comments* and transcripts from the public meetings have also been posted at *https://www.regulations.gov/docket/FEMA-2021-0024/document.* In April 2023, FEMA requested recommendations from the Technical

[1] 86 FR 21325, Apr. 22, 2021.

[2] See ''Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,'' 86 FR 30326, June 7, 2021.

[3] 80 FR 6530, Feb. 5, 2015.

[4] 80 FR 16018, Mar. 26, 2015.

[5] 81 FR 57401, Aug. 22, 2016.

[6] 86 FR 59745, Oct. 28, 2021 and 86 FR 66329, Nov. 22, 2021.

Mapping Advisory Council (TMAC) on modifying the definition of the Special Flood Hazard Area or modifying how it is calculated. In addition, FEMA requested a recommendation from TMAC on how FEMA might consider changing mapping procedures related to when land is filled. These recommendations will assist FEMA in exploring the feasibility of public comments received from the 2021 RFI.

The agency will propose regulations to better align the NFIP minimum floodplain management standards with FEMA's current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. As part of the proposed regulations, FEMA is considering revisions to the NFIP minimum floodplain management standards to better protect people and property in a nuanced manner that balances community needs with the national scope of the NFIP. FEMA will also propose opportunities to make these minimum floodplain management standards improve resilience in historically underserved communities. The proposed revisions to the NFIP floodplain management minimum standards will consider how to advance the conservation of threatened and endangered species and their habitat. FEMA is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System.

United States Citizenship and Immigration Services

U.S. Citizenship and Immigration Services (USCIS) is the government agency that administers and oversees lawful immigration to the United States. USCIS is firmly committed to creating and strengthening an accessible and humane immigration system. The USCIS mission statement is: ''USCIS upholds America's promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve.'' The American people, through Congress, have entrusted USCIS to faithfully administer the legal immigration programs that allow foreign nationals to visit, work, study, live, and seek refuge in the United States. Every day, USCIS delivers immigration decisions to individuals, families, businesses, workers, and those seeking a place of safety and shelter in our country, whether they filed applications, petitions, requests, or appeals. The work of USCIS employees makes the possibility of America a reality for immigrants, for the communities and economies they join, and for the nation as a whole. In achieving this mission, partnership with our stakeholders and strong public engagement is a strategic priority of USCIS to ensure we are crafting policies and regulations to reduce unnecessary burdens or barriers to legal immigration, meet the economic needs of U.S. employers, and reinvigorate the size and scope of humanitarian relief. Over the coming year, USCIS will pursue several regulatory actions in support of furthering a strong legal immigration system that operates with integrity, and that promotes integration, inclusion, and citizenship. USCIS will issue regulations that restore and strengthen the family and employment-based immigration systems, that improve the lives of survivors of domestic and sexual violence and other serious crimes, and that are nimble enough to address urgent humanitarian needs effectively and quickly. We will publish regulations that are clear and easy to understand, and include opportunities for public engagement and input.

Employment Issues, Economic Needs, and Lawful Pathways. USCIS is focused on promulgating policies that are responsive to the needs of the U.S. economy and U.S. employers, while providing lawful pathways to work in the United States and also protecting the rights of both U.S. and noncitizen workers. USCIS has recently proposed a rule to modernize and reform the H–2A and H–2B programs. The proposed rule incorporates necessary program efficiencies, aims to meet the needs of U.S. employers, and include provisions designated to protect against the exploitation or other abuse of H–2A and H–2B workers (*Modernization and Reform of the H–2 Programs*). USCIS will also propose a rule to update and streamline the H–1B program, with a goal of improving program efficiency, integrity, and flexibility including proposed changes to the registration system to reduce the possibility of misuse and fraud.

Many of these proposals will be informed by the public comments we received in response to a Request for Public Input that USCIS published on April 19, 2021, to solicit feedback from our stakeholders and customers on identifying and reducing barriers to immigration (86 FR 20398). (*Modernizing H–1B Requirements and Oversight and Providing Flexibility in the F–1 Program.*)

Improvements to the Overall Immigration System. On January 4, 2023, USCIS published a proposal to adjust certain immigration and naturalization benefit request fees (after performing the required biennial fee review) to ensure that fees charged recover full costs borne by USCIS. Following publication of the notice of proposed rulemaking and during the official comment period, on January 11, 2023, USCIS held a virtual listening session, ''National Listening Session on the Proposed Rule to Adjust Certain Immigration Fees'' (attended by 1,671 people), for members of the public to provide their feedback and thoughts. USCIS will consider all comments and input received from the public in developing the final rule and set fees in a manner that adheres to the ideals of removing unjustified barriers and promoting access to the immigration system (to promote, among other things, economic needs and economic growth); improving and expanding naturalization processing; and meeting the administration's humanitarian priorities. (*USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.*) In addition, USCIS plans to take steps to reform the regulations governing the adjustment of status to lawful permanent residence to improve the efficiency and administration of that program. USCIS will propose a rule that updates outdated regulations, reduces the potential for visa retrogression, and promotes the efficient use of immediately available immigrant visas. Many of the proposed policy and operational changes contained in this rulemaking were informed by public comments USCIS received on its April 19, 2021 Request for Public Input and are crafted to reduce barriers to lawful immigration as identified by our stakeholders. (*Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits.*) Lastly, USCIS is also planning a proposed rule to clarify and update eligibility requirements governing citizenship and naturalization. This project is also informed by information submitted by our public stakeholders in response to the 2021 Request for Public Input, as well as a CIS Ombudsman's Webinar Series: Naturalization and Immigrant Integration on May 23, 2021 (attended by 635 people and 118 people provided written questions/comments) and a Citizenship and Naturalization Engagement on March 15, 2022 (attended by 463 people and 6 people submitted written questions/comments by email) in which the public provided comments on regulations and policies. USCIS reviewed all comments provided through the Request for Public Input and the engagements, and incorporated edits into the proposed rule as applicable. (*Citizenship and*

Naturalization and Other Related Flexibilities.)

Humanitarian Relief. USCIS will propose reforms to the U nonimmigrant visa classification. The U nonimmigrant status is for noncitizen victims of certain qualifying criminal activities, and their eligible family members, who have been, are, or are likely to be helpful in the investigation or persecution of those crimes. To streamline the procedures and enhance operational efficiency, USCIS will propose a rule to update eligibility, procedural and filing requirements governing U nonimmigrant status, and adjustment of status for those nonimmigrants. (*Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status*).

Asylum Reforms. USCIS is focused on pursuing regulations to strengthen, rebuild, and (where appropriate) streamline the asylum system, consistent with law and mission imperatives. For example, USCIS and DOJ will take steps to remove regulatory provisions that are currently enjoined (*Procedures for Asylum and Bars to Asylum Eligibility*), propose updates to clarify eligibility for asylum and withholding of removal (*Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations*), and propose modifications or withdrawal of other asylum-related regulatory provisions (*Asylum Eligibility and Public Health*).

United States Coast Guard

The Coast Guard is a military, multi-mission, maritime service of the United States and the only military organization within DHS. It is the principal Federal agency responsible for maritime safety, security, and stewardship in U.S. ports and waterways.

Effective governance in the maritime domain hinges upon an integrated approach to safety, security, and stewardship. The Coast Guard's policies and capabilities are integrated and interdependent, delivering results through a network of enduring partnerships with maritime stakeholders. Consistent standards of universal application and enforcement, which encourage safe, efficient, and responsible maritime commerce, are vital to the success of the maritime industry. The Coast Guard's ability to field versatile capabilities and highly trained personnel is one of the U.S. Government's most significant and important strengths in the maritime environment.

America is a maritime nation, and our security, resilience, and economic prosperity are intrinsically linked to the oceans. Safety, efficient waterways, and freedom of transit on the high seas are essential to our well-being. The Coast Guard is leaning forward, poised to meet the demands of the modern maritime environment. The Coast Guard creates value for the public through solid prevention and response efforts. Activities involving oversight and regulation, enforcement, maritime presence, and public and private partnership foster increased maritime safety, security, and stewardship.

The statutory responsibilities of the Coast Guard include ensuring marine safety and security, preserving maritime mobility, protecting the marine environment, enforcing U.S. laws and international treaties, and performing search and rescue. The Coast Guard supports the Department's overarching goals of mobilizing and organizing our Nation to secure the homeland from terrorist attacks, natural disasters, and other emergencies. These goals include protection against the risks associated with climate change, and the Coast Guard seeks to obtain scientific information to assist in that task, while also acting to promote resilience and adaptation.

In 33 CFR 1.05–15, each year since 1995 the Coast Guard has confirmed that it considers public participation essential to effective rulemaking. We encourage you to participate. It is Coast Guard policy to provide opportunities for you to participate early in potential rulemaking projects. Also, in our notices of proposed rulemaking, in addition to soliciting your written comments, we solicit requests for public meetings to provide you an opportunity for oral comment. We also seek recommendations from our ten Federal advisory committees and publish notices of those committee meetings should you want to attend. And our regulatory advisory group composed of senior Coast Guard officials, the Marine Safety and Security Council, has published the *Proceedings* magazine since the 1940s. Available online, the magazine informs the public about the subject matter of Coast Guard regulations, as well as the rulemaking process itself.

The Coast Guard highlights the following regulatory actions, which are in the proposed rule stage:

Cybersecurity in the Marine Transportation System. The Coast Guard is proposing to update its maritime security regulations by adding cybersecurity requirements to existing regulations. This proposed rulemaking is part of an ongoing effort to address emerging cybersecurity risks and threats to maritime security by including additional security requirements to safeguard the marine transportation system.

Shipping Safety Fairways Along the Atlantic Coast. The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on June 19, 2020. We have considered comments on the ANPRM to develop a proposed rule that would establish shipping safety fairways along the Atlantic Coast of the United States. Fairways are marked routes for vessel traffic. They facilitate the direct and unobstructed transit of ships. The proposed fairways will be based on studies about vessel traffic along the Atlantic Coast for which we requested public comments.

MARPOL Annex VI; Prevention of Air Pollution from Ships. The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rulemaking would fill gaps in the existing framework for carrying out the provisions of Annex VI. Chapter 4 of Annex VI contains shipboard energy efficiency measures that include short-term measures reducing carbon emissions linked to climate change. This proposed rulemaking would apply to U.S.-flagged ships. It would also apply to foreign-flagged ships operating either in U.S. navigable waters or in the U.S. Exclusive Economic Zone.

Regarding outreach in the development of this proposed rulemaking, in June 2018, the Coast Guard held a public workshop regarding Implementation of Regulation 14.1.3 of MARPOL Annex VI (Global 0.50% Sulfur Cap). In October 2011, we held a public meeting on the International Maritime Organization guidelines for exhaust gas cleaning systems for marine engines with respect to Regulations 4 and 14 of MARPOL Annex VI. And in December 2010, we requested comments regarding a study on Ship Emission Reduction Technology for cargo and passenger vessels, including what methods or equipment were then under development that might meet the MARPOL Annex VI requirements.

United States Customs and Border Protection

Customs and Border Protection (CBP) is the Federal agency principally responsible for the security of our Nation's borders, both at and between the ports of entry into the United States. CBP must accomplish its border security and enforcement mission without stifling the flow of legitimate trade and travel. The primary mission of CBP is its homeland security mission, that is, to prevent terrorists and terrorist weapons from entering the United States. An important aspect of this mission involves improving security at our borders and ports of entry, but it also means extending our zone of security beyond our physical borders.

CBP is also responsible for administering laws concerning the importation of goods into the United States and enforcing the laws concerning the entry of persons into the United States. This includes regulating and facilitating international trade; collecting import duties; enforcing U.S. trade, immigration and other laws of the United States at our borders; inspecting imports; overseeing the activities of persons and businesses engaged in importing; enforcing the laws concerning smuggling and trafficking in contraband; apprehending individuals attempting to enter the United States illegally; protecting our agriculture and economic interests from harmful pests and diseases; servicing all people, vehicles, and cargo entering the United States; maintaining export controls; and protecting U.S. businesses from theft of their intellectual property.

In carrying out its mission, CBP's goal is to facilitate the processing of legitimate trade and people efficiently without compromising security, and public input is an important tool in meeting this goal. CBP regularly seeks input from Federal Advisory Committees, issues formal Requests for Information, and holds listening sessions and symposia, including those on forced labor, green trade, and the 21st Century Customs Framework. However, some of CBP's rules further law enforcement purposes and are therefore not ripe for robust public outreach prior to their issuance. CBP's public Newsroom, with details on upcoming public engagements, is available at: *https://www.cbp.gov/newsroom.*

Consistent with its primary mission of homeland security, CBP intends to issue several regulations that are intended to improve security at our borders and ports of entry. During the upcoming year, CBP will also work on various projects to streamline CBP processing, reduce duplicative processes, reduce various burdens on the public, and automate various paper forms. CBP highlights one of those projects below.

Advance Passenger Information System: Electronic Validation of Travel Documents. CBP intends to amend current Advance Passenger Information System (APIS) regulations to incorporate additional carrier requirements that would further enable CBP to determine whether each passenger is traveling with valid, authentic travel documents prior to the passenger boarding the aircraft. The proposed regulation would require commercial air carriers to receive a second message from CBP that would state whether CBP matched the travel documents of each passenger to a valid, authentic travel document recorded in CBP's databases. The proposed regulation would also require air carriers to transmit additional data elements regarding contact information through APIS for all commercial aircraft passengers arriving in the United States to support border operations and national security. CBP expects that the collection of these elements would enable CBP to further support the Center for Disease Control and Prevention's mission in monitoring and tracing the contacts for persons involved in health incidents. This action will result in time savings to passengers and cost savings to CBP, carriers, and the public.

In addition to the regulations that CBP issues to promote DHS's mission, CBP issues regulations related to the mission of the Department of the Treasury. Under section 403(1) of the Homeland Security Act of 2002, the former-U.S. Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security. As part of the initial organization of DHS, the Customs Service inspection and trade functions were combined with the immigration and agricultural inspection functions and the Border Patrol and transferred into CBP. The Department of the Treasury retained certain regulatory authority of the U.S. Customs Service relating to customs revenue function. In the coming year, CBP expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. For a discussion of CBP regulations regarding the customs revenue function, see the regulatory plan of the Department of the Treasury.

Transportation Security Administration

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA applies an intelligence-driven, risk-based approach to all aspects of its mission. This approach results in layers of security to mitigate risks effectively and efficiently. In fiscal year 2024, TSA is prioritizing the following actions. In general, TSA has prioritized actions that are required to meet statutory mandates and, that are necessary for national security, and that are consistent with the goals of Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.

Consistent with Executive Order 14094, Modernizing Regulatory Review, TSA endeavors, as practicable and appropriate, to proactively engage parties that are interested in or affected by TSA rulemaking. With respect to the actions described below, TSA has used a range of measures to engage the public, including advance notices of proposed rulemakings, public meetings, and advisory committees.

Enhancing Surface Cyber Risk Management. On January 28, 2021, the President issued the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Controls Systems. Consistent with this priority of the Administration and in response to the ongoing cybersecurity threat to pipeline systems, TSA used its authority under 49 U.S.C. 114 to issue security directives to owners and operators of TSA-designated critical pipelines that transport hazardous liquids and natural gas to implement a number of urgently needed protections against cyber intrusions. The first directive, issued in May 2021, requires critical pipeline owner/operators to (a) report confirmed and potential cybersecurity incidents to DHS's Department of Cybersecurity and Infrastructure Security Agency (CISA); (b) designate a Cybersecurity Coordinator to be available 24 hours a day, seven days a week; (3) review current cybersecurity practices; and (4) identify any gaps and related remediation measures to address cyber-related risks and report the results to TSA and CISA within 30 days of issuance of the SD. A second security directive, first issued in July 2021, requires these owners and operators to (1) implement specific mitigation measures to protect against ransomware attacks and other known threats to information technology and operational technology systems; (2) develop and implement a cybersecurity contingency and recovery plan; and (3) conduct a cybersecurity architecture design

review. TSA updated the second directive to require owners/operators to achieve critical security outcomes through performance-based measures. In December 2021 and October 2022, TSA imposed similar requirements on certain rail operations to address emerging threats. TSA is committed to enhancing and sustaining cybersecurity for all modes of transportation and intends to issue a rulemaking that may codify these and other requirements following an opportunity for notice and comment. TSA published an advance notice of proposed rulemaking on this topic in November 2022.

Flight Training Security Program. Through an interim final rule, TSA created a new part 1552, Flight Schools, in title 49 of the Code of Federal Regulations (CFR). The IFR requires flight schools to notify TSA when noncitizens, and other individuals designated by TSA, apply for flight training or recurrent training. TSA subsequently issued exemptions and interpretations in response to comments on the IFR, questions raised during operation of the program since 2004, and a notice extending the comment period on May 18, 2018. Based on the comments and questions received, TSA is finalizing the rule with modifications that may include changing the frequency of security threat assessments from a high-frequency event-based interval to a time-based interval, clarify the definitions and other provisions of the rule, and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule. These and other changes will provide significant cost-savings to the industry and individuals seeking flight training while also enhancing security.

REAL ID Applicability to Mobile Driver's Licenses. TSA will issue a final rule to amend the REAL ID regulation to address mobile driver's licenses (mDL). The REAL ID Act of 2005 and DHS implementing regulation set minimum requirements for state-issued driver's licenses and identification cards accepted by Federal agencies for official purposes, which include accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine. The REAL ID Modernization Act (December 2020) clarifies that the REAL ID Act applies to mobile or digital driver's licenses that have been issued in accordance with regulations prescribed by DHS. This final rule will amend 6 CFR part 37 to set the minimum technical requirements and security standards for mDLs to enable Federal agencies to accept mDLs for official purposes. to establish a process that states must follow to apply for a mDL waiver from the REAL ID regulations. This rulemaking would also enable federal agencies to accept state mDLs for official purposes from states who are issued such a waiver under this final rule.

Frequency of Renewal Cycle for Indirect Air Carrier Security Programs. TSA's regulations for Indirect Air Carriers (IACs) in 49 CFR part 1548 currently require annual renewal of an IAC's security program and prompt notification to TSA of any changes to operations-related to information previously provided to TSA. Through this rulemaking, TSA will modify the regulation to allow for a three-year renewal schedule, rather than annual renewal. This change will align the security program renewal requirement with those applicable to other regulated entities within the air cargo industry.

United States Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement (ICE) is the principal criminal investigative arm of DHS and one of the three Department components charged with the criminal and civil enforcement of the Nation's immigration laws. Its primary mission is to protect national security, public safety, and the integrity of our borders through the criminal and civil enforcement of Federal law governing border control, customs, trade, and immigration. In carrying out this mission and consistent with Executive Order 14058 on Transforming Federal Customer Experience And Service Delivery To Rebuild Trust In Government ICE is committed to providing opportunities for the public to engage in the improvement of our programs, processes, and services. For example, on October 26, 2021, DHS published a notice in the **Federal Register** titled Remote Document Examination for Form I–9, Employment Eligibility Verification: Request for Public Input, (*https://www.govinfo.gov/content/pkg/FR-2021-10-26/pdf/2021-23260.pdf*) seeking comments from the public regarding document examination practices associated with Form I–9. ICE carefully considered this input resulting in a final rule and procedure that incorporates commenters suggestions. During the coming fiscal year, ICE will focus rulemaking efforts on regulations pertaining to processing improvements, including the rules mentioned below.

Clarifying and Revising Custody Determination Procedures for Noncitizens Subject to Discretionary Detention (INA 236(a)/8 U.S.C. 1226 detention). The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (collectively, the Departments) are planning to amend the regulations that govern detention and release determinations for noncitizens subject to the custody provisions in section 236 of the Immigration and Nationality Act (Act), 8 U.S.C. 1226(a). The goal of the proposed regulation would be to clarify the scope and applicability of section 236(a) of the Act, 8 U.S.C. 1226(a), and the procedures that apply under that section, including the burden and standard of proof for continued detention at initial custody determinations and any custody redetermination hearings, and related issues. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Cybersecurity and Infrastructure Security Agency

The Cybersecurity and Infrastructure Security Agency (CISA) is responsible for leading the national effort to develop cybersecurity and critical infrastructure security programs, operations, and associated policy to enhance the security and resilience of physical and cyber infrastructure.

Ammonium Nitrate Security Program. This rule implements a 2007 amendment to the Homeland Security Act. The amendment requires DHS to ''regulate the sale and transfer of ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.'' CISA published a Notice of Proposed Rulemaking in 2011. CISA is planning to issue a Supplemental Notice of Proposed Rulemaking.

Chemical Facility Anti-Terrorism Standards (CFATS). This rule would update CFATS' Risk Based Performance Standards to enhance cybersecurity requirements, modify the counting rules associated with release-flammable chemicals, remove release-explosive chemicals, and adjust the Screening Threshold Quantities of Appendix A to account for the updated risk analysis methodology. CISA previously invited public comment on an Advance Notice of Proposed Rulemaking (ANPRM) during August 2014 for potential revisions to the CFATS regulations. The

ANPRM provided an opportunity for the public to provide recommendations for possible program changes. In June 2020, CISA published for public comment a retrospective analysis of the CFATS program. And in January 2021, CISA invited additional public comment through an ANPRM concerning the removal of certain explosive chemicals from CFATS. CISA intends to address many of the subjects raised in both ANPRMs and the retrospective analysis in this regulatory action, including potential updates to CFATS cybersecurity requirements and Appendix A to the CFATS regulations. CISA is planning to issue a notice of proposed rulemaking.

Cybersecurity Incident Reporting for Critical Infrastructure Act Regulations. CISA will propose regulations to implement certain aspects of the Cybersecurity Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA). Specifically, CIRCIA directs CISA to develop and implement regulations requiring covered entities to submit reports to CISA regarding covered cyber incidents and ransom payments. CIRCIA requires CISA to publish a Notice of Proposed Rulemaking (NPRM) within 24 months of the date of enactment of CIRCIA as part of the process for developing these regulations. CISA previously issued a Request for Information on September 12, 2022, and held a series of listening sessions seeking public input on potential aspects of the proposed regulation prior to publication of the NPRM. CISA is planning to issue a Notice of Proposed Rulemaking.

A more detailed description of the priority regulations that comprise the DHS regulatory plan follows.

DHS—U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

Proposed Rule Stage

85. Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status [1615–AA67]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1101 (note); 8 U.S.C. 1102; Pub. L. 113–4

CFR Citation: 8 CFR 214; 8 CFR 274a; 8 CFR 103; 8 CFR 299.

Legal Deadline: None.

Abstract: This proposed rule would clarify and update eligibility, procedural, and filing requirements for U nonimmigrant status (commonly known as the ''U'' visa) and adjustment of status for U nonimmigrants. U nonimmigrant status is for noncitizen victims of certain qualifying criminal activities who have been, are being, or are likely to be helpful in the investigation or prosecution of those crimes and eligible family members. There is a statutory limit of 10,000 U visas per year for principal petitioners. DHS published an interim final rule in 2007 (72 FR 53013) to establish the procedures to be followed in order to petition for U nonimmigrant status and published an interim final rule in 2008 (73 FR 75540) to establish the procedures for applying for adjustment of status as a U nonimmigrant. This rule would address relevant comments and feedback from stakeholders since publication of those interim final rules, as well as update the regulations for changes in legislation.

Statement of Need: This U classification allows noncitizen victims of certain crimes to petition for U nonimmigrant status and to adjust status to that of a lawful permanent resident. Noncitizen victims of certain qualifying criminal activities who have been, are being, or are likely to be helpful in the investigation or prosecution of those crimes are eligible to petition for U nonimmigrant status. This rule would address the eligibility requirements that must be met for classification as a U nonimmigrant and implements statutory amendments to these requirements, streamlines the procedures to petition for U nonimmigrant status, provides evidentiary guidance to assist in the petition process, and clarifies adjustment of status requirements.

Summary of Legal Basis: Section 101(a)(15) of the INA, 8 U.S.C. 1101(a)(15) establishes classifications for noncitizens who are coming temporarily to the United States as nonimmigrants, including the U nonimmigrant classification. Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), authorizes the Secretary to prescribe, by regulation, the terms and conditions of the admission of nonimmigrants, including U nonimmigrants. Section 214(p) of the INA, 8 U.S.C. 1184(p), sets forth certain procedural and substantive requirements for the U nonimmigrant classification, including employment authorization for U nonimmigrants incident to status and discretionary employment authorization for those with pending, bona fide U nonimmigrant visa petitions. Section 274A of the INA, 8 U.S.C. 1324a, recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States.

Anticipated Cost and Benefits: DHS is currently considering the specific impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/17/07	72 FR 53013
Interim Final Rule Effective.	10/17/07	
Interim Final Rule Comment Period End.	11/17/07	
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, Local, State.

Additional Information: Transferred from RIN 1115–AG39.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

Agency Contact: Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

RIN: 1615–AA67

DHS—USCIS

86. Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits [1615–AC22]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 8 U.S.C. 1101; 8 U.S.C. 1103(a); 8 U.S.C. 1153 to 1155; 8 U.S.C. 1159 and 1160; 8 U.S.C. 1254a; 8 U.S.C. 1255; 8 U.S.C. 1257; 8 U.S.C. 1324a; 8 U.S.C. 1184; . . .

CFR Citation: 8 CFR 204.5; 8 CFR 204.12; 8 CFR 205.1; 8 CFR 209.1; 8 CFR 209.2; 8 CFR 244.15; 8 CFR 245.1; 8 CFR 245.2; 8 CFR 245.5; 8 CFR 245.11; 8 CFR 245.15; 8 CFR 245.18; 8 CFR 249.2; 8 CFR 264.2; 8 CFR 274a.12; . . .

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS) proposes to amend its regulations governing adjustment of status to lawful permanent residence in the United States. The proposed changes include permitting concurrent filing of a visa petition and the application for adjustment of status for the employment-based 4th preference (certain special immigrants) category, including religious workers; permitting the transfer of underlying basis of a

pending adjustment of status application; amending the definition relating to ineligibilities under section 245(c) of the INA; clarifying when a visa becomes available for purposes of the age calculation under the Child Status Protection Act; and authorizing compelling circumstances employment authorization for certain derivative beneficiaries waiting for immigrant visa availability. DHS also proposes to amend the regulations relating to temporary protected status and travel authorization and clarify the impact on the adjustment of status eligibility. The intent of these proposed changes is to reduce processing times, improve the quality of inventory data provided to partner agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas.

Statement of Need: This rulemaking is necessary to address outdated regulations to improve efficiency and the administration of the adjustment of status of immigrants to lawful permanent residence in the United States, improve the quality of inventory data that DHS provides to agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas. This rule also changes eligibility requirements for certain classifications for what constitutes compelling circumstances for employment authorization.

Summary of Legal Basis: The DHS's authority for the regulatory amendments proposed are found in various sections of the Immigration and Nationality Act (INA), codified at title 8 of the United States Code, and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002), codified at 6 U.S.C. 101 *et seq.* Specifically, 6 U.S.C. 112, and 8 U.S.C. 1103, charge DHS with the administration and enforcement of the immigration laws of the United States, and 8 U.S.C. 1103(a) authorizes DHS to establish such regulations, prescribe such forms of bond, reports, entries, and other papers; issue instructions; and perform such other acts deemed necessary for carrying out the Secretary's authority under the provisions of the INA, including for the provisions related to immigrant visa petitions (8 U.S.C. 1153 to 1155); Adjustment of status of refugees (8 U.S.C. 1159); Special Agricultural Workers (8 U.S.C. 1160); Admission of nonimmigrants (8 U.S.C. 1184); Temporary Protected Status (8 U.S.C. 1254a); Adjustment of status of nonimmigrant to that of person admitted for permanent residence (8 U.S.C. 1255); Adjustment of status of certain resident aliens to nonimmigrant status; exceptions (8 U.S.C. 1157); Work Authorization (8 U.S.C. 1324a).

Anticipated Cost and Benefits: DHS is currently considering the specific impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Mark Phillips, Residence and Naturalization Division Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC22

DHS—USCIS

87. Asylum Eligibility and Public Health [1615–AC57]

Priority: Other Significant.

Legal Authority: Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Pub. L. 104–208, 110 Stat. 3009, sec. 604(a) (codified at INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C)); INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B); Foreign Affairs Reform and Restructuring Act (''FARRA''), Pub. L. 105–277, 112 Stat. 2681–822, sec. 2242 (1998); INA 235(b), 8 U.S.C. 1225(b)

CFR Citation: 8 CFR 208; 8 CFR 1208.

Legal Deadline: None.

Abstract: On December 23, 2020, DHS and the DOJ (collectively, the Departments) published a final rule entitled Security Bars and Processing to clarify that the danger to the security of the United States statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and make certain other changes. As of December 28, 2022, the rule's effective date was delayed until December 31, 2024. The Departments plan to propose modification or withdrawal of the December 23, 2020, rule.

Statement of Need: The Departments are reviewing and reconsidering whether the Security Bars and Processing final rule is consistent with the goals of ensuring the safe and orderly reception and processing of asylum seekers consistent with public health and safety, with the additional context of the complex relationship between the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42) and the Security Bars and Processing final rule. The Departments are reevaluating whether the Security Bars and Processing rule provides the most appropriate and effective framework for achieving its goals of mitigating the spread of communicable diseases, including COVID–19, among certain noncitizens in the credible fear screening process, as well as DHS personnel and the public. Based on such reconsideration, the Departments will propose to modify or withdraw the Security Bars rule.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/09/20	85 FR 41201
NPRM Comment Period End.	08/10/20	
Final Action	12/23/20	85 FR 84160
Final Action Effective.	01/22/21	
Final Rule; Delay of Effective Date.	01/25/21	86 FR 6847
Final Rule; Effective Date Delayed Until.	03/22/21	
Interim Final Rule; Delay of Effective Date.	03/22/21	86 FR 15069
Interim Final Rule Comment Period End.	04/21/21	
Interim Final Rule Effective Date Delayed Until.	12/31/21	
Interim Final Rule; Delay of Effective Date.	12/28/21	86 FR 73615
Interim Final Rule Comment Period End.	02/28/22	
Interim Final Rule Effective Date Delayed Until.	12/31/22	
Interim Final Rule; Delay of Effective Date.	12/28/22	87 FR 79789
Interim Final Rule Comment Period End.	02/27/23	
Interim Final Rule Effective Date Delayed Until.	12/31/24	
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

Agency Contact: Rená Cutlip-Mason, Chief, Division of Humanitarian Affairs, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

Related RIN: Related to 1125–AB08, Related to 1615–AC69

RIN: 1615–AC57

DHS—USCIS

88. Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations [1615–AC65]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 8 U.S.C. 1101(a)(42); 8 U.S.C. 1158; 8 U.S.C. 1225; 8 U.S.C. 1231 and 1231 (note); E.O. 14010; 86 FR 8267 (Feb. 2, 2021)

CFR Citation: 8 CFR 207; 8 CFR 208; 8 CFR 235; 8 CFR 244; 8 CFR 1003; 8 CFR 1208; 8 CFR 1212; 8 CFR 1235; 8 CFR 1244.

Legal Deadline: None.

Abstract: This rule proposes to amend Department of Homeland Security (DHS) and Department of Justice (DOJ) (collectively, ''the Departments'') regulations that govern eligibility for asylum and withholding of removal. The amendments focus on portions of the regulations that deal with the definitions of membership in a particular social group and the interpretation of various other elements of eligibility for asylum, including some that are often determinative in particular social group claims, such as the requirements for failure of State protection, and determinations about whether persecution is on account of a protected ground. The rule will also propose to republish, modify, or rescind portions of the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42). This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a particular social group.

Statement of Need: The Departments propose this rule to clarify standards governing numerous elements of eligibility for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, and protection from removal under the regulations that implement U.S. obligations in immigration cases under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

Related RIN: Related to 1615–AC42, Related to 1125–AB13, Related to 1125–AA94

RIN: 1615–AC65

DHS—USCIS

89. Procedures for Asylum and Bars to Asylum Eligibility [1615–AC69]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135, sec. 1102, as amended; 8 U.S.C. 1103(a)(1); 8 U.S.C. 1103(a)(3); 8 U.S.C. 1103(g); 8 U.S.C. 1225(b); 8 U.S.C. 1231(b)(3) and 1231 (note); 8 U.S.C. 1158

CFR Citation: 8 CFR 208; 8 CFR 235; 8 CFR 1003; 8 CFR 1208; 8 CFR 1235.

Legal Deadline: None.

Abstract: In 2020, the Department of Homeland Security and Department of Justice (collectively, the Departments) published a final rule amending their respective regulations governing bars to asylum eligibility and procedures: Procedures for Asylum and Bars to Asylum Eligibility (RINs 1125–AA87 and 1615–AC41), 85 FR 67202 (Oct. 21, 2020). The Departments will propose to modify or rescind the regulatory changes promulgated in this final rule consistent with Executive Order 14010 (Feb. 2, 2021).

Statement of Need: The Departments are reviewing this regulation in light of the issuance of Executive Order 14010 and Executive Order 14012. This rule is needed to restore and strengthen the asylum system and to address inconsistencies with the goals and principles outlined in Executive Order 14010 and Executive Order 14012.

Anticipated Cost and Benefits: The Departments are currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

Related RIN: Related to 1125–AA87, Split from 1615–AC41, Related to 1125–AB12

RIN: 1615–AC69

DHS—USCIS

90. Modernizing H–1B Requirements and Oversight, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers [1615–AC70]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 6 U.S.C. 101, 112 and 202; 8 U.S.C. 1101(a)(15)(F) and (H)(i)(b),1103(a), 1184(a), 1184(c), 1184(i) and 1357(b); . . .

CFR Citation: 8 CFR 214.2.

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS) is proposing to amend its regulations governing H–1B specialty occupation workers and F–1 students who are the beneficiaries of timely filed H–1B cap-subject petitions. Specifically, DHS proposes to revise the regulations relating to ''specialty occupation'' and the ''employer-employee relationship''; provide flexibility for start-up entrepreneurs; implement new requirements and guidelines for H–1B site visits; provide flexibility on the employment start date listed on the petition (in limited circumstances); address ''cap-gap''

issues; bolster the H–1B registration process to reduce the possibility of misuse and fraud in the H–1B registration system; modernize cap exemptions; clarify the requirement that an amended or new petition be filed where there are material changes; and codify USCIS' deference policy and requirement of maintenance of status for all employment-based nonimmigrant classifications that use Form I–129, among other provisions.

Statement of Need: These proposed changes are needed to modernize and streamline the requirements of the H–1B program, improve program efficiency and integrity measures, and provide greater benefits and flexibilities for petitioners and beneficiaries.

Summary of Legal Basis: The Secretary of Homeland Security's authority for these proposed regulatory amendments is found in various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 *et seq.,* and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, as well as section 112 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations. Section 101(a)(15) of the INA, 8 U.S.C. 1101(a)(15) establishes classifications for noncitizens who are coming temporarily to the United States as nonimmigrants. Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), authorizes the Secretary to prescribe, by regulation, the terms and conditions of the admission of nonimmigrants. Section 214(c) of the INA, 8 U.S.C. 1184(c) authorizes the Secretary to prescribe how an importing employer may petition for nonimmigrant workers, the information that an importing employer must provide in the petition; and certain fees that are required for certain nonimmigrant petitions. Section 214(g) of the INA, 8 U.S.C. 1184(g), prescribes the H–1B numerical limitations, various exceptions to those limitations, and the period of authorized admission for H–1B nonimmigrants. Section 214(i) of the INA, 8 U.S.C. 1184(i), sets forth the definition and requirements of a specialty occupation. Section 248 of the INA, 8 U.S.C. 1258, authorizes a noncitizen to change from any nonimmigrant classification (subject to certain exceptions) to any other nonimmigrant classification if the noncitizen was lawfully admitted to the United States as a nonimmigrant and is continuing to maintain that status and is not otherwise subject to the 3- or 10-year bar applicable to certain noncitizens who were unlawfully present in the United States. Section 274A of the INA, 8 U.S.C. 1324a, recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States. Finally, section 287(b) of the INA, 8 U.S.C. 1357(b), authorizes the taking and consideration of evidence concerning any matter that is material or relevant to the enforcement of the INA.

Anticipated Cost and Benefits: DHS is currently considering the specific impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC70

DHS—USCIS

91. Modernizing H–2 Program Requirements, Oversight, and Worker Protections [1615–AC76]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 8 U.S.C. 1103(a)(3); 8 U.S.C. 1001(a)(15)(H)(ii)(a) and (b); 8 U.S.C. 1184(a), (c) and (g); 8 U.S.C. 1324a

CFR Citation: 8 CFR 214; 8 CFR 274a.

Legal Deadline: None.

Abstract: On September 20, 2023, DHS published a notice of proposed rulemaking (NPRM) in which proposed several changes to modernize and reform the H–2A and H–2B nonimmigrant worker programs. Specifically, the NPRM incorporates new policies that if finalized would produce program efficiencies, address current aspects of the program that may have unintentionally resulted in exploitation or other abuse of persons seeking to come to this country as H–2A and H–2B workers, builds upon existing protections against prohibited payments or other assessment of fees and/or salary deductions by H–2A and H–2B employers in connection with recruitment and/or H–2 employment, and otherwise adds protections for workers. DHS has not proposed any changes that would revise the temporary labor certification process or the regulations contained in 20 CFR part 655 or 29 CFR part 501 and 503. The public comment period closes November 20, 2023, and DHS will review the comments received during the comment period and in accordance with the instructions contained in the NPRM before issuing any future final rule.

Statement of Need: This rulemaking is needed to enhance protections for workers and better ensure the integrity of the H–2A and H–2B programs. In addition, this proposed rule is necessary to improve H–2 program efficiencies and remove certain barriers to program access.

Summary of Legal Basis: The Immigration and Nationality Act (INA) charges the Secretary of Homeland Security with the administration and enforcement of the immigration laws and provides that the Secretary shall establish such regulations and perform such other acts as he deems necessary for carrying out his authority under the INA. See INA section 103(a)(1),(3), 8 U.S.C. 1103(a)(1), (3). In addition, the Homeland Security Act of 2002 charges the Secretary with establishing and administering rules governing the granting of visas or other forms of permission to enter the United States to individuals who are not a citizen, or an alien lawfully admitted for permanent residence in the United States. See Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 202(4). Congress established the H–2A and H–2B nonimmigrant classifications in INA section 101(a)(15)(H)(ii)(a) and (b), 8 U.S.C. 1101(a)(15)(H)(ii)(a) and (b). With respect to nonimmigrants in particular, the INA provides that the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Secretary may by regulations prescribe. See INA section 214(a)(1), 8 U.S.C. 1184(a)(1). The INA also tasks DHS with approving petitions filed by the importing employers of nonimmigrants, including those in the H nonimmigrant visa classification, before a nonimmigrant visa may be granted. See INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

Anticipated Cost and Benefits: In the published proposed rule, DHS estimates annualized costs of rule range from $1,998,572 to $2,668,028 at a 3-percent discount rate and $2,186,033 to $2,915,885 at a 7-percent discount rate.

In addition, the total annualized transfers (from consumers to a limited number of H–2A and H–2B workers) amount to $2,918,958 in additional earnings at the 3-percent and 7-percent discount rate and related total tax transfers of $337,122. Fees paid for Form I–129 and premium processing as a result of the proposed rule's portability provision constitute a transfer of $636,760 from petitioners to USCIS (3 and 7-percent annualized equivalent).

Timetable:

Action	Date	FR Cite
NPRM	09/20/23	88 FR 65040
NPRM Comment Period End.	11/20/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

Agency Contact: Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC76

DHS—USCIS

92. Citizenship and Naturalization and Other Related Flexibilities [1615–AC80]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: sec. 102 of the Homeland Security Act of 2002; 6 U.S.C. 112(a)(3); 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1151; 8 U.S.C. 1153; 8 U.S.C. 1154; 8 U.S.C. 1159; 8 U.S.C. 1182; 8 U.S.C. 1255; 8 U.S.C. 1401; 8 U.S.C. 1409; 8 U.S.C. 1421; 8 U.S.C. 1423; 8 U.S.C. 1427; 8 U.S.C. 1429 to 1431; 8 U.S.C. 1433; 8 U.S.C. 1435; 8 U.S.C. 1438 to 1440; 8 U.S.C. 1443; 8 U.S.C. 1445 to 1449; 8 U.S.C. 1452; 8 U.S.C. 1454; 8 U.S.C. 1481

CFR Citation: 8 CFR 1.2; 8 CFR 103; 8 CFR 106; 8 CFR 204; 8 CFR 209; 8 CFR 245; 8 CFR 300; 8 CFR 306; 8 CFR 312; 8 CFR 316; 8 CFR 318; 8 CFR 319; 8 CFR 320; 8 CFR 322; 8 CFR 324; 8 CFR 329; 8 CFR 333; 8 CFR 334; 8 CFR 335; 8 CFR 336; 8 CFR 337; 8 CFR 338; 8 CFR 339; 8 CFR 341; 8 CFR 343a; 8 CFR 349; 8 CFR 212; . . .

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS) will propose to amend its regulations governing citizenship and naturalization. This includes clarifying the testing requirements, updating eligibility requirements, and proposing amendments to clarify definitions. DHS will also propose to amend other immigration benefit provisions, such as certain provisions related to adjustment of status and waivers of inadmissibility that can affect naturalization and acquisition of citizenship. In addition, DHS will propose removing certain outdated provisions and amending other provisions to align with current statutory framework, such as updating the adoption-related regulatory provisions consistent with the Intercountry Adoption Universal Accreditation Act of 2012.

Statement of Need: These proposed changes, some of which were requested by the public, are needed to improve the efficiency, effectiveness, accessibility, uniformity, and consistency of adjudications.

Summary of Legal Basis: DHS's authority is found in several statutory provisions. Section 102 of the Homeland Security Act of 2002 (Pub. L. 107296, 116 Stat. 2135), 6 U.S.C. 112, and section 103(a) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1103(a), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. In addition to establishing the Secretary's general authority for the administration and enforcement of immigration laws, section 103(a) of the Act, 8 U.S.C. 1103(a), enumerates various related authorities that include the Secretary's authority to establish such regulations as the Secretary deems necessary for carrying out the Secretary's authority under the Act.

Anticipated Cost and Benefits: DHS is currently considering the specific impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Mark Phillips, Residence and Naturalization Division Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC80

DHS—USCIS

Final Rule Stage

93. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements [1615–AC68]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 8 U.S.C. 1356(m), (n)

CFR Citation: 8 CFR 103; 8 CFR 106; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 240; 8 CFR 244; 8 CFR 245; 8 CFR 245a; 8 CFR 264; 8 CFR 274a.

Legal Deadline: None.

Abstract: On January 4, 2023, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM or proposed rule) 88 FR 402 that proposed to adjust the fees charged by U.S. Citizenship and Immigration Services (USCIS) for immigration and naturalization benefit requests. On August 3, 2020, DHS adjusted the fees USCIS charges for immigration and naturalization benefit requests, imposed new fees, revised certain fee waiver and exemption policies, and changed certain application requirements via the rule ''USCIS Fee Schedule & Changes to Certain Other Immigration Benefit Request Requirements.'' DHS has been preliminarily enjoined from implementing that rule by court order. This rule would rescind and replace the changes made by the August 3, 2020, rule and establish new USCIS fees to recover USCIS operating costs. DHS solicited public comment on the NPRM, which DHS intends to consider and address in a final rule.

Statement of Need: USCIS projects that its costs of providing immigration adjudication and naturalization services will exceed the financial resources available to it under its existing fee structure. DHS proposes to adjust the USCIS fee structure to ensure that USCIS recovers the costs of meeting its operational requirements.

The CFO Act requires each agency's chief financial officer to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.''

Summary of Legal Basis: INA 286(m) and (n), 8 U.S.C. 1356(m) and (n), authorize the Attorney General and

Secretary of Homeland Security to recover the full cost of providing immigration adjudication and naturalization services by establishing and collecting fees deposited into the Immigration Examinations Fee Account.

Anticipated Cost and Benefits: In the published proposed rule, DHS estimated the annualized net costs to the public would be $532,379,138 discounted at 3- and 7-percent. Fee increases and other changes in this proposed rule would result in annualized transfer payments from applicants/petitioners to USCIS of approximately $1,612,127,862 discounted at both 3-percent and 7-percent. Fee reductions and exemptions in this proposed rule would result in annualized transfer payments from USCIS to applicants/petitioners of approximately $116,372,429 discounted at both 3-percent and 7-percent. The annualized transfer payments from the Department of Defense (DoD) to USCIS would be approximately $222,145 at both 3- and 7-percent discount rates. DHS is currently considering the specific impacts of the final rule's provisions.

Timetable:

Action	Date	FR Cite
NPRM	01/04/23	88 FR 402
NPRM Correction	01/09/23	88 FR 1172
NPRM Comment Period End.	03/06/23	
NPRM Comment Period Extended.	02/24/23	88 FR 11825
NPRM Comment Period Extended End.	03/13/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: None.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

Agency Contact: Kika Scott, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC68

DHS—U.S. COAST GUARD (USCG)

Proposed Rule Stage

94. Shipping Safety Fairways Along the Atlantic Coast [1625–AC57]

Priority: Other Significant.

Legal Authority: 46 U.S.C. 70001; 46 U.S.C. 70003; 46 U.S.C. 70034

CFR Citation: 33 CFR 166; 33 CFR 167.

Legal Deadline: None.

Abstract: The Coast Guard seeks comments regarding the possible establishment of shipping safety fairways (fairways) along the Atlantic Coast of the United States. Fairways are marked routes for vessel traffic in which any fixed obstructions are prohibited. The proposed fairways are based on studies about vessel traffic along the Atlantic Coast. The Coast Guard is coordinating this action with the Bureau of Offshore Energy Management (BOEM) to minimize the impact on potential offshore energy leases.

Statement of Need: This rulemaking would establish shipping safety fairways along the Atlantic coast of the United States to facilitate the direct and unobstructed transits of ships and facilitate development on the outer continental shelf. The establishment of fairways would ensure that obstruction-free routes are preserved to and from US ports and along the Atlantic coast.

Summary of Legal Basis: Section 70003 of title 46 United States Code (46 U.S.C. 70003) directs the Secretary of the department in which the Coast Guard resides to designate necessary fairways that provide safe access routes for vessels proceeding to and from U.S. ports.

Alternatives: The ANPRM outlined the Coast Guard's plans for fairways along the Atlantic Coast and requested information and data associated with the regulatory concepts. The Coast Guard will use this information and data to shape regulatory language and alternatives and assess the associated impacts in the NPRM. The Coast Guard is also considering comments received on port access route studies notices in development of the proposed rule.

Anticipated Cost and Benefits: The fairways are designed to keep traditional vessel navigation routes free from fixed structures that could impact navigation safety and impede other shared offshore activities. Fairways are not mandatory; however, the Coast Guard recognizes that there is increasing interest in offshore commercial development, including offshore renewable energy installations, and believes this development is best served by the establishment of consistent and well-defined fairways. The proposed fairways would help ensure that offshore developments remain viable by allowing developers to construct and maintain installations without risk of impeding vessel traffic.

Risks: The Bureau of Ocean Energy Management (BOEM) is leasing offshore areas that could affect customary shipping routes. Expeditious pursuit of this rulemaking is intended to prevent conflict between customary shipping routes and areas that may be leased by BOEM.

Timetable:

Action	Date	FR Cite
ANPRM	06/19/20	85 FR 37034
ANPRM Comment Period End.	08/18/20	
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Additional Information: Docket number USCG–2019–0279.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

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RIN: 1625–AC57

DHS—USCG

95. Cybersecurity in the Marine Transportation System [1625–AC77]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 46 U.S.C. 70101; 46 U.S.C. 70102; 46 U.S.C. 70104; 46 U.S.C. 70124

CFR Citation: 33 CFR 101.

Legal Deadline: None.

Abstract: The Coast Guard proposes to update its maritime security regulations by adding cybersecurity requirements to existing Maritime Security regulations in 33 CFR part 101 *et seq.* This proposed rulemaking is part of an ongoing effort to address emerging cybersecurity risks and threats to maritime security by including additional security requirements to safeguard the marine transportation system.

Statement of Need: The purpose of this rulemaking is to set minimum cybersecurity requirements for vessels

and facilities to safeguard the Marine Transportation System (MTS) from cybersecurity vulnerabilities.

Summary of Legal Basis: The Coast Guard exercises the Maritime Transportation Security Act of 2002 (MTSA) authorities of Chapter 701 of Title 46 of the U.S. Code. This includes the authority to promulgate Chapter 701 regulations under 46 U.S.C. 70124. This statute provides that the Secretary of Homeland Security may issue regulations necessary to implement Chapter 701 of Title 46.

Anticipated Cost and Benefits: The regulatory analysis for the proposed rule is still being developed.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Agency Contact: Frank Strom, Chief, Systems Engineering Division (CG–ENG–3), Department of Homeland Security, U.S. Coast Guard, Office of Design and Engineering Standards, 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1375, *Email: frank.a.strom@uscg.mil.*

RIN: 1625–AC77

DHS—USCG

96. Marpol Annex VI; Prevention of Air Pollution From Ships [1625–AC78]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1903

CFR Citation: 33 CFR 151.

Legal Deadline: None.

Abstract: The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rule would fill gaps in the existing framework for carrying out the provisions of Annex VI. Chapter 4 of Annex VI contains shipboard energy efficiency measures that include short-term measures reducing carbon emissions linked to climate change and supports Administration goals outlined in Executive Order 14008 titled Tackling the Climate Crisis at Home and Abroad. This proposed rule would apply to U.S.-flagged ships. It would also apply to foreign-flagged ships operating either in U.S. navigable waters or in the U.S. Exclusive Economic Zone.

Statement of Need: The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rule would fill gaps in the existing framework for carrying out the provisions of Annex VI and explain how the United States has chosen to carry out certain discretionary aspects of Annex VI.

Summary of Legal Basis: Section 4 of the Act to Prevent Pollution from Ships (Pub. L. 96–478, Oct. 21, 1980, 94 Stat. 2297), as reflected in 33 U.S.C. 1903, directs the Secretary of Homeland Security to prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol. The ''MARPOL Protocol'' is defined in 33 U.S.C. 1901 and includes Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973.

Anticipated Cost and Benefits: USCG anticipates the costs for the proposed rule to come primarily from additional labor for 5 requirements including overseeing surveys; developing and maintaining a fuel-switching procedure; recording various data during each fuel switching; developing and managing a Volatile organic compounds (VOC) management plan; crew member to calculate and report the attained Energy Efficient Design Index (EEDI) of the vessel, and crew member to develop and maintain the Ship Energy Efficiency Management Plan (SEEMP). USCG expects the proposed rule to have benefits from avoided engine emissions.

Timetable:

Action	Date	FR Cite
NPRM	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Federalism: Undetermined.

Agency Contact: Frank Strom, Chief, Systems Engineering Division (CG–ENG–3), Department of Homeland Security, U.S. Coast Guard, Office of Design and Engineering Standards, 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1375, *Email: frank.a.strom@uscg.mil.*

RIN: 1625–AC78

DHS—U.S. CUSTOMS AND BORDER PROTECTION (USCBP)

Final Rule Stage

97. Advance Passenger Information System: Electronic Validation of Travel Documents [1651–AB43]

Priority: Other Significant.

Legal Authority: 49 U.S.C. 44909; 8 U.S.C. 1221

CFR Citation: 19 CFR 122.

Legal Deadline: None.

Abstract: U.S. Customs and Border Protection (CBP) regulations require commercial air carriers to electronically transmit passenger information to CBP's Advance Passenger Information System (APIS) prior to an aircraft's arrival in or departure from the United States. CBP proposes to amend these regulations to incorporate additional carrier requirements that will enable CBP to validate each passenger's travel documents prior to the passenger boarding the aircraft. This proposed rule would also require air carriers to transmit additional data elements through APIS for all commercial aircraft passengers arriving in the United States in order to support border operations and national security. The collection of additional data elements will support the efforts of the Centers for Disease Control, within the Department of Health and Human Services, to monitor and contact-trace health incidents. This rule is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Statement of Need: Current regulations require U.S. citizens and foreign travelers entering and leaving the United States via air travel to submit travel documents containing biographical information, such as a passenger's name and date of birth. For security purposes, CBP compares the information on passengers' documents to various databases and the terrorist watch list through APIS. While in the case of security threats CBP may require an air carrier to deny boarding to the passenger. CBP recommends that air carriers deny boarding to those likely to be deemed inadmissible upon arrival in the United States. To further improve

CBP's vetting processes with respect to identifying and preventing passengers with fraudulent or improper documents from traveling to or leaving the United States, CBP proposes to require carriers to receive from CBP a message that would state whether CBP matched the travel documents of each passenger to a valid, authentic travel document prior to departure to the United States from a foreign port or place or departure from the United States. The proposed rule also would require carriers to submit passenger contact information while in the United States to CBP through APIS. Submission of such information would enable CBP to identify and interdict individuals posing a risk to border, national, and aviation safety and security more quickly. Collecting these additional data elements would also enable CBP to further assist CDC to monitor and trace the contacts of those involved in serious public health incidents upon CDC request. Additionally, the proposed rule would allow carriers to include the aircraft tail number in their electronic messages to CBP and make technical changes to conform with current practice.

Anticipated Cost and Benefits: The proposed rule would result in costs to CBP, air carriers, and passengers for additional time spent coordinating to resolve a passenger's status should there be a security issue upon checking in for a flight. In addition, CBP will incur costs for technological improvements to its systems. CBP, air carriers, and passengers would benefit from reduced passenger processing times during customs screening. Unquantified benefits would result from greater efficiency in passenger processing pre-flight, improved national security, and fewer penalties for air carriers following entry denial of a passenger.

Timetable:

Action	Date	FR Cite
NPRM	02/02/23	88 FR 7016
NPRM Comment Period End.	04/03/23	
Final Action	08/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

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RIN: 1651–AB43

DHS—TRANSPORTATION SECURITY ADMINISTRATION (TSA)

Proposed Rule Stage

98. Enhancing Surface Cyber Risk Management [1652–AA74]

Priority: Other Significant.

Legal Authority: 49 U.S.C. 114; Pub. L. 110–53, secs. 1405, 1512 and 1531

CFR Citation: 49 CFR 1520; 49 CFR 1570; 49 CFR 1580; 49 CFR 1582; 49 CFR 1584.

Legal Deadline: None.

Abstract: On July 28, 2021, the President issued the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. In response to the ongoing threat to pipeline systems, TSA used its authority under 49 U.S.C. 114 to issue emergency security directives to owners and operators of TSA-designated critical pipelines that transport hazardous liquids and natural gas to implement a number of urgently needed protections against cyber intrusions. TSA also issued security directives in the freight, passenger, and transit-rail sectors under the same statutory authority. TSA is committed to enhancing and sustaining industry's resilience to cybersecurity attacks. TSA intends to issue a rulemaking that will permanently codify critical cybersecurity requirements for pipeline and rail modes. Through this rulemaking, TSA will also address certain requirements in the Implementing Recommendations of the 9/11 Commission Act of 2007 related to information and operational technology systems. TSA is committed to enhancing and sustaining cybersecurity for all modes of transportation and intends to issue a rulemaking that may codify these and other requirements following an opportunity for notice and comment. In addition to holding numerous technical roundtables with the industry regarding cybersecurity requirements, TSA also solicited public input in the development of this rulemaking through publication of an advance notice of proposed rulemaking in November 2022.

Statement of Need: This rulemaking is necessary to address the ongoing cybersecurity threat to U.S. transportation modes with potential impacts on national security, including economic security.

Anticipated Cost and Benefits: TSA is in the process of determining the costs and benefits of this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	11/30/22	87 FR 73527
ANPRM Comment Period End.	01/17/23	
ANPRM Comment Period Extended.	12/23/22	87 FR 78911
ANPRM Comment Period Extended End.	02/01/23	
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

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Related RIN: Related to 1652–AA56

RIN: 1652–AA74

DHS—TSA

Final Rule Stage

99. Flight Training Security Program [1652–AA35]

Priority: Other Significant.

Legal Authority: 6 U.S.C. 469(b); 49 U.S.C. 114; 49 U.S.C. 44939; 49 U.S.C. 46105

CFR Citation: 49 CFR part 1552.

Legal Deadline: Final, Statutory, February 10, 2004, interim final rule required within 60 days of enactment of the Vision 100 Act.

Public Law 108–176, sec. 612(a) (Dec. 12, 2003) requires an interim final rule to implement the requirements of 49 U.S.C. 44939, as further amended by section 612(a), not later than 60 days after the date of enactment of the act. Public Law 108–90, sec. 520 (Oct. 1, 2003), codified at 6 U.S.C. 469(b), requires collection of fees authorized by Public Law 108–176). Public Law 110–329, sec. 543 (Sept. 30, 2008) further amends 6 U.S.C. 469 to include both initial and recurrent training.

Abstract: As required by the Vision 100 Act, TSA issued an Interim Final Rule (IFR) (effective September 20, 2004) that transferred responsibility for the vetting of flight school candidates from the Department of Justice to TSA, with certain modifications to the program required by the act. TSA reopened the comment period for 30 days on May 18, 2018. This IFR applies to training providers and to individuals who apply for or receive flight training. Flight schools are required to notify TSA when non-U.S. citizens, non-U.S. nationals, and other individuals designated by TSA, apply for flight training or recurrent flight training. TSA issued exemptions and interpretations in response to comments on the IFR and questions raised during operation of the program since 2004, and a notice published in 2018 extending the comment period on the IFR. Many of the changes made to the program through this final rule are in direct responses to recommendations from the Aviation Security Advisory Committee, a statutorily created committee charged with providing input to TSA on regulatory requirements. Based on the comments and questions received, TSA is finalizing the rule and considering modifications that would change the frequency of security threat assessments from a high-frequency, event-based interval, to a time-based interval; clarify the definitions and other provisions of the rule; and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule. These and other changes will provide significant cost-savings to the industry and individuals seeking flight training while also enhancing security.

Statement of Need: In the years since TSA published the IFR, members of the aviation industry, the public, and federal oversight organizations have identified areas where the Flight Training Security Program (formerly the Alien Flight Student Program) could be improved. TSA's internal procedures and processes for vetting applicants also have advanced through technology and other enhancements. Publishing a final rule that addresses comments on the IFR and aligns with modern TSA vetting practices would streamline and reduce burden for the Flight Training Security Program application, vetting, and recordkeeping process for all parties involved.

Anticipated Cost and Benefits: TSA is considering revising the requirements of the Flight Training Security Program to reduce costs and industry burden. One action TSA is considering is an electronic recordkeeping platform where all flight training providers would upload certain information to a TSA-managed website (*https://fts.tsa.dhs.gov/*). Also at industry's request, TSA is considering changing the interval for a Security Threat Assessment of each non-U.S. citizen and non-U.S. national flight student, by eliminating the requirement for a Security Threat Assessment for each separate training event. This change would result in an annual savings, although there may be additional start-up and record retention costs for the agency as a result of this revision. The change in the interval of the Security Threat Assessment would result in immediate cost savings to flight providers and students who are neither U.S. citizens nor U.S. nationals without compromising the security process.

Timetable:

Action	Date	FR Cite
Interim Final Rule; Request for Comments.	09/20/04	69 FR 56324
Interim Final Rule Effective.	09/20/04	
Interim Final Rule; Comment Period End.	10/20/04	
Notice-Information Collection; 60-Day Renewal.	11/26/04	69 FR 68952
Notice-Information Collection; 30-Day Renewal.	03/30/05	70 FR 16298
Notice-Information Collection; 60-Day Renewal.	06/06/08	73 FR 32346
Notice-Information Collection; 30-Day Renewal.	08/13/08	73 FR 47203
Notice-Alien Flight Student Program Recurrent Training Fees.	04/13/09	74 FR 16880
Notice-Information Collection; 60-Day Renewal.	09/21/11	76 FR 58531
Notice-Information Collection; 30-Day Renewal.	01/31/12	77 FR 4822
Notice-Information Collection; 60-Day Renewal.	03/10/15	80 FR 12647
Notice-Information Collection; 30-Day Renewal.	06/18/15	80 FR 34927
IFR; Comment Period Re-opened.	05/18/18	83 FR 23238
IFR; Comment Period Re-opened End.	06/18/18	
Notice-Information Collection; 60-Day Renewal.	07/06/18	83 FR 31561
Notice-Information Collection; 30-Day Renewal.	10/31/18	83 FR 54761
Notice-Information Collection; 60-Day Renewal.	08/27/21	86 FR 48239
Notice-Information Collection; 30-Day Renewal.	01/19/22	87 FR 2889
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

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James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, *Email: james.ruger@tsa.dhs.gov.*

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Related RIN: Related to 1652–AA61

RIN: 1652–AA35

DHS—TSA

100. Frequency of Renewal Cycle for Indirect Air Carrier Security Programs [1652–AA72]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 49 U.S.C. 114; 49 U.S.C. 5103; 49 U.S.C. 40113; 49 U.S.C. 44901 to 44905; 49 U.S.C. 4491 to 44914; 49 U.S.C. 44916 to 44917; 49 U.S.C. 44932; 49 U.S.C. 449354 to 44936; 49 U.S.C. 46105

CFR Citation: 49 CFR 1548.

Legal Deadline: None.

Abstract: The Transportation Security Administration (TSA) is reducing the frequency of renewal applications for indirect air carriers (IACs). Currently, these entities must submit an application to renew their security program each year. Following a review of TSA's regulatory requirements seeking to reduce the cost of compliance, TSA determined that the duration of the security program for these entities can be increased from 1 year to 3 years without having a negative impact on transportation security. This change will align the security program renewal requirement with the renewal cycle for Certified Cargo Screening Facilities under 49 CFR part 1549. This rulemaking is in response to a request from the industry subject to these requirements.

Statement of Need: Consistent with Executive Order 12866 and Executive Order 13563, TSA identified portions of air cargo regulations that may be tailored to impose a lesser burden on society and that may improve government processes. Under 49 CFR part 1548 indirect air carriers are required to renew their security programs each year. TSA's robust inspection and compliance requirements make the annual renewal requirement unnecessary.

Anticipated Cost and Benefits: This rule would reduce the frequency of IAC security program certifications from annually to once every three years. This rule does not impose any incremental costs because regulated entities are already performing all actions required to obtain the certification in question. The expected outcome will have a minimal cost impact with positive net benefit due to time saved with a lower frequency in the renewal cycle.

Timetable:

Action	Date	FR Cite
Final Rule	09/16/09	74 FR 47705
Final Rule Effective.	09/16/09	
NPRM	12/27/22	87 FR 79264
NPRM Comment Period End.	02/27/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *https://www.regulations.gov.*

URL For Public Comments: https://www.regulations.gov.

Agency Contact: Angel Rodriguez, Acting Section Chief, Department of Homeland Security, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–2108, *Email: angel.l.rodriguez@tsa.dhs.gov.*

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Related RIN: Related to 1652–AA23

RIN: 1652–AA72

DHS—TSA

101. • Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses [1652–AA76]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111; 6 U.S.C. 112

CFR Citation: 6 CFR 37.

Legal Deadline: None.

Abstract: This proposal is the first rulemaking in a multi-phased project to enable Federal agencies, at their discretion, to continue accepting mobile driver's licenses and mobile identification cards (collectively referred to as mDLs), while the Transportation Security Administration (TSA) develops comprehensive regulatory requirements for REAL ID-compliant mDLs. This rule is proposing to add new mDL definitions to 6 CFR part 37 (REAL ID regulations), and to establish a process that states must follow to apply for a mDL waiver from the REAL ID regulations. This initial rulemaking would also enable federal agencies to accept State mDLs for official purposes from States who are issued such a waiver.

After multiple industry technical standards are finalized and published, TSA would repeal the waiver provisions and issue regulations setting the minimum technical requirements and security standards for mDLs to enable Federal agencies to accept mDLs for official purposes. The Department of Homeland Security (DHS) solicited public participation in the development of requirements in this rulemaking through a request for information published in April 2021, including two extensions of the comment period. As part of this public engagement, DHS also held a virtual public meeting on June 30, 2021, to discuss the purposes of the rulemaking and provide an additional forum of comments by stakeholders and other interested persons.

Effective May 22, 2023, authority to administer the REAL ID program was delegated from the Secretary of Homeland Security to the Administrator of TSA pursuant to DHS Delegation No. 7060.02.1.

Statement of Need: This rulemaking is necessary to implement authority under the REAL ID Modernization Act, which clarified that REAL ID requirements apply to mDLs issued in accordance with regulations prescribed by the Secretary. The rule would enable continued mDL acceptance when REAL ID enforcement begins in 2025.

Anticipated Cost and Benefits: TSA anticipates that States, TSA, and some Federal agencies will incur costs associated with using mDLs. States incur costs to submit waiver applications, TSA incurs costs to administer the waiver program, and Federal agencies that choose to accept mDLs for official purposes incur costs to implement mDL acceptance. TSA anticipates benefits for all stakeholders, including increased convenience, security, privacy, and health benefits from contact-free identity verification.

Timetable:

Action	Date	FR Cite
NPRM	08/30/23	88 FR 60056
NPRM Comment Period End.	10/16/23	
Final Rule	05/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, State.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

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Related RIN: Previously reported as 1601–AB06, Related to 1601–AA37, Related to 1601–AB01, Related to 1601–AB03

RIN: 1652–AA76

DHS—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (USICE)

Proposed Rule Stage

102. Clarifying and Revising Custody Determination and Detention Classification Procedures [1653–AA92]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 8 U.S.C. 1103; 6 U.S.C. 251; 6 U.S.C. 111; 8 U.S.C. 1226

CFR Citation: 8 CFR 236.1.

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (collectively, the Departments) are planning to amend the regulations that govern detention and release determinations for noncitizens subject to the custody provisions in section 236 of the Immigration and Nationality Act (Act), 8 U.S.C. 1226(a). The goal of the proposed regulation would be to clarify the scope and applicability of section 236(a) of the Act, 8 U.S.C. 1226(a), and the procedures that apply under that section, including the burden and standard of proof for continued detention at initial custody determinations and any custody redetermination hearings, and related issues. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Statement of Need: The proposed rule is needed to bring clarity and uniformity to the procedures governing ICE initial custody decisions and IJ bond hearings for noncitizens subject to discretionary detention under INA 236(a). This rule will also revise the procedures for determining whether a noncitizen is properly subject to INA 236(c) detention. Additionally, this rule will clarify the detention authority that applies during the petition for review process for certain noncitizens seeking judicial review of their removal orders. Lastly, the proposed rule will make organizational changes to the structure of the EOIR regulations governing custody redetermination hearings and address outdated provisions in the Departments' custody and bond regulations. The Departments believe this rulemaking will help address issues that frequently arise in litigation brought by noncitizens challenging the Departments' existing custody and bond hearing procedures and it may also help to resolve differing interpretations among Federal circuit courts.

Anticipated Cost and Benefits: DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

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Related RIN: Related to 1125–AB27

RIN: 1653–AA92

DHS—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Proposed Rule Stage

103. National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form [1660–AB06]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 4001 *et seq.*

CFR Citation: 44 CFR 61.

Legal Deadline: None.

Abstract: The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. Property owners in participating communities are eligible to purchase NFIP flood insurance. This proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

Statement of Need: The National Flood Insurance Act requires FEMA to provide by regulation the general terms and conditions of insurability applicable to properties eligible for flood insurance coverage. 42 U.S.C. 4013(a). To comply with this requirement, FEMA adopts the Standard Flood Insurance Policy (SFIP) in regulation, which sets out the terms and conditions of insurance. See 44 CFR part 61, Appendix A. FEMA must use the SFIP for all flood insurance policies sold through the NFIP. See 44 CFR 61.13.

The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are currently three forms of the SFIP: the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP) Form. The Dwelling Form insures a one-to-four family residential building or a single-family dwelling unit in a condominium building. See 44 CFR part 61, Appendix A(1). Policies under the Dwelling Form offer coverage for building property, up to $250,000, and personal property up to $100,000. The General Property Form ensures a five-or-more family residential building or a non-residential building. See 44 CFR part 61, Appendix A(2). The General Property Form offers coverage for building and contents up to $500,000 each. The RCBAP Form insures residential condominium association buildings and offers building coverage up to $250,000 multiplied by the number of units and contents coverage up to $100,000 per building. See 44 CFR part 61, appendix A(3). RCBAP contents coverage insures property owned by the insured condominium association. Individual unit owners must purchase their own Dwelling Form policy in order to insure their own contents.

FEMA last substantively revised the SFIP in 2000. See 65 FR 60758 (Oct. 12, 2000). In 2020, FEMA published a final rule that made non-substantive clarifying and plain language improvements to the SFIP. See 85 FR 43946 (July 20, 2020). However, many policyholders, agents, and adjusters continue to find the SFIP difficult to

read and interpret compared to other, more modern, property and casualty insurance products found in the private market. Accordingly, FEMA proposes to adopt a new Homeowner Flood Form.

The new Homeowner Flood Form, which FEMA proposes to add to its regulations at 44 CFR 61 appendix A(4), would protect property owners in a one-to-four family residence. Upon adoption, the Homeowner Flood Form would replace the Dwelling Form as a source of coverage for this class of residential properties. FEMA would continue to use the Dwelling Form to insure landlords, renters, and owners of mobile homes, travel trailers, and condominium units. Compared to the current Dwelling Form, the new Homeowner Flood Form would clarify coverage and more clearly highlight conditions, limitations, and exclusions in coverage as well as add and modify coverages and coverage options. FEMA also proposes adding to its regulations five endorsements to accompany the new Form: Increased Cost of Compliance Coverage, Actual Cash Value Loss Settlement, Temporary Housing Expense, Basement Coverage, and Builder's Risk. These endorsements, which FEMA proposes to codify at 44 CFR 61 appendices A(101)- (105), respectively, would give policyholders the option of amending the Homeowner Flood Form to modify coverage with a commensurate adjustment to premiums charged. Together, the Homeowner Flood Form and accompanying endorsements would increase options and coverage for owners of one-to-four family residences.

FEMA intends that this new Form will be more user-friendly and comprehensible. As a result, the new Homeowner Flood Form and its accompanying endorsements would provide a more personalized, customizable product than the NFIP has offered during its 50 years. In addition to aligning with property and casualty homeowners' insurance, the result would increase consumer choice and simplify coverage.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in an increase in transfer payments from policyholders to FEMA and insurance providers in the form of flood insurance premiums, and from FEMA to policyholders in the form of claims payments. Additionally, this rulemaking would result in benefits to policyholders, insurance providers, and FEMA, mostly through cost savings due to increased clarity and fulfillment of customer expectations through expanded coverage options. It would also help the NFIP better signal risk through premiums, reduce the need for Federal assistance, and increase resilience by enhancing mitigation efforts. Lastly, FEMA, States, and insurance providers will incur costs for implementation and familiarization of the rule.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Christine Merk, Lead Management and Program Analyst, Department of Homeland Security, Federal Emergency Management Agency, Insurance Analytics and Policy Branch, 400 C Street SW, Washington, DC 20472, *Phone:* 202 735–6324, *Email: christine.merk@fema.dhs.gov.*

RIN: 1660–AB06

DHS—FEMA

104. Update of FEMA'S Public Assistance Regulations [1660–AB09]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 5121 to 5207

CFR Citation: 44 CFR 206.

Legal Deadline: None.

Abstract: The Federal Emergency Management Agency (FEMA) proposes to revise its Public Assistance (PA) program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

Statement of Need: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. 100–707, 102 Stat. 4689, authorizes the President to provide Federal assistance when the severity and magnitude of an incident or threatened incident, exceeds the affected State, local, Indian Tribal, and Territorial government's (SLTT's) capabilities to effectively respond or recover. 42 U.S.C. 5170 and 5191. If the President declares an emergency or major disaster authorizing the Public Assistance program, FEMA may award Public Assistance grants to assist SLTTs and certain private nonprofit (PNP) organizations so communities can quickly respond to and recover from the major disaster or emergency.

FEMA proposes to amend its Public Assistance and Community Disaster Loan program regulations to incorporate statutory changes that have amended sections of the Stafford Act relating to Public Assistance and Community Disaster Loans and to improve program administration. These include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438. FEMA also proposes to implement program improvements and make clarifications and corrections to existing regulations.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in benefits to SLTTs and FEMA from improving clarity and aligning FEMA regulations with statutory changes and current practices. Such increased clarity and understanding would improve the efficiency and the consistency of FEMA's PA programs. Additionally, proposed improvements to State/Tribal administrative plans would better position SLTTs to respond to and to recover from emergencies and disasters. Lastly, FEMA estimates increases in costs for SLTTs due to additional paperwork burden and familiarization of the rule.

Timetable:

Action	Date	FR Cite
NPRM	05/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State, Tribal.

Additional Information: Docket ID FEMA–2023–0005.

Agency Contact: Tod Wells, Deputy Director, Public Assistance Division Recovery Directorate, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3100, *Phone:* 202 646–3834, *Email: fema-recovery-pa-policy@fema.dhs.gov.*

RIN: 1660–AB09

DHS—FEMA

105. Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard [1660–AB12]

Priority: Other Significant.

Legal Authority: 6 U.S.C. 101 *et seq.;* 42 U.S.C. 4001 *et seq.;* 42 U.S.C. 4321 *et seq.;* E.O. 11988 of May 24, 1977, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24, 1977, 42 FR 26961, 3 CFR, 1977 Comp., p. 121; E.O. 13690, 80 FR 6425; E.O. 14030, 86 FR 27967

CFR Citation: 44 CFR 9.

Legal Deadline: None.

Abstract: Consistent with President Biden's Executive Order on Climate Related Financial Risk (E.O. 14030), the Federal Emergency Management Agency (FEMA) proposes to amend its regulations at 44 CFR part 9, ''Floodplain Management and Protection of Wetlands,'' to incorporate amendments to Executive Order 11988 and the Federal Flood Risk Management Standard (FFRMS). The FFRMS is a flexible framework allowing agencies to choose among three approaches to define the floodplain and corresponding flood elevation requirements for federally funded projects. 44 CFR part 9 describes FEMA's process under Executive Order 11988 for determining whether the proposed location for an action falls within a floodplain and how to complete the action in the floodplain, in light of the risk of flooding. The proposed rule would change how FEMA defines a floodplain with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating the proposed action in the floodplain.

FEMA has engaged the public extensively on these matters. On February 5, 2015, FEMA acting on behalf of the Mitigation Framework Leadership Group, posted a **Federal Register** notice seeking comments on a draft of the Revised Guidelines for Implementing Executive Order 11988, Floodplain Management. The 60-day comment period was extended an additional 30 days. During the public comment period for the Revised Guidelines, FEMA sent advisories to representatives from Governors' offices nationwide inviting comments on the draft Revised Guidelines. Over 25 meetings were held across the country with State, local, and Tribal officials and interested stakeholders to discuss the draft Revised Guidelines as well as 9 public listening sessions across the country attended by over 700 participants to facilitate feedback. All relevant comments received in response to these efforts have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2015-0006-0001/comment.* Comments from meetings and listening sessions can be found at *https://www.regulations.gov/docket/FEMA-2015-0006/document.* Additionally, FEMA published a Notice of Proposed Rulemaking (NPRM) in 2016 seeking public comment on FEMA's proposed implementation of the Revised Guidelines. All relevant comments received in response to the 2016 NPRM have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2015-0006-0373/comment.*

Statement of Need: The United States is experiencing increased flooding and flood risk from changing conditions. FEMA has not made significant updates to its regulations governing floodplain management to reflect the challenges faced because of increased flooding and changing conditions since initial publication in 1980. As a result, FEMA is now proposing to amend 44 CFR part 9, ''Floodplain Management and Protection of Wetlands,'' to implement the FFRMS and update the agency's 8-step process. The FFRMS is a flood resilience standard that is required for federally funded projects and provides a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands. A floodplain is any land area that is subject to flooding and refers to geographic features with undefined boundaries. 44 CFR part 9 describes the 8-step process FEMA uses to determine whether a proposed action would be located within or affect a floodplain, and if so, whether and how to continue with or modify the proposed action. Executive Order 11988, as amended, and the FFRMS changed the Executive Branch-wide guidance for defining the floodplain with respect to federally funded projects (*i.e.,* actions involving the use of Federal funds for new construction, substantial improvement, or to address substantial damage to a structure or facility). This proposed rule would ensure that actions subject to the FFRMS are designed to be resilient to both current and future flood risks to minimize the impact of floods on human health, safety, and welfare and to protect Federal investments by reducing the risk of flood loss.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in benefits to grant recipients (States, Local, Tribes, Territories, and Individuals) and to FEMA, mostly through the reduction in damage to properties and contents from future floods, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding. FEMA estimates project cost increases for FEMA and grant recipients due to increased elevation or floodproofing requirements of the proposed rule.

Timetable:

Action	Date	FR Cite
Proposed Policy: Request for Comments.	10/02/23	88 FR 67697
Proposed Policy: Comment Period End.	12/01/23	
NPRM	10/02/23	88 FR 67869
NPRM Comment Period End.	12/01/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State, Tribal.

Additional Information: Docket ID FEMA–2023–0026.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

Agency Contact: Portia Ross, Office of Environmental and Historic Preservation, Department of Homeland Security, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, *Phone:* 202 709–0677, *Email: fema-regulations@fema.dhs.gov.*

RIN: 1660–AB12

DHS—FEMA

Final Rule Stage

106. Individual Assistance Program Equity [1660–AB07]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 5155; 42 U.S.C. 5174; 42 U.S.C. 5189a

CFR Citation: 44 CFR 206.101; 44 CFR 206.110 to 206.115; 44 CFR 206.117 to 206.119; 44 CFR 206.191.

Legal Deadline: None.

Abstract: The Federal Emergency Management Agency (FEMA) will publish an interim final rule (IFR) amending its regulations governing the Individual Assistance program to

increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR will: Increase eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allow for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplify the documentation requirements for continued temporary housing assistance; simplify the appeals process; simplify the process to request approval for a late registration; remove the requirement to apply for a Small Business Administration loan as a condition of eligibility for Other Needs Assistance (ONA); and establish additional assistance under ONA for serious needs, displacement, disaster-damaged computing devices, and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multi-family rental housing, child care assistance, maximum assistance limits, and waiver authority.

FEMA sought input on regulatory changes to the Individuals and Households Program (IHP) through a Request for Information (RFI), published on April 22, 2021, seeking public input on its programs, regulations, collections of information, and policies to ensure they effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice. 86 FR 21325, Apr. 22, 2021.

FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments. See ''Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,'' 86 FR 30326, June 7, 2021. All relevant comments received in response to the RFI, including those received during the public meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2021-0011-0001/comment.* Commenters raised equitable concerns that FEMA will address in this IFR, such as by removing the requirement to apply for the SBA for a loan before receipt of ONA, amending FEMA's habitability standards, increasing assistance for essential tools, simplifying its appeal process, and removing documentation requirements for late registrations. FEMA will seek public comment on this IFR and will carefully consider each comment received to determine whether further changes to FEMA's IHP regulations are needed.

Statement of Need: FEMA's IHP regulations have not had a major review and update since section 206 of the Disaster Mitigation Act of 2000 replaced the Individual and Family Grant Assistance Program with the current IHP. Some minor changes to Repair Assistance were completed in 2013, but Congress has passed multiple other laws that have superseded portions of the regulations and created other programs or forms of assistance with no supporting regulations. This IFR will update the IHP regulations now to bring them up to date and address other lessons learned through the course of implementing the IHP in disasters much larger than any previously addressed at the time the regulations were first developed.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in an increase in transfer payments from FEMA and States in the form of disaster assistance to individuals and households. It would also result in additional costs to States for familiarization of the rule and to FEMA and applicants for paperwork burden. The rule would ensure disaster assistance is more equitably distributed and assist applicants to more quickly and fully recover from disasters by expanding eligibility for, and access to, certain types of assistance. Lastly, the rulemaking would improve clarity and align FEMA regulations with statutory changes improving the efficiency and the consistency of IHP assistance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

Additional Information: Docket ID FEMA–2023–0003.

Agency Contact: Kristina McAlister, Supervisory Emergency Management Specialist (Recovery), Department of Homeland Security, Federal Emergency Management Agency, Individual Assistance Division Recovery Directorate, 500 C Street SW, Washington, DC 20472, *Phone:* 866 826–8751, *Email: fema-ihp-policy@fema.dhs.gov.*

RIN: 1660–AB07

DHS—FEMA

Long-Term Actions

107. National Flood Insurance Program's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats [1660–AB11]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 4001 *et seq.*

CFR Citation: 44 CFR 59 to 60.

Legal Deadline: None.

Abstract: The Federal Emergency Management Agency (FEMA) issued a Request for Information (RFI) to receive the public's input on revisions to the National Flood Insurance Program's (NFIP) floodplain management standards for land management and use regulations. FEMA's authority under the National Flood Insurance Act requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. The agency will propose regulations to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. As part of the proposed regulations, FEMA is considering revisions to the NFIP minimum floodplain management standards to better protect people and property in a nuanced manner that balances community needs with the national scope of the NFIP. FEMA will also propose opportunities to make these minimum floodplain management standards improve resilience in communities that have been historically underserved. The proposed revisions to the NFIP minimum floodplain management standards will also consider how to advance the conservation of threatened and endangered species and their habitat. The agency is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System.

During the RFI comment period, FEMA held three public meetings and extended the comment period on the RFI to ensure all interested parties had

sufficient opportunity to provide comments. All relevant comments received in response to the RFI have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/docket/FEMA-2021-0024/comments* and transcripts from the public meetings have also been posted at *https://www.regulations.gov/docket/FEMA-2021-0024/document.* In April 2023, FEMA requested recommendations from the Technical Mapping Advisory Council (TMAC) on modifying the definition of the Special Flood Hazard Area or modifying how it is calculated. In addition, FEMA requested a recommendation from TMAC on how FEMA might consider changing mapping procedures related to when land is filled. These recommendations will assist FEMA in exploring the feasibility of public comments received from the 2021 RFI.

Statement of Need: FEMA issued an RFI to seek information from the public on the agency's current floodplain management standards to ensure the agency receives public input to inform any action to revise the NFIP minimum floodplain management standards.

FEMA is re-evaluating the implementation of the NFIP under the Endangered Species Act at the national level. FEMA will propose regulations based on the comments received on this RFI to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding.

Anticipated Cost and Benefits: FEMA is currently considering the cost and benefit impacts of potential proposed actions.

Timetable:

Action	Date	FR Cite
Request for Information.	10/12/21	86 FR 56713
Announcement of Public Meetings.	10/28/21	86 FR 59745
Announcement of Additional Public Meeting; Extension of Comment Period.	11/22/21	86 FR 66329
Request for Information Comment Period End.	01/27/22	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information: Docket ID FEMA–2021–0024.

URL For More Information: https://www.regulations.gov.

URL For Public Comments: https://www.regulations.gov.

Agency Contact: Rachel Sears, Resilience, Department of Homeland Security, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, *Phone:* 202 646–2977, *Email: fema-regulations@fema.dhs.gov.*

RIN: 1660–AB11

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Statement of Regulatory Priorities for Fiscal Year 2024

Introduction

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2024 highlights two significant regulations and policy initiatives that HUD seeks to complete during the upcoming fiscal year. As the Federal agency that serves as the nation's housing agency, HUD is committed to ensuring everyone has an affordable, healthy place to live. As a result, HUD plays a significant role in the lives of families and in communities throughout America.

HUD is currently working to meet the goals of its Strategic Plan to: support underserved communities, ensure access to and increase the production of affordable housing, promote homeownership, advance sustainable communities, and strengthen HUD's internal capacity. Under the leadership of Secretary Marcia L. Fudge, HUD is dedicated to implementing the Administration's priorities by setting forth initiatives related to increasing equity and improving customer experience across all HUD programs.

The rules highlighted in HUD's regulatory plan for FY 2023 reflect HUD's efforts to continue its work in building strong and sustainable communities and addressing the housing needs of all Americans. Additionally, HUD notes that the FY 2023 Semiannual Regulatory Agenda includes additional rules that advance the Administration's priorities, including rules to advance racial equity and civil rights and rules to provide economic relief to homeowners and renters.

HOME Investment Partnerships Program: Program Updates and Streamlining

HUD's HOME Investment Partnerships Program (HOME) provides formula grants to States and units of general local government to fund a wide range of activities to produce and maintain affordable rental and homeownership housing and provides tenant-based rental assistance for low-income and very low-income households.

This rule proposes to revise the current HOME regulations at 24 CFR part 92 to update, simplify, and streamline requirements, better align the program with other Federal housing programs, and implement recent amendments to the HOME statute. Specifically, the proposed changes to the HOME program include significant revisions to the community housing development organization requirements, a change in the approach to HOME rents, simplified requirements for small-scale rental projects, enhanced flexibility in tenant-based rental assistance (TBRA) programs, and simplified provisions and new flexibilities for community land trusts. The proposed rule would also strengthen and expand tenant protections, and create incentives for meeting green building standards in new construction, reconstruction, and rehabilitation of housing.

Aggregate Costs and Benefits

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be pursued in fiscal year 2024. HUD expects that neither the total economic costs nor the total efficiency gains will exceed $200 million for this proposed rulemaking. In fact, the direct economic impact of this rule would be almost entirely within the HOME program. In other words, the proposed changes would affect what participating jurisdictions do with the HOME funds they receive from HUD and how projects that accept this funding source can operate. Many of the policy adjustments proposed would only have a practical impact if participating jurisdictions choose to participate in HOME-funded activities that are affected by the updated policies.

Statement of Need

The HOME program is authorized by title II of the Cranston-Gonzalez National Affordable Housing Act (''NAHA'') (42 U.S.C. 12721 *et seq*).

Title II of NAHA has not been significantly revised since the HOME program was last reauthorized by Congress in 1992. The constraints of the prescriptive statutory authority of title II of NAHA limit the scope of changes that the Department can propose to the HOME program regulations. Working within these limitations, the Department conducted a comprehensive review of title II of NAHA and current HOME program regulations to determine whether previously unrecognized opportunities might exist to revise current regulatory provisions. In creating the proposed rule, the Department focused on its commitment to equity and wealth-building and considered input from stakeholders on the most challenging aspects of administering and using HOME funds to provide affordable housing. This proposed rule is necessary to reduce the burden and increase flexibility for participating jurisdictions and other program participants, while adhering to statutory intent and requiring responsible management of State and local HOME programs.

This proposed rule also incorporates changes made by the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and recent amendments to the HOME statute.

Alternatives: An alternative to promulgating this rule would be to maintain HUD's existing regulations governing the HOME program. However, doing so would mean failing to fully benefit from the advantages of streamlining, updating, and simplifying our regulations. It would also mean that HUD would fail to adjust its HOME regulations to be fully consistent with HOTMA and recent amendments to the HOME statute.

Risks: This proposed rule would impose tenant protections that may not be currently applicable to other affordable housing funding sources (*e.g.,* the Low-Income Housing Tax Credit program). This could result in some project owners and developers becoming hesitant to include HOME funds in the capital funding stack of affordable housing projects. Additionally, this proposed rule would make updates throughout the HOME regulation, including significant updates to a number of sections within the regulation. This could lead to a partially challenging transitional period for participating jurisdictions and other stakeholders as they learn and implement the new regulations into their policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/2023	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: Local, State.
Federalism Affected: No.
Energy Affected: No.
International Impacts: No.

Section 184 Indian Home Loan Guarantee Program

Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (12 U.S.C. 1715z–13a), as amended, authorizes the Section 184 Indian Home Loan Guarantee Program (Section 184 Program) to improve access to private financing for Native American families, Tribes, and Tribally Designated Housing Entities (TDHEs) by providing a loan guarantee to financial organizations who lend to them.

This rule would modernize and enhance the regulations governing the Section 184 Program. Through the Section 184 Program, HUD guarantees home mortgage loans made to Native American borrowers in certain areas. The Section 184 Program facilitates homeownership and improves access to capital in Native American communities.

Since its inception in 1994, the number of loans guaranteed under the Section 184 Program has increased significantly but its regulations have never been substantially revised.

In 2015, the HUD Office of Inspector General (OIG), audited the Section 184 Program and recommended that HUD develop and implement policies and procedures for monitoring and evaluating the Section 184 Program, standardize monthly delinquency reports, deny payments to lenders for claims on loans that have material underwriting deficiencies, take enforcement actions against certain lenders, and ensure that only underwriters that are approved by HUD are underwriting Section 184 loans. This rule is part of the improvements to the Section 184 Program that HUD is pursuing to address the findings in the audit.

In developing this rule, HUD engaged in robust consultation with Tribes consistent with HUD's Tribal Consultation policy. As early as 2018, prior to drafting the proposed rule, HUD held eleven in-person Tribal consultation sessions to outline HUD's vision for the rule and obtain feedback from the tribes. As HUD completed drafts of various subparts of the regulation, HUD shared these drafts with Tribes and held three additional in-person consultations to solicit Tribal feedback on each subpart of the proposed rule. During this time, HUD also held two in-person Tribal consultations and two national teleconferences to review the draft proposed rule. In addition to the Tribal consultation sessions held prior and during the drafting of the proposed rule, HUD conducted ten additional consultations during the proposed rule public comment period. HUD held six regional consultation sessions and four national consultation sessions between December 2022 and March 2023. During these consultation sessions, HUD continued to solicit input and answered questions participants had about the proposed rule.

The regulations proposed in this rule, drafted in consideration of the public comments and tribal consultations, would strengthen and comprehensively modernize the operation of the Section 184 Program. Specifically, this rule would make the Section 184 Program sustainable, protect Borrowers, address weaknesses identified by OIG, provide clarity for new and existing Direct Guarantee and Non-Direct Guarantee Lenders, and reduce unreasonable claim payment requests from Servicers Many of the procedures and policy proposed by the proposed rule adopt industry standards and best practices and do not differ from existing HUD guidance or current practice within the Section 184 Program, which are often documented in HUD guidance such as ''PIH Notices'' and ''Dear Lender Letters''.

Aggregate Costs and Benefits

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be pursued in FY 2022. HUD expects that neither the total economic costs nor the total efficiency gains will exceed $100 million. Expanding oversight, improving loan origination quality, enhancing loss mitigation and foreclosure prevention, and implementing new claims procedures will all help to ensure the fiscal stability of the Section 184 Loan Guarantee Fund. While most of the requirements and policies in the proposed regulations mirror existing practices within the Program, some are expected to have a marginal economic impact on mortgagees, Tribes, and borrowers. These impacts could impose slightly greater administrative costs on

participating lenders and shift some risk from the Fund to participating lenders.

Statement of Need

Since its inception, the number of loans guaranteed under the Section 184 Program has significantly increased. At the same time, the program regulations have never been substantially revised. This rule helps to address housing challenges that Native American households continue to face, particularly: overcrowding and a lack of affordable housing in tribal areas; and access to mortgage credit outside of tribal area.

In 2015, the OIG recommended that HUD develop and implement policies and procedures for monitoring and evaluating the Section 184 Program, standardize monthly delinquency reports, deny payments to lenders for claims on loans that have material underwriting deficiencies, take enforcement actions against certain lenders, and ensure that only underwriters that are approved by HUD are underwriting Section 184 loans. This rule provides additional structure to the Section 184 Program and is part of the OIG's corrective action plan.

Alternatives: An alternative to promulgating this rule would be to maintain HUD's existing regulations and practices concerning the Program. However, doing so would ignore the OIG's recommendations and pose a greater risk to the Section 184 Loan Guarantee Fund and the Program, as demand for the Program has significantly increased since its inception.

Risks: This rule could slightly increase the administrative costs for lenders that participate in the Program and dissuade some lenders from participating in the Program. However, in the long-term, enhanced loan origination and loss mitigation and foreclosure prevention options will help to strengthen the vitality of the Program; thus, making the Program more attractive for lenders.

Timetable:

Action	Date	FR Cite
NPRM	12/21/2022	87 FR 78324
NPRM Comment Period End.	3/17/2023	
Final Rule	03/00/2024	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: No.

Federalism Affected: No.

Energy Affected: No.

International Impacts: No.

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UNITED STATES DEPARTMENT OF THE INTERIOR

Fall 2023 Regulatory Plan

Introduction

The U.S. Department of the Interior (Department) is the principal steward of our Nation's public lands and resources, including many of our cultural treasures. The Department serves as trustee to Native Americans, Alaska Natives, and Federally Recognized Tribes and is responsible for our ongoing relationships with the Island Territories under U.S. jurisdiction and the freely associated States. Among the Department's many responsibilities is managing more than 500 million surface acres of Federal land, which constitutes approximately 20 percent of the Nation's land area, as well as approximately 700 million subsurface acres of Federal mineral estate, and more than 2.5 billion acres of submerged lands on the Outer Continental Shelf (OCS).

In addition, the Department protects and recovers endangered species; protects natural, historic, and cultural resources; provides scientific and other information about those resources; and manages water projects that are an essential lifeline and economic engine for many communities.

Hundreds of millions of people visit Department-managed lands each year to take advantage of a wide range of recreational pursuits—including camping, hiking, hunting, fishing, and various other forms of outdoor recreation—and to learn about our Nation's history. Each of these activities supports local communities and their economies. The Department also provides access to Federal lands and offshore areas for the development of energy, minerals, and other natural resources that generate billions of dollars in revenue.

In short, the Department plays a central role in how the United States stewards its public lands, ensures environmental protections, pursues environmental justice, honors the nation-to-nation relationship with Tribes and the special relationships with other Indigenous people and the insular areas.

Regulatory and Deregulatory Priorities

To help advance the Secretary of the Interior's (Secretary) commitment to honoring the Nation's trust responsibilities and to conserve and manage the Nation's natural resources and cultural heritage, the Department's regulatory and deregulatory priorities in the coming year will focus on:

- Tackling the Climate Crisis, Strengthening Climate Resiliency, and Facilitating the Transition to Renewable Energy;
- Upholding Trust Responsibilities to Federally Recognized American Indian and Alaska Native Tribes, Restoring Tribal Lands, and Protecting Natural and Cultural Resources, Advancing Equity and Supporting Underserved Communities; and
- Investing in Healthy Lands, Waters, and Local Economies and Strengthening Conservation of the Nation's Lands, Waters, and Wildlife.
- Promoting Equitable and Meaningful Participation in the Regulatory Process

Tackling the Climate Crisis, Strengthening Climate Resiliency, and Facilitating the Transition to Renewable Energy

The Biden-Harris administration remains committed to combatting climate change and reducing greenhouse gas emissions while improving public health, protecting the environment, and ensuring access to clean air and water. Under this administration, the Department has been a key leader in tackling the climate crises. Pursuant to Executive Order (E.O.) 13990 ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' (signed on Jan. 20, 2021) and E.O. 14008, ''Tackling the Climate Crisis at Home and Abroad,'' (signed January 27, 2021), the Department has advanced multiple policy and regulatory efforts to reduce climate pollution; improve and increase adaptation and resilience to the impacts of drought, wildfire, and extreme weather; address current and historic environmental injustice; protect public health; and conserve Department-managed lands and waters.

The historic Infrastructure Investment and Jobs Act of 2021 (BIL) and the Inflation Reduction Act (IRA), which President Biden signed respectively on November 15, 2021, and August 16, 2022, will enable transformational outcomes on these clean energy and resilience priorities while driving the creation of good-paying union jobs. In referring to the BIL, Secretary Haaland said, ''The Interior Department is hard at work to deliver these critical investments from the President's Investing in America agenda into the hands of American communities as quick as we can, and we're making tremendous progress.''

In accordance with E.O.s 13990 and 14008, as well as E.O. 14052, ''Implementation of the Infrastructure Investment and Jobs Act,'' (signed on Nov. 15, 2021), several bureaus within the Department are pursuing regulatory actions to implement these administration priorities, including steps toincrease renewable energy production by improving siting and permitting processes on public lands and in offshore waters.

The Department is committed to fully facilitating the development of renewable energy on public lands and waters, as well as supporting tribal and territorial efforts to develop renewable energy, including deploying 30 gigawatts (GW) of offshore wind by 2030 and 25GW of onshore renewable energy by 2025. The Department will meet these ambitious goals while also ensuring appropriate protection of public lands, waters, and biodiversity and creating good jobs. As Secretary Haaland has stated, ''The Department of the Interior continues to make significant progress in our efforts to spur a clean energy revolution, strengthen and decarbonize the nation's economy, and help communities transition to a clean energy future.''

As part of these ongoing efforts, the Bureau of Ocean Energy Management's (BOEM) most important regulatory initiative is focused on expanding offshore wind energy's role in strengthening U.S. energy security and independence, creating jobs, providing benefits to local communities, and further developing the U.S. economy. The BOEM's renewable energy program has matured over the past 10 years, a time in which BOEM has conducted numerous auctions, and issued and managed multiple commercial leases. Based on this experience, BOEM has identified multiple opportunities to update its regulations to better facilitate the development of renewable energy resources and to promote U.S. energy independence. On January 30, 2023 (88 FR 5968), BOEM proposed a rule, the ''Renewable Energy Modernization Rule'' (1010–AE04). As proposed, the rule facilitates development of offshore renewable energy and promotes U.S. energy independence in a safe and environmentally sound manner that provides a fair return to U.S. taxpayers.

Similarly, the Bureau of Land Management (BLM) plans to update its regulations for onshore rights-of- way, leasing, and operations related to all activities associated with renewable energy. On June 16, 2023 (88 FR 39726), the BLM proposed the rule, ''Rights-of-way, Leasing, and Operations for Renewable Energy'' (1004–AE78). This rule aims to improve permitting activities and processes to facilitate increased renewable energy production on public lands.

To advance the deployment of clean energy infrastructure while also meeting obligations to conserve habitats and wildlife, the Department will improve permitting frameworks for bird conservation. On September 30, 2022 (87 FR 59598), the U.S. Fish and Wildlife Service (FWS) proposed the ''Eagle Permits; Incidental Take'' rule (1018–BE70) to revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The FWS plans to finalize this rule in December 2023.

The FWS will also propose the ''Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds'' rule (1018–BF71), to clarify the MBTA's prohibitions on taking and killing migratory birds and consider establishing a straightforward process to secure authorizations for otherwise prohibited take of migratory birds.

The BIL enables the Department to establish important regulations governing carbon transportation and storage on the OCS. The orderly implementation of negative emissions technologies, such as carbon capture, utilization, and storage, is necessary to reduce hard-to-abate emissions from the industrial sector, which emits nearly 25 percent of all carbon dioxide released into the atmosphere in the United States. In accordance with the BIL, the Bureau of Safety and Environmental Enforcement (BSEE) and BOEM are drafting a joint proposed rule that would address the transportation and geologic sequestration aspects of carbon storage development on the OCS, including leasing, geological, and geophysical exploration for appropriate storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; long-term site stewardship (*i.e.,* monitoring and response); financial assurance; and safety. BSEE and BOEM plan to publish this proposed rule in December 2023.

The Department is also committed to modernizing its oversight of oil and gas leasing and development to help address the climate and biodiversity crises and to advance environmental justice. In November 2021, the Department released its report on Federal oil and gas leasing and permitting practices, following a review of onshore and offshore oil and gas programs called for in E.O. 14008. The report identified significant reforms needed to ensure the programs provide a fair return to taxpayers, discourage speculation, hold operators responsible for remediation, and create a more inclusive and just approach to managing public lands and waters. The Department's ''Report on the Federal Oil and Gas Leasing Program'' makes a number of specific recommendations to restore balance to these programs, including adjusting royalty rates, pursuing adequate financial assurance for decommissioning liabilities, and prioritizing leasing in areas with known resource potential while avoiding conflicts with other uses.

This past year, the Department proposed regulations to implement important reforms, including the report's recommendations and reforms included in the IRA regarding oil and gas resources on public lands. On Nov. 30, 2022 (87 FR 73588), the BLM published the proposed rule ''Waste Prevention, Production Subject to Royalties, and Resource Conservation 43 CFR parts 3160 and 3170'' (1004–AE79), known as the Waste Prevention Rule. On July 24, 2023 (88 FR 47562), the BLM published the proposed rule ''Fluid Mineral Leases and Leasing Process'' (1004–AE80), known as the Fluid Minerals Rule. The Waste Prevention Rule would prevent waste of Federal resources with an additional benefit of reducing methane emissions in the oil and gas sector. The Fluid Minerals Rule would incorporate many urgent fiscal and programmatic reforms included in the report and IRA, such as updating BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including potential climate and other impacts associated with oil and gas leasing activities. BLM will finalize these rules to ensure the responsible development of oil and gas on public lands. The BLM also plans to finalize a rule (1004–AE95) to govern the management of surface resources and Special Areas in the National Petroleum Reserve in Alaska. On September 8, 2023, the BLM published the proposed rule ''Management and Protection of the National Petroleum Reserve in Alaska'' (88 FR 62025), which would improve upon the existing regulations' procedures to balance oil and gas activities with the protection of surface resources in the NPR–A; assure maximum protection of Special Areas; and protect longstanding subsistence activities.

On June 29, 2023, the BOEM published the proposed rule (1010–AE14) ''Risk Management and Financial

Assurance for OCS Lease and Grant Obligations'' (88 FR 42136), which would better protect the American taxpayers from shouldering liability for the decommissioning of offshore oil and gas facilities.

BSEE is furthering its mission to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement in several rulemaking efforts. Among others, BSEE is working to update its regulations governing oil spills (1014–AA44), offshore pipelines (1014–AA45), and decommissioning requirements on the OCS (1014–AA53).

Upholding Trust Responsibilities to Federally Recognized American Indian and Alaska Native Tribes Restoring Tribal Lands, and Protecting Natural and Cultural Resources

Among the Department's most important responsibilities is its commitment to honor the nation-to-nation relationship between the Federal Government and Tribes. Secretary Haaland is strongly committed to strengthening how the Department carries out its trust responsibilities and to increasing economic development opportunities for Tribes and other historically underserved communities.

To advance the Department's trust responsibilities, the Bureau of Indian Affairs (BIA) has identified opportunities, following consultation and in close collaboration with Tribal governments, to promote Tribal economic growth and development, and provide clearer and more efficient processes for Tribes that are applying to place land into trust or enter into gaming compacts. For example, BIA is working to remove barriers to the development of renewable energy and other resources in Indian country.

Deb Haaland stated, ''Through President Biden's Investing in America agenda, we're launching a new program to electrify Indian Country to provide reliable, resilient energy that Tribes can rely on, and advance our work to tackle the climate crisis and build a clean energy future.''

In consultation with Tribes, BIA engaged in efforts to update and improve its regulations governing how it manages land held in trust or in restricted status for Tribes and individual Indians. These efforts included improving the consultation process, identifying best practices, and strengthening relationships with Tribal governments. The BIA also launched a broader review to determine whether any regulatory reforms are needed to facilitate restoration of Tribal lands and safeguard natural and cultural resources. As a result of these consultations and this review, BIA is preparing a proposed rule, ''Agricultural Leasing of Indian Land,'' which would revise the regulations governing leases of Indian land for agricultural purposes found at 25 CFR part 162 (1076–AF66). This proposed rule would streamline how leases are obtained and increase the agricultural usage of Indian land.

In December of 2022, BIA published two proposed rules, one regarding the fee-to-trust process and one regarding Class III gaming compacts (87 FR 74334, 87 FR 74916). The updated regulations will provide clearer and more efficient processes for Tribes that are applying to place land into trust or enter into gaming compacts. The land acquisitions rule (1076–AF71) will lead to a more efficient, less cumbersome, and less expensive fee-to-trust process by clarifying the Secretary of the Interior's authority to take land in trust for Tribes, reducing processing time, and establishing clear decision-making criteria. The rule also places an express focus on taking land into trust for conservation purposes. The Class III gaming rule (1076–AF68) will provide clarity on the criteria the Department would consider when deciding whether to approve these compacts by clarifying boundaries as to allowable topics of negotiation, better defining key terms, and clearly outlining when the Department must review a gaming compact. BIA plans to finalize these rules in February 2024.

The Department is also committed to improving regulations meant to protect sacred and cultural resources. To this end, the Assistant Secretary for Indian Affairs and the Assistant Secretary for Fish and Wildlife and Parks are working with the National Park Service (NPS) to incorporate recommendations from consultation with Tribes on updates to regulations implementing the Native American Graves and Repatriation Act (NAGPRA), 43 CFR part 10 (1024–AE19). This proposed rule, the ''Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,'' which published on October 18, 2022 (87 FR 63202), would provide for the disposition and repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. The updates are intended to simplify and improve the regulatory process for repatriation, rectify provisions in the current regulations that inhibit and effectively prevent respectful repatriation, and remove the burden on Indian Tribes and Native Hawaiian organizations to initiate the process and add a requirement for museums and Federal agencies to complete the process. The Department expects to publish a final rule titled ''Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,'' by the end of 2023.

Advancing Equity and Supporting Underserved Communities

The Biden-Harris administration and Secretary Haaland recognize and support the goals of advancing equity and addressing the needs of underserved communities. In January 2021, the President signed E.O. 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' Additionally, On February 17, 2022, Secretary Haaland issued S.O. 3406, ''Establishment of a Diversity, Equity, Inclusion and Accessibility Council.'' In response to E.O. 13985 and the S.O. 3406, the Department issued its Equity Action Plan on April 14, 2022. The Equity Action Plan is a key part of the Department's efforts to implement E.O. 13985, which calls on Federal agencies to advance equity by identifying and addressing barriers to equal opportunity that underserved communities may face as a result of Government policies and programs.

On February 16, 2023, the President signed E.O. 14091, ''Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' This order builds upon the previous equity-related Executive orders by extending and strengthening equity-advancing requirements for agencies, and it positions agencies to deliver better outcomes for the American people.

On April 6, 2023, the President signed E.O. 14094, ''Modernizing Regulatory Reform.'' Section 2 of this E.O. directs agencies to promote equitable and meaningful opportunities for public participation in the rulemaking process by a range of interested or affected parties, including underserved communities.

In Fiscal Year (FY) 2024, the Department will undertake a number of regulatory actions that will assist people who are members of underserved communities by removing barriers, and strengthening equity-advancing requirements.

The BLM (1004–AE60), FWS (1018–BD78), and NPS (1024–AE75) are working on right-of-way (ROW) rules that would streamline and improve efficiencies in the permitting process for electric transmission, distribution facilities, and broadband facilities. The BLM published their proposed rule ''Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way,'' on November 7, 2022 (87 FR 67306). The FWS published their revised proposed rule ''Streamlining U.S. Fish and Wildlife Service Permitting of Rights-of-Way Across National Wildlife Refuges and Other U.S. Fish and Wildlife Service-Administered Lands'' on July 24, 2023 (88 FR 47442). These rules should result in increased services such as broadband connectivity with resulting benefits to underserved communities and visitors to Departmental lands and promote good governance. These proposed rules are expected to implement several provisions of the BIL.

Investing in Healthy Lands, Waters, and Local Economies and Strengthening Conservation of the Nation's Lands, Waters, and Wildlife

The Department's regulatory agenda will continue to advance the goals of investing in healthy lands, waters, and local economies across the country. These regulatory efforts, which are consistent with the Biden-Harris administration's America the Beautiful initiative as well as the BIL and IRA which provide the Department with historic resilience and restoration investments, include expanding opportunities for outdoor recreation, such as hunting and fishing, for all Americans; enhancing conservation stewardship; and improving the management of species and their habitat. In a priority effort to advance these goals, the BLM published a proposed rule on April 3, 2023 (88 FR 19583), ''Conservation and Landscape Health (1004–AE92),'' to advance the bureaus' mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands. To ensure that health and resilience, the proposed rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make informed management decisions based on science and data.

Through this regulatory plan, the Department affirms the importance of the ESA on the 50th anniversary of its passage in providing a broad and flexible framework to facilitate conservation with a variety of stakeholders. The Department, through FWS, is committed to working with diverse Federal, Tribal, State, and industry partners not only to protect and recover America's imperiled wildlife, but to ensure the ESA is helping meet 21st century challenges.

In FY 2023, FWS published numerous proposed and final rules to continue improving implementation of the ESA so that it is clearly and consistently applied, helps recover listed species, and provides the maximum degree of certainty possible to all parties.

Consistent with the steadfast commitment to allowing access to our National Wildlife Refuges (NWRs) and continued efforts to provide hunting and fishing opportunities, the FWS opened, for the first time, two NWRs that had been closed to hunting and sport fishing. In addition, FWS opened or expanded hunting or sport fishing at 16 NWRs and added pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing for the 2022–2023 season. The FWS also changed existing station-specific regulations to reduce regulatory burden on the public and increase access for hunters and anglers on FWS lands and waters. FWS published a proposed rule on June 23, 2023 (88 FR 41058), ''National Wildlife Refuge System; 2023–2024 Station-Specific Hunting and Sport Fishing Regulations,'' that would expand hunting opportunities on three NWRs.

Per section 2 of E.O. 13990 and the ''Fact Sheet: List of Agency Actions for Review,'' the Departments of Commerce and the Interior (Departments) initiated a review of the August 27, 2019, final rules, ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat,'' (1018–BF95) (84 FR 45020) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and the procedures for designating critical habitat as well as ''Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,'' (1018–BC87) (84 FR 44976) that revised portions of the regulations that implement section 7 of the ESA, as amended. In addition, the U.S. Fish and Wildlife Service initiated a review of the August 27, 2019, final rule ''Endangered and Threatened Wildlife and Plants; Regulations for Prohibition to Threatened Wildlife and Plants,'' (1018–BC97) (84 FR 44753) that removed default protections for threatened species under section 4 of the ESA. On July 5, 2022, the 2019 rules were vacated and remanded by the U.S. District Court for the Northern District of California.

In response to the court order, the Departments proposed a new rulemaking for FY 2023, ''Endangered and Threatened Wildlife and Plants; Listing and Designating Critical Habitat,'' which published on June 22, 2023 (88 FR, 40764); ''Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation'' (1018–BF96), which published on June 22, 2023 (88 FR 40753); and ''Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants'' (1018–BF88), which published on June 22, 2023 (88 FR 40753). The Departments will work to finalize these rules in 2024.

Under section 4(d) of the Endangered Species Act (ESA), FWS plans to promulgate several species-specific rules to protect threatened species. Of particular note, the FWS issued a proposed rule on November 17, 2022, (87 FR 68975) that would revise the rule for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the ESA (1018–BG66). The proposed rule intends to increase domestic protection for African elephants in light of the recent rise in global trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants. This rulemaking action would also clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies and incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory. The Department expects to publish a final rule titled ''Revision to the Section 4(d) Rule for the African Elephant'' in January 2024.

The NPS is also pursuing several regulatory actions under the Department's direction and in accordance with these goals. These regulatory actions would authorize recreational activities, such as off-road vehicle use, motorized vessels, and bicycling, within appropriate, designated areas of certain National Park System units. These regulations would promote appropriate visitor use while supporting long-term preservation

of park resources and quality visitor experiences.

Promoting Equitable and Meaningful Participation in the Regulatory Process

In accordance with E.O. 14094, ''Modernizing Regulatory Review,'' and the OMB Memorandum ''Broadening Public Participation and Community Engagement in the Regulatory Process'' (July 19, 2023), the Department is committed to informing their regulatory actions through meaningful and equitable opportunities for public input by a range of interested or affected parties, including underserved communities.

For example, to inform the development of and increase awareness of the proposed rulemaking for Carbon Sequestration on the OCS (RIN 1082–AA04), BOEM and BSEE coordinated an extensive outreach strategy to facilitate discussions with representatives from the U.S. interagency, foreign counterpart agencies, Tribal Nations, state agencies, industry, academia, non-governmental organizations, environmental justice groups, labor organizations, and international organizations.

The goals of the outreach strategy were to (1) Facilitate the Bureaus' access to information and perspectives related to offshore carbon sequestration in support of developing a robust and effective rule in a timely manner, and (2) foster relationships with a range of stakeholders that could provide value to the bureaus well beyond the rulemaking effort. The bureaus began implementing the outreach strategy in November 2021, that includes the identification of representatives from each category listed above, introductory and follow-up written exchanges, coordination of listening sessions and informational sharing meetings, and initiation of government-to-government engagements with Tribal Nations.

In another example, on June 22, 2023, the FWS and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), together the ''Services,'' proposed two rules to improve and strengthen implementation of the Endangered Species Act (ESA) (RINs 1018–BF95 and 1018–BF96; 88 FR 40764 and 88 FR 40753), and FWS published a separate but related action (RIN 1018–BF88; 88 FR 40742). In accordance with E.O. 13990 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis), these rules will ensure the ESA effectively addresses 21st century conservation challenges, such as climate change.

The Services made a concerted effort to engage with the public to inform these rules. With publication of the proposed rules, the Services issued a news release with a link to a website with additional information about the rules as well as a recording of an informational webinar. Additionally, in coordination with Federal and State agency association partners we reached out via direct email to hundreds of stakeholders with specific registration instructions for virtual information sessions. The Services subsequently delivered a series of six live virtual informational sessions to Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations and conservation partners, and industry groups. In total, more than 500 people attended the 6 information sessions. Frequently asked questions and a recording of the presentation can be viewed on the website *https://fws.gov/project/endangered-species-act-regulation-revisions.*

The BLM published a proposed rule, ''Conservation and Landscape Health,'' on April 3, 2023, (1004–AE92, 88 FR 19583) that provides tools for the BLM to improve the resilience of public lands in the face of a changing climate; conserve important wildlife habitat and intact landscapes; plan for development; and better recognize unique cultural and natural resources on public lands. The proposed rule directly responds to the growing need to better manage public lands, waters, and wildlife in the face of devastating wildfires, historic droughts, and severe storms that communities are experiencing across the West, as well as to deepen BLM's collaborative work with communities, States and Tribes to support responsible development of critical minerals, energy and other resources. The BLM held two virtual and three in-person meetings to provide detailed information about the proposal. Members of the public had an opportunity to ask questions that facilitate a deeper understanding of the proposal. BLM also created a separate web page detailing specific details on the rule: Public Lands Rule | Bureau of Land Management (*blm.gov*).

Bureaus and Offices Within the Department of the Interior

The following is an overview of some of the major regulatory and deregulatory priorities of the Department's Bureaus and Offices.

Bureau of Indian Affairs

The BIA enhances the quality of life, promotes economic opportunity, and protects and improves the trust assets of approximately 1.9 million American Indians, Indian Tribes, and Alaska Natives. The BIA maintains a government-to-government relationship with the 574 Federally Recognized Indian Tribes. The BIA also administers and manages 55 million acres of surface land and 57 million acres of subsurface minerals held in trust by the United States for American Indians and Indian Tribes.

Regulatory and Deregulatory Actions

In the coming year, BIA will prioritize the following rulemakings:

Procedures for Federal Acknowledgment of Indian Tribes (1076–AF67)

This proposed rule would respond to recent Federal court decisions holding that the Department did not adequately explain its regulations prohibiting previously denied petitioners for Federal acknowledgment from petitioning again. The Department sought Tribal government input through communication under Executive Order 13175 criteria and the Department's consultation policy on meaningful communication and collaboration with tribal officials. The Department held Consultation sessions with federally recognized Indian Tribes and a listening session for present, former, and prospective petitioners.

Appeals From Administrative Actions (1076–AF64)

The proposed rule published on December 1, 2022 (87 FR 73688). This final rule will clarify the processes for appeals of actions taken by officials in the Office of the Assistant Secretary—Indian Affairs, BIA, Bureau of Indian Education, and Office of the Special Trustee for American Indians (collectively, Indian Affairs). The rule advances the purposes of E.O. 14058 to effectively reduce administrative burdens, simplify both public-facing and internal processes to improve efficiency, and empower the Federal workforce to solve problems. The rule streamlines the process for appeals of Tribal government representative decisions, to ensure the continued government-to-government relations with the appropriate Tribal leadership is not unduly interrupted. The Department received Tribal government input through two consultation sessions (February 17, 2022, and February 22, 2022) held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Mining of the Osage Mineral Estate for Oil and Gas (1076–AF59)

The proposed rule published on January 13, 2023 (88 FR 2430). This final rule will revise the regulations in 25 CFR part 226 to strengthen the BIA's management of the Osage Mineral Estate and improve accounting and production measurement standards; offer consistency in production valuation; address inadequate bonding; support the implementation of electronic reporting systems; enhance accountability; clarify lessees' obligations; prevent waste; promote safe and environmentally sound operations; and protect resource values. The Department received Tribal government input through consultation sessions held pursuant to Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Land Acquisitions (1076–AF71)

The proposed rule published on December 5, 2022 (87 FR 74334). This final rule will advance the purposes of E.O. 13985 and address the Department's jurisdiction to acquire land in trust for certain Tribes, streamline acquisitions on existing reservations, clarify Tribal jurisdiction, and promote Tribal conservation of lands. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Class III Tribal State Gaming Compact Process (1076–AF68)

The proposed rule published on December 6, 2022 (87 FR 74916). This final rule will provide States and Tribes with a better understanding of how the Department reviews their compacts by codifying longstanding Departmental policy and interpretations of existing case law. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Agricultural Leasing of Indian Land (1076–AF66)

This proposed rule would update provisions addressing leasing of trust or restricted land (Indian land) for agricultural purposes to reflect updates that have been made to business and residential leasing provisions and address outdated provisions. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Indian Arts and Crafts (1076–AF69)

This proposed rule would modernize the Indian Arts and Crafts Board regulations to better meet the objectives of the Indian Arts and Crafts Act to promote the economic welfare of the Indian Tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. The Department is seeking Tribal government input through communication under Executive Order 13175 criteria and the Department's policy on meaningful collaboration with Tribal officials.

Bureau of Land Management

The BLM manages more than 245 million acres of public land, known as the National System of Public Lands, primarily located in 12 Western States, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the Nation. The agency's mission is to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations.

Regulatory and Deregulatory Actions

In the coming year, the BLM will prioritize the following rulemaking actions and highlight its efforts under E.O. 14094:

Update of the Communications Uses Program, Right-of-Way Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way (1004–AE60)

The BLM published its proposed rule on November 7, 2022 (87 FR 67306). This final rule will streamline and improve efficiencies in the communications uses program, update the cost recovery fee schedules for ROW work activities, and include provisions governing the development and approval of operating plans and agreements for ROWs for electric transmission and distribution facilities. Communications uses, such as broadband, are a subset of ROW activities authorized under FLPMA, as amended. Cost recovery fees apply to most ROW activities authorized under either FLPMA or the Mineral Leasing Act of 1920, as amended. This proposed rule would also implement vegetation management requirements included in the Consolidated Appropriations Act, 2018 (codified at 43 U.S.C. 1772) to address fire risk from and to powerline ROWs on public lands and national forests. The regulatory amendments would also codify statutory requirements regarding review and approval of utilities maintenance plans, liability limitations, and definitions of hazard trees and emergency conditions. The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

Rights-of-Way, Leasing and Operations for Renewable Energy (1004–AE78)

The BLM published this proposed rule on June 16, 2023 (88 FR 39726). This final rule will revise BLM's regulations for ROWs, leasing, and operations related to all activities associated with renewable energy. The Energy Act of 2020 and E.O. 14008 prioritize the Department's need to improve permitting activities and processes to facilitate increased renewable energy production on public lands. BLM held three virtual informational meetings over the course of the comment period. Additionally, the rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule.

Waste Prevention, Production Subject to Royalties, and Resource Conservation (1004–AE79)

This proposed rule published on November 30, 2022 (87 FR 73588). The final rule will update BLM's regulations governing the waste of natural gas through venting, flaring, and leaks on onshore Federal and Indian oil and gas leases. The proposed rule would address the priorities associated with E.O. 14008. The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

Fluid Mineral Leases and Leasing Process (1004–AE80)

This proposed rule published on July 24, 2023 (88 FR 47562). This final rule will revise BLM's oil and gas regulations to update the fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production. The final rule will also update BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including potential climate and other impacts associated with oil and gas activities. This rule will implement provisions of the IRA regarding oil and gas resources on public lands. BLM will

hold five informational meetings (Two virtual, three in-person) over the course of the comment period. Additionally, the rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

Closure and Restriction Orders (1004–AE89)

This proposed rule would help BLM to better protect persons, property, and public lands and resources by allowing the agency to close or restrict the use of public lands in a timelier manner. The rule would also make BLM's regulations more consistent with other Federal land management agencies' closure and restriction authorities. The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

Conservation and Landscape Health (1004–AE92)

On April 3, 2023, the BLM published a proposed rule (88 FR 19583) to clarify and support the principles of multiple use and sustained yield in the management of the public lands pursuant to FLPMA and other relevant authorities. This final rule will provide an overarching framework governing multiple resource areas to ensure land health and sustained yield. This rule affirms the important role of restoration and conservation actions in building and maintaining sustainable land management practices to ensure healthy and productive ecosystems for current and future generations. BLM held five informational meetings (Two virtual, three in-person) over the course of the comment period. Additionally, the rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule.

Management and Protection of the National Petroleum Reserve in Alaska (1004–AE95)

This final rule will assure maximum protection of Special Areas in the NPR–A pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands Conservation Act, and other applicable authorities. On September 8, 2023, the BLM published the proposed rule ''Management and Protection of the National Petroleum Reserve in Alaska'' (88 FR 62025). The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. Additionally, a number of listening sessions will occur.

Bureau of Ocean Energy Management

The mission of BOEM is to manage development of U.S. OCS energy and mineral resources in an environmentally and economically responsible way. In accordance with its statutory mandate under Outer Continental Shelf Lands Act (OCSLA), BOEM is committed to implementing its dual mission of promoting the expeditious and orderly development of the Nation's energy resources while simultaneously protecting the marine, human, and coastal environment of the OCS State submerged lands and the coastal communities. Consistent with the policy outlined by the Biden-Harris administration in E.O. 14008, BOEM is reevaluating its programs related to the offshore development of energy and mineral resources. The BOEM is working with the Department to review options for expanding renewable energy production while evaluating alternatives to better protect the lands, waters, and biodiversity of species located within the U.S. exclusive economic zone.

Regulatory and Deregulatory Actions

In the coming year, BOEM will prioritize the following rulemaking actions:

Renewable Energy Modernization Rule (1010–AE04)

On January 30, 2023, the BOEM proposed the *Renewable Energy Modernization Rule* (88 FR 5968). As proposed, the rule would facilitate development of offshore renewable energy and promotes U.S. energy independence in a safe and environmentally sound manner that provides a fair return to U.S. taxpayers. This proposed rule contains reforms identified by BOEM and recommended by industry, including proposals for incremental funding of decommissioning accounts; more flexible geophysical and geotechnical survey submission requirements; streamlined approval of meteorological buoys; revised project verification procedures; and greater clarity regarding safety requirements.

Risk Management and Financial Assurance for OCS Lease and Grant Obligations (1010–AE14)

The BOEM has reconsidered the financial assurance policies expressed in the joint proposed rule (85 FR 65904) issued with BSEE (1082–AA02) and has determined that it would be appropriate to issue a new rule that will better protect the American taxpayers from shouldering liability for the decommissioning of offshore oil and gas facilities. On June 29, 2023, the BOEM published the *Risk Management and Financial Assurance for OCS Lease and Grant Obligations* (88 FR 42136), which proposed provisions that would ensure that facilities no longer needed for oil or gas exploration or development are shut down in a safe and environmentally responsible manner. The rule will modify the evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement grant holders, and pipeline ROW grant holders may be required to provide bonds or other financial assurance, above the regulatorily prescribed amounts for base bonds, to ensure compliance with their OCS obligations.

Carbon Sequestration (1082–AA04)

In accordance with the BIL, BOEM and BSEE are working to jointly propose regulations governing carbon transportation and geologic sequestration aspects of a development, including leasing; siting of storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; monitoring; incident response; financial assurance; and safety.

Protection of Marine Archaeological Resources (1010–AE11)

On February 15, 2023, BOEM published a proposed rule (88 FR 9797) that would revise when lessees and operators would need to conduct archaeological surveys. The proposal put forward provisions that clarify when operators would submit an archaeological report with their applications and clarify the source and extent of the data utilized.

Fitness To Operate Standards for Oil and Gas Operators and Lessees on the Outer Continental Shelf (1010–AE21)

This proposed rule would enhance the Secretary's stewardship over the OCS and offshore waters by providing regulations governing the disqualification of operators that have poor environmental or safety performance records. If not properly maintained and operated, oil and gas operations can cause significant safety hazards and environmental harm and prevent other beneficial uses of the OCS (such as fishing and future resource development). Additionally, these safety and environmental issues potentially place American taxpayers at risk to cover future cleanup costs.

Bureau of Safety and Environmental Enforcement

The BSEE's mission is to promote safety, protect the environment, and

conserve resources offshore through vigorous regulatory oversight and enforcement. The BSEE is the lead Federal agency charged with improving safety and ensuring environmental protection related to conventional and renewable energy activities on the U.S. OCS.

Regulatory and Deregulatory Actions

In the coming year, BSEE will prioritize the following rulemaking actions:

Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule (1014–AA44)

The oil spill response requirements regulations found in 30 CFR part 254 were last updated over 20 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would update existing regulations to incorporate the latest advancements in spill response and preparedness policies and technologies, as well as lessons learned and recommendations from reports related to the Deepwater Horizon explosion and subsequent oil spill.

Revisions to Subpart J—Pipelines and Pipeline Rights-of-Way Proposed Rule (1014–AA45)

This proposed rule would revise specific provisions of the current pipelines and pipeline ROW regulations under 30 CFR 250 subpart J to align with current technology and state-of-the-art safety equipment and procedures, primarily through the incorporation of industry standards.

Outer Continental Shelf Lands Act; Operating in High-Pressure and/or High-Temperature (HPHT) Environments (1014–AA49)

Currently, BSEE has no regulations specific to high pressure and/or high temperature (HPHT) projects, requiring it to issue multiple guidance documents clarifying the specific HPHT information prospective operators should submit to BSEE to support the Bureau's programmatic reviews and approvals of such projects. This final rule will formally codify BSEE's existing process for reviewing and approving projects in HPHT environments. BSEE published this proposed rule on May 16, 2022 (87 FR 29790).

Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions (RIN 1014–AA52)

This final rule will revise BSEE regulations published in the 2019 final rule ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf Blowout Preventer Systems and Well Control Revisions,'' 84 FR 21908 (May 15, 2019), for drilling, workover, completion, and decommissioning operations. BSEE published the proposed rule on September 14, 2022 (87 FR 56354).

Revisions to Decommissioning Requirements on the OCS (1014–AA53)

This proposed rule would address issues relating to: (1) Idle iron by adding a definition of this term to clarify that it applies to idle wells and structures on active leases; (2) abandonment in place of subsea infrastructure by adding regulations addressing when BSEE may approve decommissioning-in-place instead of removal of certain subsea equipment; and (3) other operational considerations.

Office of the Chief Information Officer

The Office of the Chief Information Officer (OCIO) provides leadership to the Department and its Bureaus in all areas of information management and technology (IT). To successfully serve the Department's multiple missions, the OCIO applies modern IT tools, approaches, systems, and products. Effective and innovative use of technology and information resources enables transparency and accessibility of information and services to the public.

In 2023, OCIO finalized the following rule:

Personnel Security Files System of Records (1090–AB16)

This final rule was published on February 21, 2023 (88 FR 10479) and revised the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI–45, Personnel Security Files, system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil, and administrative law enforcement requirements.

For the coming year, OCIO will prioritize the following rules:

Network Security System of Records (1090–AB14)

This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR DOI–49, Network Security, system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C 552a(j) and (k), because of criminal, civil, and administrative law enforcement requirements.

Investigative Records System of Records (1090–AB27)

A proposed rule was published on July 13, 2023 (88 FR 44748). The final rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/OIG–02, Investigative Records, system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

DOI Law Enforcement Records Management System (LERMS) System of Records (1090–AB28)

This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LERMS), system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

Office of Acquisition and Property Management

The Office of Acquisition and Property Management (PAM) coordinates Department-wide implementation of Federal policy and regulations for acquisition; and real, personal, and museum property. The PAM also directs activities in other essential areas including motor vehicle fleet management, space management, energy efficiency, water conservation, renewable energy programs, and capital planning for real and personal property assets.

For the coming year, PAM will prioritize the following rules:

Department of the Interior Acquisition Regulation, Governance Titles (1090–AB25)

The PAM proposes changes to the Department of the Interior Acquisition Regulation to update its nomenclature to align with recent changes to agency procurement governance. The senior GS–1102 contracting subject matter expert in a Department Bureau or Office would be designated as the Head of the Contracting Activity (formerly designated as the Bureau Procurement Chief). The Senior Executive who is accountable for the contracting activity would be designated as the Bureau Procurement Executive (this position was formerly designated as the Head of the Contracting Activity). These amendments would enable acquisition programs to more efficiently meet the

Department's mission needs and comply with all applicable law and regulations.

Office of Hearings and Appeals

The Office of Hearings and Appeals (OHA) exercises the delegated authority of the Secretary to conduct hearings and decide appeals from decisions made by the Bureaus and Offices of the Department. The OHA provides an impartial forum for parties who are affected by the decisions of the Department's Bureaus and Offices to obtain independent review of those decisions. The OHA also handles the probating of Indian trust estates, ensuring that individual Indian interests in allotted lands, their proceeds, and other trust assets are conveyed to the decedents' rightful heirs and beneficiaries.

For the coming year, OHA will prioritize the following rule:

Office of Hearings and Appeals (OHA) Rule (1094–AA57)

This proposed rule will update outdated provisions, make process improvements, and provide a more modernized hearings and appeals process for proceedings before OHA. This is a comprehensive proposal to provide a more efficient process for OHA and the parties who appear before it, including external stakeholders and Departmental bureaus. The rule will build upon the Direct Final Rule to incorporate a new electronic filing and docket management system into OHA's processes and will update a number of other procedural rules. Included in this proposed rule are comprehensive changes to special rules for the Interior Board of Land Appeals, Departmental Cases Hearings Division, and the Director's office. Other provisions address specific needs of the Interior Board of Indian Appeals and the Probate Hearings Division. OHA conducted informal outreach and plans to hold Tribal consultation sessions.

In 2023, OHA finalized the following rules:

Practices Before the Department of Interior (1094–AA56)

On March 16, 2023, OHA's Final Rule became effective to amend existing regulations to update office addresses for hearings and appeals purposes, to allow the OHA Director to issue interim orders in emergency circumstances, and to allow the OHA Director to issue standing orders to improve OHA's service to the public and the parties by modernizing its processes.

Technical Corrections to Updates to American Indian Probate Regulations (1094–AA55)

On June 20, 2023 (88 FR 39768), OHA published correcting amendments in a final rule to update the regulations governing probate of property that the United States holds in trust or restricted status for American Indians.

Office of Natural Resources Revenue

The Office of Natural Resources Revenue (ONRR) is responsible for collecting, accounting for, and disbursing revenues from Federal and Indian energy and mineral leases. The ONRR operates nationwide and is primarily responsible for the timely and accurate collection, distribution, and accounting of revenues associated with mineral and energy production.

In 2023, ONRR completed the following rules:

Partial Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Reform Final Rule (1012–AA34)

On July 21, 2023, ONRR reissued certain regulations for the valuation of Federal and Indian coal to implement a court order that vacates the coal valuation portions of a 2016 rule. These republished regulations implement the court's order by recodifying the regulations that were in effect prior to the vacated 2016 rule.

In the coming year, ONRR will prioritize the following rulemaking actions:

ONRR Designation Form for Payment Responsibility (1012–AA33)

This proposed rule would amend ONRR's regulations and revise its form for designating a designee for a Federal oil and gas lease. This action would open a 60-day comment period to allow interested parties to comment on the proposed rule and its information collection requirements.

Office of Restoration and Damage Assessment (ORDA)

ORDA oversees the Department's Natural Resource Damage Assessment and Restoration (NRDAR) Program whose mission is to restore natural resources injured as a result of oil spills or hazardous substance releases into the environment. In partnership with affected state, tribal and Federal trustee agencies, damage assessments are conducted which are the first step toward resource restoration and used to provide the basis for determining restoration needs that address the public's loss and use of natural resources. Once the damages are assessed, legal settlements are negotiated, or legal actions are taken against the responsible parties for the spill or release. Funds from these settlements are then used to restore the injured resources.

Natural Resource Damages for Hazardous Substances—RIN (1090–AB26)

In January 2023, ORDA issued an Advanced Notice of Proposed Rulemaking (ANPRM) to revise part of the CERCLA NRDAR Regulations Type A procedures. These procedures allow trustees to use a standardized and simplified methodology for performing Injury Determination, Quantification and Damage Determination that requires minimal field observation. Current Type A procedures are limited to certain environments when claims are less than $100,000 and are based on outdated computer models and software with extremely limited current utility. Revisions would account for modeling advances for different environments and to provide methodologies that are not technology specific and could be used into the future without additional revisions. Public comments were received on this ANPRM in March 2023. Based on the comments received, ORDA is proceeding to issue a Notice of Proposed Rulemaking (NPRM) this fall.

In the upcoming year, ORDA will review the public comments received on the NPRM and then utilizing those comments, will issue a final rule revising the Type A procedures which are part of the CERCLA NRDAR Regulations.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSMRE) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The OSMRE works with States and Tribes to ensure that citizens and the environment are protected during coal mining and that the land is restored to beneficial use when mining is finished. The OSMRE and its partners are also responsible for reclaiming and restoring lands and water degraded by mining operations before 1977. The OSMRE focuses on overseeing the State programs and developing new tools to help the States and Tribes get the job done.

The OSMRE also works with colleges and universities and other State and Federal agencies to further the science of reclaiming mined lands and protecting the environment, including initiatives to promote planting more trees and restoring much-needed wildlife habitat.

Regulatory and Deregulatory Actions

For coming year, OSMRE will prioritize the following regulatory actions:

Ten Day Notices (1029–AC81)

The proposed rule published on April 25, 2023 (88 FR 24944). The rule will amend the existing regulations about when OSMRE sends ten-day notices to State regulatory authorities regarding possible SMCRA violations.

Emergency Preparedness for Impoundments (1029–AC82)

This rule would incorporate certain aspects of the Federal Guidelines for Dam Safety (FGDS) into OSMRE's existing regulations. These regulations relate to emergency preparedness for impoundments and propose to incorporate the FGDS Emergency Action Plans (EAP) and After-Action Reports (AAR). Also, OSMRE may add new provisions to the regulations to align the classification of impoundments with industry and other Government agency standards.

U.S. Fish and Wildlife Service

The mission of FWS is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. FWS provides opportunities for Americans to enjoy the outdoors and our shared natural heritage. FWS also promotes and encourages the pursuit of recreational activities such as hunting and fishing and wildlife observation.

FWS manages a network of 568 NWRs, with at least 1 refuge in each U.S. State and Territory, and with more than 100 refuges close to major urban centers. The Refuge System plays an essential role in providing outdoor recreation opportunities to the American public with more than 67 million annual visits to refuges to hunt, fish, observe or photograph wildlife, or participate in environmental education or interpretation.

The FWS fulfills its responsibilities through a diverse array of programs that:

- Protect and recover endangered and threatened species;
- Monitor and manage migratory birds;
- Restore nationally significant fisheries;
- Enforce Federal wildlife laws and regulate international trade;
- Conserve and restore wildlife habitat such as wetlands;
- Manage and distribute over a billion dollars each year to States, Territories, and Tribes for fish and wildlife conservation;
- Help foreign governments conserve wildlife through international conservation efforts; and
- Fulfill our Federal Tribal trust responsibility.

Regulations Under the Endangered Species Act

FWS promulgated multiple regulatory actions under the ESA in FY 2023 to prevent the extinction of and facilitate the recovery of both domestic and foreign animal and plant species. These rulemaking actions added species to, removed species from, and reclassified species on the Lists of Endangered and Threatened Wildlife and Plants and designated critical habitat for certain listed species. FWS published these rulemaking documents in accordance with the National Listing Workplan. The Workplan enables FWS to prioritize workloads based on the needs of species that are candidates for regulatory actions under the ESA or those for which FWS has received a petition for rulemaking. The Workplan represents the conservation priorities of FWS based on its review of scientific information and provides greater clarity and predictability about the timing of listing determinations to State wildlife agencies, nonprofit organizations, and other stakeholders and partners. The goal is to encourage proactive conservation so that Federal protections are not needed in the first place.

In FY 2023, FWS published 23 proposed and 28 final rules to list species, reclassify their status under the ESA, or designate critical habitat; 3 proposed and 4 final rules to remove species from the Lists; and 1 proposed and 1 final rule to establish nonessential experimental populations of listed species under the ESA. FWS will publish many more species-specific rulemaking actions under the ESA in FY2024, as described in multiple entries in the Unified Agenda.

In addition, in FY 2023 FWS completed numerous other rulemaking actions, including these:

Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations (1018–BF98)

On August 2, 2023, final rule (88 FR 42642, July 3, 2023) revised the regulations concerning experimental populations of endangered species and threatened species under the Endangered Species Act (ESA). The rule removed language restricting the introduction of experimental populations to only the species' ''historical range'' to allow for the introduction of populations into habitat outside of their historical range. To provide for the conservation of certain species, establishing experimental populations outside of their historical range may be increasingly necessary and appropriate if the habitat's ability to support one or more life-history stages has been reduced due to threats such as climate change or invasive species.

Regulations To Implement the Big Cat Public Safety Act (1018–BH23)

On June 12, 2023, FWS amended the implementing regulations for the Captive Wildlife Safety Act by incorporating the requirements of the Big Cat Public Safety Act (BCPSA; signed into law on December 20, 2022) (88 FR 38358, June 12, 2023). To further the conservation of certain wildlife species (lions, tigers, leopards, snow leopards, clouded leopards, jaguars, cheetahs, and cougars, or any hybrids thereof), the BCPSA made certain activities with these species unlawful. The BCPSA also required certain entities or individuals to register each such animal with the Service not later than June 18, 2023, to continue to possess these animals.

Regulatory and Deregulatory Actions for FY 2024

In the coming year, FWS will prioritize the following rulemaking actions:

Permits for Incidental Take of Eagles and Eagle Nests, Final Rule (1018–BE70)

On September 30, 2022, FWS proposed revisions to regulations authorizing the issuance of permits for eagle incidental take and eagle nest take (87 FR 59598). The purpose of these revisions is to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. FWS proposed continuing to authorize specific permits as well as creating general permits for certain activities under prescribed conditions: qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take.

During the public comment period, FWS held four information sessions in webinar format: two for members of federally recognized Native American Tribes and two for the general public. The purpose of each of these sessions was to provide the public with a general understanding of the background for this proposed rulemaking action, activities it would cover, alternative proposals under consideration, and the draft environmental documents for the proposed action.

Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, Proposed Rule (1018–BF71)

This proposed rulemaking action would amend FWS regulations by providing definitions to terms used in the Migratory Bird Treaty Act, as amended (MBTA). The proposed rule would clarify that the MBTA's prohibitions on taking and killing migratory birds includes foreseeable, direct taking and killing that is incidental to other activities. The proposed rule would also establish authorizations for otherwise prohibited take of migratory birds.

Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, Final Rule (1018–BF95)

On June 22, 2023, FWS and the National Marine Fisheries Service (NMFS) proposed to revise portions of our regulations that implement section 4 of the ESA (88 FR 40764). The proposed revisions clarify, interpret, and implement portions of the ESA concerning the procedures and criteria used for listing, reclassifying, and delisting species on the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat.

After publication of this proposed rule and the two discussed next (RINs 1018–BF96 and 1018–BF88), FWS delivered a series of informational sessions to stakeholders including Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. Frequently asked questions and a recording of the presentation can be viewed on the website *https://fws.gov/project/endangered-species-act-regulation-revisions.*

Endangered and Threatened Wildlife and Plants; Interagency Cooperation, Final Rule (1018–BF96)

On June 22, 2023, FWS and NMFS proposed to amend portions of our regulations that implement section 7 of the ESA (88 FR 40753). The Services are proposing these changes to further clarify and improve the interagency consultation processes, while continuing to provide for the conservation of listed species. See description above under RIN 1018–BF95 for public engagement efforts.

Regulations Pertaining to Endangered and Threatened Wildlife and Plants, Final Rule (1018–BF88)

On June 22, 2023, FWS proposed to revise our regulations concerning protections of endangered species and threatened species under the ESA (88 FR 40742). We proposed to reinstate the general application of the ''blanket rule'' option for protecting newly listed threatened species pursuant to section 4(d) of the Act, with the continued option to promulgate species-specific rules. We also proposed to extend to federally recognized Tribes certain regulatory exceptions currently provided to the employees or agents of the Service and other Federal and State agencies to aid, salvage, or dispose of threatened species. We also requested comments on an additional provision that would extend to federally recognized Tribes the exceptions to prohibitions for threatened species that the regulations currently provide to employees or agents of the Service, NMFS, and State agencies for take associated with conservation-related activities. See description above under RIN 1018–BF95 for public engagement efforts.

Wildlife and Fisheries; Compensatory Mitigation Mechanisms, Proposed Rule (1018–BF63)

FWS will propose to establish regulations covering objectives, standards, and criteria for review and approval of compensatory mitigation programs and projects intended to offset, or compensate for, unavoidable impacts to federally listed, proposed, or at-risk species and designated critical habitat pursuant to the ESA. The proposed rule will advance the purposes of the ESA by promoting the effective, consistent, transparent, and predictable delivery of compensatory mitigation.

Endangered Species Act Section 10 Regulations; Enhancement of Survival and Incidental Take Permits, Final Rule (1018–BF99)

On February 9, 2023, FWS proposed to revise the regulations concerning the issuance of enhancement of survival and incidental take permits under the ESA (88 FR 8380). The purposes were to clarify the appropriate use of these permit types; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type; and include portions of our policies for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans in the regulations to reduce uncertainty. The proposed regulatory changes are intended to reduce costs and time associated with developing the application materials. We anticipate that these improvements will encourage more engagement in these voluntary programs, thereby generating greater conservation results overall.

The final rule will incorporate and address public comments received in response to the proposed rule and informational webinars held with State agencies and Tribal nations.

Establishment of a Nonessential Experimental Population of Gray Wolf in the State of Colorado, Final Rule (1018–BG79)

On February 17, 2023, FWS proposed to establish a nonessential experimental population (NEP) of the gray wolf *(Canis lupus)* in Colorado, under section 10(j) of the ESA (88 FR 10258). Establishment of this NEP will facilitate the State of Colorado's reintroduction of gray wolves and provide for allowable legal incidental taking of the gray wolf within the NEP area. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and will promote the conservation of the species.

FWS held four public information meetings during a 60-day public comment period. The final determination will be based on consideration of public comments and peer review received in response to the proposed rule.

Revision to the Section 4(d) Rule for the African Elephant, Final Rule (1018–BG66)

On November 17, 2022, FWS proposed to revise the current regulations for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the ESA (87 FR 68975). The purposes of this rulemaking action are to: (1) Increase protection for African elephants in response to the recent rise in international trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants, (2) clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies, and (3) incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and

Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products.

FWS conducted a virtual public hearing on January 5, 2023. The virtual public hearing was conducted in multiple languages, and several foreign countries expressed comments. The comment period for the proposed rule was extended due to comments expressed during the virtual public hearing. In addition to the public hearing, the agency has conducted several calls with foreign countries that have a stake in the proposed rulemaking.

Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System, Proposed Rule (1018–BG78)

FWS will propose to promulgate regulations directing the management of the National Wildlife Refuge System (NWRS) to promote the biological integrity, diversity, and environmental health of all lands and waters under the jurisdiction of the NWRS. These regulations would be based on language in the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, directing the Service to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.

National Wildlife Refuge System; Station-Specific Hunting and Sport Fishing Regulations, 2023–24, Final Rule (1018–BG71)

On June 23, 2023, FWS proposed to make additions and revisions to station-specific regulations and expand hunting and sport fishing opportunities for the 2023–24 hunting and sport fishing season (88 FR 41058). This action is part of an annual update for the national wildlife refuge system and the national fish hatchery system that ensures adequate public notice of openings and changes. These changes and openings enhance conservation stewardship and outdoor recreation and improve the management of game species and their habitat. FWS operates hunting and sport fishing programs on refuges to implement congressional directives to facilitate compatible priority wildlife-dependent recreational opportunities. Although hatcheries are not part of the national wildlife refuge system, by regulation, the administrative provisions of refuge regulations are applied to national fish hatchery areas.

FWS coordinated closely with the Association of Fish and Wildlife Agencies when developing the proposed rule. FWS also engaged with stakeholder groups through the Hunting and Wildlife Conservation Council for input on hunting and fishing programs on FWS lands and waters.

National Park Service

The NPS preserves the natural and cultural resources and values within 425 units of the National Park System encompassing more than 85 million acres of lands and waters for the enjoyment, education, and inspiration of this and future generations. The NPS also cooperates with partners to extend the benefits of resource conservation and outdoor recreation throughout the United States and the world.

Regulatory and Deregulatory Actions

In 2023, NPS completed the following rulemakings:

Mount Rainier National Park; Fishing (1024–AE66)

This final rule which published on January 20, 2023 (88 FR 3659), removed from the Code of Federal Regulations special fishing regulations for Mount Rainier National Park, including those that restrict the take of nonnative species. Instead, the National Park Service will publish closures and restrictions related to fishing in the Superintendent's Compendium for the park. This action helps implement a 2018 Fish Management Plan that aims to conserve native fish populations and restore aquatic ecosystems by reducing or eliminating nonnative fish.

In the coming year, NPS will prioritize the following rulemaking actions:

Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (1024–AE19)

This final rule will revise the NAGPRA implementing regulations. On October 18, 2022, the NPS published the proposed rule ''Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,'' (87 FR 63202). This rule eliminates ambiguities, corrects inaccuracies, simplifies excessively burdensome and complicated requirements, clarifies timelines, and removes offensive terminology in the existing regulations that have inhibited the respectful repatriation of most Native American human remains. This rule will simplify and improve the regulatory process for repatriation and thereby advance the goals of racial justice, equity, and inclusion. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Alaska; Hunting and Trapping in National Preserves (1024–AE70)

This rule would amend NPS regulations for sport hunting and trapping in national preserves in Alaska. This rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

Bureau of Reclamation

The Bureau of Reclamation's (Reclamation) mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation employs management, engineering, and science to achieve effective and environmentally sensitive solutions.

Reclamation's projects provide irrigation water service; municipal and industrial water supply; hydroelectric power generation; water quality improvement; groundwater management; fish and wildlife enhancement; outdoor recreation; flood control; navigation; river regulation and control; system optimization; and related uses. In addition, Reclamation continues to provide increased security at its facilities.

Regulatory and Deregulatory Actions

In the coming year, Reclamation will prioritize the following rulemaking action:

Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies (1006–AA58)

The proposed rule published on February 16, 2023 (88 FR 10070). The final rule, targeted to publish on or before November 2023, will revise existing definitions for the use of aircraft; the possession of firearms, update regulations on camping, swimming, and winter recreation for the wide range of circumstances found across Reclamation; and would clarify the permitting of memorials and

reburials on Reclamation lands. During the proposed rule stage, Reclamation held three tribal consultations in April and May 2022, with invites to all 287 western state Tribes, and Tribal comments were incorporated into this update.

DOI—OFFICE OF NATURAL RESOURCES REVENUE (ONRR)

Proposed Rule Stage

108. ONRR Designation Form for Payment Responsibility [1012–AA33]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 31 U.S.C. 3335; 31 U.S.C. 3711; 31 U.S.C. 3716 to 3718; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* 43 U.S.C. 1801 *et seq.*

CFR Citation: None.

Legal Deadline: None.

Abstract: ONRR proposes to amend its regulations and revise its form for designating a designee for a Federal oil and gas lease. This action opens a 60-day comment period to allow interested parties to comment on the proposed rule and its information collection requirements.

Statement of Need: ONRR proposes to amend its regulations and revise its form for designating a designee for a Federal oil and gas lease. This action opens a 60-day comment period to allow interested parties to comment on the proposed rule and its information collection requirements.

Summary of Legal Basis: 5 U.S.C. 301 *et seq.,* 30 U.S.C. 181 *et seq.,* 30 U.S.C. 351 *et seq.,* 30 U.S.C. 1001 *et seq.,* 30 U.S.C. n1701 *et seq.,* 31 U.S.C. 3335, 31 U.S.C. 3711, 31 U.S.C. 3716 to 3718, 31 U.S.C. 3720A, 31 U.S.C. n9701, 43 U.S.C. 1301 *et seq.,* 43 U.S.C. 1331 *et seq.,* and 43 U.S.C. 1801 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Luis Aguilar, Regulatory Specialist, Department of the Interior, Office of Natural Resources Revenue, Denver Federal Center West, 6th Avenue and Kipling Street, Building 85, MS 64400B, Denver, CO 80225, *Phone:* 303 231–3418, *Email: luis.aguilar@onrr.gov.*

RIN: 1012–AA33

DOI—BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT (BSEE)

Proposed Rule Stage

109. Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule [1014–AA44]

Priority: Other Significant.

Legal Authority: Federal Water Pollution Control Act, 33 U.S.C. 1321; Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.;* Outer Continental Shelf Lands Act, 42 U.S.C. 1331 *et seq.*

CFR Citation: 30 CFR 254 (proposed rewrite of 254).

Legal Deadline: None.

Abstract: This proposed rule would identify opportunities for updating Oil Spill Response Requirements regulations, in 30 CFR part 254, last updated 22 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would codify industry best practices, BSEE policy, and regulatory guidance for oil spill response planning and operations. This proposed rule would also streamline the oil spill response planning requirements, clarify equipment and operational capabilities, and address requirements from other applicable laws and technological advancements to reflect oil spill response best practices and advance safety and protection of the environment.

Statement of Need: This proposed rule would identify opportunities for updating Oil Spill Response Requirements regulations, in 30 CFR part 254, last updated 22 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would codify industry best practices, BSEE policy, and regulatory guidance for oil spill response planning and operations.

Summary of Legal Basis: Federal Water Pollution Control Act, 33 U.S.C. 1321, Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.,* Outer Continental Shelf Lands Act, 42 U.S.C. 1331 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	
NPRM Comment Period End.	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email: kirk.malstrom@bsee.gov.*

RIN: 1014–AA44

DOI—BSEE

110. Revisions to Subpart J—Pipelines and Pipeline Rights-of-Way Proposed Rule [1014–AA45]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 43 U.S.C. 1331 to 1356a, Outer Continental Shelf Lands Act

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This proposed rule would identify opportunities for improving safety, environmental protections, and equipment reliability, within the Pipelines and Pipeline Rights-of-Way regulations under 30 CFR 250 subpart J. This rule would incorporate several guidance documents and conditions of approval and update industry standards incorporated by reference into the regulations. This rulemaking rule would result in an up-to-date set of pipeline regulations that reflect current industry practices and BSEE policies that address topics such as pipeline permitting, design, installation, maintenance, inspections, and decommissioning.

Statement of Need: This proposed rule would identify opportunities for improving safety, environmental protections, and equipment reliability, within the Pipelines and Pipeline Rights-of-Way regulations under 30 CFR 250 subpart J. This rule would incorporate several guidance documents and conditions of approval and update industry standards incorporated by reference into the regulations. This rulemaking rule would result in an up-to-date set of pipeline regulations that reflect current industry practices and BSEE policies that address topics such as pipeline permitting, design, installation, maintenance, inspections, and decommissioning.

Summary of Legal Basis: 43 U.S.C. 1331 to 1356a, Outer Continental Shelf Lands Act.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
NPRM Comment Period End.	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email: kirk.malstrom@bsee.gov.*

RIN: 1014–AA45

DOI—BSEE

Final Rule Stage

111. Outer Continental Shelf Lands Act; Operating in High-Pressure and/or High-Temperature (HPHT) Environments [1014–AA49]

Priority: Other Significant.

Legal Authority: Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 to 1356a

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This rule will formally codify BSEE's existing process for reviewing and approving projects in high pressure and/or high temperature (HPHT) environments. Currently, BSEE reviews and approves HPHT projects under its existing regulations. Based on these regulations, BSEE issued multiple guidance documents clarifying the specific HPHT information prospective operators should submit to BSEE to support the bureau's programmatic reviews and approvals of such projects.

Statement of Need: This rule will formally codify BSEE's existing process for reviewing and approving projects in high pressure and/or high temperature (HPHT) environments. Currently, BSEE reviews and approves HPHT projects under its existing regulations. Based on these regulations, BSEE issued multiple guidance documents clarifying the specific HPHT information prospective operators should submit to BSEE to support the bureau's programmatic reviews and approvals of such projects.

Summary of Legal Basis: Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 to 1356a.

Timetable:

Action	Date	FR Cite
NPRM	05/16/22	87 FR 29790
NPRM Comment Period End.	07/01/22	
Final Action	11/00/23	
Final Action Effective.	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email: kirk.malstrom@bsee.gov.*

RIN: 1014–AA49

DOI—ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT (ASLM)

Proposed Rule Stage

112. Carbon Sequestration [1082–AA04]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Pub. L. 117–58

CFR Citation: Not Yet Determined.

Legal Deadline: Final, Statutory, November 15, 2022, Public Law 117–58.

The Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117–58) mandates that a new regulation be published within 12 months from enactment of the legislation on November 15, 2021.

Abstract: The proposed rulemaking would address the transportation and geologic sequestration aspects of a development, including leasing; siting of storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; monitoring; incident response; financial assurance; and safety. The Infrastructure Investment and Jobs Act of 2021 directed the Department to establish regulations intended to initiate OCS activities to accomplish carbon sequestration. This proposed joint rulemaking between the Bureau of Ocean Energy management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) would establish new regulations to implement processes in support of safe and environmentally responsible carbon sequestration activities on the OCS.

Statement of Need: The proposed rulemaking would address the transportation and geologic sequestration aspects of a development, including leasing; siting of storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; monitoring; incident response; financial assurance; and safety. The Infrastructure Investment and Jobs Act of 2021 directed the Department to establish regulations intended to initiate Outer Continental Shelf (OCS) activities to accomplish carbon sequestration. This proposed joint rulemaking between the Bureau of Ocean Energy management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) would establish new regulations to implement processes in support of safe and environmentally responsible carbon sequestration activities on the OCS.

Summary of Legal Basis: Public Law 117–58.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Stacey Noem, Chief, Office of Offshore Regulatory Programs, Department of the Interior, Assistant Secretary for Land and Minerals Management, 456000 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1222, *Email: stacey.noem@bsee.gov.*

Related RIN: Related to 1082–AA04

RIN: 1082–AA04

DOI—ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET (ASPMB)

Proposed Rule Stage

113. Department of the Interior Acquisition Regulation Governance Titles [1090–AB25]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1702

CFR Citation: 48 CFR 1.301; 48 CFR 1401.301.

Legal Deadline: None.

Abstract: The Office of Acquisition and Property Management would propose changes to the Department of the Interior Acquisition Regulation to update its nomenclature to align with recent changes to agency procurement governance. This proposal would enable acquisition programs to more efficiently meet the Department's mission needs and comply with all applicable law and regulations.

Statement of Need: This proposed rule would change the Department of the Interior Acquisition Regulations to update its nomenclature to align with recent changes to agency procurement governance. This proposal would enable

acquisition programs to more efficiently meet the Department's mission needs and comply with all applicable law and regulations.

Summary of Legal Basis: 41 U.S.C. 1702.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Antonia Giammo, Senior Procurement Analyst—Office of Acquisition and Property Management, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 208–5250, *Email: antonia_giammo@ios.doi.gov.*

RIN: 1090–AB25

DOI—ASPMB

114. Natural Resource Damages for Hazardous Substances [1090–AB26]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. secs. 9601 *et seq.* 104, 107, 111 (i), 122

CFR Citation: 40 CFR 300.600; 43 CFR 11.

Legal Deadline: None.

Abstract: This proposal would update the existing Type A Rule of the CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) regulations so it could be used in different environments and include methodologies which are not technology specific. Adjustments would also be made to the rebuttable presumption for Type A procedures which is currently limited to damages of $100,000 or less.

Statement of Need: This proposed rule would update the existing Type A Rule of the CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) regulations so it could be used in different environments and include methodologies which are not technology specific. Adjustments would also be made to the rebuttable presumption for Type A procedures which is currently limited to damages of $100,000 or less.

Summary of Legal Basis: 42 U.S.C. secs. 9601 *et seq.,* 42 U.S.C. 104, 42 U.S.C. 107, 42 U.S.C. 111 (i), and 42 U.S.C. 122.

Timetable:

Action	Date	FR Cite
ANPRM	01/19/23	88 FR 3373
ANPRM Comment Period End.	03/20/23	
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Emily Joseph, Director, Office of Restoration and Damage Assessment, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 208–4438, *Email: emily_joseph@ios.doi.gov.*

Related RIN: Related to 1090–AB17

RIN: 1090–AB26

DOI—ASPMB

115. • Privacy Act Exemption for Interior/DOI–10, DOI Law Enforcement Records Management System (LERMS) [1090–AB28]

Priority: Other Significant.

Legal Authority: 5 U.S.C 552a(k)

CFR Citation: 43 CFR 2.254.

Legal Deadline: None.

Abstract: This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LERMS), system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

Statement of Need: This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LERMS), system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

Summary of Legal Basis: 5 U.S.C. 552a(k).

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	
NPRM Comment Period End.	02/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Teri Barnett, Departmental Privacy Officer, Cybersecurity Division, Department of the Interior, 1849 C Street NW, Office of the Chief Information Officer, Room 7112, Washington, DC 20240, *Phone:* 202 208–1943, *Email: teri_barnett@ios.doi.gov.*

Related RIN: Related to 1090–AB02

RIN: 1090–AB28

DOI—ASPMB

Final Rule Stage

116. Privacy Act Exemption for Interior/OIG–02 Investigative Records [1090–AB27]

Priority: Other Significant.

Legal Authority: 5 U.S.C.552a(k)

CFR Citation: 43 CFR 2.254.

Legal Deadline: None.

Abstract: This proposed rule would amend the DOI Privacy Act regulations at 43 CFR 2.254 to exempt certain records in the INTERIOR/OIG–02, Investigative Records, system of records from one or more provisions of the Privacy Act to protect investigatory records pursuant to 5 U.S.C. 552a(k). In order to claim the exemptions and meet the requirements of the Privacy Act, DOI will publish a Notice of Proposed Rulemaking and a Final Rule in the **Federal Register**.

Statement of Need: This proposed rule would amend the DOI Privacy Act regulations at 43 CFR 2.254 to exempt certain records in the INTERIOR/OIG–02, Investigative Records, system of records from one or more provisions of the Privacy Act to protect investigatory records pursuant to 5 U.S.C. 552a(k). In order to claim the exemptions and meet the requirements of the Privacy Act, DOI will publish a Notice of Proposed Rulemaking and a Final Rule in the **Federal Register**.

Summary of Legal Basis: 5 U.S.C.552a(k).

Timetable:

Action	Date	FR Cite
NPRM	07/13/23	88 FR 44748
NPRM Comment Period End.	09/11/23	
Final Action	11/00/23	
Final Action Effective.	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Teri Barnett, Departmental Privacy Officer, Cybersecurity Division, Department of the Interior, 1849 C Street NW, Office of the Chief Information Officer, Room 7112, Washington, DC 20240, *Phone:* 202 208–1943, *Email: teri_barnett@ios.doi.gov.*

RIN: 1090–AB27

DOI—OFFICE OF HEARINGS AND APPEALS (OHA)

Proposed Rule Stage

117. Office of Hearings And Appeals (OHA) Rule [1094–AA57]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301 (2018); 43 U.S.C. 1457c (2018)

CFR Citation: 43 CFR 4.

Legal Deadline: None.

Abstract: The Office of Hearings and Appeals (OHA) proposes a Notice and Comment Rulemaking to modernize and clarify its regulations governing hearings and appeals before the Interior Board of Land Appeals (IBLA), the Interior Board of Indian Appeals (IBIA), the Departmental Cases Hearings Division (DCHD), and the OHA Director. OHA is proposes this regulatory action to update outdated provisions, make process improvements, and provide a more modernized and logical hearings and appeals process.

Statement of Need: The Office of Hearings and Appeals (OHA) proposes a Notice and Comment Rulemaking to modernize and clarify its regulations governing hearings and appeals before the Interior Board of Land Appeals (IBLA), the Interior Board of Indian Appeals (IBIA), the Departmental Cases Hearings Division (DCHD), and the OHA Director. OHA proposes this regulatory action to update outdated provisions, make process improvements, and provide a more modernized and logical hearings and appeals process.

Summary of Legal Basis: 5 U.S.C. 301 (2018) and 43 U.S.C. 1457c (2018).

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, Local, State.

Agency Contact: Rachel Lukens, Counsel to the Director, Department of the Interior, Office of Hearings and Appeals, 801 N Quincy Street, #300, Arlington, VA 22203, *Phone:* 703 223–9934, *Email: rachel_lukens@oha.doi.gov.*

RIN: 1094–AA57

DOI—UNITED STATES FISH AND WILDLIFE SERVICE (FWS)

Proposed Rule Stage

118. Wildlife and Fisheries; Compensatory Mitigation Mechanisms [1018–BF63]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1531 *et seq.;* Pub. L. 116–283

CFR Citation: 50 CFR 413.

Legal Deadline: None.

Abstract: This rulemaking action would address section 329 of the National Defense Authorization Act for Fiscal Year 2021, Objectives, Performance Standards, and Criteria for Use of Wildlife Conservation Banking Programs (NDAA 2021), which states that, to the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for characteristics of various species, and apply equivalent standards and criteria to all mitigation banks.

Statement of Need: This rulemaking action will address section 329 of the National Defense Authorization Act for Fiscal Year 2021, Objectives, Performance Standards, and Criteria for Use of Wildlife Conservation Banking Programs (NDAA 2021), which states that, to the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for characteristics of various species, and apply equivalent standards and criteria to all mitigation banks.

Summary of Legal Basis: 16 U.S.C. 1531 *et seq.,* Pub. L. 116–283.

Timetable:

Action	Date	FR Cite
ANPRM	07/27/22	87 FR 45076
ANPRM Comment Period End.	09/26/22	
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Craig Aubrey, Chief, Division of Environmental Review, Ecological Services Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041, *Phone:* 703 358–2442, *Fax:* 703 358–1800, *Email: craig_aubrey@fws.gov.*

RIN: 1018–BF63

DOI—FWS

119. Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, Proposed Rule [1018–BF71]

Priority: Section 3(f)(1) Significant.

Legal Authority: 16 U.S.C. 703 *et seq.*

CFR Citation: 50 CFR 21.

Legal Deadline: None.

Abstract: This proposed rulemaking action would amend FWS regulations by providing definitions to terms used in the Migratory Bird Treaty Act, as amended (MBTA). The proposed rule would clarify that the MBTA's prohibitions on taking and killing migratory birds includes foreseeable, direct taking and killing that is incidental to other activities. The proposed rule would also establish authorizations for otherwise prohibited take of migratory birds.

Statement of Need: This proposed rulemaking action would amend FWS regulations by providing definitions to terms used in the Migratory Bird Treaty Act, as amended (MBTA). The proposed rule would clarify that the MBTA's prohibitions on taking and killing migratory birds includes foreseeable, direct taking and killing that is incidental to other activities. The proposed rule would also establish authorizations for otherwise prohibited take of migratory birds.

Summary of Legal Basis: 16 U.S.C. 703 *et seq.*

Timetable:

Action	Date	FR Cite
ANPRM	10/04/21	86 FR 54667
ANPRM Comment Period End.	12/03/21	
NPRM	11/00/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Jerome Ford, Assistant Director—Migratory Bird Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS–MB, Falls Church, VA 22041–3803, *Phone:* 703 358–1050, *Email: jerome_ford@fws.gov.*

RIN: 1018–BF71

DOI—FWS

120. Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System, Proposed Rule [1018–BG78]

Priority: Other Significant.
Legal Authority: 5 U.S.C. 301; 16 U.S.C. 460k; 16 U.S.C. 664; 16 U.S.C. 668dd–668ee; 16 U.S.C. 715i; Pub. L. 115–20
CFR Citation: 50 CFR 29.
Legal Deadline: None.
Abstract: FWS proposes to promulgate regulations directing the management of the National Wildlife Refuge System (NWRS) to promote the biological integrity, diversity, and environmental health of all lands and waters under the jurisdiction of the NWRS. These regulations would be based on language in the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, directing the Service to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans. FWS has intentionally coordinated with State and Tribal partners to develop the proposed regulations. FWS solicited comments from States through the Association of Fish and Wildlife Agencies (AFWA) and held three meetings with AFWA and State leadership to discuss the proposed regulations. FWS also held two public webinars for Tribal partners across the country to discuss the proposed regulations and to gain their feedback.
Statement of Need: FWS proposes to promulgate regulations directing the management of the National Wildlife Refuge System (NWRS) to promote the biological integrity, diversity, and environmental health of all lands and waters under the jurisdiction of the NWRS. These regulations would be based on language in the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, directing the Service to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.
Summary of Legal Basis: 5 U.S.C. 301, 16 U.S.C. 460k, 16 U.S.C. 664, 16 U.S.C. 668dd–668ee, 16 U.S.C. 715i, and Public Law 115–20.
Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.
Government Levels Affected: None.
Agency Contact: Katherine Harrigan, Sportsmen's Access Coordinator, Department of the Interior, United States Fish and Wildlife Service, Branch of Conservation Policy and Planning, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2440, *Email: katherine_harrigan@fws.gov.*
RIN: 1018–BG78

DOI—FWS

Final Rule Stage

121. Permits for Incidental Take of Eagles and Eagle Nests, Final Rule [1018–BE70]

Priority: Other Significant.
Legal Authority: 16 U.S.C. 668 to 668d
CFR Citation: 50 CFR 22.
Legal Deadline: Other, Judicial, September 15, 2021, For submission of an advance notice of proposed rulemaking to OFR.
NPRM, Judicial, September 16, 2022.
Final, Judicial, January 31, 2024.
Abstract: FWS will finalize a proposed rule that set forth potential approaches for expediting and simplifying the permit process authorizing incidental take of eagles. The proposed rule would revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The proposed rule would create general eagle permits for certain activities under prescribed conditions in addition to specific eagle permits authorized under current regulations.
Statement of Need: FWS will finalize a proposed rule that set forth potential approaches for expediting and simplifying the permit process authorizing incidental take of eagles. The rule will revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The rule will create general eagle permits for certain activities under prescribed conditions in addition to specific eagle permits authorized under current regulations.
Summary of Legal Basis: 16 U.S.C. 668 to 668d.
Timetable:

Action	Date	FR Cite
ANPRM	09/14/21	86 FR 51094
ANPRM Comment Period End.	10/29/21	
NPRM	09/30/22	87 FR 59598
NPRM Comment Period Extended.	11/28/22	87 FR 72957
NPRM Comment Period End.	11/29/22	
NPRM Comment Period Extended End.	12/29/22	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: No.
Government Levels Affected: Local, State, Tribal.
Agency Contact: Dr. Eric L. Kershner, Chief, Division of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email: eric_kershner@fws.gov.*
RIN: 1018–BE70

DOI—FWS

122. Regulations Pertaining to Endangered and Threatened Wildlife and Plants [1018–BF88]

Priority: Other Significant.
Legal Authority: 16 U.S.C. 1531 *et seq.*
CFR Citation: 50 CFR 17.
Legal Deadline: None.
Abstract: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O.13990), the Department of the Interior (the Department) initiated a review of the previous rulemaking action with the title, ''Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants'' (84 FR 44753; August 27, 2019) that revised portions of the regulations that address prohibition and protective regulations regarding the conservation of endangered and threatened species of fish, wildlife, and plants. As a result of that review, the Department proposed to revise those regulations (88 FR 40742, June 22, 2023) and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the

website *https://fws.gov/project/endangered-species-act-regulation-revisions.*

Statement of Need: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O.13990), the Department of the Interior (the Department) initiated a review of the previous rulemaking action with the title, ''Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants (84 FR 44753; August 27, 2019) that revised portions of the regulations that address prohibition and protective regulations regarding the conservation of endangered and threatened species of fish, wildlife, and plants. As a result of that review, the Department proposed a new rulemaking.

Summary of Legal Basis: 16 U.S.C. 1531 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	06/22/23	88 FR 40742
NPRM Comment Period End.	08/21/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, State.

Agency Contact: Carey Galst, Chief, Branch of Listing Policy and Support, Department of the Interior, United States Fish and Wildlife Service, Ecological Services Program, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041–3803, *Phone:* 703 358–1954, *Fax:* 703 358–1954, *Email: carey_galst@fws.gov.*

RIN: 1018–BF88

DDOI—FWS

123. Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, Final Rule [1018–BF95]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 424.

Legal Deadline: None.

Abstract: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat'' (84 FR 45020; August 27, 2019) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. As a result of that review, the Departments proposed to revise those regulations (88 FR 40764, June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website *https://fws.gov/project/endangered-species-act-regulation-revisions.*

Statement of Need: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat'' (84 FR 45020; August 27, 2019), that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. As a result of that review, the Departments proposed a new rulemaking.

Summary of Legal Basis: 16 U.S.C. 1531 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	06/22/23	88 FR 40764
NPRM Comment Period End.	08/21/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, State.

Agency Contact: Carey Galst, Chief, Branch of Listing Policy and Support, Department of the Interior, United States Fish and Wildlife Service, Ecological Services Program, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041–3803, *Phone:* 703 358–1954, *Fax:* 703 358–1954, *Email: carey_galst@fws.gov.*

Related RIN: Related to 0648–BK47

RIN: 1018–BF95

DOI—FWS

124. Endangered and Threatened Wildlife and Plants; Interagency Cooperation [1018–BF96]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 402.

Legal Deadline: None.

Abstract: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation'' (84 FR 44976; August 27, 2019) that revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. As a result of that review, the Departments proposed to revise those regulations (88 FR 40753; June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website *https://fws.gov/project/endangered-species-act-regulation-revisions.*

Statement of Need: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the August 27, 2019, final rule (84 FR 44976) that revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. As a result of that review, the Departments proposed a new rulemaking.

Summary of Legal Basis: 16 U.S.C. 1531 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	06/22/23	88 FR 40753
NPRM Comment Period End.	08/21/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Craig Aubrey, Chief, Division of Environmental Review, Ecological Services Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041, *Phone:* 703 358–2442, *Fax:* 703 358–1800, *Email: craig_aubrey@fws.gov.*

Related RIN: Related to 0648–BH41, Related to 1018–BC87

RIN: 1018–BF96

DOI—FWS

125. Endangered Species Act Section 10 Regulations; Enhancement of Survival and Incidental Take Permits, Final Rule [1018–BF99]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 17.

Legal Deadline: None.

Abstract: Pursuant to the Endangered Species Act of 1973 (ESA), this final rule will revise the regulations at 50 CFR part 17 that implement section 10(a)(1)(A) and 10(a)(1)(B) of the ESA. This section pertains to, among other things, permit issuance for take of endangered and threatened wildlife species. This final rule incorporates and addresses public comments received in response to our proposed rule and informational webinars held with State agencies and Tribal nations.

Statement of Need: Pursuant to the Endangered Species Act of 1973 (ESA), this final rule will revise the regulations at 50 CFR part 17 that implement section 10 of the ESA. This section pertains to, among other things, permit issuance for take of endangered and threatened wildlife species.

Summary of Legal Basis: 16 U.S.C. 1531 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	02/09/23	88 FR 8380
NPRM Comment Period End.	04/10/23	
Final Action	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Elizabeth Maclin, Division of Restoration and Recovery, Department of the Interior, United States Fish and Wildlife Service, Ecological Services, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2646, *Fax:* 703 358–1735, *Email: elizabeth_maclin@fws.gov.*

RIN: 1018–BF99

DOI—FWS

126. Revision to the Section 4(d) Rule for the African Elephant, Final Rule [1018–BG66]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1361 to 1407; 16 U.S.C. 1531 to 1544; 16 U.S.C. 4201 to 4245

CFR Citation: 50 CFR 17.40(e).

Legal Deadline: None.

Abstract: This rule will revise the current regulations for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act (ESA). The purposes are to: (1) Increase protection for African elephants in response to the recent rise in international trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants, (2) clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies, and (3) incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decisionmaking process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products. FWS conducted a virtual public hearing on January 5, 2023. The virtual public hearing was conducted in multiple languages, and several foreign countries expressed comments. The comment period for the proposed rule was extended due to comments expressed during the virtual public hearing. In addition to the public hearing, the agency has conducted several calls with foreign countries that have a stake in the proposed rulemaking.

Statement of Need: This rule will revise the current regulations for the African elephant (Loxodonta africana) promulgated under section 4(d) of the Endangered Species Act (ESA). The purpose is to: (1) Increase protection for African elephants in response to the recent rise in international trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants, (2) clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies, and (3) incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decisionmaking process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory.

Summary of Legal Basis: 16 U.S.C. 1361 to 1407, 16 U.S.C. 1531 to 1544, and 16 U.S.C. 4201 to 4245.

Timetable:

Action	Date	FR Cite
NPRM	11/17/22	87 FR 68975
NPRM Comment Period End.	01/23/23	
NPRM Comment Period Extended.	01/17/23	88 FR 2597
NPRM Comment Period Extended End.	03/30/23	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Naimah Aziz, Manager, Division of Management Authority, Department of the Interior United States Fish and Wildlife Service, International Affairs, 5275 Leesburg Pike MS: IA, Falls Church, VA 22041–3808, *Phone:* 571 218–5019, *Email: naimah_aziz@fws.gov.*

RIN: 1018–BG66

DOI—FWS

127. Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado, Final Rule [1018–BG79]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 17.

Legal Deadline: None.

Abstract: FWS will make a final determination on the proposal to establish a nonessential experimental population (NEP) of the gray wolf *(Canis*

lupus) in Colorado, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Establishment of this NEP will facilitate the State of Colorado's reintroduction of gray wolves and provide for allowable legal incidental taking of the gray wolf within the NEP area. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and will promote the conservation of the species. We held four public information meetings during a 60-day public comment period. This final determination is based on consideration of public comments and peer review received in response to our proposed rule.

Statement of Need: FWS will make a final determination on the proposal to establish a nonessential experimental population (NEP) of the gray wolf (Canis lupus) in Colorado, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Establishment of this NEP will facilitate the State of Colorado's reintroduction of gray wolves and provide for allowable legal incidental taking of the gray wolf within the NEP area. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and will promote the conservation of the species.

Summary of Legal Basis: 16 U.S.C. 1531 *et seq.*

Timetable:

Action	Date	FR Cite
Notification of Intent to Prepare an EIS.	07/21/22	87 FR 43489
Comment Period End.	08/22/22	
NPRM	02/17/23	88 FR 10258
NPRM Comment Period End.	04/18/23	
Notification of Availability of FEIS and ROD.	09/19/23	88 FR 64399
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, State.

Agency Contact: Elizabeth Maclin, Division of Restoration and Recovery, Department of the Interior, United States Fish and Wildlife Service, Ecological Services, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2646, *Fax:* 703 358–1735, *Email: elizabeth_maclin@fws.gov.*

RIN: 1018–BG79

DOI—FWS

Completed Actions

128. National Wildlife Refuge System; Station-Specific Hunting and Sport Fishing Regulations, 2023–24, Final Rule [1018–BG71]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 460k to 460k–4; 16 U.S.C. 668dd to 668ee

CFR Citation: 50 CFR 32; 50 CFR 71.

Legal Deadline: None.

Abstract: This rule revises the FWS station-specific regulations and expands hunting and sport fishing opportunities for the 2023–24 hunting and sport fishing season. This action is part of an annual update for the national wildlife refuge system and the national fish hatchery system that ensures adequate public notice of openings and changes. These changes and openings enhance conservation stewardship and outdoor recreation and improve the management of game species and their habitat. The FWS operates hunting and sport fishing programs on refuges to implement Congressional directives to facilitate compatible priority wildlife-dependent recreational opportunities. Although hatcheries are not part of the national wildlife refuge system, by regulation, the administrative provisions of refuge regulations are applied to national fish hatchery areas. The FWS coordinated closely with the Association of Fish and Wildlife Agencies when developing the rule. The FWS also engaged with stakeholder groups through the Hunting and Wildlife Conservation Council for input on hunting and fishing programs on FWS lands and waters.

Statement of Need: This proposed rule would make additions and revisions to station-specific regulations and expand hunting and sport fishing opportunities for the 2023–24 hunting and sport fishing season. This action is part of an annual update for the national wildlife refuge system and the national fish hatchery system that ensures adequate public notice of openings and changes. These changes and openings enhance conservation stewardship and outdoor recreation and improve the management of game species and their habitat. The FWS operates hunting and sport fishing programs on refuges to implement congressional directives to facilitate compatible priority wildlife-dependent recreational opportunities. Although hatcheries are not part of the national wildlife refuge system, by regulation, the administrative provisions of refuge regulations are applied to national fish hatchery areas.

Summary of Legal Basis: 16 U.S.C. 460k to 460k–4 and 16 U.S.C. 668dd to 668ee.

Timetable:

Action	Date	FR Cite
NPRM	06/23/23	88 FR 41058
NPRM Comment Period End.	08/22/23	
Final Action Effective.	10/27/23	
Final Action	10/30/23	88 FR 74050

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Katherine Harrigan, Sportsmen's Access Coordinator, Department of the Interior, United States Fish and Wildlife Service, Branch of Conservation Policy and Planning, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2440, *Email: katherine_harrigan@fws.gov.*

RIN: 1018–BG71

DOI—NATIONAL PARK SERVICE (NPS)

Final Rule Stage

129. Native American Graves Protection and Repatriation Act Regulations [1024–AE19]

Priority: Other Significant.

Legal Authority: 25 U.S.C. 3001 *et seq.*

CFR Citation: 43 CFR 10.

Legal Deadline: None.

Abstract: This final rule revises the Native American Graves Protection and Repatriation Act (NAGPRA) implementing regulations. The rule eliminates ambiguities, correct inaccuracies, simplifies excessively burdensome and complicated requirements, clarifies timelines, and removes offensive terminology in the existing regulations that have inhibited the respectful repatriation of most Native American human remains. This rule simplifies and improves the regulatory process for repatriation and thereby advances the goals of racial justice, equity, and inclusion. The Department sought Tribal government input through communication under Executive Order 13175 criteria and the Department's consultation policy on meaningful communication and collaboration with tribal officials. The Department held Consultation sessions with federally recognized Indian Tribes and a listening session for present, former, and prospective petitioners.

Statement of Need: This rule will revise the Native American Graves

Protection and Repatriation Act (NAGPRA) implementing regulations. The rule will eliminate ambiguities, correct inaccuracies, simplify excessively burdensome and complicated requirements, clarify timelines, and remove offensive terminology in the existing regulations that have inhibited the respectful repatriation of most Native American human remains. This rule will simplify and improve the regulatory process for repatriation and thereby advance the goals of racial justice, equity, and inclusion.

Summary of Legal Basis: 25 U.S.C. 3001 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	10/18/22	87 FR 63202
NPRM Comment Period Extended.	01/10/23	88 FR 1344
NPRM Comment Period Extended End.	01/31/23	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Additional Information: Since the passage of NAGPRA in 1990, it has been the policy of the United States that human remains of any ancestry must always be treated with dignity and respect. Yet in the last 30 years, less than half of the Native American human remains in collections have been repatriated to their traditional caretakers. The revisions to the existing regulatory requirements will respect the civil rights and sovereignty of Indian Tribes and Native Hawaiians to repatriate their ancestors and cultural items. The rule responds to regular and repeated requests for regulatory revisions and will reduce the regulatory burden on all parties by streamlining requirements in accessible language with clear timelines, removing ambiguity, and improving efficiency. The rule will likely have a positive net benefit, justifying any temporary cost increase.

URL For More Information: *www.nps.gov/nagpra.*

Agency Contact: Melanie O'Brien, National NAGPRA Program Manager, Department of the Interior, National Park Service, National NAGPRA Program, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 354–2204, *Email: melanie_o'brien@nps.gov.*

RIN: 1024–AE19

DOI—NPS

130. Alaska; Hunting and Trapping in National Preserves [1024–AE70]

Priority: Other Significant.

Legal Authority: 54 U.S.C. 100751

CFR Citation: 36 CFR 13.

Legal Deadline: None.

Abstract: This final rule will amend regulations for sport hunting and trapping in national preserves in Alaska. This rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

Statement of Need: This final rule will amend regulations for sport hunting and trapping in national preserves in Alaska. This rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

Summary of Legal Basis: 54 U.S.C. 100751.

Timetable:

Action	Date	FR Cite
NPRM	01/09/23	88 FR 1176
NPRM Comment Period End.	03/10/23	
NPRM Comment Period End Extended.	03/10/23	88 FR 14963
NPRM Comment Period Extended End.	03/27/23	
Final Rule	05/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Sarah Creachbaum, Alaska Regional Director, Department of the Interior, National Park Service, 240 W 5th Avenue, Anchorage, AK 99501, *Phone:* 907 644–3510, *Email: akr_regulations@nps.gov.*

RIN: 1024–AE70

DOI—BUREAU OF INDIAN AFFAIRS (BIA)

Proposed Rule Stage

131. Agricultural Leasing of Indian Land [1076–AF66]

Priority: Other Significant.

Legal Authority: 25 U.S.C. 380 to 635; 25 U.S.C. 2201 *et seq.;* 25 U.S.C. 3701 *et seq.;* 44 U.S.C. 3101 *et seq.*

CFR Citation: 25 CFR 162.

Legal Deadline: None.

Abstract: This rule would propose to update provisions addressing leasing of trust or restricted land (Indian land) for agricultural purposes to reflect updates that have been made to business and residential leasing provisions and address outdated provisions.

Statement of Need: This rule would update provisions addressing leasing of trust or restricted land (Indian land) for agricultural purposes to reflect updates that have been made to business and residential leasing provisions and address outdated provisions.

Summary of Legal Basis: 25 U.S.C. 380 to 635, 25 U.S.C. 2201 *et seq.,* 25 U.S.C. 3701 *et seq.,* and 44 U.S.C. 3101 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Tribal.

Agency Contact: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email: oliver.whaley@bia.gov.*

RIN: 1076–AF66

DOI—BIA

132. Procedures for Federal Acknowledgment of Indian Tribes [1076–AF67]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479A–1

CFR Citation: 25 CFR 83.

Legal Deadline: None.

Abstract: This proposed rule would respond to recent Federal court decisions holding that the Department did not adequately explain its regulations prohibiting previously denied petitioners for Federal acknowledgment from petitioning again. The Department sought Tribal government input through communication under Executive Order 13175 criteria and the Department's consultation policy on meaningful communication and collaboration with tribal officials. The Department held Consultation sessions with federally recognized Indian Tribes and a listening session for present, former, and prospective petitioners.

Statement of Need: This final rule will update the regulations in response to recent Federal court decisions to address whether previously denied petitioners for Federal acknowledgment may petition again.

Summary of Legal Basis: 5 U.S.C. 301, 25 U.S.C. 2, 25 U.S.C. 9, and 25 U.S.C. 479A–1.

Timetable:

Action	Date	FR Cite
NPRM	04/27/22	87 FR 24908
NPRM Comment Period End.	07/06/22	
Second NPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road, NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email: oliver.whaley@bia.gov.*

George Patton, Department of the Interior, Bureau of Indian Affairs, Indian Affairs—RACA, 1001 Indian School Road NW, Suite 312, Albuquerque, NM 87104, *Phone:* 505 563–3805, *Email: george.patton@bia.gov.*

RIN: 1076–AF67

DOI—BIA

133. Indian Arts and Crafts [1076–AF69]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 305 *et seq.*

CFR Citation: 25 CFR 301; 25 CFR 304; 25 CFR 307 to 310.

Legal Deadline: None.

Abstract: This proposed rule would modernize the Indian Arts and Crafts Board regulations to better meet the objectives of the Indian Arts and Crafts Act to promote the economic welfare of the Indian Tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. The Department is seeking Tribal government input through communication under Executive Order 13175 criteria and the Department's policy on meaningful collaboration with Tribal officials.

Statement of Need: This proposed rule would modernize the Indian Arts and Crafts Board regulations to better meet the objectives of the Indian Arts and Crafts Act to promote the economic welfare of the Indian Tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship.

Summary of Legal Basis: 5 U.S.C. 301, 25 U.S.C. 2, 25 U.S.C. 9, and 25 U.S.C. 305 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Tribal.

Agency Contact: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email: oliver.whaley@bia.gov.*

RIN: 1076–AF69

DOI—BIA

Final Rule Stage

134. Mining of the Osage Mineral Estate for Oil and Gas [1076–AF59]

Priority: Other Significant.

Legal Authority: Pub. L. 59–321; Pub. L. 66–360; Pub. L. 70–919; Pub. L. 75–711

CFR Citation: 25 CFR 226.

Legal Deadline: None.

Abstract: This final rule revises the regulations in 25 CFR part 226 to strengthen the BIA's management of the Osage Mineral Estate and improve accounting and production measurement standards; offer consistency in production valuation; address inadequate bonding; support the implementation of electronic reporting systems; enhance accountability; clarify lessees' obligations; prevent waste; promote safe and environmentally sound operations; and protect resource values. The Department received Tribal government input through consultation sessions held pursuant to Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Statement of Need: This final rule will revise the regulations in 25 CFR part 226 to advance the purposes of E.O. 14058; and provide for the implementation of electronic royalty and production reporting systems, reducing administrative burdens on operators, purchasers, and the government, and streamlining accounting and reconciliation processes.

Summary of Legal Basis: Public Law 59–321, Public Law 66–360, Public Law 70–919, and Public Law 75–711.

Timetable:

Action	Date	FR Cite
NPRM	01/13/23	88 FR 2430
NPRM Comment Period End.	03/17/23	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, State, Tribal.

Agency Contact: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email: oliver.whaley@bia.gov.*

RIN: 1076–AF59

DOI—BIA

135. Class III Tribal State Gaming Compact Process [1076–AF68]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 479a–1

CFR Citation: 25 CFR 293.

Legal Deadline: None.

Abstract: This final rule will update procedures the Secretary of the Interior (Secretary) uses for reviewing Class III Tribal State Gaming compacts submitted for approval to clarify what law the Secretary applies and make the process more transparent. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Statement of Need: This final rule will improve the tranparency of procedures taken by the Secretary of the Interior (Secretary) to review Class III Tribal State Gaming compacts submitted for approval.

Summary of Legal Basis: 5 U.S.C. 301, 25 U.S.C. 2, 25 U.S.C. 9, and 25 U.S.C. 479a–1.

Timetable:

Action	Date	FR Cite
NPRM	12/06/22	87 FR 74916
NPRM Comment Period End.	03/01/23	
Final Action	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: State, Tribal.

Agency Contact: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email: oliver.whaley@bia.gov.*

George Patton, Department of the Interior, Bureau of Indian Affairs, Indian Affairs—RACA, 1001 Indian School Road NW, Suite 312, Albuquerque, NM 87104, *Phone:* 505 563–3805, *Email: george.patton@bia.gov.*

RIN: 1076–AF68

DOI—BIA

136. Land Acquisitions [1076–AF71]

Priority: Other Significant.

Legal Authority: R.S. 161, 5 U.S.C. 301; 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; . . .

CFR Citation: 25 CFR 151.

Legal Deadline: None.

Abstract: This rule will advance the purposes of E.O. 13985 and address the Department's jurisdiction to acquire land in trust for certain Tribes, streamline acquisitions on existing reservations, clarify Tribal jurisdiction, and promote Tribal conservation of lands. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Statement of Need: This rule will advance the purposes of E.O. 13985 and address the Department's jurisdiction to acquire land in trust for certain Tribes, streamline acquisitions on existing reservations, clarify Tribal jurisdiction, and promote Tribal conservation of lands.

Summary of Legal Basis: R.S. 161, 5 U.S.C. 301, 46 Stat. 1106, as amended, and 46 Stat. 1471, as amended.

Timetable:

Action	Date	FR Cite
NPRM	12/05/22	87 FR 74334
NPRM Comment Period End.	03/01/23	
Final Action	02/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Tribal.

Agency Contact: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email: oliver.whaley@bia.gov.*

George Patton, Department of the Interior, Bureau of Indian Affairs, Indian Affairs—RACA, 1001 Indian School Road NW, Suite 312, Albuquerque, NM 87104, *Phone:* 505 563–3805, *Email: george.patton@bia.gov.*

RIN: 1076–AF71

DOI—BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM)

Proposed Rule Stage

137. • Fitness To Operate Standards for Oil and Gas Operators and Lessees on the Outer Continental Shelf [1010–AE21]

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: 43 U.S.C. 1331, OCS Lands Act

CFR Citation: 30 CFR 550; 30 CFR 556.

Legal Deadline: None.

Abstract: In response to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the Department of the Interior prepared Report on the Federal Oil and Gas Leasing Program. The report stated that the Bureau of Ocean Energy Management, through a new ''Fitness to Operate'' standard, would establish safety, environmental, and financial responsibilities for companies to meet in order to operate on the U.S. Outer Continental Shelf.

This rule would establish safety, environmental, and financial responsibilities for oil and gas companies to meet in order to operate on the U.S. Outer Continental Shelf.

Statement of Need: In response to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the Department of the Interior prepared a report on the Federal Oil and Gas Leasing Program. The report stated that the Bureau of Ocean Energy Management, through a new ''Fitness to Operate'' standard, would establish safety, environmental, and financial responsibilities for companies to meet in order to operate on the U.S. Outer Continental Shelf.

This rule would establish safety, environmental, and financial responsibilities for oil and gas companies to meet in order to operate on the U.S. Outer Continental Shelf.

Summary of Legal Basis: 43 U.S.C. 1331, OCS Lands Act.

Timetable:

Action	Date	FR Cite
NPRM	09/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses.

Government Levels Affected: Tribal.

Federalism: Undetermined.

Agency Contact: Kelley Spence, Department of the Interior, Bureau of Ocean Energy Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 984 298–7345, *Email: kelley.spence@boem.gov.*

RIN: 1010–AE21

DOI—BOEM

Final Rule Stage

138. Renewable Energy Modernization Rule [1010–AE04]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 43 U.S.C. 1337(p)

CFR Citation: 30 CFR 585.

Legal Deadline: None.

Abstract: This final rule will clarify BOEM's renewable energy regulations facilitating offshore renewable energy development in a manner that is safe, environmentally sound, and provides fair return to U.S. taxpayers. This action also helps meet commitments of Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad,* by supporting renewable energy production and in offshore waters.

BOEM received a range of comments on the NPRM during the public comment period. In addition, BOEM held multiple staff-level and Government-to-Government Tribal Consultations. This final rule will address feedback received from public comment and Tribal Consultations.

Statement of Need: This final rule will clarify BOEM's renewable energy regulations facilitating offshore renewable energy development in a manner that is safe, environmentally sound, and provides fair return to U.S. taxpayers. This action also helps meet commitments of Executive Order 14008, Tackling the Climate Crisis at Home and Abroad by supporting renewable energy production and in offshore waters.

Summary of Legal Basis: 43 U.S.C. 1337(p).

Timetable:

Action	Date	FR Cite
NPRM	01/30/23	88 FR 5968
NPRM Comment Period End.	03/31/23	

Action	Date	FR Cite
NPRM Comment Period Extension.	04/03/23	88 FR 19578
NPRM Comment Period Extension End.	05/01/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Tribal.

Agency Contact: Karen Thundiyil, Chief, Office of Regulations, Department of the Interior, Bureau of Ocean Energy Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 742–0970, *Email: karen.thundiyil@boem.gov.*

Related RIN: Merged with 1010–AD89, Merged with 1010–AD91

RIN: 1010–AE04

DOI—BOEM

139. Protection of Marine Archaeological Resources [1010–AE11]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: NHPA–54 U.S.C. 300101 *et seq.*

CFR Citation: 30 CFR 550.

Legal Deadline: None.

Abstract: This final rule will revise when lessees and operators would need to conduct archaeological surveys. It would clarify when operators would submit an archaeological report with their applications and clarify the source and extent of the data utilized.

Statement of Need: This final rule will revise when lessees and operators would need to conduct archaeological surveys. It would clarify when operators would submit an archaeological report with their applications and clarify the source and extent of the data utilized.

Summary of Legal Basis: 30 CFR 550.

Timetable:

Action	Date	FR Cite
NPRM	02/15/23	88 FR 9797
NPRM Comment Period End.	04/17/23	
Final Rule	05/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Peter Meffert, Regulatory Analyst, Department of the Interior, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1610, *Email: peter.meffert@boem.gov.*

RIN: 1010–AE11

DOI—BOEM

140. Risk Management and Financial Assurance for OCS Lease and Grant Obligations [1010–AE14]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: OCSLA–43 U.S.C. 1331 *et seq.*

CFR Citation: 30 CFR 550; 30 CFR 556.

Legal Deadline: None.

Abstract: This final rule will modify the evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement grant holders, and pipeline right-of-way grant holders may be required to provide bonds or other financial assurance, above the regulatorily prescribed amounts for base bonds, to ensure compliance with their Outer Continental Shelf obligations.

We held a Government-to-Government consultation with the Indian Tribal Nation during the development of the NPRM and expect to have another consultation on the final rule. This final rule will address feedback received from public comment period and Tribal consultations.

Statement of Need: This rule will modify the evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement grant holders, and pipeline right-of-way grant holders may be required to provide bonds or other financial assurance, above the regulatorily prescribed amounts for base bonds, to ensure compliance with their Outer Continental Shelf obligations.

Summary of Legal Basis: OCSLA—43 U.S.C. 1331 *et seq.*

Timetable:

Action	Date	FR Cite
NPRM	06/29/23	88 FR 42136
NPRM Comment Period Extension.	08/25/23	88 FR 58173
NPRM Comment Period End.	08/28/23	
NPRM Comment Period Extension End.	09/07/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Kelley Spence, Program Analyst, Department of the Interior, Bureau of Ocean Energy Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 948 298–7345, *Email: kelley.spence@boem.gov.*

Related RIN: Split from 1082–AA02

RIN: 1010–AE14

DOI—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE)

Proposed Rule Stage

141. Emergency Preparedness for Impoundments [1029–AC82]

Priority: Other Significant.

Legal Authority: 30 U.S.C. 1201

CFR Citation: 30 CFR 780; 30 CFR 784; 30 CFR 816; 30 CFR 817.

Legal Deadline: None.

Abstract: This proposed rule would incorporate certain aspects of the Federal Guidelines for Dam Safety (Federal Guidelines) into OSMRE's existing regulations. This proposed rule would relate to emergency preparedness for impounding structures and propose to include provisions for Emergency Action Plans (EAPs) and After-Action Reports (AARs) that are consistent with the Federal Guidelines. Also, OSMRE may add new provisions to the regulations explaining the EAP and AAR requirements and aligning the classification of impoundments with industry and other government agency standards.

Statement of Need: This proposed rule would incorporate certain aspects of the Federal Guidelines for Dam Safety (Federal Guidelines) into OSMRE's existing regulations. This proposed rule would relate to emergency preparedness for impounding structures and propose to include provisions for Emergency Action Plans (EAPs) and After-Action Reports (AARs) that are consistent with the Federal Guidelines. Also, OSMRE may add new provisions to the regulations explaining the EAP and AAR requirements and aligning the classification of impoundments with industry and other government agency standards.

Summary of Legal Basis: 30 U.S.C. 1201.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
NPRM Comment Period End.	02/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Khalia Boyd, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240, *Phone:* 202 208–2823, *Email: kboyd@osmre.gov.*

RIN: 1029–AC82

DOI—OSMRE

Final Rule Stage

142. Ten-Day Notices [1029–AC81]

Priority: Other Significant.
Legal Authority: Pub. L. 95–87; 30 U.S.C. 1211(c)(2)
CFR Citation: 30 CFR 733; 30 CFR 842.
Legal Deadline: None.
Abstract: The final rule would amend OSMRE's regulations on ten-day notices that went into effect on December 24, 2020. The final rule would amend the existing rules about when OSMRE sends ten-day notices to State regulatory authorities regarding possible SMCRA violations.
Statement of Need: The final rule would amend OSMRE's regulations on ten-day notices that went into effect on December 24, 2020. The final rule would amend the existing rules about when OSMRE sends ten-day notices to State regulatory authorities regarding possible Surface Mining Control and Reclamation Act violations.
Summary of Legal Basis: Public Law 95–87 and 30 U.S.C. 1211(c)(2).
Timetable:

Action	Date	FR Cite
NPRM	04/25/23	88 FR 24944
NPRM Comment Period End.	06/26/23	
Final Action	02/00/24	
Final Action Effective.	03/00/24	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: State.
Agency Contact: Khalia Boyd, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240, *Phone:* 202 208–2823, *Email: kboyd@osmre.gov.*
RIN: 1029–AC81

DOI—BUREAU OF RECLAMATION (RB)

Final Rule Stage

143. Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies [1006–AA58]

Priority: Other Significant.
Legal Authority: 43 U.S.C. 373
CFR Citation: 43 CFR 423.
Legal Deadline: None.
Abstract: The revisions to this rule clarify regulations that maintain law and order and protect persons and property on Bureau of Reclamation facilities, lands, and waterbodies. The rule revises existing definitions for the use of aircraft and the possession of firearms; updates regulations on camping, swimming, and winter recreation for the wide range of circumstances found across Bureau of Reclamation facilities, lands, and waterbodies; and clarifies the permitting of memorials and reburials on Bureau of Reclamation lands.
Statement of Need: This rule will revise existing definitions for the use of aircraft and the possession of firearms; update regulations on camping, swimming, and winter recreation for the wide range of circumstances found across Bureau of Reclamation facilities, lands, and waterbodies; and will clarify the permitting of memorials and reburials on Bureau of Reclamation lands.
Summary of Legal Basis: 43 U.S.C. 373.
Timetable:

Action	Date	FR Cite
NPRM	02/16/23	88 FR 10070
NPRM Comment Period End.	04/17/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
Agency Contact: Jill Nagode, Regulatory Contact, Department of the Interior, Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Building 67, Denver, CO 80225, *Phone:* 303 445–2055, *Email: jnagode@usbr.gov.*
RIN: 1006–AA58

DOI—BUREAU OF LAND MANAGEMENT (BLM)

Proposed Rule Stage

144. Closure and Restriction Orders [1004–AE89]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Legal Authority: 43 U.S.C. 1701 *et seq.;* 43 U.S.C. 315a; 16 U.S.C. 1281c; 16 U.S.C. 877 *et seq.;* 16 U.S.C. 4601–6a; 16 U.S.C. 1241 *et seq.;* 16 U.S.C. 7913; 16 U.S.C. 1338; . . .
CFR Citation: None.
Legal Deadline: None.
Abstract: The proposed rule would revise the visitor services regulations to enhance the BLM's ability to issue closure and restriction orders. The proposed rule would also make BLM's regulations more consistent with other Federal land management agencies' closure and restriction authorities.
Statement of Need: This proposed rule would allow the Bureau of Land Management (BLM) to better protect persons, property and public lands and resources by allowing the agency to close or restrict the use of public lands in a more timely manner. The rule would also make the BLM's regulations more consistent with other Federal land management agencies' closure and restriction authorities.
Summary of Legal Basis: 43 U.S.C. 1701 *et seq.,* 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 877 *et seq.,* 16 U.S.C. 4601–6a, 16 U.S.C. 1241 *et seq.,* 16 U.S.C. 7913, and 16 U.S.C. 1338.
Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
Agency Contact: Tom Heinlein, Assistant Director, National Landscape Conservation System, Department of the Interior, Bureau of Land Management, 760 Horizon Drive, Grand Junction, CO 81506, *Phone:* 970 256–4954, *Email: theinlein@blm.gov.*
RIN: 1004–AE89

DOI—BLM

145. Management and Protection of the National Petroleum Reserve in Alaska (Section 610 Review) [1004–AE95]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Legal Authority: Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 to 6508)
CFR Citation: 43 CFR subpart 2361.
Legal Deadline: None.
Abstract: This proposed rule would assure maximum protection of Special Areas in the NPR–A pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands Conservation Act, and other applicable authorities.
Statement of Need: The final rule will assure maximum protection of Special Areas in the NPR–A pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands

Conservation Act, and other applicable authorities.

Summary of Legal Basis: Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 to 6508).

Timetable:

Action	Date	FR Cite
NPRM	09/08/23	88 FR 62025
NPRM Comment Period End.	11/07/23	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Kyle W. Moorman, Division Chief for Regulatory Affairs and Directives, Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 527–2433, *Email: kmoorman@blm.gov.*

RIN: 1004–AE95

DOI—BLM

Final Rule Stage

146. Update of the Communications Uses Program, Right-of-Way Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way [1004–AE60]

Priority: Other Significant.

Legal Authority: 30 U.S.C. 185 and 189; 43 U.S.C. 1733; 43 U.S.C. 1740; 43 U.S.C. 1763

CFR Citation: 43 CFR 2800; 43 CFR 2860; 43 CFR 2880; 43 CFR 2920.

Legal Deadline: None.

Abstract: The BLM is proposing to amend its right-of-way regulations to improve access to broadband communications and update the cost recovery fee schedules for ROW work activities. Additionally, this rule will implement vegetation management requirements to address fire risk from and to power line ROWs on public lands and national forests.

Statement of Need: This proposed rule would address issues relating to (1) Idle iron by adding a definition of this term to clarify that it applies to idle wells and structures on active leases; (2) abandonment in place of subsea infrastructure by adding regulations addressing when BSEE may approve decommissioning-in-place instead of removal of certain subsea equipment; and (3) other operational considerations.

Summary of Legal Basis: 30 U.S.C. 185 and 189, 43 U.S.C. 1733, 43 U.S.C. 1740, and 43 U.S.C. 1763.

Timetable:

Action	Date	FR Cite
NPRM	11/07/22	87 FR 67306
NPRM Comment Period End.	01/06/23	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Agency Contact: Dominica VanKoten, Division Chief, Lands, HQ–35– (Lands, Realty, and Cadastral), Department of the Interior, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, NM 87508, *Phone:* 571 266–9585, *Email: dvankote@blm.gov.*

Related RIN: Merged with 1004–AE69

RIN: 1004–AE60

DOI—BLM

147. Rights-of-Way, Leasing and Operations for Renewable Energy [1004–AE78]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 30 U.S.C. ch. 23; 43 U.S.C. 1733; 43 U.S.C. 1740; 43 U.S.C. 1763; 30 U.S.C. 185 and 189; Pub. L. 109–58; Division Z, Pub. L. 116–260; E.O. 14008; . . .

CFR Citation: None.

Legal Deadline: None.

Abstract: The proposed rule would revise the BLM's regulations for rights-of-way, leasing, and operations related to activities associated with solar and wind energy development. The Energy Act of 2020 and section 207 of Executive Order 14008 prioritize the Department of the Interior's need to improve permitting activities and processes to facilitate increased renewable energy permitting and production on public lands.

Statement of Need: The principal purpose of these amendments is to facilitate responsible solar and wind energy development on public lands managed by the BLM. The rule will adjust acreage rents and capacity fees for solar and wind energy, provide the BLM with more flexibility in how it processes applications for solar and wind energy development inside designated leasing areas, and update agency criteria on prioritizing solar and wind applications. The rule will also make technical changes, corrections, and clarifications to the existing right-of-way regulations.

Summary of Legal Basis: 30 U.S.C. ch. 23, 43 U.S.C. 1733, 43 U.S.C. 1740, 43 U.S.C. 1763, 30 U.S.C. 185 and 189, Public Law 109–58 Division Z, Public Law 116–260, E.O. 14008.

Timetable:

Action	Date	FR Cite
NPRM	06/16/23	88 FR 39726
NPRM Comment Period End.	08/15/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

Agency Contact: Ben Gruber, Deputy Assistant Director, Energy, Minerals, and Realty Mgmt., Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 951 269–9548, *Email: begruber@blm.gov.*

RIN: 1004–AE78

DOI—BLM

148. Waste Prevention, Production Subject to Royalties, and Resource Conservation [1004–AE79]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1701 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 25 U.S.C. 396; E.O. 13990; E.O. 14008; . . .

CFR Citation: None.

Legal Deadline: None.

Abstract: This rule proposes updates to the BLM's existing rules governing the venting and flaring of natural gas (methane) from onshore Federal and Indian oil and gas leases. The rulemaking will address the priorities associated with Executive Order 14008 to address tackling the climate crisis. Per Executive Order 13990, the rule will address reducing methane emissions in the oil and gas sector.

Statement of Need: The final rule will ensure that companies do not waste valuable Federal mineral resources in their extraction processes and would further address the priorities associated with Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.''

Summary of Legal Basis: 30 U.S.C. 181 *et seq.,* 30 U.S.C. 1701 *et seq.,* 43 U.S.C. 1701 *et seq.,* 25 U.S.C. 396a *et seq.,* 25 U.S.C. 2101 *et seq.,* 25 U.S.C. 396, E.O. 13990, and E.O. 14008.

Timetable:

Action	Date	FR Cite
NPRM	11/30/22	87 FR 73588
NPRM Comment Period End.	01/30/23	

Action	Date	FR Cite
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Ben Gruber, Deputy Assistant Director, Energy, Minerals, and Realty Mgmt., Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 951 269–9548, *Email: begruber@blm.gov.*

RIN: 1004–AE79

DOI—BLM

149. Fluid Mineral Leases and Leasing Process [1004–AE80]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 to 359 *et seq.;* 43 U.S.C. 1701 *et seq.;* 30 U.S.C. 521 to 531 *et seq.*; 90 Stat. 1083 to 1092; 30 U.S.C. 1701 *et seq.;* 92 Stat. 2073 to 2075; Pub. L. 102–486; Pub. L. 109–58; 25 U.S.C. 396; 25 U.S.C. 396a–g; 25 U.S.C. 2101 to 2108; 30 U.S.C. 1201 *et seq.;* 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 4321 *et seq.;* E.O. 14008; . . .

CFR Citation: None.

Legal Deadline: None.

Abstract: The proposed rule would revise the BLM's oil and gas regulations to update fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production. The proposed rule would also update the BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including addressing impacts associated with fossil fuel activities and ensuring a fair return to taxpayers.

Statement of Need: This rule will revise the BLM's oil and gas regulations to update the fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production pursuant to the Inflation Reduction Act (Pub. L. 117–169). The rule will also update the BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including addressing impacts associated with fossil fuel activities and ensuring a fair return to taxpayers.

Summary of Legal Basis: 30 U.S.C. 181 *et seq.,* 30 U.S.C. 351 to 359 *et seq.,* 43 U.S.C. 1701 *et seq.,* 30 U.S.C. 521 to 531 *et seq.,* 90 Stat. 1083 to 1092, 30 U.S.C. 1701 *et seq.,* 92 Stat. 2073 to 2075, Public Law 102–486, Public Law 109–58, 25 U.S.C. 396, 25 U.S.C. 396a–g, 25 U.S.C. 2101 to 2108, 30 U.S.C. 1201 *et seq.,* 42 U.S.C. 7101 *et seq.,* 42 U.S.C. 4321 *et seq.,* and E.O. 14008.

Timetable:

Action	Date	FR Cite
NPRM	07/24/23	88 FR 47562
NPRM Comment Period End.	09/22/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Nick Douglas, Assistant Director, Energy, Minerals, and Realty Management Department of the Interior, Bureau of Land Management, 760 Horizon Drive, Grand Junction, CO 81506, *Phone:* 970 256–4918, *Email: ndouglas@blm.gov*.

Ben Gruber, Deputy Assistant Director, Energy, Minerals, and Realty Mgmt., Department of the Interior Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 951 269–9548, *Email: begruber@blm.gov*.

RIN: 1004–AE80

DOI—BLM

150. Conservation and Landscape Health (Section 610 Review) [1004–AE92]

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: 43 U.S.C. 1732(a)

CFR Citation: 43 CFR 6000; 43 CFR 1610.

Legal Deadline: None.

Abstract: The proposed rule would clarify and support the principles of multiple use and sustained yield in the management of the public lands, incorporating climate resiliency and restoration through conservation and preservation in the management of the public lands pursuant to the Federal Land Policy and Management Act and other relevant authorities. The proposed rule is within 43 CFR 6000 and would provide an overarching framework that would cover multiple resource areas to ensure land health and sustained yield.

Statement of Need: The principles of multiple use and sustained yield management govern the BLM's stewardship of America's public lands. This proposed rule interprets and implements a vital component of the BLM's multiple use and sustained yield mission: addressing landscape resilience and using restoration and conservation as tools to ensure sustainable and productive natural resources for future generations. Identifying tools, standards, and procedures to appropriately achieve sustained yield is particularly important to ensure that the BLM can pursue is multiple use mission and maintain sustained yield in the face of the challenges posed by climate change, drought, fire, land use changes, and other factors impacting the health of land, waters, and ecosystems. This proposed rule addresses those concerns, defines conservation, and provides an operational definition of sustained yield in the context of changing landscapes. This rule also provides a framework for decision-making to appropriately implement conservation, including by identifying best practices to conserve and restore lands and waters to desired conditions based on land health standards and best available science. These proposed regulations will promote restoration opportunities with significant public involvement, honor the Bureau's commitment to work closely with Tribes and other governmental entities, and respond more effectively to changing resource conditions and increasing demands on public lands and waters. Further, this rule will expand Areas of Critical Environmental Concern regulations to affirm statutory requirements.

Summary of Legal Basis: Federal Land Policy and Management Act (FLPMA) provides BLM authority for the protection of ecological values (section 102(8)), the preservation of certain lands in their natural condition (section 102(8)), and the establishment of fish and wildlife development and utilization as one of six principal or major uses of public lands (section 103(l)). These mandates in FLPMA provide BLM with general authority to conserve ecosystems across its 245 million acres of public lands. FLPMA section 302(a), provides: The Secretary shall manage the public lands under principles of multiple use and sustained yield . . . except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law 43 U.S.C. 1732(a) (emphasis added). The multiple use and sustained yield principles in section 102(a)(8) authorizes the BLM to implement the policies set forth in this rulemaking effort.

Alternatives: N/A.

Anticipated Cost and Benefits: TBD.

Risks: TBD.

Timetable:

Action	Date	FR Cite
NPRM	04/03/23	88 FR 19583
NPRM Comment Period End.	06/20/23	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Federalism: Undetermined.

Agency Contact: Brian St. George, Acting Assistant Director, Directorate of Resources and Planning, Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 239–3741, *Email: bstgeorge@blm.gov*.

RIN: 1004–AE92

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DEPARTMENT OF JUSTICE (DOJ)—FALL 2023

Statement of Regulatory Priorities

The mission of the Department of Justice is to uphold the rule of law, to keep our country safe, and to protect civil rights. In carrying out this mission, the Department is guided by the core values of integrity, fairness, and commitment to promoting the impartial administration of justice—including for those in historically underserved, vulnerable, or marginalized communities. Consistent with its mission and values, the Department is prioritizing activities that protect the public against foreign and domestic threats, strengthen enforcement of civil rights laws, defend against domestic and international terrorism, combat gun violence, prevent and control crime, and reform criminal justice systems. Because the Department of Justice is primarily a law enforcement agency, not a regulatory agency, it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

Regulatory action is, however, a significant aspect of the law enforcement mission of the Department. The regulatory priorities of the Department include initiatives in the areas of criminal justice reform, immigration, civil rights, and gun violence reduction, and are effectuated through rulemaking by the various components of the Department. These initiatives, as well as others important to components' accomplishing key law enforcement priorities, are summarized below.

In addition to the public participation and outreach efforts of the Department described below in the Civil Rights Division section, the Abstracts of various Justice rulemakings also include descriptions of the Department's efforts in these areas including: 1105–AB69 ''OVW Special Tribal Criminal Jurisdiction Reimbursement''; 1105–AB40 ''Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have not had a Prior In-Person Medical Evaluation''; 1117–AB60 ''Providing Controlled Substances to Ocean Vessels''; 1117–AB63 ''Termination of Registration Upon Discontinuation of Business or Change of Ownership''; 1117–AB69 ''Operation of Automated Dispensing Systems at Long Term Care Facilities by Hospital/Clinic Pharmacies''; 1117–AB72 ''Changes to a Prescription''; 1120–AB05 ''District of Columbia Educational Good Time Credit''; 1120–AB67 ''Use of Chemical Agents or Other Less-Than-Lethal Force in Immediate Use of Force Situations''; 1120–AB71 ''Inmate Discipline Program: Disciplinary Segregation and Prohibited Act Code Changes''; and 1121–AA89 ''Updating Office for Victims of Crime Programs Regulations.''

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

ATF issues regulations to enforce and implement federal laws relating to the manufacture, importation, sale, and other commerce in firearms and explosives. Such regulations are designed to promote the ATF mission to curb illegal traffic in, and criminal use of, firearms and explosives, and to assist state, local, Tribal, territorial, and other federal law enforcement agencies in reducing violent crime.

ATF will continue, as a priority during fiscal year 2024, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals.

The Department is undertaking a rulemaking to amend ATF's regulations to conform with the changes made by Congress in the Bipartisan Safer Communities Act (Pub. L. 117–159) and parts of the Consolidated Appropriations Act of 2022 (Pub. L. 117–109), which included the NICS Denial Notification Act of 2022 (RIN 1140–AA57). The Department has also proposed to amend ATF's regulations to further clarify what it means for a person to be ''engaged in the business'' of dealing in firearms, and to have the intent to ''predominantly earn a profit'' from the sale or disposition of firearms (RIN 1140–AA58). ATF is undertaking an amendment to 27 CFR part 555 to require that persons who store explosive materials annually notify the local authority that has jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, quantity, and location of each site where the explosive materials are being stored (RIN 1140–AA51).

Bureau of Prisons (BOP)

BOP issues regulations to enforce the Federal laws relating to its mission: to protect public safety by ensuring that federal offenders serve their sentences of imprisonment in facilities that are safe, humane, cost-efficient, and appropriately secure, and to provide reentry programming to ensure their successful return to the community.

The First Step Act (FSA) of 2018, Public Law 115–391, 132 Stat. 5194 (2018) has brought a host of regulatory changes for BOP. To date, BOP has successfully enacted FSA-related regulations (1) to enable eligible inmates to earn Time Credits towards prerelease custody or early transfer to supervised release, and (2) to modify the amount of Good Time Credit to which eligible inmates are entitled. BOP's next FSA-related regulatory measure involves publishing a Notice of Proposed Rulemaking (NPRM) titled the *Reservation of Funds for Reentry Under the First Step Act.* This rule proposes to implement a specific FSA provision requiring BOP to reserve a portion of the compensation inmates would otherwise receive for working to assist these inmates with costs associated with release from prison. BOP anticipates the NPRM's publication in the **Federal Register** by the end of 2023.

Another important BOP regulatory measure involving management of inmate funds is the Inmate Financial Responsibility Program (IFRP). On January 10, 2023, BOP published an NPRM titled *Inmate Financial Responsibility Program: Procedures,* which proposes to withhold a portion of inmate work pay and money received by outside sources in order to pay restitution obligations toward victims and satisfy other lawful obligations. Specifically, the rule proposes withholding 75% of all community-source deposits in inmates' commissary account; withholding 50% of pay for inmates in grades 1 through 4 of UNICOR; withholding 25% of pay for inmates in grade 5 of UNICOR and inmates receiving performance pay for institution work; removing two penalties for failure to participate in the program; and adding one penalty for an inmate's refusal to participate. BOP

continues to carefully review and thoughtfully consider the 1,300 public comments received in response to the NPRM.

In addition, BOP continues to actively pursue several proposed rules to update the inmate discipline program; revise technical sections of the regulation regarding filing of tort claims; clarify use of force policy for less-than-lethal munitions; and modify clinical guidelines related to infectious disease testing for affected inmates. Finally, BOP continues to explore procedural avenues to finalize interim final rules related to, for example, (1) exceptions to the filing requirements for certain administrative remedies, and (2) calculation of educational good time credit for eligible District of Columbia inmates.

Civil Rights Division (CRT)

CRT works to uphold the civil and constitutional rights of all persons in the United States, particularly some of the most vulnerable members of our society. Consistent with this mission, CRT plans to engage in five separate rulemakings on disability rights.

First, CRT plans to adopt technical standards for public entities' websites under title II of the Americans with Disabilities Act (ADA) to help public entities meet their existing ADA obligations to ensure their websites are accessible to people with disabilities (RIN 1190–AA79). The Department issued a Notice of Proposed Rulemaking on this topic in August 2023. To promote public engagement with the rulemaking, the Department also made available a fact sheet providing a plain language summary of the proposed rule. The fact sheet is intended to help the public get acquainted with the proposal so that the proposed rule feels more navigable and so that providing public comments feels more approachable. These resources were posted on the Department's *www.ada.gov* website with information about how to submit comments. They were also posted on a web page created by HHS's Administration for Community Living to track rulemakings implementing non-discrimination requirements protecting people with disabilities. CRT also held a number of listening sessions to provide an overview of the proposal and hear the perspectives of a variety of stakeholders including disability groups, State and local government groups, and others. Second, CRT plans to amend the current DOJ regulation under section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability in programs and activities conducted by an executive agency, to bring it up to date (RIN 1190–AA73). Third, CRT will propose standards that address the accessibility of medical diagnostic equipment under title II of the ADA (RIN 1190–AA78). Fourth, CRT intends to propose requirements for pedestrian facilities in the public right-of-way, such as sidewalks and crosswalks, covered by part A of title II of the ADA that are consistent with the Access Board's minimum Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way to help public entities meet their existing ADA obligations to make those facilities accessible (RIN 1190–AA77). Last, CRT plans to publish an advance notice of proposed rulemaking seeking public input on possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture in public entities and public accommodations' programs and services (RIN 1190–AA76).

Drug Enforcement Administration (DEA)

DEA is the agency primarily responsible for coordinating the drug law enforcement activities of the United States and also assisting in the implementation of the President's National Drug Control Strategy. DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended, collectively referred to as the Controlled Substances Act (CSA).

DEA's mission is to enforce the controlled substances laws and regulations of the United States and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacture, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the United States. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States.

Pursuant to its statutory authority, DEA intends to continue with the following priority regulation that appeared on the Fall 2022 Unified Agenda:

DEA published a Notice of Purposed Rulemaking (NPRM) on *Telemedicine Prescribing of Controlled Substances when the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation,* in March of 2023, and received a large volume of public comments. DEA then published a Temporary Rule on May 10 to extend the pandemic-era flexibilities through November 11, 2023. On October 10, 2023, DEA published a second Temporary Rule to further extend the pandemic-era flexibilities through December 31, 2024. DEA is considering a new NPRM to promulgate effective regulations responsive to the general public and industry concerns. DEA may propose a regulation that would authorize the issuance of registrations for telemedicine, and to prescribe the circumstances in which they may be obtained and used (RIN 1117–AB40).

DEA also intends to publish a proposed regulation to amend the reporting requirements found at 21 CFR 1310.05(b)(2) mandating notification to DEA of domestic transactions involving tableting and encapsulating machines 15-days before the seller ships the machine. The draft regulation also proposes to amend the definitions of a ''tableting machine'' and an ''encapsulating machine'' to include ''parts thereof.'' Finally, the draft regulation seeks to modernize customer verification requirements for transactions and proposes modifications to DEA Form 452 to improve tracking of transactions of tableting and encapsulating machines (RIN 1117–AB80).

In support of its regulatory function, DEA regularly engages with the registrant community, stakeholders, and the public at large. DEA launched ''Operation Engage'' for its field offices to connect and collaborate with the communities they serve through local partnerships to implement strategies and activities regarding drug use prevention and education as well as bridging public safety and public health efforts to help lower drug overdose deaths. DEA also routinely interacts and engages with registrants by developing programs and presenting topics of interest in webinar sessions, industry meetings, and conferences. These outreach events facilitate open dialogues with stakeholders and allow DEA an opportunity to better understand new and upcoming issues faced by the registrant community.

DEA also plans on improving and broadening community engagement and advancing participation of underserved communities by partnering with trusted members and leaders in the community, not-for-profit organizations, and patient advocacy groups, and by developing in-person and virtual listening sessions.

Based on the feedback, comments, and industry concerns received from registrants, stakeholders, and the public

during presentations and routine engagement, DEA makes informed decisions to evaluate the need to update existing regulations or identify new ones that should be proposed. DEA will continue to broaden its public engagement to support the development of future regulatory actions.

Executive Office for Immigration Review (EOIR)

EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings and appellate reviews. Immigration judges in EOIR's Office of the Chief Immigration Judge adjudicate cases to determine whether noncitizens should be removed from the United States or whether they are eligible for relief from removal. The Board of Immigration Appeals (BIA) has nationwide jurisdiction over appeals from decisions of immigration judges, as well as other matters specified by regulation. In addition, EOIR also conducts administrative hearings involving immigration-related employment practices, discrimination claims, and document fraud cases. Accordingly, the Department of Justice has a significant role in the administration of the nation's immigration laws. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

EOIR is working to revise and update the regulations to increase administrative efficiency, while also safeguarding fairness interests. Specifically, EOIR has issued a proposed rule that would restore longstanding procedures in place before a prior rule (RIN 1125–AA96), including administrative closure, and clarify and codify other established practices. The rule will promote the efficient and expeditious adjudication of cases, afford immigration judges and the Board flexibility to efficiently allocate their limited resources, and protect due process for parties before immigration judges and the Board.

EOIR and the Department of Homeland Security (DHS) are also drafting a joint proposed rule that would provide clarity and uniformity to DHS custody procedures and EOIR bond hearing procedures (RIN 1125–AB27). The Departments believe this rulemaking will help address litigation issues and resolve varying judicial interpretations of the existing custody and bond hearing procedures among Federal circuit courts.

Additionally, EOIR is developing several regulations related to the asylum system. For example, EOIR and DHS intend to propose joint rules to withdraw prior rules that created obstacles to asylum, such as RIN 1125–AB08, which proposes to rescind a pandemic-era rule that categorically barred asylum for individuals fleeing political, religious, or other persecution solely based on their passage through a country in which a communicable disease is prevalent, regardless of whether an individual was exposed to the disease or was vaccinated, and RIN 1125–AB22, which proposes to rescind or modify regulatory revisions made by a prior rule to procedures for asylum and withholding of removal.

Federal Bureau of Investigation (FBI)

The FBI is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to federal, state, local, tribal territorial, and international agencies and partners. Only in limited contexts does the FBI rely on rulemaking.

For example, the FBI drafted a proposed rule to establish the criteria for use by a designated entity in deciding fitness as described under the Child Protection Improvements Act (CPIA), 34 U.S.C. 40102, Public Law 115–141, div. S. title I, section 101(a)(1), Mar. 23, 2018, 132 Stat. 1123.

The CPIA requires that the Attorney General, by rule, establish the criteria for use by designated entities in making a determination of fitness described in subsection (b)(4) of the Act concerning whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and wellbeing of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity. Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 U.S.C. 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858f).

The FBI is also drafting rules to implement the Bipartisan Safer Communities Act of 2022 (BSCA), 28 U.S.C. 534, 34 U.S.C. 40901, and 34 U.S.C., Subt. IV, ch. 411, Refs. & Annos., Public Law 117–159, div A, title II, sections 12001(a) and 12004(h), June 25, 2022, 136 Stat. 1313 and the National Instant Criminal Background Check System (NICS) Denial Notification Act (NDNA) of 2022, 18 U.S.C. 921, 18 U.S.C. 925B through 925D, Public Law 117–103, div. W, title XI, sections 1101 through 1103, March 15, 2022, 136 Stat. 919.

In accordance with the BSCA, the FBI will propose regulatory amendments to include, but not be limited to: authorizing and establishing the process for federal firearm licensees (FFLs) to receive access to records of stolen firearms maintained in the FBI's National Crime Information Center to verify if a firearm offered for sale to the FFL has been reported stolen; authorizing, and establishing the process for, FFLs to use NICS for the purpose of voluntary background checks of certain current and/or prospective employees of the FFL; and establishing the process when NICS has been contacted for the prospective transfer of a firearm to a person under the age of 21. For NICS transactions involving persons under the age of 21, proposed regulation amendments will address, but may not be limited to, the BSCA provisions regarding: (A) the application of a delay, up to the tenth business day, if cause exists to further investigate a possibly disqualifying juvenile record; (B) the required collection (and any purge/retention) of residential address information submitted by an FFL so the FBI may comply with the expanded background checks of such persons; and (C) the process for conducting the expanded background checks to determine if certain entities where such persons reside (the state criminal history repository or juvenile justice information system, the state custodian of mental health adjudication records; and local law enforcement) have records establishing ''cause'' that such persons have possibly disqualifying juvenile records under 18 U.S.C., section 922(d).

The NDNA mandates that, when the FBI denies a firearm transfer during a NICS transaction, the Attorney General is to report various information about that denial to local law enforcement authorities in the state or tribe where a firearm was sought for transfer and, if different, the local law enforcement authorities of the state or tribe where the person resides. ''Local law enforcement authority'' is defined by the NDNA at 18 U.S.C., section 921(a).

Regulatory amendments will be drafted outlining the process for submitting, and the contents of, such denial notifications, including language similar to the BSCA, addressing the required collection (and purge/

retention) of a prospective transferee's residential address so the FBI may contact the proper local law enforcement authorities should the transaction be denied. Regulatory proposals based on the NDNA will also address denial notifications being sent to prosecution authorities in the jurisdiction where the firearm was sought and circumstances where authorities need to be updated that a person who was the subject of a denial notification has subsequently been determined to not be prohibited. Regulation proposals from the NDNA will also address the Attorney General's new, annual report to Congress concerning denial notifications, and related statistics, from the previous year.

DOJ—CIVIL RIGHTS DIVISION (CRT)

Proposed Rule Stage

151. Implementation of the ADA Amendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973) [1190–AA73]

Priority: Other Significant.

Legal Authority: Pub. L. 110–325; 29 U.S.C. 794 (sec. 504 of the Rehab. Act of 1973); E.O. 12250 (45 FR 72855)

CFR Citation: 28 CFR 39.

Legal Deadline: None.

Abstract: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability in programs and activities conducted by an Executive agency. The Department plans to revise its 504 Federally conducted regulation at 28 CFR part 39 to incorporate amendments to the statute, including the changes in the meaning and interpretation of the applicable definition of disability required by the ADA Amendments Act of 2008, Public Law 110–325, 122 Stat. 3553 (Sep. 25, 2008); incorporate requirements and limitations stemming from judicial decisions; and make other non-substantive clarifying edits, including updating outdated terminology and references.

Statement of Need: This rule is necessary to bring the Department's prior section 504 Federally conducted regulation, which has not been updated in three decades, into compliance with judicial decisions establishing rights and limitations under section 504, as well as statutory amendments to the Rehabilitation Act, including the new definition of disability provided by the ADA Amendments Act of 2008, which became effective on January 1, 2009. Additionally, following the passage of the Americans with Disabilities Act (ADA), amendments to the Rehabilitation Act sought to ensure that the same precepts and values embedded in the ADA were also reflected in the Rehabilitation Act. To ensure the intended parity between the two laws, it is also necessary to update the Federally conducted regulation to align it with the relevant provisions of title II of the ADA. An updated Federally conducted regulation would consolidate the existing section 504 requirements in one place for easy reference.

Summary of Legal Basis: The summary of the legal basis of authority for this regulation is set forth above in the abstract.

Alternatives: There are no appropriate alternatives to issuing this NPRM since it implements requirements and limitations arising from the statute and judicial decisions.

Anticipated Cost and Benefits: Because the NPRM would incorporate existing legal requirements and limitations in the Department's section 504 Federally conducted regulation, the Department does not anticipate any costs from this rule.

Risks: Failure to update the Department's section 504 Federally conducted regulation to conform to legal requirements and limitations provided under the statute and judicial decisions will interfere with the Department's ability to meet its non-discrimination requirements under section 504.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	
NPRM Comment Period End.	01/00/25	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Additional Information: Transferred from RIN 1190–AA60.

Agency Contact: Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307–0663.

RIN: 1190–AA73

DOJ—CRT

152. Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way [1190–AA77]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 12134(a); 42 U.S.C. 12134(c)

CFR Citation: 28 CFR 35.

Legal Deadline: None.

Abstract: The Department of Justice anticipates issuing a Notice of Proposed Rulemaking that would establish accessibility requirements to help public entities meet their existing Americans with Disabilities Act (ADA) obligations to ensure that sidewalks and other pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. The Architectural and Transportation Barriers Compliance Board (Access Board) has issued accessibility guidelines for pedestrian facilities in the public right-of-way, and the Department of Justice is required under the ADA to promulgate regulations that include standards that are consistent with the Access Board's minimum guidelines.

Statement of Need: This rule is necessary to help public entities meet their existing ADA obligations to ensure that pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. The Access Board intends to issue minimum accessibility guidelines for pedestrian facilities in the public right-of-way, and the ADA requires the Department of Justice to include standards in its regulations implementing part A of title II of the ADA that are consistent with the minimum ADA guidelines issued by the Access Board. Accordingly, the Department of Justice intends to propose requirements for pedestrian facilities covered by part A of title II of the ADA that are consistent with the Access Board's minimum Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way. These requirements would help ensure that people with disabilities have access to sidewalks, curb ramps, pedestrian street crossings, and other pedestrian facilities in the public right-of-way.

Summary of Legal Basis: The summary of the legal basis for this regulation is set forth in the above abstract.

Alternatives: There are no appropriate alternatives to issuing this NPRM because the ADA requires the Department of Justice to include standards in its regulations implementing part A of title II of the

ADA that are consistent with the minimum ADA guidelines issued by the Access Board. The Access Board's accessibility guidelines will only become binding when the Department of Justice adopts them as legally enforceable requirements through rulemaking.

Anticipated Cost and Benefits: The Department anticipates costs to State and local governments given that this rule would require that pedestrian facilities in the public right-of-way comply with the Department's accessibility requirements under part A of title II of the ADA. The Department also anticipates significant benefits to people with disabilities, who would obtain greater access to sidewalks and other pedestrian facilities in the public right-of-way.

Risks: Failure to adopt requirements for pedestrian facilities covered by part A of title II of the ADA that are consistent with the Access Board's minimum Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way would mean that such Access Board guidelines would remain nonbinding and unenforceable. It would also mean that the Department would not be complying with its obligation to ensure that the standards in its regulations are consistent with the minimum ADA guidelines issued by the Access Board.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307–0663.

RIN: 1190–AA77

DOJ—CRT

153. Nondiscrimination on the Basis of Disability by State and Local Governments: Medical Diagnostic Equipment [1190–AA78]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 12101 *et seq.*

CFR Citation: 28 CFR 35.

Legal Deadline: None.

Abstract: Title II of the Americans with Disabilities Act (ADA) requires State and local governments to provide services, programs, and activities in a manner that is accessible to people with disabilities. The Department will seek public comment on proposed changes to its regulations to adopt the U.S. Architectural and Transportation Barriers Compliance Board's (Access Board) Standards for Medical Diagnostic Equipment (MDE) to ensure that MDE is accessible to persons with disabilities in their participation in or benefit of services, programs, and activities provided by public entities. The Department previously announced that it intended to issue an ANPRM, titled Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture (RIN 1190–AA76) addressing possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture generally. However, given the specialized nature of MDE, the Department has decided to publish a separate NPRM that addresses the accessibility of MDE.

Statement of Need: MDE that is accessible to individuals with disabilities is often critical to a public entity's ability to provide an individual with a disability with equal access to its health care services, programs, and activities. The Department's ADA regulations contain the ADA Standards for Accessible Design (the ADA Standards), which include accessibility standards for some types of fixed or built-in equipment and furniture. However, there are no specific provisions in the ADA Standards or the ADA regulations explicitly addressing the accessibility of MDE. While manufacturers have begun to offer MDE that is more accessible to and usable by people with disabilities and the Department has sought to ensure people with disabilities have equal access to medical care under the ADA's general regulatory provisions through enforcement and the issuance of technical assistance, the Department recognizes that more specific standards are necessary to guarantee full and equal access to health care services, programs, and activities. This rule is necessary to ensure that inaccessible MDE does not prevent people with disabilities from accessing title II entities' services, programs, and activities.

Summary of Legal Basis: The summary of the legal basis for this regulation is set forth in the above abstract.

Alternatives: There are no appropriate alternatives to issuing this NPRM. The Access Board has issued standards on MDE, but these standards only become legally enforceable under the ADA when the Department adopts them through a rulemaking. Alternatively, the Department could create its own technical standards for MDE for which the Access Board does not adopt guidelines and implement them through a rulemaking.

Anticipated Cost and Benefits: The Department anticipates costs to covered entities (*i.e.,* State and local governments). Entities may need to acquire new MDE to meet technical standards that the Department includes in its regulations. The Department also anticipates significant benefits to people with disabilities, who may obtain greater access to public entities' services, programs, and activities, which may improve their health or potentially save their lives.

Risks: Failure to adopt technical standards to ensure that people with disabilities have access to MDE in public entities' programs, services, and activities will prevent people with disabilities from having the full and equal access to which they are entitled. The health of people with disabilities may suffer as a result of unequal access to medical care.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307–0663.

Related RIN: Split from 1190–AA76

RIN: 1190–AA78

DOJ—CRT

Final Rule Stage

154. Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities [1190–AA79]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 12101 *et seq.*

CFR Citation: 28 CFR 35.

Legal Deadline: None.

Abstract: The Americans with Disabilities Act (ADA) states that ''no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.'' 42 U.S.C. 12132. However, many public entities' (*i.e.,* State and local governments') websites and mobile apps fail to incorporate or activate features that enable users with disabilities to access the public entity's services, programs, and activities. The Department published a Notice of Proposed Rulemaking (NPRM) proposing to amend its title II ADA regulation to provide technical standards to assist public entities in complying with their existing obligations to make their websites and mobile apps accessible to individuals with disabilities. The Department is working to issue a final regulation on this topic.

Statement of Need: Just as steps exclude people who use wheelchairs from a building, inaccessible websites or mobile apps can exclude people with a range of disabilities from accessing critical State and local government services, programs, and activities. The Department is proposing technical requirements to provide concrete standards to public entities on how to fulfill their obligations under title II to provide access to all of their services, programs, and activities that are offered via the web or mobile apps. The Department believes the requirements described in this rule are necessary to ensure the equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities as set forth in the ADA. 42 U.S.C. 12101(a)(7). This is particularly necessary now that public entities increasingly rely on the web and mobile apps to provide their services, programs, and activities.

Summary of Legal Basis: The summary of the legal basis for this regulation is set forth in the above abstract.

Alternatives: There are no appropriate alternatives to issuing this rule. In the NPRM, the Department discussed various regulatory proposals that would ensure full access to websites and mobile apps of State and local governments and solicited public comments on these proposals. The Department will continue to evaluate these proposals as it works to issue a final regulation.

Anticipated Cost and Benefits: The Department anticipates that this rule will be economically significant (that is, that the rule will have an annual effect on the economy of $200 million or more, or adversely affect in a material way the economy, a sector of the economy, the environment, public health or safety, or State, local or tribal governments or communities). However, the Department believes that revising its title II rule to clarify the obligations of State and local governments to provide accessible websites and mobile apps will significantly increase equal access by providing citizens with disabilities the opportunity to participate in, and benefit from, State and local government services, programs, and activities. It will also ensure that individuals with disabilities have access to important services and information that are provided over the web or through mobile apps, such as benefits applications and emergency information. In drafting its NPRM, the Department attempted to minimize the compliance costs to State and local governments while maximizing the benefits of compliance to persons with disabilities and the Department will consider public comments it received on this issue when promulgating its final rule.

Risks: If the Department does not revise its ADA title II regulations to address website and mobile app accessibility, persons with disabilities in many communities will continue to be unable to access their State and local governments' services, programs, and activities in the same manner as citizens without disabilities, and in some cases persons with disabilities will not be able to access those services at all. Furthermore, State and local governments will not have specific information about how to meet their ADA obligations with respect to website and mobile app accessibility.

Timetable:

Action	Date	FR Cite
NPRM	08/04/23	88 FR 51948
NPRM Comment Period End.	10/03/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Local, State.

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RIN: 1190–AA79

DOJ—DRUG ENFORCEMENT ADMINISTRATION (DEA)

Proposed Rule Stage

155. Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation [1117–AB40]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 831(h); 21 U.S.C. 802(54); Pub. L. 115–271, sec. 3232

CFR Citation: 21 CFR 1301.

Legal Deadline: Final, Statutory, October 24, 2019.

Abstract: The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (the Act) (Pub. L. 110–425) was enacted on October 15, 2008, and amended the Controlled Substances Act by adding various provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. Among other things, the Act required an in-person medical evaluation as a prerequisite to prescribing or otherwise dispensing controlled substances by means of the internet, except in the case of practitioners engaged in the practice of telemedicine. The definition of the ''practice of telemedicine'' includes seven distinct categories that involve circumstances in which the prescribing practitioner might be unable to satisfy the Act's in-person medical evaluation requirement yet nonetheless has sufficient medical information to prescribe a controlled substance for a legitimate medical purpose in the usual course of professional practice. One specific category within the Act's definition of the ''practice of telemedicine'' includes ''a practitioner who has obtained from the [DEA Administrator] a special registration

under [21 U.S.C. 831(h)].'' 21 U.S.C. 802(54)(E). The Act also specifies certain criteria that the DEA must consider when evaluating an application for such a registration. However, the Act contemplates that the DEA must issue regulations to effectuate this special registration provision.

After publishing an NPRM on March 1, 2023, and in response to the large volume of comments received, DEA has since published a Notice of Meeting to invite all interested persons, including medical practitioners, patients, pharmacy professionals, industry members, law enforcement, stakeholders, community leaders, and other third parties, to participate in listening sessions held on September 12 and 13, 2023. The additional feedback received will assist DEA in potential rulemaking.

Statement of Need: In light of the information and feedback received in public comments to the NPRM published on March 1, 2023, DEA is considering a new NPRM on Telemedicine Prescribing of Controlled Substances when the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation in order to promulgate effective regulations responsive to the general public and industry concerns.

Summary of Legal Basis: DEA implements and enforces the CSA and the Controlled Substances Import and Export Act, (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822. The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA. 21 U.S.C. 871(b), 958(f).

Alternatives: DEA is considering various alternatives, particularly the proposed requirements outlined in the March 1, 2023 NPRM.

Anticipated Cost and Benefits: DEA anticipates this rule will not be economically significant (that is, that the rule will not have an annual effect on the economy of $200 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities). DEA believes the rule will reduce the cost of providing and receiving medical care, increasing access, particularly for those patients where an in- person medical evaluation is difficult, such as patients in rural areas and with disabilities.

Risks: Failing to issue a rule on telemedicine would interfere with DEA's mission to prevent, detect, and investigate the diversion of controlled pharmaceuticals and listed chemicals from legitimate sources while ensuring an adequate and uninterrupted supply for legitimate medical, commercial, and scientific needs.

Timetable:

Action	Date	FR Cite
NPRM	03/01/23	88 FR 12875
NPRM Comment Period End.	03/31/23	
Temporary Rule	05/10/23	88 FR 30037
Temporary Rule Effective.	05/11/23	
Second Temporary Rule.	10/10/23	88 FR 69879
Second Temporary Rule Effective.	11/11/23	
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information: DEA Docket number 407.

URL For More Information: DPW@dea.gov.

URL For Public Comments: www.regulations.gov.

Agency Contact: Scott A. Brinks, Section Chief, Regulatory Drafting and Support Section, Diversion Control Division, Department of Justice, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, *Phone:* 571 362–8209, *Email: scott.a.brinks@dea.gov*.

RIN: 1117–AB40

DOJ—DEA

156. Import/Export and Domestic Transactions of Tableting and Encapsulating Machines [1117–AB80]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 802; 21 U.S.C. 821; 21 U.S.C. 822; 21 U.S.C. 827; 21 U.S.C. 830; 21 U.S.C. 871; 21 U.S.C. 951

CFR Citation: 21 CFR 1300.02; 21 CFR 1310.05(b)(2); 21 CFR 1310.07.

Legal Deadline: None.

Abstract: This regulation would amend the reporting requirements found at 21 CFR 1310.05(b)(2) mandating notification to DEA of domestic transactions involving tableting and encapsulating machines 15-days before the seller ships the machine. The draft regulation also would amend the definitions of a tableting machine and an encapsulating machine to include parts thereof. Finally, the draft regulation seeks to modernize customer verification requirements for transactions and proposes modifications to DEA Form 452 to improve tracking of transactions of tableting and encapsulating machines.

Statement of Need: In order to combat the opioid epidemic currently fueled by counterfeit pills, it is necessary for DEA to amend the reporting requirements for all imports, exports and domestic transactions involving tableting and encapsulating machines and their parts. The proposed amendments to Form 452 are intended to capture more details about all transactions to allow DEA to closely monitor these machines and parts as they move throughout the United States. Additionally, this amended rule proposes to modify the verification methods for regulated persons transacting tableting and encapsulating machines, to reflect modern technological methods (*e.g.,* internet search). The proposed rule amendments will minimize the diversion of tableting and encapsulating machines which will reduce the illegal manufacturing of illicit drugs.

Summary of Legal Basis: DEA implements and enforces the CSA and the Controlled Substances Import and Export Act, (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with

DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822. The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA. 21 U.S.C. 871(b), 958(f).

Alternatives: There are no appropriate alternatives to issuing this NPRM. This NPRM is being issued in accordance with statutory requirements.

Anticipated Cost and Benefits: DEA anticipates this rule will not be economically significant (that is, that the rule will not have an annual effect on the economy of $200 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities). DEA believes the rule will reduce the time necessary to properly complete and process the required forms for import and export of tabulation and encapsulation machines, reducing delays, while increasing the number of submissions. Any change to cost is expected to be de minimis.

Risks: If this rule is not amended, tableting and encapsulating machines that enter U.S. ports have a greater chance of being diverted and used to illegally manufacture illicit drugs.

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: DEA Docket number 739.

URL For More Information: DPW@dea.gov.

URL For Public Comments: http://www.regulations.gov.

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RIN: 1117–AB80

DOJ—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR)

Proposed Rule Stage

157. Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations [1125–AB13]

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1101(a)(42); 8 U.S.C. 1158; 8 U.S.C. 1225; 8 U.S.C. 1231 and 1231 note; Executive Order 14010, 86 FR 8267 (Feb. 2, 2021)

CFR Citation: 8 CFR 208; 8 CFR 235; 8 CFR 244; 8 CFR 1208; 8 CFR 1244.

Legal Deadline: None.

Abstract: This rule proposes to amend Department of Homeland Security (DHS) and Department of Justice (DOJ) (collectively, ''the Departments'') regulations that govern eligibility for asylum and withholding of removal. The amendments focus on portions of the regulations that address the definitions of membership in a particular social group and the interpretation of several other elements of eligibility for asylum that are often determinative in particular social group claims, including the requirements of a failure of State protection and determinations about whether persecution is on account of a protected ground. The rule will also propose to republish, modify or rescind portions of the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42).

This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a particular social group.

Statement of Need: This rule provides guidance on a number of key interpretive issues of the refugee definition used by adjudicators deciding asylum and withholding of removal (withholding) claims. The interpretive issues include whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This rule will aid in the adjudication of claims made by applicants whose claims fall outside of the rubric of the protected grounds of race, religion, nationality, or political opinion. One example of such claims that often fall within the particular social group ground concerns people who have suffered or fear domestic violence. This rule is expected to consolidate issues raised in a proposed rule in 2000 and to address issues that have developed since the publication of the proposed rule. This rule should provide greater stability and clarity in this important area of the law. This rule will also provide guidance to the following adjudicators: USCIS asylum officers, DOJ Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals.

Furthermore, on February 2, 2021, President Biden issued Executive Order 14010 that directs DOJ and DHS [to] promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a ''particular social group,'' as that term is used in 8 U.S.C. 1101(a)(42)(A), as derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Summary of Legal Basis: The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin ''who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' Section 101(a)(42) of the Immigration and Nationality Act.

Alternatives: Because this rulemaking is mandated by executive order, there are no feasible alternatives at this time.

Anticipated Cost and Benefits: DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

Risks: Without this rulemaking, the circumstances by which a person is considered a member of a particular social group will continue to be subject to judicial and agency interpretation, which may differ by circuit.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: RIN 1125–AB14 ''Procedures for Asylum and

Withholding of Removal, Credible Fear and Reasonable Fear Review'' has been consolidated into this RIN.

URL For More Information: http://www.regulations.gov.

URL For Public Comments: http://www.regulations.gov.

Agency Contact: Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Department of Justice, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, *Phone:* 703 305–0289, *Email: pao.eoir@usdoj.gov.*

Related RIN: Related to 1125–AA94, Related to 1615–AC65, Related to 1615–AC42

RIN: 1125–AB13

DOJ—EOIR

158. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure [1125–AB18]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1154–1155; 8 U.S.C. 1158; 8 U.S.C. 1182; 8 U.S.C. 1226; 8 U.S.C. 1229; 8 U.S.C. 1229a; 8 U.S.C. 1229b; 8 U.S.C. 1229c; 8 U.S.C. 1231; 8 U.S.C. 1254a; 8 U.S.C. 1255; 8 U.S.C. 1324d; 8 U.S.C. 1330; 8 U.S.C. 1361–1362; 28 U.S.C. 509–510; 28 U.S.C. 1746; sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953, Comp. p. 1002; sec. 203 of Pub. L. 105–100, 111 Stat. 2196–200; secs. 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; sec. 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328

CFR Citation: 8 CFR 1003; 8 CFR 1239; 8 CFR 1240; . . .

Legal Deadline: None.

Abstract: On December 16, 2020, by a rule titled Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure (RIN 1125–AA96) the Department of Justice (Department) amended its regulations regarding finality of case disposition at both the immigration court and appellate levels. The Department is planning to modify or rescind those regulations and to clarify the authority of immigration judges and the Board of Immigration Appeals (BIA) to administratively close, terminate, dismiss, and sua sponte reopen and reconsider a case.

Statement of Need: On December 16, 2020, the Department amended the regulations related to processing of appeals and EOIR adjudicator authority to administratively close cases. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (RIN 1125–AA96). The Department has reconsidered its position on those matters and proposed to revise the regulations accordingly and make other related amendments. This proposed rule will clarify immigration judge and the Board authority, including clarifying general authority to administratively close, terminate, or dismiss a case under certain circumstances and the authority to sua sponte reopen and reconsider cases. The proposed rule also revises Board of Immigration Appeals standards involving adjudication timelines, briefing schedules, self-certification, remands, background checks, administrative notice, and voluntary departure. Moreover, the proposed rule rescinds the EOIR Director's authority to issue decisions in certain cases, rescinds procedures for immigration judges to certify cases for quality assurance, and revises procedures for background checks, remand procedures for adjudication of voluntary departure, and for the forwarding of the record on appeal, as well as other minor revisions. The Department believes that this proposed rule is needed to provide guidance to EOIR adjudicators about the necessary or appropriate exercise of their general authorities to promote fairness and efficiency in proceedings.

Summary of Legal Basis: The Attorney General has general authority under 8 U.S.C. 1103(g) to establish regulations related to the immigration and naturalization of noncitizens. Thus, this proposed rule utilizes such authority to propose revisions to the regulations regarding administrative determinations in immigration proceedings and the authorities of EOIR adjudicators.

Alternatives: The December 2020 rule, 85 FR 81588 (Dec. 16, 2020), was enjoined nationwide in March 2021. *Nat'l Immigrant Just. Ctr. et al.,* v. *EOIR et al.,* 21–CV–0056 (D.D.C. Jan 14, 2021). Unless the Department relies on litigation, there are no feasible alternatives to revising the regulations. Relying on litigation could be extremely time consuming and may introduce confusion as to whether the regulation is in effect. Thus, the Department considers this alternative to be an inadequate and inadvisable course of action.

Anticipated Cost and Benefits: The Department is largely reinstating the briefing schedules and other appellate procedures that the December 2020 rule revised. As stated in the December 2020 rule, 85 FR at 81650, the basic briefing procedures have remained across rules; thus, the Department believes the costs to the public will be negligible, if any, given that costs will revert back to those established for decades prior to the December 2020 rule. The proposed rule imposes no new additional costs, as much of the proposed rule involves internal case processing. For those provisions that constitute more than simple internal case processing measures, such as the amendments to the EOIR adjudicator's administrative closure and termination authority, they likewise would not impose significant costs to the public. Indeed, such measures would generally reduce costs, as they facilitate and reintroduce various mechanisms for fair, efficient case processing.

Risks: Without this rulemaking, the regulations will remain enjoined pending litigation (as described in the Alternatives section). This is inadvisable, as litigation typically takes an inordinate time to conclude. The Department strongly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/08/23	88 FR 62242
NPRM Comment Period End.	11/07/23	
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information: Related to EOIR Docket No. 19–0022.

URL For More Information: http://www.regulations.gov.

URL For Public Comments: http://www.regulations.gov.

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Related RIN: Related to 1125–AA96

RIN: 1125–AB18

DOJ—EOIR

159. Hearing Requirements and Application Procedures for Asylum and Related Protection [1125–AB22]

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1103(g); 8 U.S.C. 1158; 8 U.S.C. 1229a

CFR Citation: 8 CFR 1208.13; 8 CFR 1208.14; 8 CFR 1240.11.

Legal Deadline: None.

Abstract: On December 16, 2020, by the rule titled Procedures for Asylum and Withholding of Removal (RIN 1125-

AA93) the Department of Justice (Department) amended the regulations governing the adjudication of applications for asylum and related protection before EOIR, including requirements for filing a complete application and consequences for filing an incomplete application, filing and adjudication timelines for asylum and related protection in certain proceedings before EOIR, and amendments related to the information an immigration judge may consider when adjudicating applications for asylum and related protection. To revise the regulations related to EOIR adjudicatory procedures for asylum and related protection, the Department initially considered two separate rulemakings to generally require immigration judges to hold evidentiary hearings for asylum and related protection before adjudicating such applications (RIN 1125–AB22) and to reconsider the provisions that focus on the filing and adjudication of such applications (RIN 1125–AB15). After determining that these regulatory actions both relate to the procedures for adjudicating applications for asylum and related protection, the Department has decided to combine the two regulatory actions into a single rulemaking under RIN 1125–AB22 to rescind or modify the regulatory revisions made by Procedures for Asylum and Withholding of Removal (RIN 1125–AA93) and clarify that immigration judges must generally conduct an evidentiary hearing prior to adjudicating an application for asylum or related protection, consistent with *Matter of E–F–H–L–,* 26 I&N Dec. 319 (BIA 2014).

Statement of Need: This proposed rule will revise the regulations related to adjudicatory procedures for asylum and withholding of removal, including changes to asylum evidentiary hearings and pretermission of such applications. On December 16, 2020, the Department amended the regulations governing asylum and withholding of removal, including changes to what must be included with an application for it to be considered complete and the consequences of filing an incomplete application, and changes related to the 180-day asylum adjudications clock. Procedures for Asylum and Withholding of Removal, 85 FR 81698 (RIN 1125–AA93). In light of Executive Orders 14010 and 14012, 86 FR 8267 (Feb. 2, 2021) and 86 FR 8277 (Feb. 2, 2021), the Department reconsidered its position on those matters and now issues this proposed rule to revise the regulations accordingly.

Summary of Legal Basis: The Attorney General has general authority under 8 U.S.C. 1103(g) to establish regulations related to the immigration and naturalization of noncitizens. More specifically, under 8 U.S.C. 1158(d)(5)(B), the Attorney General has authority to provide by regulation additional conditions and limitations consistent with the INA for the consideration of asylum applications. Thus, this proposed rule utilizes such authority to propose revisions to the regulations related to EOIR adjudicatory procedures for asylum and withholding of removal pursuant, in part, to 8 U.S.C. 1229a(c)(4)(B).

Alternatives: The December 2020 rule, 85 FR 81698 (Dec. 16, 2020), was enjoined nationwide in January 2021. *See Nat'l Immigrant Just. Ctr. et al.,* v. *EOIR et al.,* 21–CV–0056 (D.D.C. Jan 14, 2021). Unless the Department relies on litigation, there are no feasible alternatives to revising the regulations. Relying on litigation could be extremely time consuming and may introduce confusion as to whether the regulation is in effect. Additionally, without this proposed rule, the Department would have to rely on an uncertain legal and procedural landscape related to evidentiary hearings and pretermission. Thus, the Department considers this alternative to be an inadequate and inadvisable course of action.

Anticipated Cost and Benefits: The Department believes this proposed rule will not be economically significant. This proposed rule imposes no new additional costs to the Department or to respondents: respondents have always been required to submit complete asylum applications in order to have them adjudicated, and immigration judges have always maintained the authority to set deadlines. In addition, this proposed rule proposes no new fees. Additionally, evidentiary hearings for asylum and related protection are generally standard practice. Thus, the Department believes that the costs to the public will be negligible. Any new minimal cost would be limited to the cost of the public familiarizing itself with the proposed rule, although, as previously stated, the proposed rule restores most of the regulatory language to that which was in effect before the December 2020 rule. Further, an immigration judge's ability to set filing deadlines is already established by regulation, and filing deadlines for both applications and supporting documents are already well-established aspects of immigration court proceedings guided by regulations and the Office of the Chief Immigration Judge Practice Manual. Thus, the Department expects little in the proposed rule to require extensive familiarization.

Risks: Without this rulemaking, the regulations will remain enjoined pending litigation (as described in the Alternatives section). This is inadvisable, as litigation is unpredictable and often takes a long time to conclude. The Department strongly prefers proactively addressing the regulations through this proposed rule. Additionally, without this rulemaking, there will be a lack of clarity as to whether asylum hearings on the merits are a general practice or whether asylum applicants are generally entitled to such hearings.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information: Former RIN 1125–AB15 merged into this rulemaking.

URL For More Information: http://regulations.gov.

URL For Public Comments: http://regulations.gov.

Agency Contact: Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Department of Justice, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, *Phone:* 703 305–0289, *Email: pao.eoir@usdoj.gov.*

RIN: 1125–AB22

DOJ—EOIR

160. Clarifying and Revising Custody Determination Procedures for Noncitizens Subject to Discretionary Detention (INA 236(a)/8 U.S.C. 1226 Detention) [1125–AB27]

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1226; . . .

CFR Citation: 8 CFR 1003.19; 8 CFR 1236.1; 8 CFR 236.1; 8 CFR 236.7; 8 CFR 1236.7; 8 CFR 1240.10; 8 CFR 1003.8; . . .

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (collectively, the Departments) are planning to amend the regulations that govern detention and release determinations for noncitizens subject to the custody provisions in section 236 of the Immigration and Nationality Act (Act), 8 U.S.C. 1226(a). The goal of the proposed regulation

would be to clarify the scope and applicability of section 236(a) of the Act, 8 U.S.C. 1226(a), and address the burden and standard of proof for continued detention at initial custody determinations and any custody redetermination hearings. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Statement of Need: The proposed rule is needed to bring clarity and uniformity to the procedures governing ICE initial custody decisions and IJ bond hearings for noncitizens subject to discretionary detention under INA 236(a). This rule will also revise the procedures for determining whether a noncitizen is properly subject to INA 236(c) detention. Additionally, this rule will clarify the detention authority that applies during the petition for review process for certain noncitizens seeking judicial review of their removal orders. Lastly, the proposed rule will make organizational changes to the structure of the EOIR regulations governing custody redetermination hearings and address outdated provisions in the Departments' custody and bond regulations. The Departments believe this rulemaking will help address issues that frequently arise in litigation brought by noncitizens challenging the Departments' existing custody and bond hearing procedures and it may also help to resolve differing interpretations among Federal circuit courts.

Summary of Legal Basis: The Attorney General has general authority under 8 U.S.C. 1103(g) to establish regulations related to the immigration and naturalization of noncitizens. More specifically, under section 441 of the Homeland Security Act (HSA), the Attorney General transferred the authority to oversee broad immigration enforcement functions, including detention and removal, to DHS. Additionally, pursuant to HSA 1101(a), the Attorney General retains and shares with DHS the authority to detain or authorize bond for noncitizens under INA 236(a).

Alternatives: Unless the Departments rely on piecemeal litigation to resolve the various issues that arise with respect to the existing custody and bond hearing procedures, there are no feasible alternatives to this rulemaking.

Anticipated Cost and Benefits: DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

Risks: Without this rulemaking, the procedures and standards governing ICE custody procedures and IJ bond hearings will continue to be subject to litigation and judicial interpretation which results in a lack of nationwide uniformity. Moreover, the Departments are concerned that the current regulatory framework risk allocating ICE's scarce detention resources on noncitizens whose flight risk, if any, could be managed effectively in the community, rather than on those whose detention is necessary. The Departments strongly prefer proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Agency Contact: Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Department of Justice, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, *Phone:* 703 305–0289, *Email: pao.eoir@usdoj.gov.*

RIN: 1125–AB27

BILLING CODE 4410–BP–P

U.S. DEPARTMENT OF LABOR

Fall 2023 Statement of Regulatory Priorities

Introduction

The Department's Fall 2023 Regulatory Agenda represents Acting Secretary Su's commitment to build a worker-centric economy and good jobs that change lives. These rules will advance the Department's mission to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. Under Acting Secretary Su's leadership, the Department's rulemaking is focused on centering workers and improving job quality, empowering and protecting workers and their families, and promoting equity in opportunity and pathways to good jobs for all workers.

Since the start of the Biden Administration, the Department of Labor has pursued rulemaking to advance the Administration's priorities. To create and sustain good jobs, the Department has focused rulemaking on worker health and safety, fair wages, and supporting unions and workers who are organizing unions. The Department is advancing equity and supporting marginalized communities through rulemaking that bolsters protections for workers from discrimination. To tackle the climate crisis, the Department is pursuing a rulemaking on heat illness prevention in the workplace. Under the Administration's priority to improve service delivery, customer experience and reduce administrative burdens, the Department continues to regulate employer-provided retirement security and health care. These include the following rulemakings:

- We issued a Final Rule to update the regulations implementing Davis-Bacon and Related Acts—the most comprehensive review of the regulation in 40 years—to ensure employers on federally funded or assisted construction projects pay locally prevailing wages to construction workers. The Final Rule will speed up prevailing wage updates, creating efficiencies in the current system and ensuring that prevailing wages keep up with actual wages. Over time, this would mean higher wages for workers, which is especially important given the administration's investments under the Investing in America Agenda.
- We finalized the rescission of certain provisions related to the religious exemption for federal contractors and subcontractors. The rescission returned OFCCP to its longstanding approach of ensuring that the religious exemption contained in Executive Order 11246 is applied consistently with nondiscrimination principles of Title VII of the Civil Rights Act of 1964, as amended. The rescission reaffirmed nondiscrimination protections for employees of federal contractors.
- We finalized the rulemaking to modify the agency's procedures for using resources strategically to remove barriers to equal employment opportunity. The rule strengthened OFCCP's ability to resolve potential employment discrimination at federal contractor workplaces, which created hurdles to effective enforcement.
- We issued a Final Rule that requires employers to check a box disclosing whether they are federal contractors or subcontractors on their ''LM–10'' forms, which are filed if they hire a consultant to persuade their workers about labor relations activities or to ''surveil'' employees or unions involved in a labor dispute.
- We issued a proposed rule to amend the existing standards to better

protect miners against occupational exposure to respirable crystalline silica, a carcinogenic hazard, and to improve respiratory protection for all airborne hazards.

• We issued a proposed rule to provide guidance that would help employers and workers determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act. The proposed rule would combat employee misclassification that leads to workers being denied their rights and protections under federal labor standards.

• Along with the Departments of Treasury and Health and Human Services, we issued a Final Rule implementing the No Surprises Act, which aims to protect consumers against surprise medical bills. The Final Rule makes certain medical claims payment processes more transparent for providers and clarifies the process for providers and health insurance companies to resolve their disputes.

• Also, with the Departments of Treasury of Health and Human Services, we issued proposed rules to better ensure that people seeking coverage for mental health and substance use disorder care can access treatment as easily as people seeking coverage for medical treatments. The proposed rules aim to fully protect the rights of people seeking mental health and substance use disorder benefits, under the Mental Health Parity and Addition Equity Act, and to provide clear guidance to plans and issuers on how to comply with the law's requirements.

The 2023 Regulatory Plan highlights the Labor Department's most noteworthy and significant rulemaking efforts, with each addressing the top priorities of its regulatory agencies: Employee Benefits Security Administration (EBSA), Employment and Training Administration (ETA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP), Occupational Safety and Health Administration (OSHA), Office of Workers' Compensation Programs (OWCP), and Wage and Hour Division (WHD). These regulatory priorities exemplify the Acting Secretary's vision to center workers in the economy; protect workers' rights, wages and safety on the job; and promote equity, job quality, and pathways to good jobs for all workers, especially those who have historically been left behind.

The Department's regulatory priorities also reflect our robust engagement process with stakeholders and our strong culture of evidence-based decision making. Through regular stakeholder meetings, public hearings, Small Business Advocacy Review Panels, and public comments on proposed regulations, the Department engages with diverse stakeholders to seek input on our regulatory agenda overall or feedback on proposed rules. We intentionally seek input from members of the public who have not typically participated in the regulatory process, including workers with disabilities, union members, small businesses, low-paid workers, and immigrant workers, both as a Department and in cooperation with federal partners like the SBA Office of Advocacy. Among the specific rules described below, we include further details on previous stakeholder engagement and future opportunities for stakeholder engagement.

Centering Workers and Improving Job Quality

The Department's regulatory priorities reflect the Acting Secretary's focus on centering workers in the economy and improving job quality. This means protecting workers right to organize and form a union and ensuring the creation of good jobs by upholding strong labor and equity standards across every aspect of hiring and employment.

• WHD will finalize updates to the executive, administrative, and professional exemption for the Fair Labor Standards Act. Updating the salary threshold would ensure that middle class jobs pay middle class wages, extending important overtime pay protections to millions of workers and raising their pay. Prior to issuing the proposed rule, the Department conducted 27 virtual listening sessions around the country with more than 2,000 participants to gather information and input about possible changes to the overtime regulations. In addition to reaching out to national stakeholders, the Wage and Hour Division conducted 10 regional listening sessions for workers and worker advocates as well as employers and business leaders. This was an important and valuable step in the regulatory development process.

• WHD will finalize regulations that offer certain employees employed under the federal service contracts a right of first refusal of employment when contracts change over, thereby promoting the retention of skilled workers in the federal services workforce.

Empowering and Protecting Workers and Their Families

The Department's regulatory priorities reflect the Acting Secretary's focus on protecting workers' rights, wages and safety on the job and fighting discrimination in the workplace. This means leveling the playing field for America's workers by ensuring all workers get the wages they've earned, especially those in low-wage and historically underserved communities.

• WHD will finalize regulations that address and clarify the distinction between employees and independent contractors under the Fair Labor Standards Act. This proposed rule also benefited from extensive stakeholder engagement prior to its issuance.

• ETA is proposing regulations that will ensure that H–2 visa programs promote worker voice and worker protections.

Under this priority, the Department is also focusing on safeguarding workers' hard-earned benefits and pensions and ensuring access to health benefits, including mental health and substance use disorder benefits.

• EBSA will finalize joint rulemaking with the Departments of Health and Human Services and Treasury, implementing the Mental Health Parity and Addiction Equity Act (MHPAEA) will promote compliance and address amendments to the Act from the Consolidated Appropriations Act of 2021 to ensure parity of mental health and substance abuse disorder benefits so workers can access mental health care as easily as other types of care.

• EBSA, along with the Departments of Human and Human Services and Treasury, will finalize joint rulemaking regarding coverage of certain preventive services under the Affordable Care Act, which would establish a new pathway for individuals to obtain contraceptive services at no cost.

• EBSA is proposing regulations to reevaluate the criteria for a group or association of employers to be able to sponsor a multiple employer group health plan.

• EBSA is proposing to update the definition of the term ''fiduciary'' for a retirement plan to ensure retirement savers get sound investment advice free from conflicts of interest.

The Department's health and safety regulatory proposals are aimed at eliminating preventable workplace injuries, illnesses, and fatalities. Workplace safety also protects workers' economic security, ensuring that illness and injury do not force families into poverty. Our efforts will prevent workers from having to choose between their lives and their livelihood.

• OSHA will propose an Infectious Diseases rulemaking to protect employees in healthcare and other high-risk environments from exposure to and

transmission of persistent and new infectious diseases, ranging from ancient scourges such as tuberculosis to newer threats such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus (COVID–19), and other diseases.

- OSHA will complete small business consultations as its next step in advancing rulemaking on heat illness prevention to protect workers from heat hazards in the workplace. Increased temperatures are posing a serious threat to workers laboring outdoors and in non-climate controlled indoor settings. Exposure to excessive heat is not only a hazard in itself, causing heat illness and even death; it is also an indirect hazard linked to the loss of cognitive skills which can also lead to workplace injuries and worker deaths. Protecting workers will help to save lives while we confront the growing threat of climate change.
- OSHA will propose regulations that update standards for emergency response and preparedness to reflect the full range of hazards or concerns currently facing emergency responders and other workers providing skilled support and the major changes in performance specifications for protective clothing and equipment.
- MSHA will finalize a new silica standard to effectively address health hazards and prevent irreversible diseases with a goal of ensuring that all miners are safe at their workplaces.
- MSHA will finalize a rule establishing that mine operators must develop and implement a written safety program for mobile and power haulage equipment used at surface mines and surface areas of underground mines, in order to reduce accidents and provide safer workplaces for miners.

Promoting Equity in Opportunity and Pathways to Good Jobs for All Workers

The Department's regulatory priorities reflect the Acting Secretary's focus on promoting access to good jobs free from discrimination and harassment, especially for those who have historically been left behind, and growing the workforce that brings in all of America, with a focus on expanding opportunities for women and people of color.

- ETA will ensure job-seekers can more easily get the support they need by issuing final rules updating the Wagner-Peyser Employment Service regulations.
- ETA is focused on apprenticeship and is proposing regulations for a National Apprenticeship System that is more responsive to worker and employer needs. This proposed rule was extensively informed by the deliberations of the Department's reconstituted Advisory Committee on Apprenticeships.

DOL—WAGE AND HOUR DIVISION (WHD)

Proposed Rule Stage

161. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees [1235–AA39]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 29 U.S.C. 201 *et seq.;* 29 U.S.C. 213

CFR Citation: 29 CFR 541.

Legal Deadline: None.

Abstract: The Department of Labor (Department) proposes updating and revising the regulations issued under the Fair Labor Standards Act implementing the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. Significant proposed revisions include increasing the standard salary level to the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently the South) $1,059 per week ($55,068 annually for a full-year worker) and increasing the highly compensated employee total annual compensation threshold to the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally ($143,988). The Department is also proposing to add to the regulations an automatic updating mechanism that would allow for the timely and efficient updating of all the earnings thresholds. For additional information, please see the Department's fall regulatory plan narrative statement.

Statement of Need: One of the primary goals of this rulemaking is to update the salary level requirement of the section 13(a)(1) exemption. A salary level test has been part of the regulations since 1938 and it has been long recognized that the best single test of the employer's good faith in attributing importance to the employee's services is the amount they pay for those services. In prior rulemakings, the Department explained its commitment to update the standard salary level and Highly Compensated Employees (HCE) total compensation levels more frequently. Regular updates promote greater stability, avoid disruptive salary level increases that can result from lengthy gaps between updates and provide appropriate wage protection.

Summary of Legal Basis: Section 13(a)(1) of the FLSA, codified at 29 U.S.C. 213(a)(1), exempts any employee employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the [Administrative Procedure Act.]) The FLSA does not define the terms executive, administrative, professional, or outside salesman. However, Congress explicitly delegated to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through regulations. Accordingly, the Department issues regulations at 29 CFR part 541 defining the scope of the section 13(a)(1) exemptions.

Alternatives: The Department considered a range of alternatives before selecting its proposed methods for updating the standard salary level and the HCE compensation level. The Department proposes to update the standard salary level using earnings for the 35th percentile of full-time salaried workers in the lowest range Census Region (the South), equivalent to $1,059 per week based on current data. Alternatives considered for the standard salary level are: (1) 20th percentile of earnings of nonhourly full-time workers in the South Census region and the retail industry nationally equivalent to $822 per week; (2) 10th percentile of earnings of likely exempt workers, equivalent to $925 per week; (3) 40th percentile of earnings of nonhourly full-time workers in the South Census region, equivalent to $1,145 per week; and (4) a methodology based on the historical short test salary level, equivalent to $1,378 per week.

The Department proposes to update the HCE compensation level using earnings from the 85th percentile of all full-time salaried workers nationally, equivalent to $143,988 per year. The Department also considered the following alternative methods to set the HCE compensation levels: (1) 80th percentile of nonhourly full-time workers nationally, equivalent to $125,268 annually; and (2) 90th percentile of nonhourly full-time workers nationally, equivalent to $172,796 annually.

The public is invited to provide comments on the proposed revisions and possible alternatives.

Anticipated Cost and Benefits: The Department quantified three direct costs

to employers in this analysis: (1) regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. The Department estimated in Year 1, regulatory familiarization costs would be $427.2 million, adjustment costs would be $240.8 million, and managerial costs would be $534.9 million. Total direct employer costs in Year 1 would be $1.2 billion. The Department additionally estimated that the proposed rule over its first 10 years, would transfer approximately $1.3 billion per year from employers to employees in the form of increased wages.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/08/23	88 FR 62152
NPRM Comment Period End.	11/07/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406.

RIN: 1235–AA39

DOL—WHD

Final Rule Stage

162. Nondisplacement of Qualified Workers Under Service Contracts [1235–AA42]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: E.O. 14055

CFR Citation: 29 CFR 9.

Legal Deadline: None.

Abstract: On November 18, 2021, President Biden signed Executive Order 14055 requiring the Secretary of Labor to issue final regulations on the nondisplacement of qualified workers under service contracts. Implementation of this Executive Order will promote retention of experienced and skilled employees working on federal service contracts. Service work supporting federal government functions occurs all over the country, from federal building maintenance to services provided on military bases to skilled technicians operating and maintaining federal equipment. Under this Executive Order, when a federal service contract transitions from one contractor to another, the new contractor will be required to offer jobs to qualified employees who worked for the previous contractor and performed their jobs well. This prevents disruptions in federal services, makes it easier for employers to find workers who are already trained for the job, and saves taxpayer dollars.

Statement of Need: Executive Order 14055 requires the Secretary of Labor to issue regulations on the nondisplacement of qualified workers under service contracts.

Summary of Legal Basis: President Biden issued Executive Order 14055 pursuant to his authority under ''the Constitution and the laws of the United States,'' expressly including the Procurement Act. 86 FR 66397. The Procurement Act authorizes the President to ''prescribe policies and directives that the President considers necessary to carry out'' the statutory purposes of ensuring ''economical and efficient'' government procurement and administration of government property. 40 U.S.C. 101.121(a). Executive Order 14055 directs the Secretary to issue regulations to ''implement the requirements of this order.'' 86 FR 66399.

Alternatives: The Department has discussed a few specific provisions in which limited alternatives are possible.

First, in cases where a prime contract is above the simplified acquisition threshold, but their subcontract falls below this threshold, the Department could potentially have discretion to exclude these subcontracts from the requirements of this proposed rule. However, the Department stated in the NPRM that, consistent with the language in the Executive Order, where a prime contract is covered by the rule, all subcontracts for services, regardless of size, would also be covered. Second, the Department has some discretion in defining the specific analysis that must be completed by contracting agencies regarding location continuity. The Department is considering whether to require contracting officers to analyze additional factors when determining whether to decline to require location continuity. Any requirement of a more in-depth analysis could potentially increase costs for contracting agencies.

Anticipated Cost and Benefits: The rule could result in costs for covered contractors and contracting agencies in the form of rule familiarization costs, implementation costs, and recordkeeping costs. The rule would increase the use of a carryover workforce which would reduce disruption in the delivery of services during the period of transition between contractors, maintains physical and information security, and provides the Federal Government with the benefits of an experienced and well-trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements.

The Department estimated both familiarization costs, implementation costs and familiarization costs. Costs in Year 1 consists of $11,124,370 in rule familiarization costs, $35,471,685 in implementation costs ($7,518,342 for contractors and $27,953,342 for contracting agencies), and $6,014,674 in recordkeeping costs. Therefore, total Year 1 costs are $52,610,728. Costs in the following years consist only of implementation and recordkeeping costs and amount to $41,486,358. Average annualized costs over 10 years are $43 million using a 7 percent discount rate, and $52 million using a 3 percent discount rate.

Risks: This action does not affect the public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/15/22	87 FR 42552
NPRM Comment Period End.	08/15/22	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406.

RIN: 1235–AA42

DOL—WHD

163. Employee or Independent Contractor Classification Under the Fair Labor Standards Act [1235–AA43]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219

CFR Citation: 29 CFR 795; 29 CFR 780; 29 CFR 788.

Legal Deadline: None.

Abstract: On January 7, 2021, the Department of Labor (Department) published a final rule on independent contractor status under the Fair Labor Standards Act (FLSA). *See* 86 FR 1168 (2021 IC Rule). The Department subsequently published final rules to delay and withdraw the 2021 IC Rule on March 4, 2021, and May 6, 2021, respectively. *See* 86 FR 12535 (Delay Rule); 86 FR 24303 (Withdrawal Rule). On March 14, 2022, a district court in the Eastern District of Texas vacated the Department's Delay and Withdrawal Rules, concluding that the 2021 IC Rule became effective as of March 8, 2021. The Department has appealed the district court's decision. The Department continues to believe that the 2021 IC Rule does not fully comport with the FLSA's text and purpose as interpreted by courts and has proposed to rescind the 2021 IC rule and set forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC rule. The Department published an NPRM on October 13, 2022. For additional information, please see the Department's fall regulatory plan narrative statement.

Statement of Need: The Department believes it is appropriate to consider rescinding the 2021 IC Rule and setting forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC Rule.

Summary of Legal Basis: The Department's authority to interpret the analysis for determining whether workers are employees or independent contractors under the FLSA comes with its authority to administer and enforce the Act. See 29 U.S.C. 201–219; see also *Herman* v. *Fabri-Centers of Am., Inc.,* 308 F.3rd 580, 592–93 & n.8 (6th Cir. 2002) (noting that ''[t]he Wage and Hour Division of the Department of Labor was created to administer the Act'' while agreeing with the Department's interpretation of one of the Act's provisions); *Dufrene* v. *Browning-Ferris, Inc.,* 207 F.3rd 264, 267 (5th Cir. 2000) (''By granting the Secretary of Labor the power to administer the FLSA, Congress implicitly granted him the power to interpret.''); *Condo* v. *Sysco Corp.,* 1 F.3rd 599, 603 (7th Cir. 1993) (same).

Alternatives: The Department assessed four regulatory alternatives in the proposed rule in addition to what it proposed. For the first alternative, the Department considered codifying the common law control test, which is used to distinguish between employees and independent contractors under some other Federal laws, such as the Internal Revenue Code. For the second alternative, the Department considered codifying an ABC test to determine independent contractor status under the FLSA similar to the ABC test recently adopted under California law. For the third alternative, the Department considered a proposed rule that would not fully rescind the 2021 IC Rule and instead retain some aspects of that rule. For the fourth alternative, the Department considered rescinding the 2021 IC Rule and providing guidance on employee or independent contractor classification through subregulatory guidance instead of through new regulations.

Anticipated Cost and Benefits: The total one-time regulatory familiarization costs for establishments, governments, and independent contractors are estimated to be $408 million. Regulatory familiarization costs in future years were assumed to be de minimis. Employers and independent contractors would continue to familiarize themselves with the applicable legal framework in the absence of the rule, so this rulemaking would not be expected to impose costs after the first year. This would amount to a 10-year annualized cost of $56.4 million at a discount rate of 3 percent or $54.3 million at a discount rate of 7 percent.

Benefits would include increased consistency with existing judicial precedent and the Department's longstanding guidance, as well as possibly reducing the occurrence of misclassification.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	10/13/22	87 FR 62218
NPRM Comment Period Extended.	10/26/22	87 FR 64749
NPRM Comment Period Extended End.	12/13/22	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Undetermined.

Agency Contact: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406.

RIN: 1235–AA43

DOL—EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)

Proposed Rule Stage

164. Improving Protections for Workers in Temporary Agricultural Employment in the United States [1205–AC12]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 8 U.S.C. 1188; 29 U.S.C. 49 *et seq.*

CFR Citation: 29 CFR 501; 20 CFR 651; 20 CFR 653; 20 CFR 654; 20 CFR 655; 20 CFR 658.

Legal Deadline: None.

Abstract: The Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division propose to amend regulations to improve working conditions and protections for workers engaged in temporary agricultural employment in the United States; and strengthen protections in the recruitment, job order clearance, and oversight processes. The proposed regulatory changes involve the Employment Service and the H–2A non-immigrant visa program at 29 CFR part 501 and 20 CFR parts 651, 653, 654, 655, and 658.

The Department has identified a need to strengthen and clarify protections for all temporary agricultural workers, including U.S. workers and workers employed through the H–2A temporary agricultural program. The H–2A temporary agricultural program allows agricultural employers to perform agricultural labor or services of a temporary or seasonal nature so long as there are not sufficient able, willing, and qualified U.S. workers to perform the work and the employment of H–2A workers does not adversely affect the wages and working conditions of similarly employed workers in the United States. The use of the H–2A program has grown substantially in recent years and the Department is committed to protecting agricultural workers in light of their significant vulnerabilities.

Statement of Need: The Department will propose revisions to the H–2A regulations and the Employment Service regulations that will strengthen

protections for agricultural workers and enhance the Department's enforcement capabilities against fraud and program violations. The Department has determined the proposed revisions will help prevent exploitation and abuse of agricultural workers and ensure that employers do not gain from their violations or contribute to economic and workforce instability by circumventing the law.

Summary of Legal Basis: The Department's proposals to strengthen protections and improve compliance are aimed at ensuring that the Department can better fulfill its statutory responsibility at 8 U.S.C. 1188(a)(1) to certify that: (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition; and (2) the employment of H–2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed, and its responsibility under the Wagner-Peyser Act at 29 U.S.C. 49b to effectively assist in coordinating the State public employment service offices throughout the country.

Alternatives: The Department has considered alternatives but believes that rulemaking to update the H–2A regulations and the Employment Service regulations is a reasonable approach to better ensure the necessary worker protections are available and enforceable.

Anticipated Cost and Benefits: The Department estimates that the proposed rule would result in costs and transfer payments. As shown in Exhibit 1, the proposed rule is expected to have an annualized cost of $2.03 million and a total 10-year quantifiable cost of $14.24 million, each at a discount rate of 7 percent. The proposed rule is estimated to result in annual transfer payments from H–2A employers to H–2A employees of $12.81 million and total 10-year transfer payments of $89.95 million at a discount rate of 7 percent.

The benefits are described above and include preventing exploitation of vulnerable workers and ensuring that employers do not benefit from exploitation.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	09/15/23	88 FR 63750
NPRM Comment Period End.	11/14/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, Tribal.

Agency Contact: Brian Pasternak, Administrator, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Office of Foreign Labor Certification, Room N–5311, FP Building, Washington, DC 20210, *Phone:* 202 693–8200, *Email: pasternak.brian@dol.gov*.

RIN: 1205–AC12

DOL—ETA

165. National Apprenticeship System Enhancements [1205–AC13]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: The National Apprenticeship Act, as amended (50 Stat. 664) 29 U.S.C. 50

CFR Citation: 29 CFR 29; 29 CFR 30.

Legal Deadline: None.

Abstract: The regulations at 29 CFR part 29 addressing labor standards of apprenticeship and the governance of the National Apprenticeship System were last updated in October 2008 to increase administrative flexibility, ensure program quality, and promote registered apprenticeship opportunity. The Department plans to revise these regulations to strengthen, expand, modernize, and diversify the National Apprenticeship System by enhancing worker protections and equity, improving the quality of registered apprenticeships, revising the state governance provisions, and more clearly establishing critical pipelines to registered apprenticeships such as pre-apprenticeships so that the National Apprenticeship System is more responsive to current worker and employer needs. The Department will also make technical and conforming adjustments to the current text of 29 CFR part 30 (governing equal employment opportunity in apprenticeships) as appropriate. For additional information, please see the Department's regulatory plan narrative statement.

Statement of Need: The regulations governing the minimum labor standards for the registration of apprenticeship programs at Title 29 of the Code of Federal Regulations (CFR) part 29 have not been updated since 2008. With this action, the Department seeks to ensure that the regulatory framework for the Registered Apprenticeship System remains current with a range of emerging apprenticeship practices and program structures that have developed since that time. The proposed revisions will enable the Registered Apprenticeship System to continue its vital role in developing a skilled, competitive American workforce.

Summary of Legal Basis: The National Apprenticeship Act of 1937 (also known as the Fitzgerald Act), 29 U.S.C. 50, gives the Secretary broad power to promote, create, and set standards for apprenticeship programs. The Act authorizes and directs the Secretary to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with section 17 of title 20.

Alternatives: Alternatives are described in the text of the NPRM, and the public will be provided an opportunity to comment upon them.

Anticipated Cost and Benefits: Registered apprenticeships provide individuals with valuable training and skill development, and provide businesses with a structure for developing a diverse pool of skilled workers. Although the Department is unable to quantify the anticipated benefits due to data limitations, the proposed rule is expected to result in annualized costs of $152 million during the first 10 years (2025–2034) at a discount rate of 7 percent based on preliminary estimates.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: John V. Ladd, Administrator, Office of Apprenticeship, Department of Labor, Employment and Training Administration, 200 Constitution

Avenue NW, FP Building, Room C–5311, Washington, DC 20210, *Phone:* 202 693–2796, *Fax:* 202 693–3799, *Email: ladd.john@dol.gov*.

RIN: 1205–AC13

DOL—ETA

Final Rule Stage

166. Wagner-Peyser Act Staffing [1205–AC02]

Priority: Other Significant.

Legal Authority: Wagner-Peyser Act sec. 12 (29 U.S.C. 49k)

CFR Citation: 20 CFR 651; 20 CFR 652; 20 CFR 653; 20 CFR 658.

Legal Deadline: None.

Abstract: The Department proposed to revise the Wagner-Peyser Act regulations regarding Employment Services (ES) staffing to require that states use state merit staff to provide ES services, including Migrant and Seasonal Farmworker (MSFW) services, and to improve service delivery.

Statement of Need: The Department identified areas of the regulation that changed to create a uniform standard of ES services provision for States.

Summary of Legal Basis: The Department determined that it is vital for the ES to be administered so that States deliver services effectively and equitably to unemployment insurance beneficiaries and other ES customers.

Alternatives: Two alternatives will be considered, and the public had the opportunity to comment on these alternatives during the comment period of the NPRM.

Anticipated Cost and Benefits: The proposed rule was estimated to have one-time rule familiarization costs of $4,205 in 2020 dollars, as well as unknown transition costs. The proposed rule also estimated the rule to have annual transfer payments of $9.6 million for three of the five States that currently have non-State merit staff providing some labor exchange services; transfer payments are monetary payments from one group to another, such as wages shifting from one employer to another, that do not affect total resources available to society. The transfer payments for this proposed rule were the estimated wage cost increases to the States associated with employee wages and fringe benefits. In the NPRM, the Department solicited comments from stakeholders and the public on the unknown transition costs, plus transfer payments that would be incurred by any States with some non-State merit staff providing labor exchange services.

Risks: This action does not affect the public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/20/22	87 FR 23700
NPRM Comment Period End.	06/21/22	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: State.

Agency Contact: Kimberly Vitelli, Administrator, Office of Workforce Investment, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, FP Building, Room C–4526, Washington, DC 20210, *Phone:* 202 693–3980, *Email: vitelli.kimberly@dol.gov*.

RIN: 1205–AC02

DOL—EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA)

Proposed Rule Stage

167. Retirement Security Rule: Definition of an Investment Advice Fiduciary [1210–AC02]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 29 U.S.C. 1002; 29 U.S.C. 1135; Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 252 (2020)

CFR Citation: 29 CFR 2510.3–21.

Legal Deadline: None.

Abstract: This rulemaking would amend the regulatory definition of the term fiduciary set forth at 29 CFR 2510.3–21(c) to more appropriately define when persons who render investment advice for a fee to employee benefit plans and IRAs are fiduciaries within the meaning of section 3(21) of ERISA and section 4975(e)(3) of the Internal Revenue Code. The amendment would take into account practices of investment advisers, and the expectations of plan officials and participants, and IRA owners who receive investment advice, as well as developments in the investment marketplace, including in the ways advisers are compensated that can subject advisers to harmful conflicts of interest. In conjunction with this rulemaking, EBSA also proposed amendments to existing prohibited transaction exemptions to ensure consistent protection of employee benefit plan and IRA investors.

Statement of Need: Many protections, duties, and liabilities in ERISA hinge on fiduciary status; therefore, the determination of who is a fiduciary is of central importance. The Department's existing regulatory definition of an investment advice fiduciary, adopted in 1975, established a five-part test for status as a fiduciary. The 1975 regulation's five-part test is not founded in the statutory text of ERISA, does not take into account the current nature and structure of many individual account retirement plans and IRAs, is inconsistent with the reasonable expectations of plan officials and participants, and IRA owners who receive investment advice, and allows many investment advice providers to avoid status as a fiduciary under federal pension laws. Under ERISA, fiduciaries must avoid conflicts of interest or comply with a prohibited transaction exemption with conditions designed to protect retirement investors. A wide and compelling body of evidence shows that conflicts of interest and forms of compensation that can subject advisers to harmful conflicts of interest, if left unchecked, too often result in biased investment advice and resulting harm to retirement investors. In conjunction with this rulemaking, EBSA also proposed amendments to existing prohibited transaction exemptions to ensure consistent protection of employee benefit plan and IRA investors.

Summary of Legal Basis: The Department is proposing the amendment to its regulation defining a fiduciary pursuant to authority in ERISA section 505 (29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 252 (2020).

Alternatives: The Department considered as an alternative leaving the 1975 regulation in place without change.

Anticipated Cost and Benefits: The proposed amendment to the 1975 regulation would extend the protections associated with fiduciary status to more advice arrangements. The proposed regulation and associated prohibited transaction exemptions are expected to require providers of investment advice to adhere to a best interest standard, charge no more than reasonable compensation, eliminate or mitigate conflicts of interest, and make important disclosures to their customers, among other things. These protections would deliver substantial gains for retirement investors and economic benefits that more than justify the costs. The costs of the regulation are largely expected to stem from compliance with the associated prohibited transaction

exemptions. Estimates of the cost of compliance are reflected in the notice of proposed rulemaking.

Risks: The Department believes that the 1975 regulation must be revised to align with retirement investors' reasonable expectations regarding their relationships with investment advice providers and to reflect developments in the investment advice marketplace since the 1975 regulation was adopted. Failure to appropriately define an investment advice fiduciary under ERISA is likely to expose retirement investors to conflicts of interest that will erode retirement savings. The risks are especially great with respect to recommendations to roll assets out of ERISA-covered plans to IRAs because of the central importance of retirement plan savings to workers, the relative size of rollover transactions, and the technical requirements of the current fiduciary regulation, which have encouraged advisers to argue that their advice falls outside the regulation's purview regardless of its importance.

Timetable:

Action	Date	FR Cite
NPRM	11/03/23	88 FR 75890
NPRM Comment Period End.	01/02/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Karen E. Lloyd, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N–5655, Washington, DC 20210, *Phone:* 202 693–8510.

RIN: 1210–AC02

DOL—EBSA

168. Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 [1210–AC11]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: Pub. L. 116–260, Division BB, Title II; Pub. L. 110–343, secs. 511–512

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This rule would finalize proposed amendments to the final rules implementing the Mental Health Parity and Addiction Equity Act (MHPAEA). The amendments clarify plans' and issuers' obligations under the law, promote compliance with MHPAEA, and update requirements to take into account experience with MHPAEA in the years since the rules were finalized. The rule would also finalize new regulations implementing amendments to MHPAEA recently enacted as part of the Consolidated Appropriations Act, 2021 (CAA, 2021).

Statement of Need: There have been a number of legislative enactments related to MHPAEA since issuance of the 2014 final rules, including the 21st Century Cures Act, the Support Act, and the CAA, 2021. This rule would propose amendments to the final rules and incorporate examples and modifications to account for this legislation and previously issued guidance and to take into account experience with MHPAEA in the years since the rules were finalized. This rule would also include new regulations implementing the nonquantitative treatment limitation (NQTL) comparative analyses requirements set forth under the CAA, 2021.

Summary of Legal Basis: The Department of Labor regulations would be adopted pursuant to the authority contained in 29 U.S.C. 1002, 1135, 1182, 1185d, 1191a, 1191b, and 1191c; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

Alternatives: The Departments considered various approaches related to NQTLs as well as comparative analysis requirements. These alternatives included not expressly incorporating the statutory requirements that NQTLs be no more restrictive for MH/SUD than M/S and requiring plans to include specific data elements in their comparative analysis These alternatives will be included in the published final rule.

Anticipated Cost and Benefits: The Departments anticipate that the MHPAEA final rules would improve the quality of the comparative analyses conducted by plans and issuers, as required by the CAA, 2021, help plans and issuers better understand and fulfill their obligations under MHPAEA, and promote greater transparency regarding discrepancies between mental health and substance use disorder benefits and medical/surgical benefits. The Departments believe that the amendments could cause plans and issuers to revise their policies and remove limitations on treatments for mental health and substance use disorders. This will provide improved access for participants and beneficiaries seeking MH/SUD treatments which will result in better health outcomes. These expanded protections and clarifications will greatly benefit plans, participants and beneficiaries and more than justify the costs. The costs of the proposed rule include costs to the plans and issuers associated with expanded coverage and utilization, collecting, analyzing and documenting data under the revised NQTL comparative analyses requirements.

Risks: Risks and areas of uncertainty regarding potential impacts will be included in the final rule.

Timetable:

Action	Date	FR Cite
NPRM	08/03/23	88 FR 51552
NPRM Comment Period Extended.	09/28/23	88 FR 66728
NPRM Comment Period Extended End.	10/17/23	
NPRM Analyze Comments.	11/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Amber Rivers, Director, Office of Health Plan Standards and Compliance Assistance, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, *Phone:* 202 693–8335, *Email: rivers.amber@dol.gov*.

RIN: 1210–AC11

DOL—EBSA

169. Definition of 'Employer' Under Section 3(5) of ERISA-Association Health Plans [1210–AC16]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 29 U.S.C. 1002; 29 U.S.C. 1135

CFR Citation: 29 CFR 2510.3–3, –5.

Legal Deadline: None.

Abstract: In this rulemaking, the Department of Labor's Employee Benefits Security Administration (EBSA) will explore whether to withdraw, or withdraw and replace, its regulation at 29 CFR 2510.3–5, published as a final rule in 2018, which

established an alternative set of criteria for determining when an employer association may act indirectly in the interest of an employer under section 3(5) of the Employee Retirement Income Security Act (ERISA) for purposes of establishing a multiple employer group health plan. The United States District Court for the District of Columbia vacated portions of the final rule in a 2019 decision in *New York* v. *United States Department of Labor,* 363 F. Supp. 3d 109 (D.D.C. 2019). EBSA will reevaluate the criteria for a group or association of employers to be able to sponsor a multiple employer group health plan.

Statement of Need: To be determined.

Summary of Legal Basis: To be determined.

Alternatives: To be determined.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N–5655, Washington, DC 20210, *Phone:* 202 693–8500.

RIN: 1210–AC16

DOL—EBSA

Final Rule Stage

170. Coverage of Certain Preventive Services Under the Affordable Care Act [1210–AC13]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Pub. L. 111–148, sec. 1001

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This rule would finalize proposed amendments to the final rules regarding religious and moral exemptions and accommodations regarding coverage of certain preventive services under Title I of the Patient Protection and Affordable Care Act.

Statement of Need: Previous rules, regulations, and court decisions have left many women without contraceptive coverage and access to contraceptive services without cost sharing. These rules would seek to resolve the long-running litigation with respect to religious objections to providing contraceptive coverage by honoring the objecting entities' religious objections while also ensuring that women enrolled in a group health plan established or maintained, or in health insurance covered offered or arranged, by an objecting entity have the opportunity to obtain contraceptive services at no cost. These rules would also eliminate the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs, which prevents access to contraceptive services without cost sharing.

Summary of Legal Basis: The Department of Labor regulations would be adopted pursuant to the authority contained in 29 U.S.C. 1002, 1135, 1182, 1185d, 1191a, 1191b, and 1191c; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

Alternatives: In developing this rule, the Departments considered various alternative approaches. The Departments considered maintaining the exemption (along with the existing accommodations and the proposed individual contraceptive arrangement) with respect to group health plans, health insurance issuers, and institutions of higher education that have a non-religious, moral objection to contraceptive coverage. With respect to individuals enrolled in coverage through entities that have a religious objection to contraceptive coverage, the Departments considered an approach under which contraceptive coverage would be available through separate individual insurance policies that cover only contraceptives and in which participants, beneficiaries, and enrollees would have to separately enroll if they desired contraceptive coverage. The Departments also considered an approach under which, if an objecting entity contracts for a health plan without contraceptive coverage, the contraceptive coverage requirement would apply directly to the issuer in the case of a fully insured plan, or the third party administrator in the case of a self-insured plan. The issuer or third party administrator would then be required to fulfill its separate and independent obligation to provide contraceptive coverage.

Anticipated Cost and Benefits: This rule is expected to increase access to contraceptive services without cost sharing through the individual contraceptive arrangement for eligible individuals and the elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs. This rule would increase health equity given the disproportionate burden of out-of-pocket spending on contraceptive services currently faced by low-income individuals (as those individuals with lower incomes must spend a greater percentage of their incomes on contraceptive services). This rule would also lead to better health outcomes for eligible individuals by increasing access to contraceptive services and reducing unintended pregnancies. Participating providers of contraceptive services (including clinicians, facilities, and pharmacies) and issuers would incur costs associated with entering into signed agreements for reimbursement of costs associated with the provision of contraceptive services to eligible individuals, including costs of verifying consumer eligibility and other associated administrative costs. Eligible individuals would incur costs associated with participating in the individual contraception arrangement, including confirming eligibility to their provider of contraceptive services. HHS estimates the total cost to providers of contraceptive services, issuers, and eligible individuals to be approximately $30.2 million annually. The rule would also lead to a reduction in health care costs for individuals, issuers, group health plan sponsors, and states due to reductions in unintended pregnancies.

Risks: Departments do not have information on the number of entities and individuals that have claimed a moral exemption to providing contraceptive coverage and are therefore uncertain of the amount of the potential transfer from plans and issuers to participants, beneficiaries, and enrollees due to reduced out-of-pocket spending on contraceptive services associated with the proposed elimination of the exemption for entities and individuals that object to contraceptive coverage based on nonreligious moral beliefs. The Departments estimate that the provision of the individual contraceptive arrangement could lead to a transfer from the Federal Government to individuals (via issuers to providers of contraceptive services) of approximately $49.9 million annually. This estimate is uncertain due to the limited information available in the 2019 user fee adjustment data. The Departments are uncertain as to how the number of participating providers might vary (for example, across rural and urban areas) and how this variation might affect access to services under the individual

contraceptive arrangement. Due to the lack of data, the Departments are unable to develop a precise estimate of the number of eligible individuals who might participate in the individual contraceptive arrangement. This overall lack of data leads to uncertainty regarding the magnitudes of the total cost savings to eligible individuals and any resulting potential cost savings to states (associated with reduced spending on State-funded programs that provide contraceptive services or a potential reduction in the number of unintended pregnancies that would otherwise impose costs to states).

Timetable:

Action	Date	FR Cite
NPRM	02/02/23	88 FR 7236
NPRM Comment Period End.	04/03/23	
Final Rule	08/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Amber Rivers, Director, Office of Health Plan Standards and Compliance Assistance, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, *Phone:* 202 693–8335, *Email: rivers.amber@dol.gov*.

RIN: 1210–AC13

DOL—MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

Final Rule Stage

171. Respirable Crystalline Silica [1219–AB36]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 30 U.S.C. 811; 30 U.S.C. 813(h); 30 U.S.C. 957

CFR Citation: 30 CFR 56; 30 CFR 57; 30 CFR 60; 30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 75; 30 CFR 90.

Legal Deadline: None.

Abstract: Many miners are exposed to respirable crystalline silica (RCS) in respirable dust. These miners can develop lung diseases such as chronic obstructive pulmonary disease, and various forms of pneumoconiosis, such as silicosis, progressive massive fibrosis, and rapidly progressive pneumoconiosis.

These diseases are irreversible and may ultimately be fatal. MSHA's existing standards limit miners' exposures to RCS. MSHA will publish a final rule to address the existing permissible exposure limit of RCS for all miners and to update the existing respiratory protection standards under 30 CFR 56, 57, and 72.

Statement of Need: Many miners are exposed to respirable crystalline silica (RCS) in respirable dust, which can result in the onset of diseases such as silicosis and rapidly progressive pneumoconiosis. These lung diseases are irreversible and may ultimately be fatal. MSHA is examining the existing limit on miners' exposures to RCS to safeguard the health of America's miners. Based on MSHA's experience with existing standards and regulations, as well as OSHA's RCS standards and NIOSH research, MSHA will develop a rule applicable to metal, nonmetal, and coal operations.

Summary of Legal Basis: Sections 101(a), 103(h), and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended (30 U.S.C. 811(a), 813(h), and 957).

Alternatives: MSHA will examine one or two different levels of miners' RCS exposure limit and assess the technological and economic feasibility of such option(s).

Anticipated Cost and Benefits: To be determined.

Risks: Miners face impairment risk of health and functional capacity due to RCS exposures. MSHA will examine the existing RCS standard and determine ways to reduce the health risks associate with RCS exposure.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	08/29/19	84 FR 45452
RFI Comment Period End.	10/28/19	
NPRM	07/13/23	88 FR 44852
NPRM Comment Period Extended.	08/14/23	88 FR 54961
NPRM Comment Period Extended End.	09/11/23	
NPRM Notice of Public Hearings.	07/26/23	88 FR 48146
NPRM Public Hearing in Arlington Virginia.	08/03/23	
NPRM Public Hearing in Beckley, West Virginia.	08/10/23	
NPRM Public Hearing in Denver, Colorado.	08/21/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, State.

Agency Contact: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 201 12th Street S, Suite 401, Arlington, VA 22202, *Phone:* 202 693–9440, *Fax:* 202 693–9441.

RIN: 1219–AB36

DOL—MSHA

172. Safety Program for Surface Mobile Equipment [1219–AB91]

Priority: Other Significant.

Legal Authority: 30 U.S.C. 811; 30 U.S.C. 813(h); 30 U.S.C. 957

CFR Citation: 30 CFR 56; 30 CFR 57; 30 CFR 77.

Legal Deadline: None.

Abstract: MSHA would require mine operators to establish a written safety program for mobile equipment and powered haulage equipment (except belt conveyors) used at surface mines and surface areas of underground mines. Under this proposal, mine operators would be required to assess hazards and risks and identify actions to reduce accidents related to surface mobile equipment. The operators would have flexibility to develop and implement a safety program that would work best for their mining conditions and operations. This proposed rule would reduce fatal and nonfatal injuries involving surface mobile equipment used at mines and improve miner safety and health.

Statement of Need: Although mine accidents are declining, accidents involving mobile and powered haulage equipment are still a leading cause of fatalities in mining. To reduce fatal and nonfatal injuries involving surface mobile equipment used at mines, MSHA is proposing a regulation that would require mine operators employing six or more miners to develop a written safety program for mobile and powered haulage equipment (excluding belt conveyors) at surface mines and surface areas of underground mines. The written safety program would include actions mine operators would take to identify hazards and risks to reduce accidents, injuries, and fatalities related to surface mobile equipment.

Summary of Legal Basis: Sections 101(a), 103(h), and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended (30 U.S.C. 811(a), 813(h), and 957).

Alternatives: MSHA considered requiring all mines, regardless of size, to

develop and implement a written safety program for surface mobile equipment. Based on the Agency's experience, MSHA concluded that a mine operator with five or fewer miners would generally have a limited inventory of surface mobile equipment. These operators would also have less complex mining operations, with fewer mobile equipment hazards that would necessitate a written safety program. Thus, these mine operators are not required to have a written safety program, although MSHA would encourage operators with five or fewer miners to have safety programs. MSHA will consider comments and suggestions received on alternatives or best practices that all mines might use to develop safety programs (whether written or not) for surface mobile equipment.

Anticipated Cost and Benefits: The proposed rule would not be economically significant, and it would have some net benefits.

Risks: Miners operating mobile and powered haulage equipment or working nearby face risks of workplace injuries, illnesses, or deaths. The proposed rule would allow a flexible approach to reducing hazards and risks specific to each mine so that mine operators would be able to develop and implement safety programs that work for their operation, mining conditions, and miners.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	06/26/18	83 FR 29716
Notice of Public Stakeholder Meetings.	07/25/18	83 FR 35157
Stakeholder Meeting—Birmingham, AL.	08/07/18	
Stakeholder Meeting—Dallas, TX.	08/09/18	
Stakeholder Meeting (Webinar)—Arlington, VA.	08/16/18	
Stakeholder Meeting—Reno, NV.	08/21/18	
Stakeholder Meeting—Beckley, WV.	09/11/18	
Stakeholder Meeting—Albany, NY.	09/20/18	
Stakeholder Meeting—Arlington, VA.	09/25/18	
RFI Comment Period End.	12/24/18	
NPRM	09/09/21	86 FR 50496
NPRM Comment Period End.	11/08/21	
NPRM Reopening of the Rulemaking Record for. Public Comments	12/20/21	86 FR 71860
Virtual Public Hearing.	01/11/22	
NPRM Comment Period Reopened End.	02/11/22	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 201 12th Street S, Suite 401, Arlington, VA 22202, *Phone:* 202 693–9440, *Fax:* 202 693–9441.

RIN: 1219–AB91

DOL—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

Prerule Stage

173. Heat Illness Prevention in Outdoor and Indoor Work Settings [1218–AD39]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: Not Yet Determined

CFR Citation: None.

Legal Deadline: None.

Abstract: Heat is the leading weather-related killer. Excessive heat can cause heat stroke and even death if not treated properly. It also exacerbates existing health problems like asthma, kidney failure, and heart disease. Workers in agriculture and construction are at highest risk, but the problem affects all workers exposed to heat, including indoor workers without climate-controlled environments. Essential jobs where employees are exposed to high levels of heat are disproportionately held by Black and Brown workers.

Heat stress killed 815 U.S. workers and seriously injured more than 70,000 workers from 1992 through 2017, according to the Bureau of Labor Statistics. However, this is likely a vast underestimate, given that injuries and illnesses are under reported in the U.S., especially in the sectors employing vulnerable and often undocumented workers. Further, heat is not always recognized as a cause of heat-induced injuries or deaths and can easily be misclassified, because many of the symptoms overlap with other more common diagnoses.

To date, California, Oregon, Washington, Minnesota, and the US military have issued heat protections. OSHA currently relies on the general duty clause (OSH Act section 5(a)(1)) to protect workers from this hazard. Notably, from 2013 through 2017, California used its heat standard to conduct 50 times more inspections resulting in a heat-related violation than OSHA did nationwide under its general duty clause. It is likely to become even more difficult to protect workers from heat stress under the general duty clause in light of the 2019 Occupational Safety and Health Review Commission's decision in *Secretary of Labor* v. *A.H. Sturgill Roofing, Inc.*

OSHA was petitioned by Public Citizen for a heat stress standard in 2011. The Agency denied this petition in 2012, but was once again petitioned by Public Citizen, on behalf of approximately 130 organizations, for a heat stress standard in 2018 and 2019. In 2019 and 2021, some members of the Senate also urged OSHA to initiate rulemaking to address heat stress.

Given the potentially broad scope of regulatory efforts to protect workers from heat hazards, as well as a number of technical issues and considerations with regulating this hazard (*e.g.,* heat stress thresholds, heat acclimatization planning, exposure monitoring, medical monitoring), OSHA published an ANPRM on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (October 27, 2021) to begin a dialogue and engage with stakeholders to explore the potential for rulemaking on this topic. For additional information, please see the Department's fall regulatory plan narrative statement.

Statement of Need: Heat stress killed more than 900 US workers, and caused serious heat illness in almost 100 times as many, from 1992 through 2017, according to the Bureau of Labor Statistics. However, this is likely a vast underestimate, given that injuries and illnesses are underreported in the US, especially in the sectors employing vulnerable and often undocumented workers. Further, heat is not always recognized as a cause of heat-induced illnesses or deaths, which are often misclassified, because many of the symptoms overlap with other more common diagnoses.

Summary of Legal Basis: The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives: One alternative to proposed rulemaking would be to take no regulatory action and instead rely upon the General Duty Clause (OSH Act Section 5(a)(1) for select enforcement activity). As OSHA develops more information, it will also make decisions relating to the scope of the standard and the requirements it may impose.

Anticipated Cost and Benefits: The estimates of costs and benefits are still under development.

Risks: Analysis of risks is still under development.

Timetable:

Action	Date	FR Cite
ANPRM	10/27/21	86 FR 59309
ANPRM Comment Period Extended.	12/02/21	86 FR 68594
ANPRM Comment Period Extended End.	01/26/22	
Initiate SBREFA ..	06/02/23	
Complete SBREFA.	11/00/23	
Analyze SBREFA Report.	01/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Email: levinson.andrew@dol.gov*.

RIN: 1218–AD39

DOL—OSHA

Proposed Rule Stage

174. Infectious Diseases [1218–AC46]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 5 U.S.C. 533; 29 U.S.C. 657 and 658; 29 U.S.C. 660; 29 U.S.C. 666; 29 U.S.C. 669; 29 U.S.C. 673

CFR Citation: 29 CFR 1910.

Legal Deadline: None.

Abstract: Employees in health care and other high-risk environments face long-standing infectious disease hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles, as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus (COVID–19), and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting TB, SARS, Methicillin-Resistant Staphylococcus Aureus (MRSA), COVID–19, and other infectious diseases that can be transmitted through a variety of exposure routes. OSHA is examining regulatory alternatives for control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. Workplaces where such control measures might be necessary include: health care, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories, which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries.

Statement of Need: Employees in health care and other high-risk environments face long-standing infectious disease hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles, as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus (COVID–19), and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting TB, SARS, Methicillin-Resistant Staphylococcus Aureus (MRSA), COVID–19, and other infectious diseases that can be transmitted through a variety of exposure routes.

Summary of Legal Basis: The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives: One alternative is to take no regulatory action. OSHA is examining regulatory alternatives for control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. In addition to health care, workplaces where SERs suggested such control measures might be necessary include: emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people.

A standard could also apply to laboratories, which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries. OSHA offered several alternatives to the SBREFA panel when presenting the proposed Infectious Disease (ID) rule. OSHA considered a specification oriented rule rather than a performance oriented rule, but has preliminarily determined that this type of rule would provide less flexibility and would likely fail to anticipate all of the potential hazards and necessary controls for every type and every size of facility and would under-protect workers. OSHA also considered changing the scope of the rule by restricting the ID rule to workers who have occupational exposure during the provision of direct patient care in institutional settings but based on the evidence thus far analyzed, workers performing other covered tasks in both institutional and non-institutional settings also face a risk of infection because of their occupational exposure.

Anticipated Cost and Benefits: The estimates of costs and benefits are still under development.

Risks: Analysis of risks is still under development.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	05/06/10	75 FR 24835
RFI Comment Period End.	08/04/10	
Analyze Comments.	12/30/10	
Stakeholder Meetings.	07/05/11	76 FR 39041
Initiate SBREFA ..	06/04/14	
Complete SBREFA.	12/22/14	
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Email: levinson.andrew@dol.gov*.

RIN: 1218–AC46

DOL—OSHA

175. Emergency Response [1218–AC91]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657; 5 U.S.C. 609

CFR Citation: 29 CFR 1910.

Legal Deadline: None.

Abstract: OSHA currently regulates aspects of emergency response and preparedness; some of these standards were promulgated decades ago, and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, and other workers providing skilled support, nor do they reflect major changes in performance specifications for protective clothing and equipment. The agency acknowledges that current OSHA standards also do not reflect all the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards. OSHA is considering updating these standards with information gathered through an RFI and public meetings.

Statement of Need: Emergency response is a dangerous activity with more than 100 responders killed, and hundreds of thousands injured each year. OSHA currently regulates aspects of emergency response and preparedness; some of these standards were promulgated decades ago, and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, nor do they reflect major changes in performance specifications for protective clothing and equipment. The agency acknowledges that current OSHA standards also do not reflect all the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards. OSHA is developing a proposed rule that updates, by replacing, the existing outdated fire brigade standard to reflect current consensus standards and industry best practices. The agency anticipates that compliance with the updated rule would significantly reduce injuries and fatalities.

Summary of Legal Basis: The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives: One alternative to proposed rulemaking would be to take no regulatory action. As a program standard that is primarily performance based, alternatives would depend on each employer's individual situation. There are no alternatives proposed in the NPRM under development. OSHA intends to seek stakeholder input for alternatives that could reduce the burden on small entities, and on entities with volunteer emergency responders who are treated as employees in some states with OSHA approved state OSH programs and would be impacted by a proposed rule.

Anticipated Cost and Benefits: The estimates of costs and benefits are still under development.

Risks: Analysis of risks is still under development.

Timetable:

Action	Date	FR Cite
Stakeholder Meetings.	07/30/14	
Convene NACOSH Workgroup.	09/09/15	
NACOSH Review of Workgroup Report.	12/14/16	
Initiate SBREFA ..	08/02/21	
Finalize SBREFA	12/02/21	
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Email: levinson.andrew@dol.gov*.

RIN: 1218–AC91

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DEPARTMENT OF TRANSPORTATION (DOT)

Introduction: Departmental Mission

The U.S. Department of Transportation (Department or DOT) has a mission to deliver the world's leading transportation system, serving the American people and economy through the safe, efficient, sustainable, and equitable movement of people and goods.

The Department's Regulatory Philosophy, Initiatives, and Priorities

DOT issues regulations to make America's transportation the safest in the world for the benefit of all who use it, grow an inclusive and sustainable economy, reduce inequities across our transportation systems and the communities they affect, and help tackle the climate crisis. To accomplish this goal, DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, transit, and pipeline transportation areas. The Department also regulates aviation consumer and economic issues and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, motor transportation and vehicle safety. DOT also has responsibility for developing policies that implement a wide range of regulations that govern Departmental programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, emergency response, and the use of aircraft and vehicles. In addition, DOT writes regulations to carry out a variety of statutes ranging from the Air Carrier Access Act and the Americans with Disabilities Act to Title VI of the Civil Rights Act.

Safety is our North Star. The DOT Regulatory Plan reflects our commitment through a balanced regulatory approach grounded in reducing transportation-related fatalities and injuries. Our goals are to manage safety risks, reverse recent trends negatively affecting safety, and build on the successes that have already been achieved to make our transportation system safer than it has ever been. The regulatory plan laid out below also reflects a careful balance that emphasizes the Department's priorities in responding to the urgent challenges facing our nation.

The safe and efficient movement of goods and passengers requires us not just to maintain, but to improve our national transportation infrastructure. Accordingly, our Regulatory Plan incorporates regulatory actions that increase competition and consumer protection, as well as enable the next generation of automation technology for commercial motor vehicles.

Climate change is one of the most urgent challenges facing our Nation. As discussed in the next section, the Department has engaged in significant regulatory activities to address this challenge.

Ensuring that the transportation system equitably benefits underserved communities is a top priority. This work is guided by the Departmental and interagency work being done pursuant to Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. As discussed in the next section, the Department is working on multiple regulatory changes to ensure access to transportation for people with disabilities.

When developing regulations and establishing our regulatory priorities, the Department fosters active participation and engagement from members of the public and affected communities. In our Regulatory Plan, we detail engagement efforts that have helped to inform our priorities to date, as well as future engagement tools we plan to use. The Department is ensuring that we hear from members of the public who have not typically participated in the regulatory process. To that end, in April 2022, the Department issued new *ex parte* guidance that encourages DOT personnel to have meetings or other contacts with outside parties during rulemaking and states that DOT personnel ''should ensure, through appropriate affirmative outreach where necessary, that the opportunity to engage in *ex parte* communications is equitable to all parties, including stakeholders who might otherwise be less represented in that process.'' [1]

The Department carries out its responsibilities through the Office of the Secretary (OST) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Pipeline and Hazardous Materials Safety Administration (PHMSA); and Great Lakes St. Lawrence Seaway Development Corporation (GLS). Since each OA has its own area of focus, we summarize the regulatory priorities of each below. More information about each of the rules discussed below can be found in the DOT Unified Agenda.

Office of the Secretary of Transportation

OST oversees the regulatory processes for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of senior officials in regulatory decision making. Through the Office of the General Counsel (OGC), OST is also responsible for ensuring that the Department complies with the Administrative Procedure Act, Executive Orders 12866, 13563 and 14094, DOT's Regulatory Policies and Procedures, and other legal and policy requirements affecting the Department's rulemaking activities. In addition, OST has the lead role in matters concerning aviation consumer and economic rules, Title VI of the Civil Rights Act, the Americans with Disabilities Act, and rules that affect multiple elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and processes for personnel throughout the Department. OST also plays an instrumental role in the Department's efforts to improve our economic analyses; risk assessments; regulatory flexibility analyses; other related analyses; retrospective reviews of rules; and data quality, including peer reviews. OGC is the lead office that works with the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) to comply with Executive Order 12866 for significant rules, coordinates the Department's response to OMB's intergovernmental review of other agencies' significant rulemaking documents, and other relevant Administration rulemaking directives. OGC also works closely with representatives of other agencies, the White House, and congressional staff to provide information on how various proposals would affect the ability of the Department to perform its safety, infrastructure, and other missions.

The Department has recently completed a rulemaking to ensure that people with disabilities will be able to access lavatories on single-aisle aircraft. This rule was heavily informed by feedback from persons with disabilities, as it was developed as part of a negotiated rulemaking. Stakeholders, including numerous disability advocacy organizations, directly developed the features of the rule, which DOT then implemented through a recently issued final rule. DOT also reached out to the U.S. Access Board to develop new safety and accessibility standards for on-board wheelchairs. The Department held a joint public meeting with the Access Board to solicit further comment on the provisions of the rule relating to on-board wheelchairs.

In addition, the Department is working on: (1) a rulemaking to enhance the safety of air travel for individuals with disabilities who use wheelchairs; and (2) a rulemaking to ensure that disabled persons have equitable access to transit facilities. In the rulemaking to enhance air travel safety for wheelchair users, the Department is considering, among other things, options to ensure that assistance provided to individuals with disabilities be provided in a safe manner and that disabled individuals' assistive devices not be mishandled.

Executive Order 14036 directs the Department to take actions that would promote competition and deliver benefits to America's consumers, including initiating a rulemaking to ensure that air consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' ''cancellation fees,'' and fees for seating adjacent to young children at the time of ticket purchase. Among a number of steps to further the Administration's goals in this area, the Department has initiated a rulemaking to enhance consumers' ability to determine the true cost of travel, titled ''Enhancing Transparency of Airline Ancillary Service Fees.'' This rulemaking is informed by feedback received at three different public meetings: two meetings of the Aviation Consumer Protection Advisory Committee on December 8, 2022, and January 12, 2023, and one public hearing on March 30, 2023. All meetings were open to the public, and attendees had the option to provide live input at the December 8 and March 30 meetings. The docket for this rule was also open to public comment submission for approximately 120 days.

To further enhance consumer protection, the Department is also working on a rulemaking that would clarify, under the Department's rules requiring airlines to provide prompt refunds, when carriers and ticket agents must provide prompt ticket refunds to passengers when a carrier cancels or makes a significant change to a flight. This rulemaking would also require airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner. This rulemaking is

[1] Guidance on Communication with Parties outside of the Federal Executive Branch (Ex Parte Communications) at 5, available at: *https://www.transportation.gov/sites/dot.gov/files/2022-04/Guidance-on-Communication-with-Parties-outside-of-the-Federal-Executive-Branch-%28Ex-Parte-Communications%29.pdf.* See also OIRA Memorandum on Broadening Public Participation and Community Engagement in the Regulatory Process, available at: *https://www.whitehouse.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf.*

informed by feedback received at four public meetings: three meetings of the Aviation Consumer Protection Advisory Committee on August 22, 2022, December 8, 2022, and January 12, 2023, and one public hearing on March 21, 2023. The docket for this rule was also open to public comment submission for approximately 130 days.

Federal Aviation Administration

FAA is charged with safely and efficiently operating and maintaining the most complex aviation system in the world. To enhance aviation safety, FAA is working on a rulemaking that would require a safety management system for certain aircraft, engine, and propeller manufacturers; certificate holders conducting common carriage operations; and persons conducting certain, specific types of air tour operations. This rulemaking is informed by feedback that FAA received from an Aviation Rulemaking Committee comprised of members from across the aviation industry. In addition, FAA will proceed with a rulemakings to enable powered lift operations and to further advance the integration of unmanned aircraft systems into the national airspace system.

Federal Highway Administration

FHWA carries out the Federal highway program in partnership with State and local agencies to meet the Nation's transportation needs. FHWA's mission is to improve the quality and performance of our Nation's highway system and its intermodal connectors.

Consistent with this mission, FHWA has finalized its National Electric Vehicle Infrastructure (NEVI) Formula Program regulation as required by the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act) (Pub. L. 117–58) (Nov. 15, 2021). This regulation will enable States to implement federally-funded charging station projects in a standardized fashion across a national Electric Vehicle (EV) charging network that can be utilized by all EVs regardless of vehicle brand. Such standards will provide consumers with reliable expectations for travel in an EV across and throughout the United States and support a national workforce skilled and trained in EV supply equipment installation and maintenance. This rule was informed by feedback provided through two webinars hosted by FHWA that were advertised, in part, to communities interested in alternative fuels and sustainable transportation. FHWA is also working on a rulemaking that would establish a method for the measurement and reporting of greenhouse gas emissions associated with transportation. In addition, FHWA is working on a Buy America rulemaking to encourage the use of American-manufactured products.

Federal Motor Carrier Safety Administration

The mission of FMCSA is to reduce crashes, injuries, and fatalities involving commercial trucks and buses. FMCSA regulations establish minimum safety standards for motor carriers, commercial drivers, commercial motor vehicles, and State agencies receiving certain motor carrier safety grants and issuing commercial drivers' licenses.

FMCSA will continue to coordinate efforts on the development of autonomous vehicle technologies and is currently working on a rulemaking to revise existing regulations to identify changes that might be needed to ensure that DOT regulations ensure safety and keep pace with innovations. This rulemaking is informed by feedback that FMCSA received at two separate listening sessions held with stakeholders and members of the public.

Additionally, in support of the NHTSA automatic emergency braking (AEB) rulemaking for heavy trucks, FMCSA will seek information and comment concerning the maintenance and operation of AEB by motor carriers. FMCSA has also been engaged in activities to advance the voluntary adoption of AEB for heavy vehicles, primarily through the Tech-Celerate Now (TCN) program. This program focuses on accelerating the adoption of Advanced Driver Assistance Systems (ADAS), such as AEB, by the trucking industry to reduce fatalities and prevent injuries and crashes, in addition to realizing substantial return-on-investment through reducing costs associated with such crashes for the motor carrier. Initiated in September 2019 and completed in February 2022, the first phase of this program encompassed research into ADAS technology adoption barriers; a national outreach, educational, and awareness campaign; and data collection and analysis. Outreach accomplishments included development of training materials for fleets, drivers, and maintenance personnel related to AEB technology and return-on-investment (ROI) guides; educational videos on ADAS braking, steering, warning, and monitoring technologies; a web-based TCN ADAS-specific ROI calculator; four articles on ADAS technologies; and a program website to host the training materials. Planning is underway for the second phase of the TCN program, which includes an expanded national outreach and education campaign, additional research into the barriers to ADAS adoption by motor carriers, and evaluation of the outreach campaign. FMCSA is also working on a rulemaking that would set a maximum speed for certain commercial motor vehicles.

National Highway Traffic Safety Administration

NHTSA pursues policies that enable safety; establish light-, medium-, and heavy-duty vehicle fuel economy and fuel efficiency standards; enhance equity; and improve mobility to save lives, prevent injuries, and reduce economic and social costs due to roadway crashes. The statutory responsibilities of NHTSA relating to motor vehicles include reducing the number, and mitigating the effects, of motor vehicle crashes and related fatalities and injuries; providing safety-relevant information to aid prospective purchasers of vehicles, child restraints, and tires; and improving fuel economy and fuel efficiency standards requirements. NHTSA develops safety standards and other regulations driven by data and research. NHTSA's regulatory priorities focus on issues related to safety, climate, equity, and vulnerable road users.

Relative to climate and equity, NHTSA plans to propose a rulemaking to address the next phase of Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles, pursuant to Executive Order 14037. Also pursuant to Executive Order 14037, NHTSA has proposed the next phase of NHTSA's corporate average fuel economy (CAFE) standards for passenger cars and light trucks. To enhance the safety of vulnerable road users and vehicle occupants, NHTSA has issued a proposal to require automatic emergency braking (AEB) on light vehicles, including Pedestrian AEB. For heavy trucks, NHTSA also proposed a rulemaking, in coordination with FMCSA, to require AEB. NHTSA's rulemakings are informed by the public outreach that it regularly engaged in while a rule is in development, including with Federal partners; State, local, and tribal governments; and a wide range of interested stakeholders—some of whom represent underserved communities.

Federal Railroad Administration

FRA exercises regulatory authority over all areas of railroad safety and, where feasible, incorporates flexible performance standards. The current FRA regulatory program continues to reflect a number of pending proceedings

to satisfy mandates resulting from the Bipartisan Infrastructure Law (2021). These actions support a safe, high-performing passenger rail network, protect worker safety, and encourage innovation and the adoption of new technology to improve rail safety.

To further enhance safety, FRA is working on a rulemaking that would address the potential safety impact of one-person train operations, including appropriate measures to mitigate an accident's impact and severity. This rulemaking would address the issue of minimum requirements for the size of train crews, depending on the type of operations. To inform this rulemaking, FRA conducted outreach on its proposed rule that resulted in about 99 percent of the written comments submitted to the docket being from individual commenters who were not filing their comment officially on behalf of an organization, group, or business. FRA also held a public hearing that allowed more than 225 people to watch live testimony from labor organization leaders, railroads, and rail associations, in addition to the approximately 60 speakers and other physically present attendees.

Federal Transit Administration

The mission of FTA is to improve public transportation for America's communities. To further that end, FTA provides financial and technical assistance to local public transit systems, including buses, subways, light rail, commuter rail, trolleys, and ferries, oversees safety measures, and helps develop next-generation technology research. FTA's regulatory activities implement the laws that apply to recipients' uses of Federal funding and the terms and conditions of FTA grant awards.

Maritime Administration

MARAD administers Federal laws and programs to improve and strengthen the maritime transportation system to meet the economic, environmental, and security needs of the Nation. To that end, MARAD's efforts are focused upon ensuring a strong American presence in the domestic and international trades and to expanding maritime opportunities for American businesses and workers.

MARAD's regulatory objectives and priorities reflect the Agency's responsibility for ensuring the availability of water transportation services for American shippers and consumers and, in times of war or national emergency, for the U.S. armed forces. MARAD will continue its work increasing the efficiency of program operations by updating and clarifying implementing rules and program administrative procedures.

Pipeline and Hazardous Materials Safety Administration

PHMSA has responsibility for rulemaking focused on hazardous materials transportation and pipeline safety. In addition, PHMSA administers programs under the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

PHMSA will continue working on the Gas Pipeline Leak Detection and Repair rulemaking, which would amend the Pipeline Safety Regulations to enhance requirements for detecting and repairing leaks on new and existing natural gas distribution, gas transmission, and gas gathering pipelines. PHMSA anticipates that the amendments proposed in this rulemaking would reduce methane emissions arising from leaks and incidents from natural gas pipelines and address environmental justice concerns by improving the safety of natural gas pipelines near environmental justice communities and mitigating the risks for those communities arising from climate change. This rulemaking is informed by feedback that PHMSA received at a virtual public meeting. PHMSA staff also attended a Methane Detection Technology Workshop hosted by EPA in August 2021. In addition, in November 2023, PHMSA intends to hold a Gas Pipeline Advisory Committee meeting to discuss the leak detection rulemaking, including the comments received on the NPRM.

DOT—FEDERAL AVIATION ADMINISTRATION (FAA)

Final Rule Stage

176. Safety Management Systems [2120–AL60]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 44701(a)(5)

CFR Citation: 14 CFR 135; 14 CFR 21; 14 CFR 91.

Legal Deadline: None.

Abstract: This rulemaking would apply the requirements of 14 CFR part 5, with appropriate modifications. As a result, this rulemaking would require persons engaged in the design and production of aircraft, engines, or propellers; certificate holders that conduct common carriage operations under part 135; and persons conducting certain, specific types of air tour operations under part 91 to implement a Safety Management System.

Statement of Need: Recent incidents and accidents have indicated the need for action to improve safety in the National Airspace System (NAS). In addition, recommendations from the National Transportation Safety Board (NTSB), mandates in the Aircraft Certification Safety and Accountability (ACSA) Act (Pub. L. 116–260, December 27, 2020), agreements in International Civil Aviation Organization (ICAO) Annexes and Standards and Recommended Practices (SARPs), and recommendations from previous Aviation Rulemaking Committees (ARCs) indicate that expanded application of SMS is needed. Further, the successful implementation of Safety Management Systems (SMS) in part 121 suggests the potential benefit to expansion of SMS into other sectors of the aviation system. Therefore, the Federal Aviation Administration has determined that expanding the application of part 5 is necessary.

Summary of Legal Basis: The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. This rulemaking is also promulgated under 49 U.S.C. 44701(a)(5), 49 U.S.C. 44701(d)(1)(A), 49 U.S.C. 44701(a)(2), 49 U.S.C. 44707(2), 49 U.S.C. 44702 and 49 U.S.C 44704. In addition, the Airport Certification, Safety, and Accountability Act, (the Act), Public Law 116–260, division V, title I, sec. 102 (December 27, 2020) requires the FAA to initiate a rulemaking to require that manufacturers that hold both a type certificate and a production certificate issued pursuant to 49 U.S.C. 44704 have a safety management system consistent with standards and recommended practices established by ICAO. This rulemaking is within the scope of the aforementioned authorities because it requires certain entities to develop and maintain an SMS to improve the safety of their operations. The development and implementation of SMS ensures safety in air transportation, manufacturing, and maintenance by helping certain entities proactively identify and mitigate safety hazards, thereby reducing the possibility or recurrence of accidents in air transportation.

Alternatives: The proposed expansion of the applicability of part 5 furthers the

Administrator's mission of promoting the safe flight of civil aircraft in air commerce and reducing or eliminating the possibility or recurrence of accidents in air transportation. The FAA is currently exploring several alternatives to determine how the revised applicability would extend SMS requirements to parts 21, 91, 135, and 145.

Summary of Legal Basis: The FAA is in the process of determining the costs and benefits associated with the proposed rule.

Risks: An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies. An SMS provides an organization's management with a set of decision-making tools that can be used to plan, organize, direct, and control its business activities in a manner that enhances safety and ensures compliance with regulatory standards. Adherence to standard operating procedures, proactive identification and mitigation of hazards and risks, and effective communications are crucial to continued operational safety. The FAA envisions an SMS would provide those covered by the proposed rule with an added layer of safety to help reduce the number of incidents, and accidents.

Timetable:

Action	Date	FR Cite
NPRM	01/11/23	88 FR 1932
NPRM Comment Period Extended.	01/30/23	88 FR 5812
NPRM Comment Period End.	03/13/23	
Second NPRM Comment Period End.	04/11/23	
Analyzing Comments.	06/30/23	
Final Action	07/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov*.

URL For Public Comments: *www.regulations.gov*.

Agency Contact: Scott VanBuren, Office of Accident Investigation and Prevention, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 494–8417, *Email:* *scott.vanburen@faa.gov*.

RIN: 2120–AL60

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Statement of Regulatory Priorities

The primary mission of the Department of the Treasury is to maintain a strong economy and create economic and job opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combatting threats and protecting the integrity of the financial system, and manage the U.S. Government's finances and resources effectively.

Consistent with this mission, regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by Congress and signed by the President. It is the policy of the Department to comply with applicable requirements to issue a Notice of Proposed Rulemaking and carefully consider public comments before adopting a final rule. Also, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Orders 12866, 13563, and 13609 and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to implement and enforce Federal laws relating to alcohol, tobacco, firearms, and ammunition excise taxes and certain non- tax laws relating to alcohol. TTB's mission and regulations are designed to:

(1) Collect the taxes on alcohol, tobacco products, firearms, and ammunition;

(2) Protect the consumer by ensuring the integrity of alcohol products;

(3) Ensure only qualified businesses enter the alcohol and tobacco industries; and

(4) Prevent unfair and unlawful market activity for alcohol and tobacco products.

In FY 2024, TTB will continue its multi-year Regulations Modernization effort by prioritizing projects that reduce regulatory burdens, streamline and simplify requirements, and improve service to regulated businesses. These actions include rulemaking on streamlining permit and qualification requirements for distilled spirits plants, wineries, and breweries, and completing rulemaking to modernize the regulations regarding wine labeling and to authorize additional wine treating materials and processes.

In addition, TTB will also prioritize publishing rulemaking to implement recommendations of the Department of the Treasury's February 2022 report on Competition in the Markets for Beer, Wine, and Spirits, which was issued in response to Executive Order 14036, ''Promoting Competition in the American Economy.'' These actions focus on soliciting public comment on trade practice regulations that prevent anticompetitive practices and maintain a ''level playing field'' across the alcohol industry, and labeling and advertising regulations that would require alcohol beverage labels to include specific, content-related information on alcohol content, allergens, and other ingredients. They also include finalizing rulemaking on proposed new approved container sizes (''standards of fill'') for wine and distilled spirits.

The specific projects TTB plans to prioritize in FY 2024 are described below:

- *Streamlining and Modernizing the Permit Application Process (RINs: 1513–AC46, 1513–AC47, and 1513–AC48, Modernization of Permit and Registration Application Requirements for Distilled Spirits Plants, Permit Applications for Wineries, and Qualification Requirements for Brewers, respectively).*

In FY 2022, TTB proposed regulatory changes to eliminate or streamline application and qualification requirements for distilled spirits plants and breweries. In FY 2024, TTB intends to publish a similar proposal for wineries, and to publish final rules to implement the changes for distilled spirits plants and breweries. These changes are expected to reduce the amount of information industry members must submit to TTB in connection with permit and similar applications to engage in regulated businesses and reduce the types of operational activities that require prior approval, and overall reduce the regulatory burden on both new and existing businesses.

- *Modernizing the Alcohol Beverage Labeling and Advertising Requirements (RIN: 1513–AC67, Modernization of*

Wine Labeling and Advertising Regulations).

The Federal Alcohol Administration Act requires that alcohol beverages introduced in interstate commerce have a label approved under regulations prescribed by the Secretary of the Treasury. TTB conducted an analysis of its alcohol beverage labeling regulations to identify any that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with that analysis. These regulations were also reviewed to assess their applicability to the modern alcohol beverage marketplace. As a result of this review, in FY 2019, TTB proposed revisions to the regulations concerning the labeling requirements for wine, distilled spirits, and malt beverages. TTB anticipated that these regulatory changes would assist industry in voluntary compliance, decrease industry burden, and result in the regulated industries being able to bring products to market without undue delay. TTB received over 1,100 comments in response to the notice, which included suggestions for further revisions. In FY 2020, TTB published in the **Federal Register** (85 FR 18704) a final rule amending its regulations to make permanent certain of the proposed liberalizing and clarifying changes, and to provide certainty with regard to certain other proposals that commenters generally opposed and that TTB did not intend to adopt. In FY 2022, TTB published in the **Federal Register** (87 FR 7526) a final rule that addressed remaining issues related to the labeling of distilled spirits and malt beverages and reorganized those regulations to make them easier to read and understand, for which industry members expressed support. In FY 2024, TTB intends to complete this modernization initiative by publishing a final rule to similarly reorganize the wine labeling regulations, address the remaining labeling issues related to wine, and finalize the regulations related to the advertising of wine, distilled spirits, and malt beverages.

• *Authorizing the Use of Additional Wine Treating Materials and Soliciting Comments on Proposed Changes to the Limits on the Use of Wine Treating Materials to Reflect ''Good Manufacturing Practice'' (1513–AC75).*

TTB intends to propose to amend its regulations pertaining to the production of wine to authorize additional treatments that may be applied to wine and to juice from which wine is made. These proposed amendments are in response to requests from wine industry members. Although TTB may administratively approve such treatments without amending the regulations, administrative approval does not guarantee acceptance in foreign markets of any wine so treated. Under certain international agreements, authorization of wine treatments through public notice facilitates the acceptance of exported wine made using those treatments in foreign markets. TTB also intends to propose for public comment additional changes to the regulations in response to a petition to allow more wine treating materials to be used within the limitations of ''good manufacturing practice'' rather than within specified numerical limits, thereby providing additional flexibility to winemakers.

• *Consideration of Updates to Trade Practice Regulations (RIN: 1513–AC92).*

In FY 2023, TTB issued an advance notice of proposed rulemaking to seek public comment on TTB's trade practice regulations related to the Federal Alcohol Administration Act's exclusive outlet, tied house, commercial bribery, and consignment sales prohibitions. Executive Order 14036 (''Promoting Competition in the American Economy''), the Department of the Treasury's related February 2022 report (''Competition in the Markets for Beer, Wine, and Spirits''), and public comments related to that report have raised questions about whether these regulations could be improved. In FY 2024, TTB intends to review and consider the comments received in formulating potential proposals to amend the regulations.

• *Labeling and Advertising of Alcohol Beverages with Alcohol and Nutritional Content, Allergens, and Ingredients (RIN: 1513–AC93, Labeling and Advertising of Distilled Spirits, Wines, and Malt Beverages With Statements of Alcohol and Nutritional Content; RIN: 1513–AC94, Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages; and 1513–AC95, Ingredient Labeling of Distilled Spirits, Wines, and Malt Beverages).*

TTB intends to request public comment on possible changes to its labeling and advertising regulations governing alcohol beverage products related to statements of alcohol and nutritional content, allergen labeling, and ingredient labeling. The February 2022 report issued by the Department of the Treasury (''Competition in the Markets for Beer, Wine, and Spirits'') discussed past and potential future proposals related to the labeling of alcohol beverage products with ''serving facts'' information. The report stated that TTB should revive or initiate rulemaking proposing mandatory information on alcohol content, nutritional content, and appropriate serving sizes for alcohol beverage products, as well as ingredient labeling. TTB intends to publish two notices of proposed rulemaking (one on alcohol content and nutrition facts, and another on allergens) and an advance notice of proposed rulemaking on ingredient-labeling.

• *Standards of Fill for Wine and Distilled Spirits (RIN: 1513–AC86).*

TTB plans to publish a final rule to address its proposal published May 25, 2022 (87 FR 31787) to amend the regulations governing wine and distilled spirits containers. TTB proposed to add 10 additional authorized standards of fill for wine in response to requests it has received for such standards, and to be consistent with a Side Letter included as part of a U.S.–Japan Trade Agreement that addresses issues related to market access and, specifically, to alcohol beverage standards of fill. TTB also solicited comments on an alternative proposal to eliminate all but a minimum standard of fill for wine containers and all but a minimum and maximum for distilled spirits.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises all national banks and Federal savings associations (FSAs). The agency also supervises the Federal branches and agencies of foreign banks. The OCC's mission is to ensure that national banks and FSAs operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.

Regulatory priorities for fiscal year 2024 are described below.

• *Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity (12 CFR part 3).*

The OCC, the Federal Reserve Board, and the FDIC issued a joint notice of proposed rulemaking that would comprehensively revise the agencies' risk-based capital rules, including revisions to the current standardized and advanced approaches capital rules.

• *Capital Requirements for Market Risk; Fundamental Review of the Trading Book (12 CFR part 3).*

The OCC, the Federal Reserve Board, and the FDIC issued a joint notice of proposed rulemaking to revise their respective capital requirements for market risk, which are generally applied to banking organizations with substantial trading activity. The OCC

expects the revisions to be generally consistent with the standards set forth in the Fundamental Review of the Trading Book published by the Basel Committee on Bank Supervision.

• *Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions.*

The OCC, the Federal Reserve Board, and the FDIC, plan to issue a joint notice of proposed rulemaking that would require certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and certain insured depository institutions, to issue and maintain outstanding a minimum amount of long-term debt. The proposed rule would improve the resolvability of these firms in case of failure, reduce costs to the Depository Insurance Fund and mitigate financial stability and contagion risks by reducing the risk of loss to uninsured depositors.

Customs Revenue Functions

The Homeland Security Act of 2002 (the Act) provides that, although many functions of the former United States Customs Service were transferred to the Department of Homeland Security, the Secretary of the Treasury retains sole legal authority over customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100–16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions subject to certain exceptions, but further provided that the Secretary of the Treasury retained the sole authority to approve such regulations.

During fiscal year 2024, CBP and Treasury plan to give priority to regulatory matters involving the customs revenue functions which streamline CBP procedures, protect the public, or are required by either statute or Executive Order. Examples of these efforts are described below.

• *Investigation of Claims of Evasion of Antidumping and Countervailing Duties.*

Treasury and CBP plan to finalize interim regulations (81 FR 56477) which amended CBP regulations implementing section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, which set forth procedures to investigate claims of evasion of antidumping and countervailing duty orders.

• *Enforcement of Copyrights and the Digital Millennium Copyright Act.*

Treasury and CBP plan to finalize proposed amendments to the CBP regulations pertaining to importations of merchandise that violate or are suspected of violating the copyright laws, including the Digital Millennium Copyright Act (DMCA), in accordance with Title III of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) and Executive Order 13785, ''Establishing Enhanced Collection and Enforcement of Anti-dumping and Countervailing Duties and Violations of Trade and Customs Laws.''

The proposed amendments are intended to enhance CBP's enforcement efforts against increasingly sophisticated piratical goods, clarify the definition of piracy, simplify the detention process relative to goods suspected of violating the copyright laws, and prescribe new regulations enforcing the DMCA.

• *Merchandise Produced by Convict or Forced Labor or Indentured Labor under Penal Sanctions.*

Treasury and CBP plan to publish a proposed rule to update, modernize, and streamline the process for enforcing the prohibition in 19 U.S.C. 1307 against the importation of merchandise that has been mined, produced, or manufactured, wholly or in part, in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions. The proposed rule would generally bring the forced labor regulations and detention procedures into alignment with other statutes, regulations, and procedures that apply to the enforcement of restrictions against other types of prohibited merchandise.

• *Non-Preferential Origin Determinations for Merchandise Imported From Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA).*

Treasury and CBP plan to finalize a proposed rule to harmonize non-preferential origin determinations for merchandise imported from Canada or Mexico. Such determinations would be made using certain tariff-based rules of origin to determine when a good imported from Canada or Mexico has been substantially transformed resulting in an article with a new name, character, or use. Once finalized, the rule is intended to reduce administrative burdens and inconsistency for non-preferential origin determinations for merchandise imported from Canada or Mexico for purposes of the implementation of the USMCA.

• *Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings.*

Treasury and CBP plan to finalize interim regulations (80 FR 61278) which amended CBP regulations to name the Automated Commercial Environment (ACE) as a CBP-authorized electronic data interchange (EDI) system for the processing of electronic entry and entry summary filings.

• *Elimination of Paper-Based Bond Applications and the Automated Processing of Bond Applications.*

Treasury and CBP plan to publish a proposed rule to replace the paper-based bond application and approval process with a streamlined electronic process. The proposed rule would implement the successful National Customs Automation Program (NCAP) test of the electronic bond process.

Financial Crimes Enforcement Network

As administrator of the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) is responsible for developing and implementing regulations that are the core of the Department's anti-money laundering (AML) and countering the financing of terrorism (CFT) efforts. FinCEN's responsibilities and objectives are linked to, and flow from, that role. In fulfilling this role, FinCEN seeks to enhance U.S. national security by making the financial system increasingly resistant to abuse by money launderers, terrorists and their financial supporters, and other perpetrators of crime.

The Secretary of the Treasury, through FinCEN, is authorized by the BSA to issue regulations requiring financial institutions to file reports and keep records that are highly useful in criminal, tax, or regulatory investigations, risk assessments, or proceedings, or intelligence or counter-intelligence activities, including analysis, to protect against terrorism. The BSA also authorizes FinCEN to require that designated financial institutions establish AML/CFT programs and compliance procedures. Recent legislation has given FinCEN the added authority and responsibility to develop a system for reporting the beneficial owners of certain legal entities in the United States. To implement and realize its mission, FinCEN has established regulatory objectives and priorities to safeguard the financial system from the abuses of financial crime, including terrorist financing, proliferation financing, money laundering, and other illicit activity.

These objectives and priorities include: (1) issuing, interpreting, and enforcing compliance with regulations implementing the BSA; (2) supporting, working with, and as appropriate overseeing compliance examination functions delegated by FinCEN to other Federal regulators; (3) managing the collection, processing, storage, and dissemination of data related to the BSA and beneficial ownership; (4) maintaining government-wide access services to that same data for authorized users with a range of interests; (5) conducting analysis in support of policymakers, law enforcement, regulatory and intelligence agencies, and (for compliance purposes) the financial sector; and (6) coordinating with and collaborating on AML/CFT initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

FinCEN's regulatory priorities for fiscal year 2024 include:

• *Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024.*

FinCEN intends to finalize an amendment, proposed on September 28, 2023, to the beneficial ownership information (BOI) reporting rule (Reporting Rule) that FinCEN published on September 30, 2022. The amendment will extend the BOI filing deadline for entities created or registered on or after January 1, 2024, and before January 1, 2025, from 30 days to 90 days. This reporting extension will provide those entities with additional time to understand the new BOI reporting obligation and collect the necessary information to complete their filings. Entities created or registered on or after January 1, 2025, will have 30 days to file their BOI reports with FinCEN, as required under the original Reporting Rule.

• *Beneficial Ownership Information Access and Safeguards.*

FinCEN intends to issue a final rule entitled ''Beneficial Ownership Information Access and Safeguards.'' The final rule will establish protocols to protect the security and confidentiality of the beneficial ownership information (BOI) that will be reported to FinCEN pursuant to the Bank Secrecy Act, as amended by Section 6403(a) of the Corporate Transparency Act, and will establish the framework for authorized recipients' access to the BOI reported.

• *Revisions to Customer Due Diligence Requirements for Financial Institutions.*

FinCEN intends to issue a notice of proposed rulemaking entitled ''Revisions to Customer Due Diligence Requirements for Financial Institutions,'' relating to Section 6403(d) of the Corporate Transparency Act (CTA). Section 6403(d) of the CTA requires FinCEN to revise its customer due diligence requirements for financial institutions to account for the changes created by the BOI reporting and access requirements set out in the CTA.

• *Exempting a System of Records from Certain Provisions of the Privacy Act of 1974.*

FinCEN intends to issue a final rule amending 31 CFR 1.36 to exempt a new system of records, entitled ''FinCEN .004—Beneficial Ownership Information System,'' from certain provisions of the Privacy Act of 1974. The Beneficial Ownership Information (BOI) System is being established to implement the BOI reporting and access requirements set out in the Bank Secrecy Act (BSA), as amended by the Corporate Transparency Act. The exemptions are intended to increase the value of the system for law enforcement purposes and to comply with the BSA's prohibitions against unauthorized disclosure of certain information.

• *Residential Real Estate Transaction Reports and Records.*

FinCEN intends to issue a notice of proposed rulemaking to address money laundering threats in the U.S. residential real estate sector.

• *Anti-Money Laundering Program and Suspicious Activity Report Filing Requirement for Investment Advisers.*

FinCEN intends to issue a notice of proposed rulemaking that would prescribe minimum standards for anti-money laundering programs to be established by certain investment advisers and to require such investment advisers to report suspicious activity to FinCEN pursuant to the Bank Secrecy Act.

• *Section 6101. Establishment of National Exam and Supervision Priorities.*

FinCEN intends to issue a notice of proposed rulemaking as part of the establishment of national exam and supervision priorities. The proposed rule implements Section 6101(b) of the Anti-Money Laundering Act of 2020 that requires the Secretary of the Treasury to issue and promulgate rules for financial institutions to carry out the government-wide anti-money laundering and countering the financing of terrorism priorities (AML/CFT Priorities). The proposed rule: (i) incorporates a risk assessment requirement for financial institutions; (ii) requires financial institutions to incorporate AML/CFT Priorities into risk-based programs; and (iii) provides for certain technical changes. Once finalized, this proposed rule will affect all financial institutions subject to regulations under the Bank Secrecy Act that have AML/CFT program obligations.

• *Section 6314. Updating Whistleblower Incentives and Protection.*

FinCEN intends to issue a notice of proposed rulemaking to establish a whistleblower award program for eligible individuals that provide information regarding certain violations of the Bank Secrecy Act and U.S. economic sanctions. The proposed regulations would implement section 6314 of the Anti- Money Laundering Act of 2020 and the Anti-Money Laundering Whistleblower Improvement Act. Pursuant to the proposed regulations, potential whistleblowers would voluntarily provide information regarding relevant violations to FinCEN, the Department of Justice, or a whistleblower's employer. The proposed regulations would also govern the award phase of the whistleblower program. Potential whistleblowers would apply for an award following the successful enforcement of a covered judicial or administrative action. FinCEN would adjudicate such award applications pursuant to the proposed regulations and would pay awards to eligible whistleblowers from the Financial Integrity Fund (Fund). As set forth in 31 U.S.C. 5323, the structure of the Fund is such that monetary sanctions collected by the Secretary or Attorney General in any judicial or administrative action under title 31, chapter 35 or section 4305 or 4312 of title 50, or the Foreign Narcotics Kingpin Designation Act will be deposited into the Fund, (or an amount equal to those sanctions will be credited to the Fund), unless the balance of the Fund at the time the monetary sanction is collected exceeds $300,000,000.

• *Commercial Real Estate Transaction Reports and Records.*

FinCEN intends to issue a notice of proposed rulemaking to address money laundering threats in the U.S. commercial real estate sector.

• *Other Requirements.*

FinCEN also will continue to issue proposed and final rules pursuant to section 311 of the USA PATRIOT Act, as appropriate. Finally, FinCEN expects that it may propose various technical and other regulatory amendments in conjunction with ongoing efforts with respect to a comprehensive review of existing regulations to enhance regulatory efficiency required by Section 6216 of the Anti-Money Laundering Act of 2020.

Bureau of the Fiscal Service

The Bureau of the Fiscal Service (Fiscal Service) administers regulations pertaining to the Government's financial activities, including: (1) implementing Treasury's borrowing authority, including regulating the sale and issue of Treasury securities; (2) administering Government revenue and debt collection; (3) administering government-wide accounting programs; (4) managing certain Federal investments; (5) disbursing the majority of Government electronic and check payments; (6) assisting Federal agencies in reducing the number of improper payments; and (7) providing administrative and operational support to Federal agencies through franchise shared services.

During fiscal year 2024, Fiscal Service will accord priority to the following regulatory projects:

• *Revision of the Federal Claims Collection Standards*

Fiscal Service is proposing to amend the Federal Claims Collections Standards (FCCS), codified in 31 CFR parts 900–904, which is jointly administered by Treasury and the Department of Justice. The FCCS set standards for administrative collection, compromise, and suspension or termination of collection activity for federal nontax debts. They also set standards for referring federal nontax debts to DOJ for litigation. The proposed amendments, which have been jointly prepared by Treasury and DOJ, include revisions for equity and updates to conform to developments since the last publication of the regulations in 2000.

• *Amendment of Electronic Payment Regulation*

Fiscal Service will be publishing a final rule to amend 31 CFR part 208, Management of Federal Agency Disbursements—Fiscal Service's regulation that implements a statutory mandate requiring the Federal Government to deliver non-tax payments by electronic funds transfer (EFT) unless a waiver is available. Among other things, the final rule strengthens the EFT requirement by narrowing the scope of existing waivers from the EFT mandate or requiring agencies to obtain Fiscal Service's approval to invoke certain existing waivers. The use of electronic payments has expanded significantly since the waivers from the EFT mandate were first published in 1998 and the final rule appropriately adjusts the waivers given the broad availability of safe and secure electronic payment options currently available.

Internal Revenue Service

The Internal Revenue Service (IRS), working with Treasury's Office of Tax Policy, promulgates regulations that interpret and implement the Internal Revenue Code (Code), and other internal revenue laws of the United States. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible, which reduces the burdens on taxpayers and the IRS.

During fiscal year 2024, the priority of the IRS and the Office of Tax Policy is to provide guidance, including proposed and final rules in certain cases, regarding implementation of key tax provisions of several public laws, including Public Law 117–169, known as the Inflation Reduction Act of 2022 (IRA), the CHIPS and Science Act of 2022, Public Law 117–167, the Infrastructure Investment and Jobs Act, Public Law 117–58, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted as Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, and the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328.

With regard to the following key provisions of the Code enacted by the IRA, Treasury and the IRS intend to issue guidance, including proposed and final rules in certain cases:

• The credit for alternative fuel refueling property under § 30C of the Code.

• The consumer vehicle credits under §§ 25E and 30D of the Code.

• The credit for sustainable aviation fuel under § 40B of the Code.

• The prevailing wage rate and apprenticeship requirements in § 45(b) as applicable for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 48, 48C, 48E, and 179D of the Code.

• The domestic content enhancements for purposes of §§ 45, 45Y, 48, 48E.

• The energy community enhancements for purposes of §§ 45, 45Y, 48, 48E.

• The extension and modification of the credit for carbon oxide sequestration under § 45Q of the Code.

• The zero-emission nuclear power PTC under § 45U of the Code.

• The clean hydrogen PTC under § 45V of the Code.

• The credit for qualified commercial clean vehicles under § 45W of the Code.

• The advanced manufacturing PTC under § 45X of the Code.

• The clean electricity PTC under § 45Y of the Code.

• The clean fuels production credit under § 45Z of the Code.

• The extension and modification of the investment tax credit (ITC) for energy property under § 48 of the Code.

• The allocation of amounts of environmental justice solar and wind capacity limitation to qualified solar and wind facilities under § 48(e) of the Code.

• The qualifying advanced energy project credit under § 48C of the Code.

• The advanced manufacturing ITC under § 48D of the Code as enacted by the CHIPS Act of 2022.

• The corporate alternative minimum tax under §§ 53, 55, 56, and 56A of the Code.

• The energy efficient commercial buildings deduction under § 179D of the Code.

• The excise tax on the repurchase of corporate stock under § 4501 of the Code.

• The elective payment and transfer of credits for energy property & electricity produced from certain renewable resources under §§ 6417 and 6418 of the Code.

Consistent with the Administration's goals of equity and fairness in tax administration, using new funding provided by the Inflation Reduction Act, the IRS will continue to reduce burdens for taxpayers. Underpayments by tax evaders shift burdens onto honest, hard-working Americans who follow the law as well as onto future generations. The funding is being used to help ensure that everyone pays their fair share. Pursuant to the Inflation Reduction Act, billions of dollars will go toward substantial service improvements for taxpayers as they interact with the IRS. The IRS is improving customer service, answering more calls, processing returns and refunds faster, updating computer systems, and simplifying tax filing. The IRS is also expanding the customer callback capability, which gives taxpayers an alternative to waiting on hold. This reduces burden and frustration for taxpayers.

Although taxpayers can still choose to use paper-based processes to file returns, the IRS is transitioning to digital platforms, with better data tools to make more filings and processes available electronically, reducing audits and retiring paper-based processes. IRS employees still need to manually

transcribe millions of paper returns. However, the IRS is automating the scanning of millions of individual paper returns into digital copies. For taxpayers, this means faster processing and, ultimately, faster refunds for paper filers.

The IRS is expanding the use of issue resolution tools so that taxpayers can access their own online account and get the information they need without the need of an IRS assistor. The new IRS Online Account features make it easier to communicate with the IRS where most issues can be resolved online.

Every year, Treasury and the IRS identify guidance projects that are priorities for allocation of resources during the year in the Priority Guidance Plan (PGP) (available on *irs.gov* and *regulations.gov*). The plan represents projects that Treasury and the IRS intend to actively work on during the plan year. See, for example, the *2022–2023 Priority Guidance Plan* (May 5, 2023). To facilitate and encourage suggestions, Treasury and the IRS have developed an annual process for soliciting public input for guidance projects. The annual solicitation is done through the issuance of a notice inviting recommendations from the public for items to be included on the PGP for the upcoming plan year. See, for example, *Notice 2023–36* (May 4, 2023). We also invite the public to provide us with their comments and suggestions for guidance projects throughout the year.

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) administers services and benefit programs that recognize the important federal obligations to those who served this Nation. VA's regulatory responsibility is almost solely confined to carrying out mandates of the laws enacted by Congress relating to programs for veterans and their families. VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by VA involve at least one of three VA components: the Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery Administration. The primary mission of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans and their dependents. The primary mission of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The primary mission of the National Cemetery Administration is to memorialize eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as national shrines in perpetuity as a final tribute of a grateful Nation to commemorate their service and sacrifice to our Nation.

VA's regulatory priorities also reflect our robust engagement process with stakeholders and our strong culture of evidence-based decision making. Through regular stakeholder meetings, public hearings, Small Business Advocacy Review Panels, and public comments on proposed regulations, the Department engages with diverse stakeholders to seek input on our regulatory agenda overall or feedback on proposed rules. When VA publishes a proposed rule, it is current practice to send a Plain Language Summary Document (PLSD) to VSOs, Congress and Intergovernmental Affairs offices notifying them that a proposed rule is open for public comment. We also do this for Final rules and in some instances, we send a Press Release document in lieu of the PLSD. A Press Release and a PLSD is a summary of the published rule, its impacts, why the rule is necessary and who the rule impacts. Among the specific rules described below, we include further details on previous stakeholder engagement and future opportunities for stakeholder engagement. VA's regulatory priority plan consists of thirteen (13) priority regulations. The regulations listed below are not in any priority order.

BILLING CODE 8320–01–P

1	**AR96 - Amendments to the Caregivers Program** **Summary:** The rule will propose amendments to the eligibility criteria, definitions used, and consider other changes to evaluation processes for the Program of Comprehensive Assistance for Family Caregivers, which provides services and benefits, including a monthly stipend, for eligible caregivers of veterans who sustained a serious injury or illness in the line of duty. **Rule Type:** Proposed Rule **EO 12866:** 3(f)(1) Significant **EO 14094:** Yes **Estimated Publication Date:** 3/00/24
2	**AS00 - Revision of Veterans Community Care Program (VCCP) Access Standards** **Summary:** VA proposes to revise its designated access standards for purposes of the Veterans Community Care Program to consider a veteran's preference for telehealth when scheduling appointments. VA additionally proposes to consider whether and how to address standards for when a VA provider is not available within the existing average drive time standards. **Rule Type:** Proposed Rule **EO 12866:** Other Significant **EO 14094: No** **Estimated Publication Date:** 4/00/24
3	**AQ95 - Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge** **Summary:** The Department of Veterans Affairs (VA) is amending its regulations regarding character of discharge determinations. The amendments will modify the regulatory framework for discharges considered "dishonorable" for VA benefit eligibility purposes, such as discharges due to "willful and persistent misconduct," an offense involving "moral turpitude," and homosexual acts involving aggravating circumstances or other factors affecting the "performance of duty." This rule contains early public participation/engagement in the rulemaking process in accordance with Executive Order 14094. **Rule Type:** Final Rule **EO 12866:** 3(f)(1) Significant **EO 14094:** Yes **Estimated Publication Date: 1/00/24**
4	**AR10 - Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure.** **Summary:** The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations relating to exposure to herbicides, such as Agent Orange, in order to incorporate the provisions of the Blue Water Navy Vietnam Veterans Act of 2019 (the BWN Act). This proposed rule would extend the presumed area of exposure to the offshore waters of the Republic of Vietnam and expand the date ranges for presumption of exposure in the Republic of Vietnam and Korea. This rule would also clarify the definition of a *Nehmer* class member and establish entitlement to spina bifida benefits for children of certain veterans who served in Thailand. On the basis of VA's general rulemaking authority, VA also proposes to establish a presumption of herbicide exposure for certain veterans who served in Thailand

	and also proposes to codify longstanding procedures for searching for payees entitled to *Nehmer* class action settlement payments. This proposed rule incorporates the provisions contained in VA's RIN 2900-AR45, titled, "Diseases Associated with Exposure to Certain Herbicide Agents (Bladder Cancer, Parkinsonism, and Hypothyroidism)" as a result of VA withdrawing RIN 2900-AR45 from the Fall 2022 Unified Agenda. A future regulation will be published to all of VA's adjudication regulations with controlling statute. This future regulation will also ensure that eligible Veterans are not denied the benefits they are entitled to and will allow VA to correct previous improper denials of service connection. **Rule Type:** Proposed Rule **EO 12866:** Section 3(f)(1) Significant **EO 14094:** No **Estimated Publication Date:** 1/00/24
5	**AR25 - Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter** **Summary:** This rulemaking adopts as final, with changes, an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. The amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis. **Rule Type:** Final Rule **EO 12866:** 3(f)(1) Significant **EO 14094:** No **Estimated Publication Date:** 9/1/23
6	**AR44 - Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate.** **Summary:** This rulemaking adopts as final, without changes, an interim final rule amending the Department of Veterans Affairs (VA) adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposure to fine particulate matter. These presumptions apply to Veterans with a qualifying period of service, *i.e.,* who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War (hereinafter Gulf War), from August 2, 1990, onward, as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War. This rulemaking implements a decision by the Secretary of Veterans Affairs that determined there is sufficient evidence to support these cancers as presumptive based on exposure to fine particulate matter during service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. The intended effect of this rulemaking is to ease the evidentiary burden of this population of Veterans who file claims with VA for these nine rare respiratory cancers. **Rule Type:** Final Rule **EO 12866:** Other Significant **EO 14094:** No **Estimated Publication Date:** 11/00/23

7	**AR47 – Expanding Veterans Cemetery Grant Program (VCGP) Grants to Include Training Costs.** **Summary:** VA proposes to amend its regulations regarding aid for the establishment, expansion, and improvement, or operation and maintenance of Veterans cemeteries to implement new authorities provided in section 2208 of The Veterans Health Care and Benefits Improvement Act of 2020. **Rule Type:** Proposed Rule **EO 12866:** Other Significant **EO 14094:** No **Estimated Publication Date:** 6/00/24
8	**AR68 - Veteran and Spouse Transitional Assistance Grant Program** **Summary:** VA, as authorized under the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, amends its regulations to establish the Veteran Transitional Assistance Grant Program (VTAGP). VA will establish grant application procedures and evaluative criteria for determining whether to issue funding to eligible organizations providing transition services to members of the Armed Forces who are separated, retired, or discharged, as well as their spouses. **Rule Type:** Final Rule **EO 12866:** Other Significant **EO 14094:** No **Estimated Publication Date:** 11/00/23
9	**AR75 - Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure.** **Summary:** The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address comprehensive Toxics Act of 2022, Public Law 117-168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modified or established presumptions of service connection related to toxic exposure. Pursuant to the Act, VA is proposing to remove the manifestation period requirement and the minimum compensable evaluation requirement from Gulf War claims based on undiagnosed illness and medically unexplained chronic multi-symptom illnesses. VA is also proposing to expand the definition of a Persian Gulf Veteran and update the list of locations eligible for a presumption of exposure to toxic substances, chemicals, or hazards based on Gulf War service. To implement additional provisions of the Act, VA is also proposing to codify the procedure for determining when examinations and medical nexus opinions are required for claims based on toxic exposure. **Rule Type:** Proposed Rule **EO 12866:** Other Significant **EO 14094:** No **Estimated Publication Date:** 1/00/24
10	**AR76 - Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117-168** **Summary:** The Department of Veterans Affairs (VA) amends its adjudication regulations concerning certain awards of Dependency and Indemnity Compensation (DIC). Under this amendment, relevant claimants will be eligible to elect to have certain previously denied DIC claims reevaluated pursuant to changes that establish or modify a presumption of service connection. Any award as a result of the reevaluation may be made retroactive as if the establishment or modification of the presumption of service connection had been in effect on the date of the submission of the original claim. This amendment incorporates legislative changes enacted by the PACT Act and will bring Federal regulations into conformance with those changes.

	Rule Type: Final Rule **EO 12866:** Section 3(f)(1) Significant **EO 14094:** No **Estimated Publication Date:** 11/00/23
11	**AR91 - Evidence Requirements for Direct Service Connection of Covered Mental Health Conditions Based on In-Service Personal Trauma.** **Summary:** VA is proposing to amend regulations concerning the type of evidence that may be used to support a veteran's statement regarding the occurrence of an in-service personal trauma. VA is also proposing to define key terms relevant to such claims. These amendments will provide greater specificity and clarity to the regulatory text and aid claims processors who develop and decide claims based on in-service personal trauma. The intent of this change is to ease the evidentiary requirements for veterans claiming a mental health condition based on in-service personal trauma. **Rule Type:** Proposed Rule **EO 12866:** Other Significant **EO 14094:** No **Estimated Publication Date:** 2/00/24
12	**AR73 - Technical Revisions to Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service (Section 103 PACT Act)** **Summary:** The Department of Veterans Affairs (VA) is issuing this rule to amend its medical regulations governing eligibility for VA health care and copayment requirements to conform to recent statutory changes made by section 103 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117-168 (PACT Act). VA is changing its medical benefits enrollment criteria to include toxic-exposed veterans and veterans who supported certain overseas contingency operations, to exempt such veterans from copayments for certain care, and to provide per diem for nursing home care for such veterans. **Rule Type:** Proposed Rule **EO 12866:** Other Significant **EO 14094:** No **Estimated Publication Date:** 8/00/24
13	**AQ30 – Modifying Copayments for Veterans at High Risk for Suicide** **Summary:** The Department of Veterans Affairs (VA) is finalizing a proposed rule s to amend its medical regulations governing copayments for VA outpatient medical care and medications (to include outpatient medical care and medications provided by VA directly or community care obtained by VA through contracts, provider agreements or sharing agreements) by eliminating the copayment for outpatient care and reducing the copayment for medications dispensed to veterans identified by VA as being at high risk for suicide. These copayment changes will be applied until VA determines that the veteran is no longer at high risk for suicide. **Rule Type:** Final Rule **EO 12866:** Other Significant **EO 14094:** No **Estimated Publication Date:** 9/00/24

BILLING CODE 8320–01–C

VA

Proposed Rule Stage

177. Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure [2900–AR10]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 38 U.S.C. 1116; 38 U.S.C. 1116A; 38 U.S.C. 1116B; 38 U.S.C. 1821; 38 U.S.C. 1822

CFR Citation: 38 CFR 3.30; 38 CFR 3.309; 38 CFR 3.105; 38 CFR 3.114; 38 CFR 3.313; 38 CFR 3.81.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations relating to exposure to herbicides, such as Agent Orange, in order to incorporate the provisions of the Blue Water Navy Vietnam Veterans Act of 2019 (the BWN Act). This proposed rule would extend the presumed area of exposure to the offshore waters of the Republic of Vietnam and expand the date ranges for presumption of exposure in the Republic of Vietnam and Korea. This rule would also clarify the definition of a Nehmer class member and establish entitlement to spina bifida benefits for children of certain veterans who served in Thailand. On the basis of VA's general rulemaking authority, VA also proposes to establish a presumption of herbicide exposure for certain veterans who served in Thailand and also proposes to codify longstanding procedures for searching for payees entitled to Nehmer class action settlement payments. This proposed rule incorporates the provisions contained in VA's RIN 2900–AR45, titled, ''Diseases Associated with Exposure to Certain Herbicide Agents (Bladder Cancer, Parkinsonism, and Hypothyroidism)'' as a result of VA withdrawing RIN 2900–AR45 from the Fall 2022 Unified Agenda. A future Interim Final Rule will be published to align all of VA's adjudication regulations with controlling statute. This future regulation will also ensure that eligible Veterans are not denied the benefits they are entitled to and will allow VA to correct previous improper denials of service connection.

Statement of Need: The Department of Veterans Affairs (VA) is proposing to amend its regulations for the following purposes: (1) extend the presumption of herbicide exposure to the offshore waters of the Republic of Vietnam and to define those boundaries; (2) expand the dates for presumption of herbicide exposure for service in the Korean Demilitarized Zone; (3) establish entitlement to spina bifida benefits for children of certain Veterans who served in Thailand; (4) codify the presumption of herbicide exposure for certain locations identified where herbicide agents were used, tested, or stored outside of Vietnam; (5) codify longstanding procedures for searching for payees entitled to class-action settlements under *Nehmer* v. *Department of Veterans Affairs;* (6) apply the definition of Republic of Vietnam offshore waters to presumptive service connection claims for non-Hodgkin's lymphoma; (7) add bladder cancer, hypothyroidism, and Parkinsonism as presumptive herbicide diseases; and (8) recognize hypertension and monoclonal gammopathy of undetermined significant as presumptive herbicide diseases.

Summary of Legal Basis: Promulgation of these regulations is necessitated by the Blue Water Navy Vietnam Veterans Act of 2019, Public Law 116–123; Fiscal Year 2021 National Defense Authorization Act; and the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act), Public Law 117–168. VA's general rulemaking authority under 38 U.S.C. 501(a) is also utilized in effectuating these regulations.

Alternatives: The comprehensive framework of the enacted laws requires VA to issue regulations to ensure that claims processors accurately and consistently adjudicate claims pursuant to the intent and text of the legislation. The absence of regulations would cause confusion amongst adjudicators leading to benefit decision errors, as well as incurring significant litigation risk if the only instruction concerning application of the aforementioned laws is sub-regulatory guidance that did not go through notice-and-comment as required by the Administrative Procedures Act.

Anticipated Cost and Benefits: VA has estimated that there are both transfers and costs associated with the provisions of this rulemaking. The total transfers are estimated to be $59.9 billion over 10 years. Actual transfers and costs will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov*.

Agency Contact: Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, *Phone:* 202 461–9700, *Email:* *robert.parks3@va.gov*.

RIN: 2900–AR10

VA

178. Expanding Veterans Cemetery Grant Program (VCGP) Grants To Include Training Costs [2900–AR47]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 605(b); 2 U.S.C. 1532; 38 U.S.C. 101; 25 U.S.C. 450b(l)

CFR Citation: 38 CFR 39.34.

Legal Deadline: None.

Abstract: VA proposes to amend its regulations regarding aid for the establishment, expansion, and improvement, or operation and maintenance of Veterans cemeteries to implement new authorities provided in section 2208 of The Veterans Health Care and Benefits Improvement Act of 2020. The Act authorizes VA to expand the use of Veterans Cemetery Grant Program (VCGP) funds to include training costs for State and Tribal cemetery personnel to participate in training provided by the National Cemetery Administration (NCA).

Statement of Need: This rulemaking is needed for the Department of Veteran Affairs (VA) to amend its regulations, in accordance with 38 U.S.C. 501, to implement new authorities enacted in Section 2208 of Public Law 116–315, The Veterans Health Care and Benefits Improvement Act of 2020. That Public Law amended section 2408 of title 38, United States Code (U.S.C.).

Summary of Legal Basis: VA proposes to amend its regulations regarding aid for the establishment, expansion, and improvement, or operation and maintenance of Veterans cemeteries to implement new authorities provided in section 2208. The Act authorized VA to expand the use of Veterans Cemetery Grant Program (VCGP) funds to include training costs for State and Tribal cemetery personnel to participate in training provided by the National Cemetery Administration (NCA).

Alternatives: Because VA must implement new grants authority in regulation, there are no practical alternatives to rulemaking. Grantees can choose to apply for training grant funds or expend their own resources to send employees to attend NCA training.

However, as mentioned above, because many grantees lack sufficient fiscal resources for their employees to attend NCA training, VA anticipates increased participation from grantee-cemetery employees. The proposed approach limits the number of employees the State or Tribal Organizations can have attending training and those entities will continue to have difficulty meeting the same national shrine standards and measures as VA national cemeteries.

Anticipated Cost and Benefits: The primary benefit of this program expansion will assist VA grant-funded State and Tribal Veterans' cemeteries in meeting NCA operational standards and measures. This includes the appearance in the key cemetery areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites, and turf conditions. VA estimates transfers of $89,916 for Fiscal Year (FY) 2023 and $458,661 for FY 2023–FY 2027.

Risks: TBD.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov*.

Agency Contact: George Eisenbach, Director, Veterans Cemetery Grants Program, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 632–7369, *Email: george.eisenbach@va.gov*.

RIN: 2900–AR47

VA

179. Technical Revisions To Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service [2900–AR73]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1710; Pub. L. 117–168 sec. 103(a)

CFR Citation: 38 CFR 17.36; 38 CFR 17.108; 38 CFR 17.110; 38 CFR 17.111; 38 CFR 51.50.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) proposes to amend its medical regulations governing eligibility for VA health care and copayment requirements to conform to recent statutory changes made by section 103 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). VA is changing its medical benefits enrollment criteria to include toxic-exposed veterans and veterans who supported certain overseas contingency operations, to exempt such veterans from copayments for certain care, and to provide per diem for nursing home care for such veterans.

Statement of Need: This rulemaking is necessary to implement the provisions of section 103(a) of the Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act), which expanded the provision of health care and nursing home care to new groups of toxic-exposed veterans. This rule would also amend VA's medical regulations to exempt such veterans from copayments for certain care.

Summary of Legal Basis: Pursuant to 38 U.S.C. 1710, VA proposes to amend its medical regulations and regulations on per diem for nursing home care of veterans in State homes. This would conform with changes made to 38 U.S.C. 1710 by section 103 of the PACT Act.

Alternatives: TBD.

Anticipated Cost and Benefits: TBD.

Risks: Delayed access to health care for these toxic-exposed veterans that would be newly-eligible for VA health care. These additional groups of toxic-exposed veterans who are already enrolled in VA health care would continue to be charged copayments for care of illness related to their toxic exposures until these changes are made.

Timetable:

Action	Date	FR Cite
NPRM	08/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov*.

Agency Contact: Ryan Heiman, Acting Deputy Director, VHA Member Services, Department of Veterans Affairs, 3401 SW 21st Street, Building 9, Topeka, KS 66604, *Phone:* 785 817–2719, *Email: ryan.heiman@va.gov*.

RIN: 2900–AR73

VA

180. Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure [2900–AR75]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1117; 38 U.S.C. 1119; 38 U.S.C. 1120; 38 U.S.C. 501

CFR Citation: 38 CFR 3.159; 38 CFR 3.317; 38 CFR 3.320.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modified or established presumptions of service connection related to toxic exposure. Pursuant to the Act, VA is proposing to remove the manifestation period requirement and the minimum compensable evaluation requirement from Gulf War claims based on undiagnosed illness and medically unexplained chronic multi-symptom illnesses. VA is also proposing to expand the definition of a Persian Gulf Veteran and update the list of locations eligible for a presumption of exposure to toxic substances, chemicals, or hazards based on Gulf War service. To implement additional provisions of the Act, VA is also proposing to codify the procedure for determining when examinations and medical nexus opinions are required for claims based on toxic exposure.

Statement of Need: The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modifies or establishes presumptions of service connection related to toxic exposure.

Summary of Legal Basis: The new provisions of regulation are authorized by sections 302, 303, 405 and 406 of Public Law 117–168. VA must publish regulations to carry out the laws administered by the Department as required by 38 U.S.C. 501(a).

Alternatives: The comprehensive framework of the enacted law requires VA to issue regulations to ensure that claims processors accurately and consistently adjudicate claims pursuant to the intent and text of the legislation. The absence of regulations would cause confusion amongst adjudicators leading to benefit decision errors, as well as incurring significant litigation risk if the only instruction concerning application of the aforementioned law is sub-regulatory guidance that did not go through notice-and-comment as

required by the Administrative Procedures Act.

Anticipated Cost and Benefits: Actual costs and transfers will be determined and reflected in this section of ROCIS once the rule is formally sent to OMB for a formal Executive Order 12866 review.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov*.

Agency Contact: Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, *Phone:* 202 461–9700, *Email:* *robert.parks3@va.gov*.

RIN: 2900–AR75

VA

181. Evidence Requirements for Direct Service Connection of Covered Mental Health Conditions Based on In-Service Personal Trauma [2900–AR91]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 38 U.S.C. 501

CFR Citation: 38 CFR 3.304.

Legal Deadline: None.

Abstract: VA is proposing to amend regulations concerning the type of evidence that may be used to support a veteran's statement regarding the occurrence of an in-service personal trauma. VA is also proposing to define key terms relevant to such claims. These amendments will provide greater specificity and clarity to the regulatory text and aid claims processors who develop and decide claims based on in-service personal trauma. The intent of this change is to ease the evidentiary requirements for veterans claiming a mental health condition based on in-service personal trauma.

Statement of Need: TBD—The statement of need is still pending but will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Summary of Legal Basis: TBD—The legal basis for this Reg is still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Alternatives: TBD—Alternatives are still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Anticipated Cost and Benefits: TBD—Actual costs and transfers are still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Risks: TBD—Risks are still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, *Phone:* 202 461–9700, *Email:* *robert.parks3@va.gov*.

RIN: 2900–AR91

VA

182. Amendments to the Caregivers Program [2900–AR96]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 38 U.S.C. 1720G

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The rule will propose amendments to the eligibility criteria, definitions used, and consider other changes to evaluation processes for the Program of Comprehensive Assistance for Family Caregivers, which provides services and benefits, including a monthly stipend, for eligible caregivers of veterans who sustained a serious injury or illness in the line of duty.

Statement of Need: This rulemaking is necessary to implement several changes to VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) and Program of General Caregiver Support Services (PGCSS) to improve program operations, update eligibility criteria, and expand access to the programs for eligible veterans and servicemembers and their caregivers and comply with Executive Order 14095, Increasing Access to High-Quality Care and Supporting Caregivers, issued April 18, 2023, that required the Secretary of Veterans Affairs consider issuing a notice of proposed rulemaking by the end of this fiscal year that would make any appropriate modifications to eligibility criteria for PCAFC. In accordance with Executive Order 14094, VA briefed the Veterans Service Organizations (VSO) on June 30th, 2023, during the rulemaking process.

Summary of Legal Basis: Pursuant to its authority in 38 U.S.C. 1720G, VA proposes to amend its regulations under 38 CFR part 71, which governs PCAFC, a program that provides Family Caregivers of eligible veterans benefits, such as training, respite care, counseling, technical support, beneficiary travel, and for Primary Family Caregivers, provides a monthly stipend payment, and access to health care; and PGCSS, which is available to caregivers of covered veterans of all eras of military service. Proposed amendments would comply with the U.S. Court of Appeals for the Federal Circuit decision in *Veteran Warriors, Inc.* v. *Sec'y of Veterans Affairs*, 29 F.4th 1320 (Fed. Cir. 2022), which set aside a portion of VA's regulations concerning PCAFC eligibility criteria, specifically VA's definition of need for supervision, protection, and instruction as that term is used throughout 38 CFR part 71. VA proposes to remove conflicting language from its regulations.

Alternatives: There are no acceptable policy alternatives to issuing this regulation.

Anticipated Cost and Benefits: VA is still determining costs but anticipates costs to be over $200 million in any given year of the 10-year estimate; VA anticipates this rule would be a section 3(f)(1) significant rule under Executive Order 12866.

This rulemaking would expand access to caregiver benefits for eligible veterans based on proposed changes in eligibility criteria. Actual costs will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Risks: Delayed access to PCAFC for eligible veterans and their Family Caregivers.

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov*.

Agency Contact: Colleen Richardson PsyD, Executive Director, Caregiver

Support Program, Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 461–7337, *Email: colleen.richardson2@va.gov*.

RIN: 2900–AR96

VA

183. • Revision of Veterans Community Care Program (VCCP) Access Standards [2900–AS00]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1703; 38 U.S.C. 1703B

CFR Citation: 38 CFR 17.4040.

Legal Deadline: None.

Abstract: VA proposes to revise its designated access standards for purposes of the Veterans Community Care Program to consider a veteran's preference for telehealth when scheduling appointments. VA additionally proposes to consider whether and how to address standards for when a VA provider is not available within the existing average drive time standards.

Statement of Need: This rulemaking is needed to implement certain provisions of section 125 of Division U of the Consolidated Appropriations Act, 2023, the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022 (hereinafter referred to as the Act).

Summary of Legal Basis: Pursuant to 38 U.S.C. 1703 and 1703B and subject to regulations at 38 CFR 17.4000–17.4040, VA administers the Veterans Community Care Program (VCCP) to furnish care in the community to covered Veterans at their election and subject to the availability of appropriations. Consistent with 38 U.S.C. 1703(d)(1)(D) and 1703B, current 38 CFR 17.4010(a)(4) establishes eligibility for the VCCP if a covered veteran has contacted VA to request required care or services, but VA has determined it is not able to furnish such care or services in a manner that complies with VA's designated access standards in 17.4040. Section 125 of the Act amended section 1703B(f) to require VA to meet the access standards established under section 1703B(a) when furnishing care through VCCP and ensure that meeting such access standards is reflected in the contractual requirements of third-party administrators (TPA).

Alternatives: VA does not interpret that there is an alternative to implementing certain provisions of section 125 of the Act. VA does not interpret that there is an alternative to a two-stage rulemaking because current VCCP regulations do not apply VA access standards to eligible entities and providers (non-VA providers) under TPA agreements, and to do so requires notice and comment prior to being implemented.

Anticipated Cost and Benefits: VA does not anticipate this rulemaking would result in $200 million or more in costs or savings. VA anticipates benefits for Veterans as eligible entities and providers participating in VCCP would also be subject to measurable access standards designed to improve Veteran's access to care. Actual costs will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.

Risks: None identified.

Timetable:

Action	Date	FR Cite
NPRM	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: www.regulations.gov.

Agency Contact: Joseph Duran, Director of Policy and Planning (10D1A1) Department of Veterans Affairs, 3773 Cherry Creek North Drive, Denver, CO 80209, *Phone:* 303 370–1637, *Email: joseph.duran2@va.gov*.

RIN: 2900–AS00

VA

Final Rule Stage

184. Modifying Copayments for Veterans at High Risk for Suicide [2900–AQ30]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1710(g); 38 U.S.C. 1722A

CFR Citation: 38 CFR 17.108; 38 CFR 17.110.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) is finalizing a proposed rule to amend its medical regulations governing copayments for VA outpatient medical care and medications (to include outpatient medical care and medications provided by VA directly or community care obtained by VA through contracts, provider agreements or sharing agreements) by eliminating the copayment for outpatient care and reducing the copayment for medications dispensed to veterans identified by VA as being at high risk for suicide. These copayment changes will be applied until VA determines that the veteran is no longer at high risk for suicide.

Statement of Need: This rulemaking is needed because a change in the current regulation is called for by the policy outlined in Executive Order 13822, which provides that our Government must improve mental healthcare and access to suicide prevention resources available to veterans. Healthcare research has provided extensive evidence that copayments can be barriers to healthcare for vulnerable patients, which places the change in line with the goals of the Executive order.

Summary of Legal Basis: Executive Order 13822.

Alternatives: The express intent of the rulemaking is to reduce barriers to mental health care for Veterans at high risk for suicide. To defer implementation of the regulation would be to undermine its purpose. However, alternative regulatory approaches were considered. It was considered whether VHA national or local policy changes could effectively meet the intent of the regulation. It was found that policy change is not a viable alternative due to regulatory constraints that prevent changes to copayment requirements. The timing of rulemaking was considered. There were no potential cost savings or other net benefits identified that would lead to a more beneficial option. A phase-in period for the regulation was considered. There were no burdens, likely failures, or negative comments identified that a phase-in period would help mitigate. There were no potential cost savings or other net benefits identified that would make phasing in the regulation a more beneficial option.

Anticipated Cost and Benefits: Outpatient medical care and medication copayments will be reduced for Veterans determined to be at high risk for suicide. VA strongly believes, based on extensive empirical evidence, that the provisions of this rulemaking will decrease the likelihood of fatal or medically serious overdoses from VA prescribed medications among Veterans who are at a high risk of suicide. VA also strongly believes, based on the evidence, that the provisions of this rulemaking will significantly increase the engagement of Veterans who are at a high risk of suicide in outpatient health care, which is known to decrease the risk of suicide and other adverse outcomes. Actual costs and/or transfers will be determined and reflected in this section of ROCIS once the Reg is

formally sent to OMB for a formal Executive Order 12866 review.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/05/22	87 FR 418
NPRM Comment Period End.	03/07/22	
Final Action	09/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Julie Wildman, Informatics Educator, Department of Veterans Affairs, 795 Willow Road, Building 321, Room A124, Menlo Park, CA 94304, *Phone:* 650 493–5000, *Email: julie.wildman@va.gov.*

RIN: 2900–AQ30

VA

185. Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge [2900–AQ95]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 38 U.S.C. 501

CFR Citation: 38 CFR 3.12.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) is amending its regulations regarding character of discharge determinations. The amendments will modify the regulatory framework for discharges considered ''dishonorable'' for VA benefit eligibility purposes, such as discharges due to ''willful and persistent misconduct,'' an ''offense involving moral turpitude,'' and ''homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.'' The amendments will also extend a ''compelling circumstances'' exception to certain regulatory bars to benefits in order to ensure fair character of discharge determinations in light of all pertinent factors. VA's amendments will take into consideration the public comments received on the published proposed rule (85 FR 41471), comments that VA receives from a published Request for Information (86 FR 50513) and comments received during two scheduled listening sessions, which are described in aforementioned Request for Information.

Statement of Need: TBD. In accordance with Executive Order 14094, VA published a Request for Information (RFI) on September 9, 2021, 86 FR 50513 (2021) after the NPRM published. Specifically, the RFI asked questions about compelling circumstances, willful and persistent misconduct, moral turpitude, benefit eligibility and removing the regulatory bars. In addition to and subsequent of the RFI, VA held a two-day listening session in October 2021 to receive oral comments on the RFI questions.

Summary of Legal Basis: TBD.

Alternatives: TBD.

Anticipated Cost and Benefits: TBD.

Risks: TBD.

Timetable:

Action	Date	FR Cite
NPRM	07/10/20	85 FR 41471
NPRM Comment Period End.	09/08/20	
Request For Information (RFI).	09/09/21	86 FR 50513
RFI Comment Period End.	10/12/21	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Olumayowa Famakinwa, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 461–9700, *Email: olumayowa.famakinwa@va.gov.*

RIN: 2900–AQ95

VA

186. Veteran and Spouse Transitional Assistance Grant Program [2900–AR68]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 601 to 612; 31 U.S.C. 302

CFR Citation: 38 CFR 63.6309.

Legal Deadline: None.

Abstract: VA, as authorized under the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, amends its regulations to establish the Veteran Transitional Assistance Grant Program (VTAGP). VA will establish grant application procedures and evaluative criteria for determining whether to issue funding to eligible organizations providing transition services to members of the Armed Forces who are separated, retired, or discharged, as well as their spouses.

Statement of Need: The Department of Veterans Affairs (VA) has determined this rulemaking is necessary, in accordance with authority established by Public Law (Pub. L.) 116–315 4304 and 38 U.S.C. 501, 512 to implement Public Law 116315 4304, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (January 5, 2021). VA proposes to amend title 38 Pensions, Bonuses, and Veterans' Relief by adding part 80 and new sections 80.1 through 80.17 to the Code of Federal Regulations (CFR) to implement this new grant authority.

Summary of Legal Basis: VA proposes regulations to establish the Veteran and Spouse Transitional Assistance Grant Program (VSTAGP). VA will establish grant application procedures and evaluative criteria for determining whether to issue funding to eligible organizations providing transition services to members of the Armed Forces who are separated, retired, or discharged, as well as their spouses.

Alternatives: VA discussed how to implement provisions of 4304 of Public Law 116–315. A rulemaking is the preferred option as VA grant programs have historically been established utilizing the rulemaking process. If this regulation were not enacted, VA would struggle to implement the mandates put forth in Public Law 116–315 with current available resources and therefore, the agency would not be in compliance with the law. Alternatively, participants would continue to access existing transition services that may limit services to Veterans as defined in 38 U.S.C. 101(2). VA also considered an alternative title to this rulemaking, however after discussions with external partners it was determined to include the term spouse in the title. VSTAGP intends to provide transition services to members of the Armed Forces who are separated, retired, or discharged from the Armed Forces, and spouses of such members, by identifying employment barriers and developing individualized employment plans to overcome barriers. The program will also link participants to necessary support services. Also, a rulemaking will notify the public and interested parties of VA's new authority and allow for notice and comment. Public Law 116–315 requires grant recipients to provide matching funding from non-Federal sources that are at least equal to Federal grant funds awarded by VA.

Anticipated Cost and Benefits: Each year, approximately 200,000 men and women leave the U.S. military service and return to their lives as civilians, a process known as the military-to-civilian transition. This rulemaking benefits former Service members who are discharged, retired, or separated, and their spouses (referred to as

participants), by establishing a grants program focused on improving transition services. Transition services would include resume assistance, interview training, job recruitment training and related services that would result in a successful transition as determined by the Secretary. Related services would include, but are not limited to, employment placement services, employment education and/or training and employment referrals. VA has determined there are costs and transfers associated with this rulemaking. The total regulatory budget impact associated with this rulemaking is estimated to be $6.9 million in FY 2024 and $38.3 million over 5 years as reflected in Table 1 below. Costs associated with this rulemaking are estimated at $1.9 million in FY 2024 and $13.3 million over 5 years to include an information technology (IT) solution to manage grants. The net transfers for the creation of VSTAGP are $5 million for FY 2024 and $25 million over 5 years.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	07/05/23	88 FR 42891
NPRM Comment Period End.	08/04/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Kenneth Fenner, Program Analyst, Office of Outreach, Transition and Economic Dev., Department of Veterans Affairs, 1800 G Street SW, Washington, DC 20420, *Phone:* 800 877–8339, *Email:* *kenneth.fenner@va.gov.*

RIN: 2900–AR68

VA

187. Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117–168 [2900–AR76]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 38 U.S.C. 501; 38 U.S.C. 1305

CFR Citation: 38 CFR 3.817.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) amending its adjudication regulations concerning certain awards of Dependency and Indemnity Compensation (DIC). Relevant claimants will be eligible to elect a reevaluation of certain previously denied DIC determinations pursuant to changes that establish or modify a presumption of service-connection. Any award following reevaluation may be made retroactive to the date of a previously denied claim as if the establishment or modification of the presumption of service- connection had been in effect on the date of the submission of the original claim. With respect to new or initial awards of DIC pending before VA on or after August 10, 2022, VA will utilize the most advantageous effective date amongst 38 CFR 3.114 and 3.400, to potentially grant an award earlier than August 10, 2022, if applicable. Lastly, as the PACT Act is silent with respect to changes in the accrued or substitution process as it relates to the reevaluation of DIC claims, VA will be utilizing the regular processes regarding accrued and substitution benefits contained in 38 U.S.C. 5121 and 5121A. The amendments within this final rulemaking incorporate legislative updates enacted by the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (Pub. L. 117–168) (PACT Act) and will bring federal regulations into conformance with the statutory changes. The amendments in this regulation are in accordance with the President's priorities to address toxic exposure. Also improve service delivery, customer experience, and reduce administrative burdens for those accessing public benefits and services.

Statement of Need: The Department of Veterans Affairs has determined the need to amend its regulations, in accordance with 38 U.S.C. 501, to incorporate legislative updates enacted by Section 204 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 or the Honoring our PACT Act of 2022 (Pub. L. 117–168).

Summary of Legal Basis: This amendment to the Dependency and Indemnity Compensation benefit program is authorized by section 204 of Public Law 117–168. VA must publish regulations for matters related to benefits as required by 38 U.S.C. 501(d).

Alternatives: VBA has considered an alternative policy to this final rule. VBA could choose not to act at this time and codify a new regulation at a later date. However, this would have a negative effect on VA's effectiveness in processing benefits claims as the current regulations do not align with the updated statutes. This new adjudication regulation is needed to appropriately determine eligibility to certain VA benefits based on these statutory changes. Therefore, the final rule of adding a new adjudication regulation which will provide relevant claimants the ability to elect a reevaluation of certain previously denied DIC determinations pursuant to changes that establish or modify a presumption of service connection to conform with the statutory changes within the PACT Act is VA's preferred policy approach.

Anticipated Cost and Benefits: TBD.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	03/22/23	88 FR 17166
NPRM Comment Period End.	05/22/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Eric Baltimore, Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 632–8863, *Email: eric.baltimore@va.gov.*

RIN: 2900–AR76

VA

Completed Actions

188. Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter [2900–AR25]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

CFR Citation: 38 CFR 3.319 (new).

Abstract: This rulemaking adopts as final, with changes, an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. The amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis.

Statement of Need: The amendment is necessary, in accordance with 38 U.S.C. 501(a), to provide health care, services, and benefits to Gulf War Veterans who were potentially exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan.

Summary of Legal Basis: This rulemaking adopts as final, with changes, an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. The amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis.

Alternatives: None.

Anticipated Cost and Benefits: The intended effect of this amendment is to address the needs and concerns of Gulf War Veterans and service members who have served and continue to serve in these locations as military operations in the Southwest Asia theater of operations have been ongoing from August 1990 until the present time. Neither Congress nor the President has established an end date for the Gulf War. Therefore, to provide immediate health care, services, and benefits to current and future Gulf War Veterans who may be affected by particulate matter due to their military service, VA intends to provide presumptive service connection for the chronic disabilities of asthma, rhinitis, and sinusitis, to include rhinosinusitis, as well as a presumption of exposure to fine, particulate matter. This will ease the evidentiary burden of Gulf War Veterans who file claims with VA for these three conditions, which are among the most commonly claimed respiratory conditions. VA has determined that both transfers and costs are associated with this final rulemaking. The total budgetary impact is estimated to be $1.5 billion in FY 2023, $12.4 billion over five years, and $30.4 billion over 10 years, as detailed in Table 1 below. Transfers are estimated to be $1.3 billion in 2023, $11.2 billion over five years, and $28.5 billion over 10 years.

Risks: TBD.

Completed:

Reason	Date	FR Cite
Final Action	09/01/23	88 FR 60336
Final Action Effective.	10/31/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Jane Allen, Policy Analyst, Robert Parks, Chief, Part 3 Regulations Staff (211), Department of Veterans Affairs, Compensation Service (21C), 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 461–9700.

RIN: 2900–AR25

VA

189. Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate Matter [2900–AR44]

Priority: Other Significant.

CFR Citation: 38 CFR 3.317(e)(2); 38 CFR 3.

Abstract: This rulemaking adopts as final, without changes, an interim final rule amending the Department of Veterans Affairs (VA) adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposure to fine particulate matter. These presumptions apply to Veterans with a qualifying period of service, *i.e.,* who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War (hereinafter Gulf War), from August 2, 1990, onward, as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War. This rulemaking implements a decision by the Secretary of Veterans Affairs that determined there is sufficient evidence to support these cancers as presumptive based on exposure to fine particulate matter during service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. The intended effect of this rulemaking is to ease the evidentiary burden of this population of Veterans who file claims with VA for these nine rare respiratory cancers.

Statement of Need: The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposures to fine particulate matter. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs that there is a plausible relationship between service in the Southwest theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of larynx, SCC of trachea, adenocarcinoma of trachea, salivary gland-type tumors of trachea, adenosquamous carcinoma of lung, large cell carcinoma of lung, salivary gland-type tumors of lung, sarcomatoid carcinoma of lung, and typical and atypical carcinoid of the lung. The intended effect of this amendment is to ease the evidentiary burden of Gulf War Veterans who file claims with VA for these nine rare respiratory cancers.

Summary of Legal Basis: VA amends its adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposures to $PM_{2.5}$ for certain Veterans. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs that there is a plausible relationship between service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. The intended effect of this rulemaking is to ease the evidentiary burden of this population of Veterans who file claims with VA for these nine rare respiratory cancers.

Alternatives: None.

Anticipated Cost and Benefits: This rulemaking allows VA to provide access to immediate health care services and benefits such as disability compensation and life insurance to current and future Gulf War Veterans who may be affected by fine particulate matter due to their military service, and to ease the

evidentiary burden of Gulf War Veterans who file claims with VA for these nine rare respiratory cancers. This rulemaking will also provide access to benefits such as health care, survivor compensation, and burial benefits to eligible survivors.

VA has determined that both transfers and costs are associated with this rulemaking. Transfers are estimated to be $54.2 million in 2023, $301.1 million over five years, and $704.6 million over ten years. Costs are estimated to be $3.9 million in 2023, $16.8 million over five years, and $35.2 million over ten years. The total budgetary impact is estimated to be $58.1 million in 2023, $317.9 million over five years, and $739.9 million over ten years.

Risks: None.

Completed:

Reason	Date	FR Cite
Final Rule	11/03/23	88 FR 75498
Final Rule Effective.	11/03/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, *Phone:* 202 461–9700, *Email: robert.parks3@va.gov*.

RIN: 2900–AR44

BILLING CODE 8320–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (AMERICORPS)

Fall 2023 Statement of Regulatory Priorities

Overview

The Corporation for National and Community Service, operating as AmeriCorps, is the Federal agency for national service and volunteerism. AmeriCorps provides opportunities for individuals to address some the nation's most pressing challenges, improve lives and communities, and strengthen civic engagement. AmeriCorps offers individuals and organizations flexible ways to make a local and lasting impact through its programs, such as AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, the Volunteer Generation Fund, and AmeriCorps Seniors RSVP, Foster Grandparents, Senior Companions and Senior Demonstration programs. AmeriCorps also supports volunteerism through the national 9/11 Day of Service and Martin Luther King, Jr., Day of Service. AmeriCorps' authorizing statutes and regulations provide the necessary legal framework for its programs. AmeriCorps' regulatory priorities are guided by its Strategic Plan (available at *americorps.gov/about/agency-overview/strategic-plan*) and Administration priorities.

Highlights of Americorps' Regulatory Plan

This Regulatory Plan provides highlights of AmeriCorps' upcoming regulatory actions. Please refer to AmeriCorps' Semiannual Regulatory Agenda for the full spectrum of AmeriCorps' upcoming regulatory actions.

Among other objectives, AmeriCorps' Strategic Plan establishes a goal of partnering with communities to alleviate poverty and advance racial equity. This past year, AmeriCorps finalized updates to its AmeriCorps VISTA regulations (3045–AA79) in support of this goal. The AmeriCorps VISTA program promotes economic resilience and address persistent poverty by encouraging and enabling persons from all walks of life to perform volunteer service to assist in the solution of poverty and poverty-related problems and secure and increase opportunities for self-advancement by persons affected by such problems. Recently finalized updates to VISTA's regulations add programmatic and grantmaking flexibilities to better reach underserved communities, reduce barriers to participation in national service, and provide those communities with access to the benefits of service to reduce poverty.

AmeriCorps is planning two proposed regulatory actions in further support of partnering with communities to alleviate poverty and advance racial equity:

First, AmeriCorps State and National Updates (3045–AA84) will consider additional programmatic and grantmaking flexibilities, including waivers and exceptions for individuals who may benefit from additional education and training, such as those reentering society after a period of incarceration, to participate in national service while acquiring skills and knowledge to ease their transition into the workplace.

And second, AmeriCorps Seniors Updates (3045–AA81) will consider removing barriers to service for individuals, particularly for low-income individuals, and increasing flexibility for sponsors to determine the best mix of staffing and resources to accomplish project goals.

BILLING CODE 6050–28–P

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

Overview

EPA works to ensure that all Americans are protected from significant risks to human health and the environment, including climate change, and that overburdened and underserved communities and vulnerable individuals—in particular, communities with environmental justice concerns—are meaningfully engaged and benefit from focused efforts to protect their communities from pollution. EPA acts to ensure that all efforts to reduce environmental harms are based on the best available scientific information, that federal laws protecting human health and the environment are enforced equitably and effectively, and that the United States plays a leadership role in working with other nations to protect the global environment. EPA is committed to environmental protection that builds and supports more diverse, equitable, sustainable, resilient, and productive communities and ecosystems.

By taking advantage of the latest science, the newest technologies and the most cost-effective and sustainable solutions, EPA and its federal, tribal, state, local, and community partners have made important progress in addressing pollution where people live, work, play, and learn. By cleaning up contaminated waste sites, reducing greenhouse gases, lowering emissions of mercury and other air pollutants, and investing in water and wastewater treatment, EPA's efforts have resulted in tangible benefits to the American public. Efforts to reduce air pollution alone have produced hundreds of billions of dollars in benefits in the United States, and tremendous progress has been made in cleaning up our nation's land and waterways. But much more needs to be done to implement the nation's environmental statutes and ensure that all individuals and communities benefit from EPA's efforts to protect human health and the environment and to address the climate crisis.

EPA will use its regulatory authorities, along with grant- and incentive-based programs, technical and compliance assistance, and research and educational initiatives, to address the following priorities set forth in EPA's Strategic Plan:

- Tackle the Climate Crisis
- Take Decisive Action to Advance Environmental Justice and Civil Rights

- Enforce Environmental Laws and Ensure Compliance
- Ensure Clean and Healthy Air for All Communities
- Ensure Clean and Healthy Water for All Communities
- Safeguard and Revitalize Communities
- Ensure Safety of Chemicals for People and the Environment

As EPA develops regulations, we seek to increase participation and engagement of members of the public affected by our regulations, including in the development of our regulatory priorities. In our Regulatory Plan we detail engagement efforts that have helped to inform our priorities to date, as well as future engagement efforts we have planned. Throughout our engagement, EPA would particularly like to hear from members of the public who have not typically participated in the regulatory process, including families and communities affected by climate change, rural workers, and others.

All this work will be undertaken with a strong commitment to scientific integrity, the rule of law and transparency, the health of children and other vulnerable populations, and with special focus on supporting and achieving environmental justice at federal, tribal, state, and local levels.

Highlights of EPA's Regulatory Plan

This Regulatory Plan highlights our most important upcoming regulatory actions. As always, our Semiannual Regulatory Agenda contains information on a broader spectrum of EPA's upcoming regulatory actions.

Tackle the Climate Crisis

EPA is taking appropriate regulatory action under existing statutory authorities to reduce emissions from our nation's largest sources of greenhouse gases (GHG) to respond to the severe and urgent threat of climate change. The impacts of climate change are affecting people in every region of the country, threatening lives and livelihoods and damaging infrastructure, ecosystems, and social systems. Overburdened and underserved communities and individuals are particularly vulnerable to these impacts, including low-income communities and communities of color, children, the elderly, tribes, and indigenous people.

Exercising its authority under the Clean Air Act (CAA), EPA will address major sources of GHGs that are driving these impacts by taking regulatory action to minimize emissions of methane from new and existing sources in the oil and natural gas sector; reduce GHGs from new and existing fossil fuel-fired power plants; and limit GHGs from new light-duty vehicles and heavy-duty trucks. EPA will also carry out the mandates of the American Innovation and Manufacturing (AIM) Act to implement, and where appropriate accelerate, a national phasedown in the production and consumption of hydrofluorocarbons (HFCs), which are highly potent GHGs. Further, these regulatory priorities complement the commitment to holistically and aggressively combat damaging climate pollution while supporting the creation of good jobs and lowering energy costs for families together with implementation of relevant climate provisions of the Inflation Reduction Act.

- *New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review.*

On November 15, 2021, the EPA proposed new source performance standards and emission guidelines for crude oil and natural gas facilities that would secure major climate and health benefits for all Americans by reducing emissions of methane and other harmful air pollution from both new and existing sources in the oil and natural gas industry. (86 FR 63110). This action was in response to the January 20, 2021, Executive Order titled 'Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.' The 2021 action proposed to update and strengthen methane and VOC standards on the books for new sources, add standards for currently unregulated new sources, and establish the first nationwide Emission Guidelines for states to regulate existing sources. On December 6, 2022, EPA issued a supplemental proposal to update, strengthen and expand its November 2021 proposal (87 FR 74702). The supplemental proposal would achieve more comprehensive emissions reductions from oil and natural gas operations by improving standards in the 2021 proposal and adding proposed requirements for sources not previously covered. Specific proposed requirements include fugitive emissions monitoring and repair at well sites, stronger requirements for flares, zero emissions standards for pneumatic pumps, new standards for dry seal compressors, and a program to allow approved third parties to identify super-emitting events for prompt mitigation. The supplemental proposal also promotes innovation in methane detection technology by allowing for the use of advanced methane detection systems. The proposal included details for implementing the Emissions Guidelines. EPA received more than 515,000 public comments on the 2022 supplemental proposal, in addition to 470,000 comments received on the 2021 proposal. EPA held multi-day virtual public hearings on both proposals and has conducted numerous trainings and webinars for communities, members of Tribal Nations, tribal environmental professionals and small businesses. The Agency expects to issue a final rule later this year.

- *NSPS for GHG Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired EGUs; Emission Guidelines for GHG Emissions from Existing Fossil Fuel-Fired EGUs; and Repeal of the ACE Rule.*

Fossil fuel-fired electric generating units (EGUs) are the nation's second largest source of greenhouse gas (GHG) pollution. In May 2023, EPA proposed to set limits for new gas-fired combustion turbines, existing coal, oil and gas-fired steam generating units, and certain existing gas-fired combustion turbines. Consistent with EPA's traditional approach to establishing pollution standards for power plants under section 111 of the Clean Air Act, the proposed standards are based on technologies such as carbon capture and sequestration/storage (CCS), low-GHG hydrogen co-firing, and natural gas co-firing, which can be applied directly to power plants that use fossil fuels to generate electricity. As laid out in section 111 of the Clean Air Act, the proposed new source performance standards (NSPS) and emission guidelines reflect the application of the best system of emission reduction (BSER) that, taking into account costs, energy requirements, and other statutory factors, is adequately demonstrated for the purpose of improving the emissions performance of the covered electric generating units. The comment period for the proposed rule concluded on August 8, 2023. EPA intends to issue a final rule in spring 2024.

- *Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020.*

This proposed rulemaking would establish requirements for the management of certain HFCs and their substitutes under subsection (h) of the AIM Act. Specifically, this proposal considers provisions to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purposes of maximizing the reclamation and minimizing the release

of certain HFCs from equipment and ensuring the safety of technicians and consumers. Among other provisions, EPA is proposing emissions reduction requirements for certain equipment containing HFCs and their substitutes as well as requirements to increase the reclaiming of HFCs.

• *Application-Specific Review and Renewal Rule.*

The AIM Act identifies six applications that are to receive ''the full quantity of [HFC] allowances necessary, based on projected, current, and historical trends,'' under the allowance allocation program through the end of 2025. The six applications are a propellant in metered dose inhalers, defense sprays, structural composite preformed polyurethane foam for marine use and trailer use, the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector, mission-critical military end uses, and onboard aerospace fire suppression. EPA can renew this status for up to five years at a time based on statutory criteria outlined in the AIM Act. This proposed rule will review and consider whether to renew eligibility for each of the six applications, consistent with this statutory process under AIM subsection (e)(4)(B). Additionally, EPA intends to establish how it will review eligibility if petitioned for inclusion of additional applications and to consider revisions to existing regulatory requirements.

• *Greenhouse Gas Emissions Standards for Heavy-Duty Engines and Vehicles—Phase 3.*

• Transportation is the largest source of GHG emissions in the United States and heavy-duty (HD) vehicles are the second-largest contributor in the sector. GHG emissions have significant impacts on public health and welfare as evidenced by the well-documented scientific record and as set forth in EPA's Endangerment and Cause or Contribute Findings under section 202(a) of the CAA. GHG reductions would benefit all U.S. residents, including populations such as people of color, low-income populations, indigenous peoples, and/or children that may be especially vulnerable to various forms of damages associated with climate change. On April 12, 2023, EPA announced a proposal for more stringent standards to reduce greenhouse gas emissions from HD vehicles beginning in model year (MY) 2027. The new standards would be applicable to HD vocational vehicles (such as delivery trucks, refuse haulers, public utility trucks, transit, shuttle, school buses, etc.) and tractors (such as day cabs and sleeper cabs on tractor-trailer trucks). Specifically, EPA proposed stronger CO2 standards for MY 2027 HD vehicles that go beyond the current standards that apply under the HD Phase 2 Greenhouse Gas program. EPA also proposed an additional set of CO2 standards for HD vehicles that would begin to apply in MY 2028, with progressively more stringent standards each model year through 2032. This proposed ''Phase 3'' greenhouse gas program maintains the flexible structure created in EPA's Phase 2 greenhouse gas program, which is designed to reflect the diverse nature of the heavy-duty industry. EPA has conducted outreach with a wide range of interested stakeholders to gather input which we have considered in developing this proposal, and we will continue to engage with the public and all interested stakeholders as part of our regulatory development process.

• *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles.*

On April 12, 2023, EPA announced a proposal for new, more ambitious multipollutant emissions standards to further reduce harmful air pollutant emissions from light-duty passenger cars and light trucks and Class 2b and 3 vehicles (''medium-duty vehicles'' or MDVs) under its authority in section 202(a) of the Clean Air Act (CAA), 42 U.S.C. 7521(a), starting with model year 2027. The proposal builds upon EPA's final standards for federal greenhouse gas emissions standards for passenger cars and light trucks for model years 2023 through 2026 and leverages advances in clean car technology which would result in significant benefits to Americans ranging from reducing climate pollution, to improving public health, to saving drivers money through reduced fuel and maintenance costs. The proposed standards phased in over model years 2027 through 2032. EPA conducted outreach with a wide range of interested stakeholders to gather input which was considered in developing the proposal and will continue to engage with the public and all interested stakeholders as part of our regulatory development process as we develop the final rule.

Ensure Clean and Healthy Air for All Communities

• All people regardless of race, ethnicity, national origin, or income deserve to breathe clean air. EPA has the responsibility to protect the health of vulnerable and sensitive populations, such as children, the elderly, and persons overburdened by pollution or adversely affected by persistent poverty or inequality. Since enactment of the CAA, EPA has made significant progress in reducing harmful air pollution even as the U.S. population and economy have grown. Between 1970 and 2022, the combined emissions of six key pollutants dropped by 78%, while the U.S. economy remained strong as GDP grew 304% over that time period. As required by the CAA, EPA will continue to build on this progress and work to ensure clean air for all Americans, including those in underserved and overburdened communities. Among other things, EPA will take regulatory action to review and implement health-based air quality standards for criteria pollutants such as particulate matter (PM); limit emissions of harmful air pollution from both stationary and mobile sources; address sources of hazardous air pollution (HAP), such as ethylene oxide, that disproportionately affect communities with environmental justice concerns; and protect downwind communities from linked sources of air pollution that cross state lines. Along with the full set of CAA actions listed in the regulatory agenda, the following high priority actions will allow EPA to continue its progress in reducing harmful air pollution.

• *National Ambient Air Quality Standards for Particulate Matter Reconsideration (PM NAAQS Reconsideration).*

Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, the EPA published a final decision retaining the NAAQS for particulate matter (PM), which was the subject of several petitions for reconsideration as well as petitions for judicial review. As directed in Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' signed by President Biden on January 20, 2021, EPA is undertaking a reconsideration of the December 2020 decision to retain the PM NAAQS because the available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. As part of this reconsideration, EPA developed a Supplement to the 2019 PM Integrated Science Assessment (ISA) and a Policy Assessment to take into account the most up-to-date science on public health impacts of PM and engaged with the chartered Clean Air Scientific

Advisory Committee (CASAC) and a newly constituted expert CASAC PM panel. The notice of proposed rulemaking was signed on January 5, 2023. The EPA proposed to revise the primary annual $PM_{2.5}$ standard from its current level of 12.0 μg/m³ to within the range of 9.0 to 10.0 μg/m³, while proposing to retain the primary 24-hour $PM_{2.5}$ standard, the primary 24-hour PM_{10} standard, and the secondary PM standards. The EPA also proposed revisions to the Air Quality Index (AQI) and to the $PM_{2.5}$ monitoring network. The EPA held a public hearing in February 2023, where more than 300 individuals provided oral testimony. The EPA also received more than 700,000 written public comments from individuals, environmental and public health organizations, industries, federal, state, and local representatives, and tribes and tribal groups. The EPA has also provided other opportunities for public engagement throughout the reconsideration, including public meetings of the CASAC, and tribal consultation offers and informational meetings. EPA intends to issue a final rule in fall 2023.

• *Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter (Ecological Effects of NO_X, SO_X and PM Secondary NAAQS Review).*

Under the Clean Air Act, the EPA is required to review and, if appropriate, revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On April 3, 2012, the EPA published a final rule in which the Agency determined to retain the current secondary standards (welfare-based) for nitrogen oxides (NO_X) and for sulfur oxides (SO_X). On January 15, 2013, the EPA published a final rule in which the Agency retained the secondary standards for particulate matter. The current review of the air quality criteria and secondary standards for ecological effects of SO_X, NO_X and particulate matter includes the preparation of an Integrated Science Assessment and a Policy Assessment by the EPA, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. These documents will inform the Administrator's proposed decision as to whether to retain or revise the standards. The proposed decision would be published in the **Federal Register** with opportunity provided for public comment. The Administrator's final decisions would take into consideration these documents, CASAC advice, and public comment on the proposed decision. Opportunities for public engagement and sharing of information concerning this NAAQS review will include public hearings, tribal consultation, informational meetings, and through the CASAC public meetings.

• NESHAP: *Coal-and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review.*

• On February 16, 2012, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units (77 FR 9304). The rule (40 CFR part 63, subpart UUUUU), commonly referred to as the Mercury and Air Toxics Standards (MATS), includes standards to control hazardous air pollutant (HAP) emissions from new and existing coal- and oil-fired electric utility steam generating units (EGUs) located at both major and area sources of HAP emissions. There have been several regulatory actions regarding MATS since February 2012, including a May 22, 2020, action that withdrew EPA's threshold finding that it is appropriate and necessary to regulate hazardous air pollution from power plants under section 112 of the CAA, and finalized the residual risk and technology review (RTR) conducted for the Coal- and Oil-Fired EGU source category regulated under MATS (85 FR 31286). As directed by Executive Order 13990, EPA has reviewed the May 2020 final action. After this review, based on the best available science, EPA issued a final action on February 15, 2023, that reinstated the Agency's appropriate and necessary finding for MATS. Following a review of the RTR portion of the May 2020 final action, EPA also proposed to update and strengthen the MATS on April 24, 2023 (88 FR 24854). (88 FR 13956). The proposal reflects feedback EPA received from representatives from local and state governments, industry groups, and environmental organizations. Additional public input will inform EPA as the final regulation is developed. For example, the Agency held a virtual public hearing on May 9, 2023, where 93 speakers provided oral testimony. EPA also participated in a National Tribal Air Association/EPA Air Policy Update Call on May 25, 2023, to inform attendees about the rule and how to submit comments to the docket. Written comments were accepted during the 60-day comment period until June 23, 2023. EPA intends to issue a final rule addressing the RTR in 2024.

• *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.*

In this action, EPA is conducting the second residual risk and technology review for the National Emission Standards for Hazardous Air Pollutants for ethylene oxide commercial sterilizers and considering potential updates to the rule. The proposed rule was published in April 2023 (88 FR 22790). If finalized as proposed, the rule would reduce ethylene oxide emissions by 80% and would reduce lifetime cancer risk in all impacted communities to acceptable levels, many of which have environmental justice concerns. Prior to proposal, EPA issued an advance notice of proposed rulemaking that solicited comment from stakeholders, undertook a Small Business Advocacy Review panel, which is needed when there is the potential for significant economic impacts to small businesses from any regulatory actions being considered, and conducted outreach meetings within the communities affected by the highest-risk facilities as well as engagement with state and local governments. The comment period for this proposal concluded on June 27, 2023, and EPA intends to issue a final rule by March 2024.

• *Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.*

In 2019, EPA issued a proposed rule that would allow major sources of hazardous air pollutants (HAP) subject to National Emissions Standards for Hazardous Air Pollutants (NESHAP) to reclassify to area source status by taking limits on their potential to emit such that they are no longer subject to major source NESHAP. The final rule, Reclassification of Major Sources as Area Sources Under section 112 of the Clean Air Act (Major MACT to Area-MM2A final rule), was promulgated on November 19, 2020. (See 85 FR 73854) The MM2A final rule became effective on January 19, 2021. As directed by Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' EPA has reviewed the MM2A action and published for comment a notice of proposed rulemaking to determine whether changes are necessary for sources seeking to reclassify from major source status to area source status. This proposal reflects engagement with state and local agencies, representatives of communities, and other stakeholders.

• *Revisions to the Air Emission Reporting Requirements (AERR).*

On August 8, 2023 (88 FR 54118), the EPA proposed revisions to the Air Emissions Reporting Requirements in 40

CFR part 51, subpart A. The existing AERR rule was last revised on February 19, 2015 (80 FR 8787). EPA is proposing new requirements to improve the quality and completeness of HAP emissions data from stationary sources and all pollutant emissions from prescribed fires. Specifically, the EPA is proposing to require certain sources report information regarding emission of hazardous air pollutants (HAP); certain sources to report criteria air pollutants, their precursors and HAP; and to require State, local, and certain tribal air agencies to report prescribed fire data. Further, EPA is considering how best to quantify emissions from intermittent sources such as backup generators; how to obtain data from permitted facilities in Indian Country when a Tribe is not required to report emissions data; and how to address known data gaps, streamline processes, and improve data quality, documentation, and transparency for nonpoint and mobile sources. The proposed revisions also include changes for reporting data on airports, rail yards, commercial marine vessels, locomotives, and nonpoint sources. This proposed action would allow for EPA to annually collect (starting in 2027), hazardous air pollutant (HAP) emissions data for point sources in addition to continuing the criteria air pollutant and precursor (CAP) collection in place under the existing AERR. The proposed amendments would ensure that EPA has sufficient information to identify and solve air quality and exposure problems and ensure that communities have the data needed to understand significant environmental risks that may be impacting them.

• *NSPS for the Synthetic Organic Chemical Manufacturing Industry and NESHAP for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry.*

This action will address the agency's technology review under Clean Air Act (CAA) section 112(d)(6) of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for four subparts in 40 CFR part 63 (subparts F, G, H, and I) which are commonly referred to together as the Hazardous Organic NESHAP (HON) and that apply to the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and to equipment leaks from certain non-SOCMI processes. This action will also address the agency's technology review of the NESHAP for two subparts in 40 CFR part 63 (subparts U and W) that apply to the Group I and Group II Polymers and Resins industries. The HON standards were most recently updated when the agency conducted a residual risk and technology review (RTR) on December 21, 2006. Similarly, the Group I and II Polymers and Resins NESHAP were most recently updated when the agency conducted its RTR on December 16, 2008, and April 21, 2011. The HON and Group I and II Polymers and Resins NESHAP contain maximum achievable control technology (MACT) standards for controlling emissions of hazardous air pollutants (HAP) from process vents, storage vessels, transfer operations, heat exchange systems, wastewater streams, and equipment leaks. The HAP emitted from these emission sources include, but are not limited to, ethylene oxide, benzene, 1,3-butadiene, vinyl chloride, ethylene dichloride, methanol, hexane, toluene, xylenes, and chloroprene.

The agency also plans to consider risks from the SOCMI source category and from the Neoprene Production source category in the Group I Polymers and Resins NESHAP during its technology review and to ensure the standards continue to provide an ample margin of safety to protect public health. Lastly, this action will also address the agency's review, under CAA section 111(b)(1)(B), of four New Source Performance Standards (NSPS) in 40 CFR part 60 (subparts III, NNN, RRR, and VVa) for emissions of Volatile Organic Compound (VOC) from SOCMI air oxidation unit processes, SOCMI distillation operations, SOCMI reactor processes, and equipment leaks located at SOCMI sources. These subparts were originally promulgated pursuant to section 111(b) of the CAA on June 29,1990 (subparts III and NNN), August 31, 1993 (subpart RRR), and November 16, 2007 (subpart VVa). On April 25, 2023, the EPA published a proposed rulemaking in the **Federal Register** (see 88 FR 25080) for this action. In addition, the EPA has conducted public outreach activities, including hosting an informational webinar on April 13, 2023, and holding a public hearing on the proposed rulemaking on May 16, 2023. EPA intends to publish the final action by March 2024.

Ensure Clean and Healthy Water for All Communities

The Nation's water resources are the lifeblood of our communities, supporting our health, economy, and way of life. Clean and safe water is a vital resource that is essential to the protection of human health. EPA is committed to ensuring clean and safe water for all, including low-income communities and communities of color, children, the elderly, tribes, and indigenous people. Since the enactment of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA), EPA and its state and tribal partners have made significant progress toward improving the quality of our waters and ensuring a safe drinking water supply. Along with the full set of water actions listed in the regulatory agenda, the regulatory initiatives listed below will help ensure that this important progress continues.

• *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.*

• On March 29, 2023, EPA published a proposed rule to potentially strengthen the Steam Electric Effluent Limitations Guidelines and Standards (ELGs) (40 CFR 423). EPA previously revised the Steam Electric ELGs in 2015 and 2020. The proposed rule would establish more stringent ELGs for two wastestreams addressed in the 2020 ''Steam Electric Reconsideration Rule'' (flue gas desulfurization wastewater and bottom ash transport water). In addition, the proposal would establish more stringent effluent limitations and standards for an additional wastestream (combustion residual leachate) and takes comment on potential revisions to limitations and standards for a fourth wastestream (legacy wastewater). The first two wastestreams mentioned above are the subject of current litigation pending in the U.S. Court of Appeals for the Fourth Circuit. *Appalachian Voices, et al.* v. *EPA,* No. 20–2187 (4th Cir.). The 2015 limitations for combustion residual leachate and legacy wastewater discharged by existing sources were vacated by the U.S. Court of Appeals for the Fifth Circuit in *Southwestern Electric Power Co., et al.* v. *EPA,* 920 F.3d 999 (5th Cir. 2019). EPA has conducted outreach with Tribal governments, state governments and governmental organizations, and potential communities with environmental justice concerns on this rulemaking.

• *Per- and polyfluoroalkyl substances (PFAS): Perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) National Primary Drinking Water Regulation Rulemaking.*

• On March 3, 2021, EPA published the Fourth Regulatory Determinations (86 FR 12272), including a determination to regulate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in drinking water. EPA is finalizing a National Primary Drinking Water Regulation (NPDWR) for PFOA, PFOS, and other PFAS as part of this action. EPA proposed the NPDWR for public comment in March 2023. The Agency anticipates issuing a final regulation in

late 2023 after considering public comments on the proposal.

• *National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions.*

EPA promulgated the final Lead and Copper Rule Revision (LCRR) on January 15, 2021, (86 FR 4198) and subsequently reviewed those revisions to further evaluate whether the LCRR fully protected families and communities (86 FR 71574; December 17, 2021) particularly those that have been disproportionately impacted by lead in drinking water. Through this review, the Agency concluded that there are significant opportunities to improve the LCRR. EPA is developing a new proposed NPDWR, the Lead and Copper Rule Improvements (LCRI), to strengthen the regulatory framework and address lead in drinking water. EPA expects to issue the proposed LCRI in Fall 2023. The Agency anticipates issuing a final regulation prior to October 16, 2024, after considering public comments on the proposal.

• *Federal Baseline Water Quality Standards for Indian Reservations.*

On April 27, 2023, the EPA Administrator signed a proposed rule to establish federal baseline water quality standards (WQS) for waters on Indian reservations that do not have WQS under the CWA. This proposed rule would help advance President Biden's commitment to strengthening the nation-to-nation relationships with Indian country. Fifty years after enactment of the CWA, over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the CWA for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Promulgating baseline WQS would provide more scientific rigor and regulatory certainty to National Pollutant Discharge Elimination System (NPDES) permits for discharges to these waters. Consistent with EPA's regulations, the baseline WQS include designated uses, water quality criteria to protect those uses, and antidegradation policies to protect high quality waters. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the summer of 2023, concurrent with the public comment period associated with the proposal.

• *Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights.*

• Many tribes hold reserved rights to resources on lands and waters where states establish WQS, through treaties, statutes, or other sources of federal law. The U.S. Constitution defines treaties as the supreme law of the land. On November 28, 2022, the EPA Administrator signed a proposed rule that would, if finalized, revise the federal WQS regulation to ensure that WQS do not impair tribal reserved rights by giving clear direction on how to develop WQS where tribes hold reserved rights. This proposed rule would help EPA ensure protection of resources reserved to tribes in treaties, statutes, or other sources of federal law when establishing, revising, and reviewing WQS. The development of this rule helps advance President Biden's commitment to strengthening the nation-to-nation relationships with tribes. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the winter of 2023, concurrent with the public comment period for the proposed rule. EPA is working to expeditiously finalize the proposed rule, taking into account public comments.

Safeguard and Revitalize Communities

EPA works to improve the health and livelihood of all Americans by cleaning up and returning land to productive use, preventing contamination, and responding to emergencies. EPA collaborates with other federal agencies, industry, states, tribes, and local communities to enhance the livability and economic vitality 15 of neighborhoods. Challenging and complex environmental problems persist at many contaminated properties, including contaminated soil, sediment, surface water, and groundwater that can cause human health concerns. EPA acts under several different statutory authorities, including the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA's regulatory program works to incorporate new technologies and approaches to cleaning up land to provide for an environmentally sustainable future more efficiently and effectively, as well as to strengthen climate resilience and to integrate environmental justice and equitable development when returning sites to productive use. Along with the other land and emergency management actions in the regulatory agenda, EPA will take the following priority actions to address the contamination of soil, sediment, surface water, and groundwater.

• *PFAS: RCRA Listing and CERCLA Designation.*

Based on public health and environmental protection concerns and in response to several petitions which requested EPA to take regulatory action on PFAS under RCRA, EPA is evaluating the existing toxicity and health effects data on four PFAS constituents to determine if they should be listed as RCRA Hazardous Constituents. If the existing data for the four PFAS constituents support listing any or all of these constituents as RCRA hazardous constituents, EPA will propose to list the constituents in a **Federal Register** notice for public comment. The four PFAS chemicals EPA will evaluate are: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS), hexafluoropropylene oxide dimer acid (HFPO–DA or GenX). EPA has communicated with interested stakeholders about this action and will do conduct additional outreach with the public, organizations, states, tribal groups, and affected parties following publication of a proposed rule.

Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA'' or ''Superfund''), the Environmental Protection Agency (EPA or the Agency) is moving to finalize the designation of perfluorooctanoic acid (PFOA) and perfluoro octane sulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances. CERCLA authorizes the Administrator to promulgate regulations designating as hazardous substances such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Such a designation would ultimately facilitate cleanup of contaminated sites and reduce human exposure to these ''forever'' chemicals.

• *Hazardous and Solid Waste Management System: Addressing Coal Combustion Residues from Electric Utilities.*

On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments. On August 21, 2018, the D.C. Circuit Court of Appeals issued its opinion in the case of *Utility Solid Waste Activities Group, et al.* v. *EPA*, which vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR rule. In May 2023, EPA proposed regulations to implement this part of the court

decision for inactive CCR surface impoundments at inactive utilities, or ''legacy CCR surface impoundments''. This proposal included adding a new definition for legacy CCR surface impoundments. EPA also proposed to require such legacy CCR surface impoundments to follow existing regulatory requirements for fugitive dust, groundwater monitoring, and closure, or other technical requirements. Finally, EPA proposed requirements for CCR management units including a facility evaluation and to follow existing regulatory requirements for groundwater monitoring, corrective action, and closure for all CCR contamination (regardless of how or when that CCR was placed) at a regulated facility. After reviewing the public comments on the proposed rule, EPA will take final action.

• *Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act, as amended; Safer Communities by Chemical Accident Prevention.*

• On August 31, 2022, the Environmental Protection Agency (EPA) published proposed amendments to its Risk Management Program (RMP) regulations as a result of Agency review. The proposed revisions included several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. Such amendments seek to improve chemical process safety; assist in planning, preparedness, and responding to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources. EPA aims to release the final rule by the end of 2023.

• *Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives.*

• This rulemaking proposes to revise regulations will consider revisions to the regulations that allow for the open burning and detonation (OB/OD) of waste explosives. This allowance or ''variance'' to the prohibition on the open burning of hazardous waste was established at a time when there were no alternatives to the safe treatment of waste explosives. However, recent findings from the National Academies of Sciences, Engineering, and Medicine and the EPA have determined identified that safe alternatives that are potentially applicable to many energetic/explosive waste streams. Because there are potentially safe alternatives in use today that capture and treat emissions prior to release, the EPA is considering revising regulations to promote the broader use of these alternatives, where applicable. As part of the rule development process, EPA has held two rounds of engagement with states, territories, tribes, environmental and community groups, and owners/operators of OB/OD units.

• Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units EPA is considering a proposed rule that would modify the regulations at 40 CFR part 264 to clarify that the definition of hazardous waste found in RCRA section 1004(5) is applicable to corrective action for releases from solid waste management units. The proposed rule would codify in regulation EPA's interpretation of its authority under RCRA section 3004(u) and (v).

• *Hazardous Substance Response Worst Case Discharge Planning.*

The Clean Water Act (CWA) provides that regulations shall be issued ''which require an owner or operator of a tank vessel or facility . . . to prepare and submit . . . a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of . . . a hazardous substance.'' EPA was sued for failure to fulfill this mandatory duty imposed by Congress. This regulatory action is being conducted under the terms of a consent decree entered into on March 12, 2020, which requires that a proposed action is signed within 24 months of the final agreement and that a final action follow within 30 months of the publication of the proposed rule. Subsequently, the Environmental Protection Agency proposed a regulatory action to require planning for worst case discharges of CWA hazardous substances under section 311(j)(5)(A). EPA plans to promulgate a final rule by Spring 2024 meet the terms of the Consent Decree.

Ensure Safety of Chemicals for People and the Environment

EPA is responsible for ensuring the safety of chemicals and pesticides for all people at all life stages. Chemicals and pesticides released into the environment as a result their manufacture, processing, distribution, use, or disposal can threaten human health and the environment. EPA gathers and assesses information about the risks associated with chemicals and pesticides and acts to minimize risks and prevent unreasonable risks to individuals, families, and the environment. EPA acts under several different statutory authorities, including the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Federal Food, Drug and Cosmetic Act (FFDCA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know-Act (EPCRA), and the Pollution Prevention Act (PPA). Using best available science, the Agency will continue to satisfy its overall directives under these authorities and highlights the following rulemakings intended for release in FY2024:

• *Collecting Data to Better Understand the Environmental and Human Health Impacts of Per- and Polyfluoroalkyl Substances (PFAS).*

Building on EPA's completion of actions identified in the PFAS Strategic Roadmap that the EPA Administrator announced on October 18, 2021, the Agency is considering whether to add PFAS chemicals to the list of chemicals required to report to the Toxics Release Inventory (TRI) Program under EPCRA section 313 in furtherance of section 7321(d) of the National Defense Authorization Act for Fiscal Year 2020 (NDAA), which directs EPA to add any PFAS that EPA determines meet the listing criteria by December 2023.

• *Improving Procedures for Assessing the Risks of New and Existing Chemical Substances under TSCA.*

As amended in 2016, TSCA requires EPA to assess the risks of each new chemical substance for which a notice was received under TSCA section 5(a)(1) of the law and make an affirmative determination on whether such a new chemical substance presents an unreasonable risk to human health or the environment under known, intended or reasonably foreseen conditions of use before the submitter may commence manufacturing or processing of the chemical substance that is the subject of the submitted notice, and to take action as required in association with the determination. On May 26, 2023, EPA proposed to amend the new chemicals procedural regulations in 40 CFR parts 720, 721, 723, and 725 for the purpose of aligning EPA's processes and procedures with the 2016 TSCA amendments and to clarify and improve the efficiency of the Agency's review process (RIN 2070–AK65). One of the major objectives of the rulemaking is to reduce the need to redo all or part of the risk assessment for a new chemical by increasing the quality of information initially submitted in new chemicals notices, ensuring that the Agency's processes result in the timely, effective completion of new chemical risk assessments. Another key objective of the rulemaking is to improve the review process for low volume exemptions (LVEs) and low release and exposure exemptions (LoREXs), which include

requiring EPA approval of an exemption notice prior to commencement of manufacture, making per- and polyfluoroalkyl substances (PFAS) categorically ineligible for these exemptions, and providing that persistent, bioaccumulative, toxic (PBT) chemical substances are also ineligible for these exemptions, consistent with EPA's 1999 PBT policy. EPA expects to promulgate final revisions to the new chemicals procedural regulations in November 2024.

In addition, the 2016 TSCA amendments require EPA to evaluate the safety of existing chemicals via a three-stage process: prioritization, risk evaluation, and risk management. EPA first prioritizes chemicals as either high- or low-priority for risk evaluation. EPA then evaluates high-priority chemicals for unreasonable risk. As a result of litigation challenging the 2017 final rule that established EPA's procedural framework for conducting existing chemical risk evaluations under TSCA, and in consideration of Executive Order 13990, the Agency proposed to amend that framework in order to better align the Agency's processes with the statutory text and structure and Congress' intent in the 2016 amendments to TSCA (RIN 2070–AK90). Key provisions of the proposed rule include clarifications regarding the required scope of risk evaluations, considerations related to peer review, the process for revisiting a completed risk evaluation, requirements for manufacturer-requested risk evaluations and related information-gathering provisions, provisions addressing violations and penalties, and other aspects based on lessons learned in the process of carrying out the first 10 TSCA risk evaluations. EPA expects to promulgate final revisions in April 2024.

• *Addressing the Unreasonable Risk of Existing Chemical Substances under TSCA.*

• Upon determining that an existing chemical presents an unreasonable risk of injury to health or the environment, the Agency must immediately initiate an action to apply, by rule, requirements under TSCA to eliminate the unreasonable risk. EPA may consider a range of risk management options under TSCA in such a rule, including labeling, recordkeeping or notice requirements, actions to reduce human exposure or environmental release, or a ban of the chemical or of certain uses. After determining that the chemical substances present unreasonable risk under their conditions of use, the Agency intends to propose risk management regulations for addressing the unreasonable risks of 1-bromopropane (RIN 2070–AK73) and n-methylpyrrolidone (RIN 2070–AK85) and promulgate final rules addressing the unreasonable risks of chrysotile asbestos (RIN 2070–AK86), methylene chloride (RIN 2070–AK70), and trichloroethylene (RIN 2070–AK83) by Spring 2024, and to issue final risk management regulations addressing the unreasonable risks of carbon tetrachloride (RIN 2070–AK82) and perchloroethylene (RIN 2070–AK84) in Summer 2024. The Agency has undertaken extensive outreach and consultation efforts throughout the development of these actions. In addition to stakeholder outreach conducted throughout the risk evaluation and risk management rulemaking processes for these chemical substances, EPA also consulted with State, local, and Tribal government officials, and held public environmental justice consultations to further opportunities for underserved and overburdened communities to share information and input with the Agency prior to proposal. When applicable, EPA also convened Small Business Advocacy Review Panels and consulted with small entity representatives as required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) to provide advice and recommendations to ensure that EPA carefully considers small entity concerns. Further, the Agency has hosted public webinars to brief stakeholders on proposed risk management regulations that have published in the **Federal Register** and to receive additional public input in addition to written public comments submitted to the rulemaking dockets. EPA's chemical risk management efforts reflect the feedback we have received from the various stakeholders and government officials, and the Agency will continue these practices of sharing information and seeking input. For more information about the Agency's public involvement efforts, please visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca#meetings* and *https://www.epa.gov/reg-flex/small-business-advocacy-review-sbar-panels.*

• *Reevaluating Changes to the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels under TSCA.*

The Agency's dust-lead hazard standards (DLHS) provide the basis for risk assessors to determine whether dust-lead hazards are present, and apply to target housing (*i.e.,* most pre-1978 housing) and child-occupied facilities (pre-1978 non-residential properties where children 6 years of age or under spend a significant amount of time such as daycare centers and kindergartens). EPA's dust-lead clearance levels (DLCL) indicate the amount of lead in dust on a surface following the completion of an abatement activity. On July 9, 2019, EPA promulgated a final rule to lower the DLHS, and on January 6, 2021, EPA promulgated a final rule to lower the DLCL. On May 14, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 DLHS final rule and directed EPA to reconsider the 2019 DLHS rule in conjunction with a reconsideration of the DLCL. Notably, the Court instructed EPA to consider only health factors when setting the DLHS while affirming that the Agency is able to consider reliability, effectiveness, and safety, including non-health factors such as laboratory capabilities/capacity and achievability, when setting the DLCL. As part of EPA's efforts to reduce childhood lead exposure, and in accordance with the U.S. Court of Appeals for the Ninth Circuit 2021 opinion, EPA proposed on August 1, 2023, to lower the DLHS from 10 micrograms per square foot ($\mu g/ft^2$) and 100 $\mu g/ft^2$ for floors and window sills to any reportable level as analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program. EPA also proposed to change the DLCL from 10 $\mu g/ft^2$, 100 $\mu g/ft^2$ and 400 $\mu g/ft^2$ for floors, windowsills, and window troughs to 3 $\mu g/ft^2$, 20 $\mu g/ft^2$, and 25 $\mu g/ft^2$, respectively. The Agency consulted with State, local and Tribal government officials during the rulemaking. EPA expects to promulgate final revisions to the DLHS and DLCL (RIN 2070–AK91) in October 2024 and will continue its efforts to engage its partners to ensure the successful implementation of the amended hazard standards and clearance levels.

Rules Expected To Affect Small Entities

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. Actions that may affect small entities can be tracked on EPA's Regulatory Flexibility website (*https://www.epa.gov/reg-flex*) at any time.

EPA—OFFICE OF AIR AND RADIATION (OAR)

Proposed Rule Stage

190. Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter [2060–AS35]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 7401 *et seq.* Clean Air Act

CFR Citation: 40 CFR 50.

Legal Deadline: None.

Abstract: Under the Clean Air Act, the EPA is required to review and, if appropriate, revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On April 3, 2012, the EPA published a final rule in which the Agency determined to retain the current secondary standards (welfare-based) for nitrogen oxides (NO_X) and for sulfur oxides (SO_X). On January 15, 2013, the EPA published a final rule in which the Agency retained the secondary standards for particulate matter. The current review of the air quality criteria and secondary standards for ecological effects of SO_X, NO_X and particulate matter includes the preparation of an Integrated Science Assessment and a Policy Assessment by the EPA, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. These documents will inform the Administrator's proposed decision as to whether to retain or revise the standards. The proposed decision would be published in the **Federal Register** with opportunity provided for public comment. The Administrator's final decisions would take into consideration these documents, CASAC advice, and public comment on the proposed decision. Opportunities for public engagement and sharing of information concerning this NAAQS review will include public hearings, tribal consultation, informational meetings, and through the CASAC public meetings.

Statement of Need: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On April 3, 2012, EPA published a final rule retaining the Secondary NAAQS for NO_2 and SO_2, without revision. On August 29, 2013, EPA announced that it is reviewing the April 2012 decision on the secondary air quality standards for NO_2 and SO_2. On December 3, 2014, EPA announced it is reviewing the secondary air quality standards for particulate matter.

Summary of Legal Basis: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years.

Alternatives: The main alternatives for the Administrator's decision on the review of the secondary national ambient air quality standards for NO_X, SO_X and PM include retaining or revising the existing standards.

Anticipated Cost and Benefits: When the Agency proposes revisions to the standards, the Agency prepares a Regulatory Impact Analysis (RIA) to provide the public with illustrative estimates of the potential costs and health and welfare benefits of attaining the revised standards. However, the Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of state plans to implement the standards.

Risks: The review builds on the review of the NO_X and SO_X NAAQS, completed in 2012, and includes preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, and a Policy Assessment, which includes a risk/exposure assessment, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. The final versions of these documents will inform the Administrator's proposed decisions on whether to revise or retain the Secondary NO_X SO_X and PM NAAQS. The Administrator's final decisions on whether to revise or retain the Secondary NO_X SO_X and PM NAAQS will take into consideration the scientific evidence and quantitative analyses presented in these documents, CASAC advice, and public comment on the proposed decision.

Timetable:

Action	Date	FR Cite
Notice	08/22/18	83 FR 42497
Notice	05/31/23	88 FR 34852
NPRM	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Undetermined.

Additional Information:

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RIN: 2060–AS35

EPA–OAR

191. NSPS for GHG Emissions From New, Modified, and Reconstructed Fossil Fuel—Fired EGUS; Emission Guidelines for GHG Emissions From Existing Fossil Fuel—Fired EGUS; and Repeal of the ACE RULE [2060–AV09]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7411 Clean Air Act; 42 U.S.C. 7414 and 7601

CFR Citation: 40 CFR 60, subpart TTTT; 40 CFR 60 subpart UUUUa.

Legal Deadline: None.

Abstract: Fossil fuel-fired electric generating units (EGUs) are the nation's second largest source of greenhouse gas (GHG) pollution. In May 2023, EPA proposed to set limits for new gas-fired combustion turbines, existing coal, oil and gas-fired steam generating units, and certain existing gas-fired combustion turbines. Consistent with EPA's traditional approach to establishing pollution standards for power plants under section 111 of the Clean Air Act, the proposed standards are based on technologies such as carbon capture and sequestration/storage (CCS), low-GHG hydrogen co-firing, and natural gas co-firing, which can be applied directly to power plants that use fossil fuels to generate electricity. As laid out in section 111 of the Clean Air Act, the proposed new source performance standards (NSPS) and emission guidelines reflect the application of the best system of emission reduction (BSER) that, taking into account costs, energy requirements, and other statutory factors, is adequately demonstrated for the purpose of improving the emissions performance of the covered electric generating units.

EPA anticipates promulgating final rules by spring 2024.

Statement of Need: New EGUs are a significant source of GHG emissions. This action will evaluate options to reduce those emissions.

Summary of Legal Basis: Clean Air Act section 111(b) provides the legal

framework for establishing greenhouse gas emission standards for new electric generating units.

Alternatives: EPA evaluated several options for reducing GHG emissions from new EGUs including carbon capture and sequestration/storage (CCS), low-GHG hydrogen co-firing, natural gas co-firing, efficient generation, and use of clean fuels.

Anticipated Cost and Benefits: Undetermined.

Risks: Undetermined.

Timetable:

Action	Date	FR Cite
NPRM	05/23/23	88 FR 33240
NPRM Comment Period End.	07/24/23	
Supplemental NPRM.	11/20/23	88 FR 80682
Supplemental Comment Period End.	12/20/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Sectors Affected: 22111 Electric Power Generation; 221112 Fossil Fuel Electric Power Generation.

URL For More Information: https://www.federalregister.gov/d/2023-10141.

Agency Contact: Lisa Thompson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243–01, Research Triangle Park, NC 27711, *Phone:* 919 541–9775, *Email: thompson.lisa@epa.gov.*

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Related RIN: Related to 2060–AT56

RIN: 2060–AV09

EPA—OAR

192. Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act [2060–AV20]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 7401 *et seq.* CAA; 42 U.S.C. 7414; 42 U.S.C. 7601

CFR Citation: 40 CFR 63.1.

Legal Deadline: None.

Abstract: The final rule, Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (Major MACT to Area-MM2A final rule), was promulgated on November 19, 2020. (See 85 FR 73854) The MM2A final rule became effective on January 19, 2021. On January 20, 2021, President Biden issued Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. The EPA has identified the MM2A final rule as an action being considered pursuant section (2)(a) of Executive Order 13990. Under this review, EPA, as appropriate and consistent with the Clean Air Act section 112, published for comment a notice of proposed rulemaking reviewing the MM2A final rule. As the Agency developed this proposal, we sought to increase participation and engagement of members of the public affected by this action. The agency held multiple pre-proposal outreach meetings with environmental non-governmental organizations representing communities as well as associations of state/local government agencies.

Statement of Need: The EPA issued a notice of proposed rulemaking of EPA's review of the final rule Reclassification of Major Sources as Area Sources Under section 112 of the Clean Air Act (Major MACT to Area- MM2A final rule) pursuant Executive Order 13990. Pursuant section (2)(a) of Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, the EPA is to review the MM2A final rule and as appropriate and consistent with the Clean Air Act section 112, to publish for comment a notice of proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

Summary of Legal Basis: The EPA issued a final rulemaking on November 19, 2020. The final MM2A rule provides that a major source can be reclassified to area source status at any time upon reducing its potential to emit (PTE) hazardous air pollutants (HAP) to below the major source thresholds (MST) of 10 tons per year (tpy) of any single HAP and 25 tpy of any combination of HAP. Pursuant section (2)(a) of Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, the EPA is to review the MM2A final rule and as appropriate and consistent with the Clean Air Act section 112, to publish for comment a notice of proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

Alternatives: The EPA will take comments on the review of the final MM2A and EPA's proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

Anticipated Cost and Benefits: The proposed action does not have quantified costs or benefits.

Risks: The proposed action does not address public health risks.

Timetable:

Action	Date	FR Cite
NPRM	09/27/23	88 FR 66336
NPRM Comment Period End.	11/13/23	
Final Rule	05/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Additional Information:

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Related RIN: Related to 2060–AM75

RIN: 2060–AV20

EPA–OAR

193. Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (H) of the American Innovation and Manufacturing Act of 2020 [2060–AV84]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 42 U.S.C. 7675

CFR Citation: 40 CFR 84.

Legal Deadline: None.

Abstract: This proposed rulemaking would establish requirements for the management of certain HFCs and their substitutes under subsection (h) of the AIM Act. Specifically, this proposal considers provisions to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purposes of maximizing the reclamation and minimizing the release of certain HFCs from equipment and ensuring the safety of technicians and consumers. Among other provisions, EPA is proposing emissions reduction requirements for certain equipment containing HFCs and their substitutes as well as requirements for the reclaiming of HFCs.

Statement of Need: The EPA issued a notice of proposed rulemaking to meet the statutory provisions of subsection (h) of the American Innovation and Manufacturing (AIM) Act of 2020.

Summary of Legal Basis: The American Innovation and Manufacturing (AIM) Act, enacted on December 27, 2020, provides EPA new authorities to address hydrofluorocarbons (HFCs) in three main areas: phasing down the production and consumption of listed HFCs, maximizing reclamation and minimizing releases of these HFCs and their substitutes in equipment (*e.g.,* refrigerators and air conditioners), and facilitating the transition to next-generation technologies by restricting the use of HFCs in particular sectors or subsectors. Subsection (h) of the AIM Act requires EPA to establish regulations to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purpose of maximizing the reclamation and minimizing the release of certain HFCs from equipment and ensuring the safety of technicians and consumers.

Alternatives: In the proposed rule, EPA requested comments on alternative approaches and compliance dates for the various provisions. For example, EPA requested comment on alternative compliance dates for the proposed fire suppression requirements.

Anticipated Cost and Benefits: The Agency prepared a Regulatory Impact Analysis (RIA) Addendum. Taking into account both benefits and compliance costs over the 2025–2050 time period, it is estimated that the proposed rule would result in present value net benefit (benefits minus compliance costs), of $6.1 billion (with compliance costs discounted at three percent).

Risks: EPA is still evaluating the scope and risks associated with a prospective rule.

Timetable:

Action	Date	FR Cite
Notice	10/17/22	87 FR 62843
NPRM	10/19/23	88 FR 72216
NPRM Comment Period End.	12/18/23	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 2060–AV84

EPA—OAR

194. Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application–Specific Allowances [2060–AV98]

Priority: Other Significant.

Legal Authority: American Innovation and Manufacturing (AIM) Act of 2020 (42 U.S.C. 7675)

CFR Citation: 40 CFR 84.

Legal Deadline: None.

Abstract: The AIM Act identifies six applications that are to receive ''the full quantity of [HFC] allowances necessary, based on projected, current, and historical trends,'' under the allowance allocation program through the end of 2025. The six applications are a propellant in metered dose inhalers, defense sprays, structural composite preformed polyurethane foam for marine use and trailer use, the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector, mission-critical military end uses, and onboard aerospace fire suppression. EPA can renew this status for up to five years at a time based on statutory criteria outlined in the AIM Act. This proposed rule will review and consider whether to renew eligibility for each of the six applications, consistent with this statutory process under AIM subsection (e)(4)(B). Additionally, EPA intends to establish how it will review eligibility if petitioned for inclusion of additional applications and to consider revisions to existing regulatory requirements.

Statement of Need: This rule is required to meet the statutory provisions of subsection (e) of the AIM Act.

Summary of Legal Basis: The American Innovation and Manufacturing (AIM) Act, enacted on December 27, 2020, provides EPA authority to address hydrofluorocarbons (HFCs) in three main areas: phasing down the production and consumption of listed HFCs, maximizing reclamation and minimizing releases of these HFCs and their substitutes in equipment (*e.g.,* refrigerators and air conditioners), and facilitating the transition to next-generation technologies by restricting the use of HFCs in particular sectors or subsectors. Subsection (e)(iv)(B) requires EPA to allocate the full quantity of allowances necessary for 6 applications. Five years after enactment of the AIM Act, the statute requires that EPA review the 6 applications, and, if the statutory criteria are met, authorize the production or consumption, as applicable, of any regulated substance used in the application for renewable periods of not more than 5 years for exclusive use in the application.

Alternatives: The alternatives for establishing a subsection (e)(4)(B) rule are, for each application, to either authorize the production or consumption, as applicable, of any regulated substance used in an application for a renewable period of not more than 5 years for exclusive use in that application or to not extend the provisions under (e)(4)(B)(iv).

Anticipated Cost and Benefits: EPA is still evaluating the potential costs and benefits of this prospective action, but does not expect that this rule will have a significant economic effect.

Risks: EPA is still evaluating the scope and risks associated with a prospective rule.

Timetable:

Action	Date	FR Cite
NPRM	07/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

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RIN: 2060–AV98

EAP—OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSPP)

Proposed Rule Stage

195. 1-Bromopropane (1-BP); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK73]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, August 12, 2021, TSCA section 6(c).

Final, Statutory, August 12, 2022, TSCA section 6(c).

Abstract: This proposed rulemaking will address the unreasonable risk of injury to health presented by 1-bromopropane (1–BP). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA address by rule any unreasonable risk identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. The Agency's development of this rule incorporates significant stakeholder outreach and public participation, including over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation for 1–BP, describing the conditions of use, is in docket EPA–HQ–OPPT–2019–0235, with the 2022 unreasonable risk determination and additional materials in docket EPA–HQ–OPPT–2016–0741.

S*tatement of Need:* This rulemaking is needed to address the unreasonable risk of 1-bromopropane that were identified following a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of 1-bromopropane, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA will consider one or more primary alternative regulatory actions as part of the development of a proposed rule.

Anticipated Cost and Benefits: EPA will prepare a regulatory impact analysis as the Agency develops the proposed rule.

Risks: The 2020 Risk Evaluation for 1–BP identified potential health effects from short- and long-term exposure to 1–BP including non-cancer adverse health effects such as liver toxicity, kidney toxicity, reproductive toxicity, developmental toxicity, and neurotoxicity. Relative to cancer effects, the risk evaluation identified cancers hazards from carcinogenicity as well as genotoxicity, particularly for skin, intestinal, and lung tumors. For acute inhalation and dermal exposure scenarios, EPA identified non-cancer developmental effects (*i.e.,* decreased live litter size, and increases in post implantation loss) as the most sensitive endpoints. In the final 2022 Unreasonable Risk Determination, EPA determined that 1–BP presents an unreasonable risk of injury to health. The unreasonable risk determination, based on developmental toxicity and cancer, is driven by risks to workers and occupational non-users (workers who do not directly handle the chemical but perform work in an area where the chemical is present) due to occupational exposures to 1–BP (*i.e.,* during manufacture, processing, industrial and commercial uses, and disposal); and to consumers and bystanders associated with consumer uses of 1–BP due to exposures from consumer use of 1–BP and 1–BP-containing products. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
Final Rule	05/00/25	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0471.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-1-bromopropane-1-bp.

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RIN: 2070–AK73

EPA—OCSPP

196. Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK83]

Priority: Other Significant.
Unfunded Mandates: Undetermined.
Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act
CFR Citation: 40 CFR 751.
Legal Deadline: NPRM, Statutory, November 30, 2021, TSCA section 6(c). Final, Statutory, November 30, 2022, TSCA section 6(c).

Abstract: On October 31, 2023, the Environmental Protection Agency (EPA) proposed to address the unreasonable risk of injury to human health presented by trichloroethylene (TCE) under its conditions of use as documented in EPA's November 2020 Risk Evaluation for TCE and January 2023 revised Unreasonable Risk Determination for TCE pursuant to the Toxic Substances Control Act (TSCA). TCE is widely used as a solvent in a variety of industrial, commercial and consumer applications including for hydrofluorocarbon (HFC) production, vapor and aerosol degreasing, and in lubricants, greases, adhesives, and sealants. TSCA requires that when EPA determines a chemical substance presents unreasonable risk that EPA address by rule the unreasonable risk of injury to health or the environment and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. EPA determined that TCE presents an unreasonable risk of injury to health due to the significant adverse health effects associated with exposure to TCE, including non-cancer effects (liver toxicity, kidney toxicity, neurotoxicity, immunotoxicity, reproductive toxicity, and developmental toxicity) as well as cancer (liver, kidney, and non-Hodgkin lymphoma) from chronic inhalation and dermal exposures to TCE. TCE is a neurotoxicant and is carcinogenic to humans by all routes of exposure. The most sensitive adverse effects of TCE exposure are non-cancer effects (developmental toxicity and immunosuppression) for acute exposures and developmental toxicity and autoimmunity for chronic exposures. To address the identified unreasonable risk, EPA proposed to: prohibit all manufacture (including import), processing, and distribution in commerce of TCE and industrial and commercial use of TCE for all uses, with longer compliance timeframes and workplace controls for certain processing and industrial and commercial uses (including proposed phaseouts and time-limited exemptions); prohibit the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works, with a time-limited exemption for cleanup projects; and establish recordkeeping and downstream notification requirements. The Agency's development of this rule incorporates significant stakeholder outreach and public participation, including over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation for TCE, describing TCE's conditions of use is in docket EPA–HQ–OPPT–2019–0500, with the January 2023 unreasonable risk determination and additional materials in docket EPA–HQ–OPPT–2016–0737.55

Statement of Need: This rulemaking is needed to address the unreasonable risk from TCE that was identified following a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of TCE, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance if required.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires that EPA consider one or more primary alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The primary alternative regulatory action would prohibit the manufacture (including import) and processing of TCE for all uses; prohibit the distribution in commerce and industrial and commercial use of TCE, as well as prohibitions on the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works. The primary alternative regulatory action would involve longer timeframes for the prohibition of some industrial and commercial uses and for the associated manufacturing (including import) and processing. For all manufacturing (including import), processing, and industrial and commercial use of TCE that would continue more than one year after the publication of the final rule, workplace chemical protection program (WCPP) requirements, which would include a requirement to meet inhalation exposure concentration limits and exposure monitoring as well as requirements to reduce dermal exposures to TCE for certain continued conditions of use of TCE would be in effect until the respective prohibition compliance dates or, if applicable, expiration of the TSCA section 6(g) exemptions. The inhalation exposure concentration limits under the primary alternative regulatory action would be based on the immunotoxicity endpoint instead of the developmental toxicity endpoint as under the proposed regulatory action. The primary alternative regulatory action provides certain time-limited exemptions from requirements for uses of TCE that are critical or essential.

Anticipated Cost and Benefits: The monetized costs for this proposed rule are estimated to range from $33.1 million annualized over 20 years at a 3% discount rate and $40.5 million annualized over 20 years at a 7% discount rate. The monetized benefits are estimated to be $18.0 to $21.5 million annualized over 20 years at a

3% discount rate and $8.2 million to $10.3 million annualized over 20 years at a 7% discount rate. EPA believes that the balance of costs and benefits of this proposal cannot be fairly described without considering the additional, non-monetized benefits of mitigating the non-cancer adverse effects. These effects may include neurotoxicity, kidney toxicity, liver toxicity, immunotoxicity effects, reproductive effects, and developmental effects.

Risks: The 2020 Risk Evaluation for TCE identified significant adverse health effects associated with short- and long-term exposure to TCE, including non-cancer effects (immunosuppression and developmental toxicity) from acute inhalation exposures and dermal exposures, and non-cancer effects (liver toxicity, kidney toxicity, neurotoxicity, autoimmunity, reproductive toxicity, and developmental toxicity) and cancer (liver, kidney, and non-Hodgkin lymphoma) from chronic inhalation exposures to TCE. In the 2023 Final Unreasonable Risk Determination, EPA determined that TCE presents an unreasonable risk of injury to health. The unreasonable risk determination, based on immunotoxicity and cancer, is driven by risks to workers and ONUs (workers who do not directly handle the chemical but perform work in an area where the chemical is present) due to occupational exposures to TCE (*i.e.,* during manufacture, processing, industrial and commercial uses, and disposal); and to consumers and bystanders associated with consumer uses of TCE due to exposures from consumer use of TCE and TCE-containing products. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	10/31/23	88 FR 74712
NPRM Comment Period End.	12/15/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0642.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-trichloroethylene-tce.

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RIN: 2070–AK83

EPA—OCSPP

197. N-Methylpyrrolidone (NMP); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK85]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, December 23, 2021, TSCA sec. 6(c).

Final, Statutory, December 23, 2022, TSCA sec. 6(c).

Abstract: This proposed rulemaking will address the unreasonable risk of injury to health presented by n-methylpyrrolidone (NMP). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to address by rule any unreasonable risk identified in a TSCA section 6(b) risk evaluation by applying requirements to the extent necessary so the chemical no longer presents unreasonable risk. The Agency's development of this rule incorporates significant stakeholder outreach and public participation, including over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's 2020 risk evaluation for NMP, describing its conditions of use is in docket EPA–HQ–OPPT–2019–0236, with the 2022 revised unreasonable risk determination and additional materials in docket EPA–HQ–OPPT–2016–0743.6

Statement of Need: This rulemaking is needed to address the unreasonable risk from NMP that were identified following a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of NMP, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance if required.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA will consider one or more primary alternative regulatory actions as part of the development of a proposed rule.

Anticipated Cost and Benefits: EPA will prepare an economic analysis as the Agency develops the proposed rule.

Risks: The 2020 Risk Evaluation for NMP identified potential health effects for NMP including non-cancer adverse health effects such as liver toxicity,

kidney toxicity, immunotoxicity, reproductive toxicity, developmental toxicity, neurotoxicity, and irritation and sensitization. In the 2022 Final Unreasonable Risk Determination, EPA determined that NMP presents an unreasonable risk of injury to health. The unreasonable risk determination is driven by risks to workers due to occupational exposures to NMP (*i.e.,* during manufacture, processing, industrial and commercial uses, and disposal); and to consumers due to exposures from consumer use of NMP and NMP-containing products. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	
Final Rule	12/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0744.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-n-methylpyrrolidone-nmp.

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RIN: 2070–AK85

EPA—OCSPP

198. Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA) [2070–AK90]

Priority: Other Significant.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 702.

Legal Deadline: None.

Abstract: As required under section 6(b)(4) of the Toxic Substances Control Act (TSCA), EPA published a final rule in 2017 that established a process for conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use. This process incorporates the science requirements of the amended statute, including best available science and weight of the scientific evidence. The final rule established the steps of a risk evaluation process including: scope, hazard assessment, exposure assessment, risk characterization, and risk determination. The Agency has reconsidered the procedural framework rule for conducting such risk evaluations and determined that certain aspects of that framework should be revised to better align with applicable court decisions and the statutory text, to reflect the Agency's experience implementing the risk evaluation program following enactment of the 2016 TSCA amendments, and to allow for consideration of future scientific advances in the risk evaluation process without need to further amend the Agency's procedural rule.

Statement of Need: EPA's 2017 final rule that established a process for conducting risk evaluations under TSCA was challenged by several non-governmental organizations. In November 2019, the court in *Safer Chemicals, Healthy Families* v. *U.S. EPA,* 943 F.3d 397 (9th Cir. 2019) remanded certain provisions of the rule to EPA. Additionally, the 2017 rule was identified for review in accordance with Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 25, 2021). Consistent with the Court's direction and opinion in *Safer Chemicals, Healthy Families* v. *U.S. EPA,* and incorporating lessons learned in the process carrying out the first ten TSCA risk evaluations, the Agency is now considering revisions to the procedural framework and will solicit public comment on those changes through a notice of proposed rulemaking.

Summary of Legal Basis: TSCA section 6(b)(4) directed EPA to establish the process for conducting risk evaluations on chemical substances under TSCA to identify any unreasonable risk of injury to health or the environment. Agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). EPA is now exercising its inherent authority to reconsider past decisions and as such is considering revisions to that final rule based on the Court's opinion in *Safer Chemicals, Healthy Families* v. *U.S. EPA* to ensure that TSCA risk evaluations are supported by the best available science, aligned with the statutory requirements, and consistent with Congress' intent in the 2016 TSCA amendments.

Alternatives: Alternatives will not be developed as part of the development of a proposed rule.

Anticipated Cost and Benefits: EPA will analyze the incremental impacts associated with proposed amendments to requirements for manufacturer-requested risk evaluations as part of the development of a proposed rule.

Risks: This is a procedural rule related to risk evaluations and is not intended to directly address any particular risk. However, the rule would establish procedures by which EPA will evaluate whether a chemical substance presents an unreasonable risk of injury to health or the environment, including unreasonable risk to a potentially exposed or susceptible subpopulation. Rigorous procedures that support accurate identification of unreasonable risk are necessary to inform subsequent risk management action.

Timetable:

Action	Date	FR Cite
NPRM	10/30/23	88 FR 74292
NPRM Comment Period End.	12/14/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information:

Sectors Affected: 325 Chemical Manufacturing; 324110 Petroleum Refineries.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca.

Agency Contact: Susanna Blair, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7401M, Washington, DC 20460, *Phone:* 202 564–4371, *Email: blair.susanna@epa.gov.*

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RIN: 2070–AK90

EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

Proposed Rule Stage

199. Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives [2050–AH24]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 40 CFR 131; 42 U.S.C. 6924

CFR Citation: 40 CFR 264 and 265.

Legal Deadline: None.

Abstract: This rulemaking will consider revisions to the regulations that allow for the open burning and detonation (OB/OD) of waste explosives. The allowance or ''variance'' to the prohibition on the open burning of hazardous waste was established at a time when there were no alternatives to the safe treatment of waste explosives. However, recent findings from the National Academies of Sciences, Engineering, and Medicine and the EPA have identified safe alternatives that are potentially available to many energetic/explosive waste streams. Because there are potential safe alternatives in use today that capture and treat emissions prior to release, the EPA is considering revising regulations to promote the broader use of these alternatives, where applicable. As part of the rule development process, EPA has held two rounds of engagement with states, territories, tribes, environmental and community groups, and owners/operators of OB/OD units.

Statement of Need: Technological advances have been made since the 1980 Interim Status regulations were issued that banned the open burning of hazardous wastes but created an exception to allow open burning/open detonation (OB/OD) of waste explosives due to a lack of other safe modes of treatment. In 2019, EPA and the National Academies of Science, Engineering, and Medicine published reports documenting safe and available alternative treatment technologies that could potentially be used in lieu of OB/OD.

Summary of Legal Basis: The proposed rule would be established under the authority of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HWSA).

Alternatives: Based on recent information regarding availability of safe alternatives, we are revising the existing regulation to explicitly state how a demonstration of eligibility must be made.

Anticipated Cost and Benefits: The Agency will evaluate anticipated costs and benefits as part of the rule development process.

Risks: The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently early in the process to make such determinations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
Final Rule	09/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

Federalism: Undetermined.

Additional Information:

Sectors Affected: 325920 Explosives Manufacturing; 562211 Hazardous Waste Treatment and Disposal; 926150 Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors; 56291 Remediation Services; 562910 Remediation Services; 56221 Waste Treatment and Disposal.

Agency Contact: Paul Diss, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5303T, Washington, DC 20460, *Phone:* 202 566–0321, *Email: diss.paul@epa.gov.*

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RIN: 2050–AH24

EPA—OLEM

200. Listing of PFOA, PFOS, PFBS, and GenX as Resource Conservation and Recovery Act (RCRA) Hazardous Constituents [2050–AH26]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 6912 (a); 42 U.S.C. 6921; 42 U.S.C. 6924

CFR Citation: 40 CFR 261.

Legal Deadline: None.

Abstract: Based on public health and environmental protection concerns and in response to several petitions which requested EPA to take regulatory action on PFAS under RCRA, EPA is evaluating the existing toxicity and health effects data on four PFAS constituents to determine if they should be listed as RCRA Hazardous Constituents. If the existing data for the four PFAS constituents support listing any or all of these constituents as RCRA hazardous constituents, EPA will propose to list the constituents in a Federal Register notice for public comment. The four PFAS chemicals EPA will evaluate are: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS), hexafluoropropylene oxide dimer acid (HFPO–DA or GenX). EPA has communicated with interested stakeholders about this action and will do conduct additional outreach with the public, organizations, states, tribal groups, and affected parties following publication of a proposed rule

Statement of Need: EPA has received three petitions recently requesting regulatory action on PFAS under the Resource Conservation and Recovery Act (RCRA), including a petition from the Governor of New Mexico on June 23, 2021. The New Mexico petition incorporated by reference the two other petitions received previously by EPA from Public Employees for Environmental Responsibility (PEER) and the Environmental Law Clinic at the University of California, Berkeley School of Law (et al.). This proposed rulemaking is in response to the three petitions and, if finalized, will list specific PFAS as RCRA hazardous constituents subject to corrective action requirements at hazardous waste treatment, storage, and disposal facilities (TSDFs).

Summary of Legal Basis: EPA has received three petitions recently requesting regulatory action on PFAS under the Resource Conservation and Recovery Act (RCRA), including a petition from the Governor of New Mexico on June 23, 2021. The New Mexico petition incorporated by reference the two other petitions received previously by EPA from Public Employees for Environmental Responsibility (PEER) and the Environmental Law Clinic at the University of California, Berkeley School of Law (et al.). This proposed rulemaking is in response to the three petitions and, if finalized, will list specific PFAS as RCRA hazardous constituents subject to corrective action

requirements at hazardous waste treatment, storage, and disposal facilities (TSDFs).

Alternatives: We have reviewed and evaluated the toxicity and health effects information for specific PFAS to determine if they should be proposed to be listed as RCRA hazardous constituents on Appendix VIII, and there are no other alternatives.

Anticipated Cost and Benefits: The Agency will evaluate anticipated costs and benefits as part of the rule development process.

Risks: The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently too early in the process to make such determinations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: State, Federal.

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RIN: 2050–AH26

EPA—OLEM

201. Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units [2050–AH27]

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 6921; 42 U.S.C. 6912 (a); 42 U.S.C. 6938; 42 U.S.C. 6934; 42 U.S.C. 6939g; 42 U.S.C. 6937; 42 U.S.C. 6939; 42 U.S.C. 6935; 42 U.S.C. 6974; 42 U.S.C. 6924; 42 U.S.C. 6925; 42 U.S.C. 6927

CFR Citation: 40 CFR 260; 40 CFR 261; 40 CFR 270.

Legal Deadline: None.

Abstract: EPA is considering a proposed rule that would modify the regulations at 40 CFR part 260, 261 and 270 to clarify that the definition of hazardous waste found in RCRA section 1004(5) is applicable to corrective action for releases from solid waste management units. The proposed rule would more clearly implement EPA's longstanding interpretation of its authority under RCRA section 3004(u) and (v).

Statement of Need: This regulatory modification is necessary so that 40 CFR 264.101 appropriately reflects the scope of corrective action cleanup requirements for hazardous waste treatment, storage, and disposal facilities as required by RCRA section 3004(u) and (v). The revision is expected to clarify that releases of hazardous wastes that are not regulatory hazardous wastes but meet the definition of hazardous waste in RCRA section 1004(5), must be addressed in the same manner as regulatory hazardous wastes under the corrective action program. This rulemaking is expected to impact the release of certain PFAS substances and is included as part of EPA's broader PFAS Strategic Roadmap.

Summary of Legal Basis: The proposed rule would be established under the authority of sections 3004(u) and (v) of the Solid Waste Disposal Act of 1965, as amended by subsequent enactments including the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HWSA).

Alternatives: We have reviewed the applicable regulations and no alternatives have been identified.

Anticipated Cost and Benefits: The Agency will evaluate anticipated costs and benefits as part of the rule development process.

Risks: The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently too early in the process to make such determinations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

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RIN: 2050–AH27

EPA—OFFICE OF WATER (OW)

Proposed Rule Stage

202. National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI) [2040–AG16]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 U.S.C. 300f *et seq.* Safe Drinking Water Act

CFR Citation: 40 CFR 141; 40 CFR 142.

Legal Deadline: None.

Abstract: The Environmental Protection Agency (EPA) published the final Lead and Copper Rule Revision (LCRR) on January 15, 2021. EPA reviewed the LCRR and decided to initiate a new rulemaking process to improve the rule. This new National Primary Drinking Water Regulation is called the Lead and Copper Rule Improvements (LCRI). EPA is developing LCRI to strengthen the regulatory framework and address lead in drinking water.

Statement of Need: The EPA promulgated the final Lead and Copper Rule Revision (LCRR) on January 15, 2021 (86 FR 4198). Consistent with the directives of Executive Order 13990, the EPA is currently considering revising this rulemaking. The EPA will complete its review of the rule in accordance with those directives and conduct important consultations with affected parties. The EPA understands that the benefits of clean water are not shared equally by all communities and this review of the LCRR will be consistent with the policy aims set forth in Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities through the Federal Government.''

Summary of Legal Basis: The Safe Drinking Water Act, section 1412, National Primary Drinking Water Regulations, authorizes EPA to initiate the development of a rulemaking if the agency has determined that the action maintains or improves the public health.

Alternatives: To be determined.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
Final Rule	10/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Additional Information:

Sectors Affected: 23711 Water and Sewer Line and Related Structures Construction; 2213 Water, Sewage and Other Systems.

Agency Contact: Michael Goldberg, Environmental Protection Agency, Office of Water, 1200 Pennsylvania Avenue NW, 4601M, Washington, DC 20460, *Phone:* 202 564–1137, *Email: goldberg.michael@epa.gov.*

Related RIN: Related to 2040–AF15

RIN: 2040–AG16

EPA—OFFICE OF AIR AND RADIATION (OAR)

Final Rule Stage

203. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations [2060–AU37]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7607(d); 42 U.S.C. 7414, 7601

CFR Citation: 40 CFR 63, subpart O.

Legal Deadline: None.

Abstract: In December 1994, pursuant to section 112(d) of the Clean Air Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization and Fumigation Operations (59 FR 62585). The NESHAP established standards for both major and area sources. EPA completed a residual risk and technology review for the NESHAP in 2006 and, at that time, concluded that no revisions to the standards were necessary. In this action, EPA will conduct the second technology review for the NESHAP, as required by law, and consider potential updates to the rule. To aid in this effort, EPA issued an advance notice of proposed rulemaking that solicited comment from stakeholders, undertook a Small Business Advocacy Review panel, which is needed when there is the potential for significant economic impacts to small businesses from any regulatory actions being considered, and has conducted outreach meetings within the communities affected by the highest-risk facilities as part of the development of this action. These meetings involved informing community members of the risk from EtO emissions and explaining how they can be involved in the rule writing process. EPA also held a national webinar on this proposal. Accommodations were made for Spanish-language speaking communities, which are disproportionately affected by these EtO emissions. This proposal also reflects feedback EPA has received from representatives from local and state governments. For more information, please visit *https://www.epa.gov/stationary-sources-air-pollution/ethylene-oxide-emissions-standards-sterilization-facilities.*

Statement of Need: The National Air Toxics Assessment (NATA) released in August 2018 identified ethylene oxide (EtO) emissions as a potential concern in several areas across the country. The latest NATA estimates that EtO significantly contributes to potential elevated cancer risks in some census tracts. These elevated risks are largely driven by an EPA risk value that was updated in December 2016. Further investigation on NATA inputs and results led to the EPA identifying commercial sterilization using EtO as a source category contributing to some of these risks. Over the past two years, the EPA has been gathering additional information to help evaluate opportunities to reduce EtO emissions in this source category through potential NESHAP revisions. In this rule, EPA will address EtO emissions from commercial sterilizers.

Summary of Legal Basis: CAA section 112, 42 U.S.C. 7412, provides the legal framework and basis for regulatory actions addressing emissions of hazardous air pollutants from stationary sources. CAA section 112(d)(6) requires EPA to review, and revise as necessary, emission standards promulgated under CAA section 112(d) at least every 8 years, considering developments in practices, processes, and control technologies.

Alternatives: EPA is evaluating various options for reducing EtO emissions from commercial sterilizers under the NESHAP, such as pollution control equipment, reducing fugitive emissions, or monitoring.

Anticipated Cost and Benefits: Based on conversations with regulated entities who have been working to reduce emissions, the potential costs of controlling some emissions sources could be substantial.

Risks: As part of this rulemaking, EPA has been updating information regarding EtO emissions and the specific emission points within the source category. Preliminary analyses suggest that fugitive emissions from commercial sterilizers may substantially contribute to health risks associated with exposure to EtO.

Timetable:

Action	Date	FR Cite
ANPRM	12/12/19	84 FR 67889
NPRM	04/13/23	88 FR 22790
NPRM Comment Period End.	06/12/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Additional Information: EPA–HQ–OAR–2019–0178.

Sectors Affected: 311423 Dried and Dehydrated Food Manufacturing; 33911 Medical Equipment and Supplies Manufacturing; 561910 Packaging and Labeling Services; 325412 Pharmaceutical Preparation Manufacturing; 311942 Spice and Extract Manufacturing.

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Kusondra King, Environmental Protection Agency, Office of Air and Radiation, Research Triangle Park, NC 27711, *Phone:* 919 541–4373, *Email: king.kusondra@epa.gov.*

RIN: 2060–AU37

EPA—OAR

204. New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review [2060–AV16]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7411

CFR Citation: 40 CFR 60; subpart OOOO, OOOOa, OOOOb, OOOOc, KKK; app. K.

Legal Deadline: None.

Abstract: On November 15, 2021, the EPA published a proposed rule to mitigate climate-destabilizing pollution and protect human health by reducing greenhouse gas and VOC emissions from the Crude Oil and Natural Gas source category (86 FR 63110). This action was in response to the January 20, 2021, Executive Order titled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' In the November 2021 Proposal, pursuant to CAA section 111 the EPA proposed new standards of performance for greenhouse gases (in the form of methane limitations) and volatile organic compounds emissions and

Emission Guidelines for greenhouse gas emissions (in the form of methane limitations) from existing sources. The EPA also proposed several related actions stemming from the joint resolution of Congress, adopted on June 30, 2021, under the Congressional Review Act disapproving the EPA's final rule titled, Oil and Natural Gas Sector: ''Emission Standards for New, Reconstructed, and Modified Sources Review,'' September 14, 2020 (2020 Policy Rule). Lastly, in the November 2021 Proposal the EPA proposed a protocol under the general provisions for OGI.

On December 6, 2022, the EPA published a supplemental proposed rule that was composed of two main actions (87 FR 74702). First, the EPA updated, strengthened, and expanded on the NSPS proposed in November 2021 under CAA section 111(b) for greenhouse gases (in the form of methane limitations) and volatile organic compounds emissions from new, modified, and reconstructed facilities. Second, the EPA updated, strengthened, and expanded the presumptive standards proposed for the Emission Guidelines in the November 2021 Proposal as part of the CAA section 111(d) EG for greenhouse gas emissions (in the form of methane limitations) from designated facilities. For purposes of the Emission Guidelines, the EPA also proposed the implementation requirements for states to limit greenhouse gas pollution (in the form of methane limitations) from designated facilities in the Crude Oil and Natural Gas source category under CAA section 111(d). The Agency expects to issue a final rule later in 2023.

Statement of Need: The final actions stem from the EPA's authority and obligation under CAA section 111 to directly regulate categories of new stationary sources that cause or contribute to endangerment from air pollution and promulgate EG for states to follow in regulating existing sources (designated facilities) in the source category.

Summary of Legal Basis: Clean Air Act section 111(b) provides the legal framework for establishing greenhouse gas emission standards (in the form of limitations on methane) and volatile organic compounds for new oil and natural gas sources. Clean Air Act section 111(d) provides the legal framework for establishing greenhouse gas emission standards (in the form of limitations on methane) for existing oil and natural gas sources.

Alternatives: The EPA has evaluated several options for new and existing sources and will propose and solicit comment on those options.

Anticipated Cost and Benefits: The EPA's regulatory impact analyses for the December 2022 supplemental notice of proposed rulemaking can be found at document number EPA–HQ–OAR–2021–0317–1566 of the public docket (*https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-1566*).

Risks: The EPA's regulatory impact analyses for the December 2022 supplemental notice of proposed rulemaking can be found at document number EPA–HQ–OAR–2021–0317–1566 of the public docket (*https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-1566*).

Timetable:

Action	Date	FR Cite
NPRM	11/15/21	86 FR 63110
Supplemental NPRM.	12/06/22	87 FR 74702
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OAR–2021–0317. *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry.*

Sectors Affected: 213111 Drilling Oil and Gas Wells; 2111 Oil and Gas Extraction; 211 Oil and Gas Extraction; 237120 Oil and Gas Pipeline and Related Structures Construction; 23712 Oil and Gas Pipeline and Related Structures Construction; 213112 Support Activities for Oil and Gas Operations.

Agency Contact: Amy Hambrick, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code E143–05, Research Triangle Park, NC 27711, *Phone:* 919 541–0964, *Fax:* 919 541–0516, *Email: hambrick.amy@epa.gov.*

RIN: 2060–AV16

EPA—OAR

205. Revisions to the Air Emission Reporting Requirements (AERR) [2060–AV41]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7401 *et seq.* Clean Air Act

CFR Citation: 40 CFR 51.

Legal Deadline: None.

Abstract: On August 8, 2023 (88 FR 54118), the EPA proposed new requirements to improve the quality and completeness of HAP emissions data from stationary sources and all pollutant emissions from prescribed fires. Specifically, the EPA is proposing to require certain sources report information regarding emission of hazardous air pollutants (HAP); certain sources to report criteria air pollutants, their precursors and HAP; and to require State, local, and certain tribal air agencies to report prescribed fire data. Further, EPA is considering how best to quantify emissions from intermittent sources such as backup generators; how to obtain data from permitted facilities in Indian Country when a Tribe is not required to report emissions data; and how to address known data gaps, streamline processes, and improve data quality, documentation, and transparency for nonpoint and mobile sources. The proposed revisions also include changes for reporting data on airports, rail yards, commercial marine vessels, locomotives, and nonpoint sources. This proposed action would allow for EPA to annually collect (starting in 2027), hazardous air pollutant (HAP) emissions data for point sources in addition to continuing the criteria air pollutant and precursor (CAP) collection in place under the existing AERR. The proposed amendments would ensure that EPA has sufficient information to identify and solve air quality and exposure problems and ensure that communities have the data needed to understand significant environmental risks that may be impacting them.

Statement of Need: Since 2015, many aspects of emissions data collection and use have evolved. The EPA has continued to review hazardous air pollutant (HAP) emissions levels and associated public health risk through the Residual Risk and Technology (RTR) program, which in many cases has required Information Collection Requests (ICRs) under Section 114 of the Act. Such collection efforts have proven very time consuming and limited EPA's ability to act quickly. Furthermore, as the EPA gains insight into the risks posed by certain chemicals, such as Ethylene Oxide, we have found ourselves limited by the data available on emissions sources. New compounds continue to be identified as public health threats, such as per- and polyfluoroalkyl substances (PFAS), which may be listed as HAPs in the

future. Currently, States are required to report the emissions from sources in their state to EPA. In practice, that has meant emissions are reported only for facilities permitted at the state level. Facilities permitted at the federal level technically do not fall under the reporting requirements, and consequently, some never report emissions to the EPA, which does not allow for proper EPA and state program implementation. Requiring HAPs for point sources is essential to addressing continued public health risks and environmental justice issues.

Summary of Legal Basis: Section 114(a)(1) of the CAA authorizes the Administrator to, among other things, require certain persons (explained below) on a one-time, periodic, or continuous basis to keep records, make reports, undertake monitoring, sample emissions, or provide such other information as the Administrator may reasonably require. The EPA may require this information of any person who (i) owns or operates an emission source, (ii) manufactures control or process equipment, (iii) the Administrator believes may have information necessary for the purposes set forth in CAA section 114, or (iv) is subject to any requirement of the Act (except for manufacturers subject to certain Title II requirements). The information may be required for the purposes of developing an implementation plan, an emission standard under sections 111, 112, or 129, determining if any person is in violation of any standard or requirement of an implementation plan or emissions standard, or ''carrying out any provision' of the Act (except for a provision of Title II with respect to manufacturers of new motor vehicles or new motor vehicle engines).

Alternatives: The EPA is also proposing options and alternatives for consideration that may allow the States to report for owners/operators of regulated facilities.

Anticipated Cost and Benefits: This action has an associated Regulatory Impact Analysis (RIA), which describes the anticipated costs and benefits of this proposed action. The RIA is summarized in this action and provided in the docket for this action. This action's total cost impact is estimated at $117.4 million on average annually from 2024 to 2026, and then is estimated at $477.9 million in 2027. All of these costs are in 2021 dollars. The increase in costs for owners and operators of affected sources in 2027 reflects full implementation of the proposed rule if finalized for the entire population of affected sources.

Risks: No risks are associated with this action as these are proposed reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/09/23	88 FR 54118
NPRM Comment Period Extended.	09/14/23	88 FR 63046
NPRM Comment Period End.	10/18/23	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, State, Tribal.

Additional Information: EPA–HQ–OAR–2004–0489.

Agency Contact: Marc Houyoux, Environmental Protection Agency, Office of Air and Radiation, C339–02, Research Triangle Park, NC 27711, *Phone:* 919 541–3649, *Fax:* 919 541–0684, *Email: houyoux.marc@epa.gov.*

RIN: 2060–AV41

EPA—OAR

206. Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles [2060–AV49]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7401 to 7671q

CFR Citation: 40 CFR 86; 40 CFR 600.

Legal Deadline: None.

Abstract: On April 12, 2023, EPA announced a proposal for new multipollutant emissions standards to further reduce harmful air pollutant emissions from light-duty passenger cars and light trucks and Class 2b and 3 vehicles (''medium-duty vehicles'' or MDVs) under its authority in section 202(a) of the Clean Air Act (CAA), 42 U.S.C. 7521(a), starting with model year 2027. The proposal builds upon EPA's final standards for federal greenhouse gas emissions standards for passenger cars and light trucks for model years 2023 through 2026. The proposed standards would result in significant reductions in emissions of criteria pollutants, GHGs, and air toxics, resulting in significant benefits for public health and welfare. EPA also estimates that the proposal would result in reduced vehicle operating costs for consumers. The proposed standards would be phased in over model years 2027 through 2032. EPA conducted outreach with a wide range of interested stakeholders to gather input which was considered in developing the proposal, and will continue to engage with the public and all interested stakeholders as part of our regulatory development process as we develop the final rule.

Statement of Need: This action is consistent with President Biden's Executive Order, ''Strengthening American Leadership in Clean Cars and Trucks.''

Summary of Legal Basis: CAA section 202(a).

Alternatives: EPA requested comment to address alternative options in the proposed rule.

Anticipated Cost and Benefits: EPA analyzed costs and benefits in the proposed rule.

Risks: EPA evaluated the risks of this rulemaking in the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	05/05/23	88 FR 29184
NPRM Comment Period End.	07/05/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Additional Information:

Sectors Affected: 811198 All Other Automotive Repair and Maintenance; 336111 Automobile Manufacturing; 423110 Automobile and Other Motor Vehicle Merchant Wholesalers; 811112 Automotive Exhaust System Repair; 81111 Automotive Mechanical and Electrical Repair and Maintenance; 336112 Light Truck and Utility Vehicle Manufacturing; 335312 Motor and Generator Manufacturing.

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RIN: 2060–AV49

EPA—OAR

207. Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3 [2060–AV50]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 21 U.S.C. 346a; 33 U.S.C. 1318; 33 U.S.C. secs. 1311, 1314,

1316, 1317, 1318, 1361; 15 U.S.C. 2003; 33 U.S.C. 1326; 42 U.S.C. 300f; 42 U.S.C. 242b; 33 U.S.C. 1342; 33 U.S.C. 1345; 42 U.S.C. 1857; 42 U.S.C. 7542; 42 U.S.C. 6901; 42 U.S.C. 9601; 49 U.S.C. 32901 to 32919q, Pub. L. 109–58; 33 U.S.C. 1901; 42 U.S.C. 11023; 15 U.S.C. 2601

CFR Citation: 40 CFR 1037.1.

Legal Deadline: None.

Abstract: On April 12, 2023, EPA announced a proposal for more stringent standards to reduce greenhouse gas emissions from HD vehicles beginning in model year (MY) 2027. The new standards would be applicable to HD vocational vehicles (such as delivery trucks, refuse haulers, public utility trucks, transit, shuttle, school buses, etc.) and tractors (such as day cabs and sleeper cabs on tractor-trailer trucks). Specifically, EPA proposed stronger CO_2 standards for MY 2027 HD vehicles that go beyond the current standards that apply under the HD Phase 2 Greenhouse Gas program. EPA also proposed an additional set of CO_2 standards for HD vehicles that would begin to apply in MY 2028, with progressively more stringent standards each model year through 2032. This proposed Phase 3'' greenhouse gas program maintains the flexible structure created in EPA's Phase 2 greenhouse gas program, which is designed to reflect the diverse nature of the heavy-duty industry. EPA has conducted outreach with a wide range of interested stakeholders to gather input which we have considered in developing this proposal, and we will continue to engage with the public and all interested stakeholders as part of our regulatory development process.

Statement of Need: This action is consistent with President Biden's Executive Order, ''Strengthening American Leadership in Clean Cars and Trucks.''

Summary of Legal Basis: CAA section 202(a).

Alternatives: EPA requested comment to address alternative options in the proposed rule.

Anticipated Cost and Benefits: EPA analyzed costs and benefits in the proposed rule.

Risks: EPA evaluated the risks of this rulemaking in the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	04/27/23	88 FR 25926
NPRM Comment Period End.	06/16/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Additional Information:

Sectors Affected: 811198 All Other Automotive Repair and Maintenance; 336111 Automobile Manufacturing; 811112 Automotive Exhaust System Repair; 336120 Heavy Duty Truck Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 333618 Other Engine Equipment Manufacturing; 336212 Truck Trailer Manufacturing.

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RIN: 2060–AV50

EPA—OAR

208. Reconsideration of the National Ambient Air Quality Standards for Particulate Matter [2060–AV52]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7401 *et seq.* Clean Air Act

CFR Citation: 40 CFR 50.

Legal Deadline: None.

Abstract: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, the EPA published a final decision retaining the NAAQS for particulate matter (PM), which was the subject of several petitions for reconsideration as well as petitions for judicial review. As directed in Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' signed by President Biden on January 20, 2021, EPA is undertaking a reconsideration of the December 2020 decision to retain the PM NAAQS because the available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. As part of this reconsideration, EPA developed a Supplement to the 2019 PM Integrated Science Assessment (ISA) and a Policy Assessment to take into account the most up-to-date science on public health impacts of PM and engaged with the chartered Clean Air Scientific Advisory Committee (CASAC) and a newly-constituted expert CASAC PM panel. The notice of proposed rulemaking was signed on January 5, 2023, and a final rule will be issued in fall 2023. EPA proposed to revise the level of the primary annual $PM_{2.5}$ standard from its current level of 12 µg/m3 to within the range of 9–10 µg/m3. EPA proposed to retain all other PM NAAQS, including the primary and secondary 24-hour $PM_{2.5}$ standards, the primary and secondary 24-hour PM_{10} standards, and the secondary annual $PM_{2.5}$ standard. EPA also proposed revisions to the Air Quality Index (AQI) and monitoring network requirements.

Statement of Need: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, EPA published a final rule retaining the NAAQS for particulate matter, without revision. On June 10, 2021, EPA announced that it is reconsidering the December 2020 decision on the air quality standards for PM.

Summary of Legal Basis: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years.

Alternatives: The main alternative for the Administrator's decision on the review of the national ambient air quality standards for particulate matter is whether to retain or revise the existing standards.

Anticipated Cost and Benefits: When the Agency proposes revisions to the standards, the Agency prepares a Regulatory Impact Analysis (RIA) to provide the public with illustrative estimates of the potential costs and health and welfare benefits of attaining the revised standards. However, the Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of state plans to implement the standards.

Risks: The reconsideration builds on the review completed in 2020, which included the preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, and a Policy Assessment, which includes a risk/exposure assessment, with opportunities for review by the EPA's Clean Air Scientific Advisory

Committee (CASAC) and the public. These documents informed the Administrator's final decision to retain the PM standards in 2020. As a part of the reconsideration, EPA prepared a Supplement to the 2019 PM Integrated Science Assessment and a Policy Assessment, which was reviewed at a public meeting by the CASAC. These documents informed the Administrator's proposed decisions on whether to revise the PM NAAQS, and the Administrator's final decisions on whether to revise the PM NAAQS will take into consideration these documents, CASAC advice, and public comment on the proposed decision.

Timetable:

Action	Date	FR Cite
NPRM	01/27/23	88 FR 5558
NPRM Comment Period End.	03/28/23	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information: EPA–HQ–OAR–2015–0072.

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RIN: 2060–AV52

EPA—OAR

209. NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of the Residual Risk and Technology Review [2060–AV53]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7401 to 7671q

CFR Citation: 40 CFR 63, subpart UUUUU.

Legal Deadline: None.

Abstract: On February 16, 2012, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units (77 FR 9304). The rule (40 CFR part 63, subpart UUUUU), commonly referred to as the Mercury and Air Toxics Standards (MATS), includes standards to control hazardous air pollutant (HAP) emissions from new and existing coal- and oil-fired electric utility steam generating units (EGUs) located at both major and area sources of HAP emissions. There have been several regulatory actions regarding MATS since February 2012, including a May 22, 2020, action that completed a reconsideration of the appropriate and necessary finding for MATS and finalized the residual risk and technology review (RTR) conducted for the Coal- and Oil-Fired EGU source category regulated under MATS (85 FR 31286). The Biden Administration's Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, ''directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.'' Section 2(a)(iv) of the Executive Order specifically directs that the Administrator consider publishing, as appropriate and consistent with applicable law, a proposed rule suspending, revising, or rescinding the ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review,'' 85 FR 31286 (May 22, 2020). As directed by Executive Order 13990, EPA reviewed the RTR portion of the May 22, 2020 final action and, proposed to update and strengthen the MATS on April 24, 2023 (88 FR 24854). EPA finalized the Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding on February 15, 2023 (88 FR 13956).

Statement of Need: Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,'' directs EPA to review the May 2020 RTR. EPA will issue the results of the review in a notice of proposed rulemaking and will solicit comment on the review.

Summary of Legal Basis: CAA section 112, 42 U.S.C. 7412, provides the legal framework and basis for regulatory actions addressing emissions of hazardous air pollutants from stationary sources.

Alternatives: EPA has evaluated several options for reviewing the RTR and will take comment on the review.

Anticipated Cost and Benefits: EPA projects the present value of net benefits to be $2.4 billion to $3.0 billion. This includes $1.2 billion to $1.9 billion in health benefits, $1.4 billion in climate benefits, and compliance costs of $230 million to $330 million. EPA projects the estimated annualized value net benefits to be $300 million to $350 million. This includes $170 million to $220 million in health benefits, $170 million in climate benefits, and compliance costs of $33 million to $38 million. EPA projects that the proposed changes would result in the following emission reductions in the year 2035:

- 82 pounds of mercury
- 800 tons of fine particulate matter ($PM_{2.5}$)
- 8,800 tons of sulfur dioxide
- 8,700 tons of nitrogen oxides
- 5 million tons of carbon dioxide

Risks: The results of the 2020 RTR showed that emissions of HAP from coal- and oil-fired power plants have been reduced such that residual risk is at in acceptable level. EPA reviewed the 2020 residual risk assessment and determined the risk review was conducted using approaches and methodologies that are consistent with prior risk analyses and reviews for other industrial sectors. Although EPA is not reopening the 2020 risk review, the proposed standards under the technology review would achieve reductions in HAP emissions from power plants and likely to reduce HAP exposures to affected populations.

Timetable:

Action	Date	FR Cite
NPRM	04/24/23	88 FR 24854
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State.

Additional Information: EPA–HQ–OAR–2018–0794.

Sectors Affected: 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation.

URL For More Information: https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.

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RIN: 2060–AV53

EPA—OAR

210. NSPS for the Synthetic Organic Chemical Manufacturing Industry and NESHAP for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry [2060–AV71]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7401 to 7671q; 42 U.S.C. 7401

CFR Citation: 40 CFR 63, subpart F; 40 CFR 63, subpart G; 40 CFR 63, subpart H; 40 CFR 63, subpart I; 40 CFR 63, subpart U; 40 CFR 63, subpart W; 40 CFR 60, subpart VVa; 40 CFR 60, subpart III; 40 CFR 60, subpart NNN; 40 CFR 60, subpart RRR.

Legal Deadline: NPRM, Judicial, December 16, 2022, *Texas Environmental Justice Advocacy Services et al.* v. *EPA,* 1:20–cv–03733–RJL consent Decree.

Final, Judicial, March 29, 2024, *Texas Environmental Justice Advocacy Services et al.* v. *EPA,* 1:20–cv–03733–RJL consent Decree.

United States District Court for the District of Columbia, Texas Environmental Justice Advocacy Services, California Communities Against Toxics Environmental Integrity Project, Louisiana Environmental Action Network, Ohio Valley Environmental Council, Rise St. James, and Sierra Club Plaintiffs, v. *United States Environmental Protection Agency,* Defendant. Civil Action No. 1:20–cv–03733–RJL.

Abstract: This action will address the agency's technology review under Clean Air Act (CAA) section 112(d)(6) of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for four subparts in 40 CFR part 63 (subparts F, G, H, and I) which are commonly referred to together as the Hazardous Organic NESHAP (HON) and that apply to the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and to equipment leaks from certain non-SOCMI processes. This action will also address the agency's technology review of the NESHAP for two subparts in 40 CFR part 63 (subparts U and W) that apply to the Group I and Group II Polymers and Resins industries. The HON standards were most recently updated when the agency conducted a residual risk and technology review (RTR) on December 21, 2006. Similarly, the Group I and II Polymers and Resins NESHAP were most recently updated when the agency conducted its RTR on December 16, 2008, and April 21, 2011. The HON and Group I and II Polymers and Resins NESHAP contain maximum achievable control technology (MACT) standards for controlling emissions of hazardous air pollutants (HAP) from process vents, storage vessels, transfer operations, heat exchange systems, wastewater streams, and equipment leaks. The HAP emitted from these emission sources include, but are not limited to, ethylene oxide, benzene, 1,3-butadiene, vinyl chloride, ethylene dichloride, methanol, hexane, toluene, xylenes, and chloroprene. The agency also plans to consider risks from the SOCMI source category and from the Neoprene Production source category in the Group I Polymers and Resins NESHAP during its technology review and to ensure the standards continue to provide an ample margin of safety to protect public health. Lastly, this action will also address the agency's review, under CAA section 111(b)(1)(B), of four New Source Performance Standards (NSPS) in 40 CFR part 60 (subparts III, NNN, RRR, and VVa) for emissions of Volatile Organic Compound (VOC) from SOCMI air oxidation unit processes, SOCMI distillation operations, SOCMI reactor processes, and equipment leaks located at SOCMI sources. These subparts were originally promulgated pursuant to section 111(b) of the CAA on June 29,1990 (subparts III and NNN), August 31, 1993 (subpart RRR), and November 16, 2007 (subpart VVa). On April 25, 2023, the EPA published a proposed rulemaking in the **Federal Register** (see 88 FR 25080) for this action. In addition, the EPA has conducted public outreach activities, including hosting an informational webinar on April 13, 2023, and holding a public hearing on the proposed rulemaking on May 16, 2023.

Statement of Need: The EPA has a mandatory duty under CAA section 111 to at least every 8 years, review and, if appropriate, revise its NSPS governed by this section of the CAA. Similarly, EPA has a mandatory duty under CAA section 112 to at least every 8 years, review, and revise as necessary (taking into account developments in practices, processes, and control technologies), its NESHAP promulgated under this section of the CAA. Thus, this action will address EPA's mandatory obligations to conduct such reviews for various NSPS (40 CFR part 60, subparts III, NNN, RRR, and VVb) and NESHAP (40 CFR part 63, subparts F, G, H, I, U and W) that apply to the chemical industry, for which EPA is under a consent decree deadline to finalize such actions. The proposed rulemaking for this action was previously published in the **Federal Register** on April 25, 2023 (see 88 FR 25080).

Summary of Legal Basis: EPA has a mandatory duty to conduct reviews of its NSPS and NESHAP under CAA sections 111 and 112, respectively, at least every 8 years. Pursuant to a consent deadline of March 29, 2024, the Administrator of EPA must sign a final rule containing any revisions of EPA's review of various chemical sector rules, including various NSPS (40 CFR part 60, subpart III, NNN, RRR, and VVb) and NESHAP (40 CFR part 63, subparts F, G, H, I, U, and W) that apply to the chemical industry.

Alternatives: None, as EPA has a mandatory duty to conduct its review of these rules and is under a consent decree deadline to do so.

Anticipated Cost and Benefits: The anticipated costs and benefits of the final action are to be determined. For the proposed action that published in the **Federal Register** on April 25, 2023 (see 88 FR 25080), EPA estimated the costs of implementing the proposed rules at approximately $501 million in total capital costs and approximately $190 million a year in total annualized costs. For benefits in the proposed action, EPA also estimated the value of the health benefits of reducing ozone as result of reducing VOC emissions. EPA estimates that the value of those benefits would be $6.3 million in 2024 and could be as much as $62 million (2021 dollars, 3 percent discount rate).

Risks: The EPA is conducting a discretionary residual risk assessment in this action under CAA section 112(f)(2) to address unacceptable risks from ethylene oxide and chloroprene emissions coming from HON and Neoprene Production sources covered under the Group I Polymers and Resins NESHAP, respectively.

Timetable:

Action	Date	FR Cite
NPRM	04/25/23	88 FR 25080
NPRM Comment Period End.	06/26/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Sectors Affected: 3251 Basic Chemical Manufacturing; 325 Chemical Manufacturing.

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RIN: 2060–AV71

EPA—OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSPP)

Final Rule Stage

211. Methylene Chloride (MC); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK70]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, June 24, 2021, TSCA section 6(c). Final, Statutory, June 24, 2022, TSCA section 6(c).

Abstract: On May 5, 2023, EPA proposed a rule under the Toxic Substances Control Act (TSCA) to address the unreasonable risk of injury to human health from methylene chloride. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the chemical no longer presents unreasonable risk. Methylene chloride, also known as dichloromethane, is acutely lethal, a neurotoxicant, a likely human carcinogen, and presents cancer and non-cancer risks following chronic exposures as well as acute risks. Central nervous system depressant effects can result in loss of consciousness and respiratory depression, resulting in irreversible coma, hypoxia, and eventual death, including 85 documented fatalities from 1980 to 2018, a majority of which were occupational fatalities. Nevertheless, methylene chloride is still a widely used solvent in a variety of consumer and commercial applications including adhesives and sealants, automotive products, and paint and coating removers. To address the identified unreasonable risk, EPA proposed to: prohibit the manufacture, processing, and distribution in commerce of methylene chloride for consumer use; prohibit most industrial and commercial uses of methylene chloride; require a workplace chemical protection program (WCPP), which would include a requirement to meet inhalation exposure concentration limits and exposure monitoring for certain continued conditions of use of methylene chloride; require recordkeeping and downstream notification requirements for several conditions of use of methylene chloride; and provide certain time-limited exemptions from requirements for uses of methylene chloride that would otherwise significantly disrupt national security and critical infrastructure. The Agency's development of this rule incorporated significant stakeholder outreach and public participation, including public webinars and over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation, describing the conditions of use is in docket EPA–HQ–OPPT–2019–0437, with the 2022 unreasonable risk determination and additional materials in docket EPA–HQ–OPPT–2016–0742.

Statement of Need: This rulemaking is needed to address the unreasonable risk from methylene chloride that was identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of methylene chloride, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires EPA to consider one or more primary alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The primary alternative regulatory action for this rulemaking would, like the proposed action, prohibit the manufacture, processing, and distribution in commerce of methylene chloride for consumer use; prohibit most industrial and commercial uses of methylene chloride; require a workplace chemical protection program (WCPP), which would include a requirement to meet inhalation exposure concentration limits and exposure monitoring for certain continued conditions of use of methylene chloride; require recordkeeping and downstream notification requirements for several conditions of use of methylene chloride; and provide certain time-limited exemptions from requirements for uses of methylene chloride that would otherwise significantly disrupt national security and critical infrastructure. This primary alternative regulatory action includes longer compliance timeframes and additional uses under workplace chemical protection program, in comparison to the proposed action.

Anticipated Cost and Benefits: EPA's analysis of the incremental, non-closure-related costs of this proposed rule is estimated to be $13.2 million annualized over 20 years at a 3% discount rate and $14.5 million annualized over 20 years at a 7% discount rate. The proposed rule involves health benefits for the American public, some of which can be monetized and others that, while tangible and significant, cannot be

monetized. Although some benefits cannot be quantified, they are not necessarily less important than the quantified benefits. The monetized benefits of this rule are approximately $17.7 to $18.5 million annualized over 20 years at a 3% discount rate and $13.4 to $13.9 million annualized over 20 years at a 7% discount rate.

Risks: EPA determined that methylene chloride presents an unreasonable risk to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	05/03/23	88 FR 28284
NPRM Comment Period End.	07/03/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0465.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-methylene-chloride.

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RIN: 2070–AK70

EPA—OCSPP

212. Carbon Tetrachloride (CTC); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK82]

Priority: Other Significant.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, November 4, 2021, TSCA section 6(c). Final, Statutory, November 4, 2022, TSCA section 6(c).

Abstract: The Environmental Protection Agency (EPA) proposed to address the unreasonable risks of injury to health presented by carbon tetrachloride (CTC) under its conditions of use as documented in EPA's 2020 Risk Evaluation for Carbon Tetrachloride and 2022 Revised Unreasonable Risk Determination for Carbon Tetrachloride pursuant to the Toxic Substances Control Act (TSCA). CTC is a volatile, organic compound that is primarily used as a feedstock (*i.e.,* processed as a reactant) in the making of products such as refrigerants, aerosol propellants, and foam-blowing agents. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the chemical no longer presents unreasonable risk. EPA determined that CTC presents an unreasonable risk of injury to health due to cancer from chronic inhalation and dermal exposures and liver toxicity from chronic inhalation, chronic dermal, and acute dermal exposures in the workplace. To address the identified unreasonable risk under TSCA, EPA proposed to establish workplace safety requirements for most conditions of use, including the condition of use related to the making of low Global Warming Potential (GWP) hydrofluoroolefins (HFOs), prohibit the manufacture (including import), processing, distribution in commerce, and industrial/commercial use of CTC for conditions of use where information indicates use of CTC has already been phased out, and establish recordkeeping and downstream notification requirements. The use of CTC in low GWP HFOs is particularly important in the Agency's efforts to support the American Innovation and Manufacturing Act of 2020 (AIM Act) and the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, which was ratified on October 26, 2022. The Agency's development of this rule incorporates significant stakeholder outreach and public participation. EPA engaged in discussions with industry, non-governmental organizations, other government agencies, technical experts and users of CTC, and the general public to hear from users, academics, manufacturers, and members of the public health community about practices related to commercial uses of CTC; public health impacts of CTC; the importance of CTC in the various uses subject to this proposed rule; frequently-used substitute chemicals or alternative methods or lack thereof; engineering controls, administrative controls, and personal protective equipment currently in use or feasibly adoptable; and other risk-reduction approaches that may have already been adopted or considered for industrial and commercial uses. EPA conducted Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation for CTC, describing CTC's conditions of use, is in docket EPA–HQ–OPPT–2019–0499, with the December 2022 unreasonable risk determination and additional information in docket EPA–HQ–OPPT–2016–0733.

Statement of Need: This rulemaking is needed to address the unreasonable risks of Carbon Tetrachloride (CTC) that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of Carbon Tetrachloride uses, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may

be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires that EPA consider one or more primary alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The proposed primary alternative regulatory action would implement workplace chemical protection program (WCPP) requirements, including requirements to meet an existing chemical exposure limit (ECEL) and Direct Dermal Contact Controls (DDCC) to prevent direct dermal contact in the workplace by separating, distancing, physically removing, or isolating all person(s) from direct handling of CTC or from contact with surfaces that may be contaminated with CTC (*i.e.,* equipment or materials on which CTC may be present) under routine conditions in the workplace, for those conditions of use that would otherwise be prohibited under the proposed rule. The primary alternative regulatory action would also require compliance with prescriptive controls—specifically requirements for respirators and dermal PPE—for those conditions of use where an ECEL and DDCC are the proposed regulatory action and where PPE may address the unreasonable risk. This approach differs from the proposed regulatory action because it would not require the use of elimination, substitution, engineering controls, and administrative controls, in accordance with the hierarchy of controls, to the extent feasible as a means of controlling inhalation and dermal exposures. The primary alternative regulatory action would apply the same recordkeeping requirements, downstream notification requirements, and compliance timeframes as those specified in the proposed rule.

Anticipated Cost and Benefits: EPA's estimate of the incremental costs of the proposed rule is $18.8 million per year annualized over 20-years at a 3% discount rate and $18.5 million per year at a 7% discount rate. The costs are estimated as incremental to baseline conditions, including current use of personal protective equipment. The costs represent a high-end cost estimate because the high estimates for the number of entities and workers affected by the regulation were used. To the extent that EPA's approach overestimates the number of entities subject to the regulation, actual realized costs of this action will be lower. The monetized benefits of the proposed rule are from avoided cases of adrenal and liver cancers. The estimated monetized benefit of the proposed regulatory action ranges from approximately $0.09 to $0.1 million per year annualized over 20-years at a 3% discount rate and from $0.04 to $0.07 million per year at a 7% discount rate. There are also non-monetized benefits due to other potential avoided adverse health effects associated with CTC exposure, including liver, reproductive, renal, developmental, and central nervous system (CNS) toxicity endpoints.

Risks: As EPA determined in the TSCA section 6(b) risk evaluation, Carbon Tetrachloride presents unreasonable risks to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	07/28/23	88 FR 49180
Final Rule	08/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0592.

Sectors Affected: 325199 All Other Basic Organic Chemical Manufacturing; 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing; 327310 Cement Manufacturing; 325 Chemical Manufacturing; 325194 Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing; 327992 Ground or Treated Mineral and Earth Manufacturing; 562211 Hazardous Waste Treatment and Disposal; 325120 Industrial Gas Manufacturing; 331410 Nonferrous Metal (except Aluminum) Smelting and Refining; 327 Nonmetallic Mineral Product Manufacturing; 325180 Other Basic Inorganic Chemical Manufacturing; 325320 Pesticide and Other Agricultural Chemical Manufacturing; 325110 Petrochemical Manufacturing; 325211 Plastics Material and Resin Manufacturing; 331 Primary Metal Manufacturing; 562213 Solid Waste Combustors and Incinerators; 562 Waste Management and Remediation Services.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-carbon-tetrachloride.

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RIN: 2070–AK82

EPA—OCSPP

213. Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK84]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, December 28, 2021, TSCA sec. 6(c). Final, Statutory, December 28, 2021, TSCA sec. 6(c).

Abstract: On June 16, 2023, EPA proposed a rule under the Toxic Substances Control Act (TSCA) to address the unreasonable risk of injury to health from perchloroethylene (PCE). TSCA requires that EPA address by rule any unreasonable risk identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. PCE is a widely used solvent in a variety of occupational and consumer applications including fluorinated compound production, petroleum manufacturing, dry cleaning,

and aerosol degreasing. EPA determined that PCE presents an unreasonable risk of injury to health due to the significant adverse health effects associated with exposure to PCE, including neurotoxicity effects from acute and chronic inhalation exposures and dermal exposures, and cancer from chronic inhalation exposures to PCE. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. PCE, also known as perc and tetrachloroethylene, is a neurotoxicant and a likely human carcinogen. Neurotoxicity, in particular impaired visual and cognitive function and diminished color discrimination, are the most sensitive adverse effects driving the unreasonable risk of PCE, and other adverse effects associated with exposure include central nervous system depression, kidney and liver effects, immune system toxicity, developmental toxicity, and cancer. To address the identified unreasonable risk, EPA proposed to prohibit most industrial and commercial uses of PCE; the manufacture (including import), processing, and distribution in commerce of PCE for the prohibited industrial and commercial uses; the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; and, the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 10-year phaseout. For certain conditions of use that would not be subject to a prohibition, EPA also proposed to require a PCE workplace chemical protection program that includes requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact. EPA also proposed to require prescriptive workplace controls for laboratory use, and to establish recordkeeping and downstream notification requirements. Additionally, EPA proposed to provide certain time-limited exemptions from requirements for certain critical or essential emergency uses of PCE for which no technically and economically feasible safer alternative is available. The Agency's development of this rule incorporated significant stakeholder outreach and public participation, including public webinars and over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation for PCE, describing the conditions of use is in docket EPA–HQ–OPPT–2019–0502, with the 2022 unreasonable risk determination and additional materials in docket EPA–HQ–OPPT–2016–0732.

Statement of Need: This rulemaking is needed to address the unreasonable risk from PCE that was identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of PCE, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires EPA to consider one or more primary alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The primary alternative regulatory action for this rulemaking includes longer compliance timeframes and prohibits fewer uses than the proposed regulatory action. This primary alternative regulatory action would prohibit most industrial and commercial uses of PCE; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for the prohibited industrial and commercial uses; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; prohibit the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 15-year phaseout; require prescriptive workplace controls for certain conditions of use; and require a workplace chemical protection program for certain conditions of use. The second alternative regulatory action for this rulemaking includes shorter compliance timeframes and prohibits more uses than the proposed regulatory action. This second alternative regulatory action would prohibit most industrial and commercial uses of PCE; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for the prohibited industrial and commercial uses; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; prohibit the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 5-year phaseout; require a workplace chemical protection program that includes requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact for certain conditions of use; require prescriptive workplace controls for laboratory use; and provide certain time-limited exemptions from requirements for several conditions of use of PCE that would otherwise significantly disrupt national security or critical infrastructure.

Anticipated Cost and Benefits: The monetized costs for this proposed rule are estimated to range from $14.0 million annualized over 20 years at a 3% discount rate and $14.3 million annualized over 20 years at a 7% discount rate. The monetized benefits are estimated to be $10.2 to $46.3 million annualized over 20 years at a 3% discount rate and $4.72 million to $29.4 million annualized over 20 years

at a 7% discount rate. EPA believes that the balance of costs and benefits of this proposal cannot be fairly described without considering the additional, non-monetized benefits of mitigating the non-cancer adverse effects. These effects may include neurotoxicity, kidney toxicity, liver toxicity, immunological and hematological effects, reproductive effects, and developmental effects.

Risks: EPA determined that PCE presents an unreasonable risk to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	06/16/23	88 FR 39652
NPRM Comment Period End.	08/15/23	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0720.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-perchloroethylene.

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RIN: 2070–AK84

EPA—OCSPP

214. Asbestos Part 1 (Chrysotile Asbestos); Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA) [2070–AK86]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, December 28, 2021, TSCA sec. 6(c).

Final, Statutory, December 28, 2022, TSCA sec. 6(c).

Abstract: This action will address the unreasonable risk of injury to health presented by conditions of use of chrysotile asbestos. Section 6(a) of the Toxic Substances Control Act (TSCA) requires that EPA address by rule any unreasonable risk identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the relevant chemical substance no longer presents such risk. Therefore, to address the unreasonable risk identified in the TSCA Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, EPA proposed on April 12, 2022, to prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms for use in the chlor-alkali industry, chrysotile asbestos-containing sheet gaskets used in chemical production, chrysotile asbestos-containing brake blocks used in the oil industry, aftermarket automotive chrysotile asbestos-containing brakes/linings, other chrysotile asbestos-containing vehicle friction products, and other chrysotile asbestos-containing gaskets. EPA also proposed to prohibit manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use, and other chrysotile asbestos-containing gaskets for consumer use. Finally, EPA also proposed disposal and recordkeeping requirements for these conditions of use. EPA is reviewing the comments received and intends to develop a final rule.) EPA consulted with State, local and Tribal governments, and conducted extensive public outreach during the development of this rulemaking. EPA held discussions with industry, non-governmental organizations, other national governments, asbestos experts, other government agencies, users of chrysotile asbestos, and the general public on how long industry would need to implement a prohibition. These meetings helped to inform the timeline for implementation of a prohibition, EPA's understanding of how companies currently protect workers and the extent to which each industry uses asbestos-free technology. EPA also held a public webinar to provide an overview of the TSCA risk management process including the findings in the Part 1 risk evaluation. In addition, EPA published a notice of data availability on March 17, 2023 to solicit public comments on additional data received by EPA related to the proposed rule. The additional data pertain to chrysotile asbestos diaphragms used in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production and may be used by EPA in the development of the final rule, including EPA's determination of what constitutes as soon as practicable'' with regard to the proposed chrysotile asbestos prohibition compliance dates for these uses. EPA is reviewing the comments received and intends to develop a final rule.

Statement of Need: This rulemaking is needed to address the unreasonable risk of chrysotile asbestos identified in the Risk Evaluation for Asbestos Part I: Chrysotile Asbestos completed under TSCA section 6(b). EPA reviewed the exposures and hazards of the chrysotile asbestos uses evaluated in the risk evaluation, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce; (2) Prohibit or otherwise restrict for a particular use or above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or

method of disposal; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors and replace or repurchase products if required.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA considered one or more primary alternative regulatory actions as part of the development of the proposed rule. The primary alternative regulatory action considered by EPA in the proposed rule is to: prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos in bulk form or as part of: Chrysotile asbestos diaphragms in the chlor-alkali industry and for chrysotile asbestos-containing sheet gaskets in chemical production (with prohibitions taking effect five years after the effective date of the final rule) and require, prior to the prohibition taking effect, compliance with an existing chemicals exposure limit (ECEL) for the processing and commercial use of chrysotile asbestos for these uses; and to prohibit manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; and other vehicle friction products (with prohibitions taking effect two years after the effective date of the final rule and with additional requirements for disposal). The primary alternative regulatory action considered in the proposed rule also included prohibitions on manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use and other chrysotile asbestos-containing gaskets for consumer use (with prohibitions taking effect two years after the effective date of the final rule). The primary alternative regulatory action also would require disposal of chrysotile asbestos-containing materials in a manner identical to the proposed option, with additional provisions for downstream notification and signage and labeling. EPA did not consider additional alternative regulatory actions in the proposed rule.

Anticipated Cost and Benefits: As estimated in the proposed rule, converting the asbestos diaphragm cells to membrane cells in response to the proposed rule is predicted to require an incremental investment of approximately $1.8 billion across all nine plants predicted to be using asbestos diaphragms when the rule goes into effect. Compared to this baseline trend, the incremental net effect of the proposed rule on the chlor-alkali industry over a 20-year period using a 3 percent discount rate is estimated to range from an annualized cost of about $49 million per year to annualized savings of approximately $35 million per year, depending on whether the higher grade of caustic soda produced by membrane cells continues to command a premium price. Using a 7 percent discount rate, the incremental annualized net effect ranges from a cost of $87 million per year to savings of approximately $40,000 per year, again depending on whether there are revenue gains from the caustic soda production. EPA also estimates that approximately 1,800 sets of automotive brakes or brake linings containing asbestos may be imported into the U.S. each year, representing 0.002% of the total U.S. market for aftermarket brakes. The cost of a prohibition would be minimal due to the ready availability of alternative products that are only slightly more expensive (an average cost increase of $4 per brake). The proposed rule is estimated to result in total annualized costs for aftermarket automotive brakes of approximately $25,000 per year using a 3% discount rate and $18,000 per year using a 7% discount rate. EPA did not have information to estimate the costs of prohibiting asbestos for the remaining uses subject to the proposed rule (sheet gaskets used in chemical production, brake blocks in the oil industry, other vehicle friction products, or other gaskets), so there are additional unquantified costs. EPA believes that the use of these asbestos-containing products has declined over time, and that they are now used in at most small segments of the industries. EPA's Economic Analysis for the proposed rule quantified the benefits from avoided cases of lung cancer, mesothelioma, ovarian cancer, and laryngeal cancer due to reduced asbestos exposures to workers, occupational non-users (ONUs), and DIYers related to the rule's requirements for chlor-alkali diaphragms, sheet gaskets for chemical production, and aftermarket brakes. The combined national quantified benefits of avoided cancer cases associated with these products are approximately $3,100 per year using a 3% discount rate and $1,200 per year using a 7% discount rate, based on the cancer risk estimates from the Part 1 risk evaluation. EPA did not estimate the aggregate benefits of the requirements for oilfield brake blocks, other vehicle friction products or other gaskets because the Agency did not have sufficient information on the number of individuals likely to be affected by the proposed rule. Thus, as proposed, the rule may yield additional unquantified benefits from reducing exposures associated with these uses. There would also be unquantified benefits due to other avoided adverse health effects associated with asbestos exposure including respiratory effects (*e.g.,* asbestosis, non-malignant respiratory disease, deficits in pulmonary function, diffuse pleural thickening and pleural plaques) and immunological and lymphoreticular effects. In addition to the benefits of avoided adverse health effects associated with chrysotile asbestos exposure, the proposed rule is expected to generate significant benefits from reduced air pollution associated with electricity generation. Based on a sensitivity screening-level analysis that EPA conducted, converting asbestos diaphragm cells to membrane cells could yield tens of millions of dollars per year in environmental and health benefits from reduced emissions of particulate matter, sulfur dioxide, nitrogen oxides, and carbon dioxide.

Risks: In the TSCA Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, EPA determined there is unreasonable risk of injury to health from conditions of use of chrysotile asbestos. The health endpoint driving EPA's determination of unreasonable risk for chrysotile asbestos under the conditions of use is cancer from inhalation exposure. This unreasonable risk includes the risk of mesothelioma, lung cancer, and other cancers from chronic inhalation.

Timetable:

Action	Date	FR Cite
NPRM	04/12/22	87 FR 21706
Notice of Data Availability.	03/17/23	88 FR 16389
Final Rule	01/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2021–0057.

Sectors Affected: 8111 Automotive Repair and Maintenance; 325 Chemical

Manufacturing; 332 Fabricated Metal Product Manufacturing; 339991 Gasket, Packing, and Sealing Device Manufacturing; 4231 Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers; 441 Motor Vehicle and Parts Dealers; 211 Oil and Gas Extraction; 336 Transportation Equipment Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-asbestos-part-1-chrysotile-asbestos.

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RIN: 2070–AK86

EPA—OCSPP

215. Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels [2070–AK91]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 15 U.S.C. 2681; 15 U.S.C. 2682; 15 U.S.C. 2683; 15 U.S.C. 2684; 15 U.S.C. 2686; 42 U.S.C. 4851b; 42 U.S.C. 4852d

CFR Citation: 40 CFR 745.

Legal Deadline: None.

Abstract: Addressing childhood lead exposure is a priority for the Environmental Protection Agency (EPA). This rule addresses health concerns for all affected communities, including children living in communities with environmental justice concerns, who have significantly higher blood lead levels (BLLs) than other children. As part of EPA's efforts to reduce childhood lead exposure, and in accordance with a U.S. Court of Appeals for the Ninth Circuit 2021 opinion, EPA proposed to lower the dust-lead hazard standards (DLHS) from 10 micrograms per square foot (µg/ft2) and 100 µg/ft2 for floors and window sills to any reportable level as analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program. This is a non-numeric value that the Agency refers to as greater than zero µg/ft2 and may vary based on laboratory or test. While EPA's DLHS do not compel property owners or occupants to evaluate their property for lead-based paint (LBP) hazards nor take control actions (40 CFR 745.61(c)), if an LBP activity such as an abatement is performed, then EPA's regulations set requirements for doing so (40 CFR 745.220(d)). EPA also proposed to change the dust-lead clearance levels (DLCL), which are the values used to determine when abatement work can be considered complete, from 10 µg/ft2, 100 µg/ft2 and 400 µg/ft2 for floors, window sills, and window troughs to 3 µg/ft2, 20 µg/ft2, and 25 µg/ft2, respectively. Under this proposal, the DLHS for floors and window sills would not be the same as the DLCL for floors and window sills (*i.e.,* the DLHS and DLCL would be decoupled). Accordingly, dust-lead hazards could remain after an abatement due to the different statutory direction that Congress provided EPA with respect to the DLCL. Additionally, EPA proposed to change the definition of abatement so that the recommendation for action applies when dust-lead loadings are at or above the DLCL, as well as several other amendments, including revising the definition of target housing to conform with the statute. The Agency consulted with State, local and Tribal government officials during the rulemaking, and held a public webinar in summer of 2023.

Statement of Need: On July 9, 2019, EPA promulgated a final rule to lower the DLHS from 40 micrograms of lead per square foot (µg/ft2) to 10 µg/ft2 for floors, and from 250 µg/ft2 to 100 µg/ft2 for window sills. EPA's dust-lead clearance levels (DLCL) indicate the amount of lead in dust on a surface following the completion of an abatement activity. On January 6, 2021, EPA promulgated a final rule to lower the DLCL from 40 µg/ft2 to 10 µg/ft2 for floors, and from 250 µg/ft2 to 100 µg/ft2 for window sills. The Agency began a reconsideration of the July 2019 and January 2021 final rules in keeping with Executive Order 13990 (addressing the protection of public health and the environment and restoring science to tackle the climate crisis). In addition, on May 14, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 DLHS final rule and directed EPA to reconsider the 2019 DLHS rule in conjunction with a reconsideration of the DLCL. EPA proposed its reconsideration rule on August 1, 2023.

Summary of Legal Basis: EPA proposed this rule under the authority of sections 401, 402, 403, 404, and 406 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* as amended by Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or ''Title X'') (Pub. L. 102–550), and section 237(c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), as well as sections 1004 and 1018 of Title X (42 U.S.C. 4851b, 4852d), as amended by section 237(b) of Title II of Division K of the Consolidated Appropriations Act, 2017.

Alternatives: EPA considered 2 alternative approaches for revising the DLHS and 1 alternative approach for revising the DLCL. One of the alternative approaches for revising the DLHS is a numeric standard based on the probability of exceedance of one or more IQ or BLL metrics as determined by the Agency. The other alternative approach for revising the DLHS would use the background dust-lead levels of housing built in 1978 and beyond as the DLHS (known as ''post-1977 background''). For the numeric standard approach, EPA evaluated several numeric DLHS candidates that the Agency believed to be appropriate given the health and exposure metrics of interest. The numeric DLHS candidates were 1/10 µg/ft2 (*i.e.,* 1 µg/ft2 for floors and 10 µg/ft2 for sills), 2/20 µg/ft2, 3/30 µg/ft2, and 5/40 µg/ft2 and those values were compared to the specified BLL and IQ metrics to estimate the probability of exceeding the BLL or IQ targets. The post-1977 background approach would establish the DLHS for target housing and COFs using post-1977 background dust-lead levels, and address disparities in the dust-lead levels that children in target housing may be exposed to and the corresponding disparate health risks. This approach would also align with the focus of Title X on lead hazards in housing constructed before 1978. Using this approach, DLHS would be established at 0.2 µg/ft2 for floors and 0.8 µg/ft2 for window sills as the dust-lead levels that would result in adverse human health effects. The alternative approach EPA considered for revising the DLCL would be to employ the current enforceable levels established by the New York City Department of Health and Mental Hygiene of 5 µg/ft2 for floors, 40 µg/ft2 for window sills and 100 µg/ft2 for window troughs.

Anticipated Cost and Benefits: EPA analyzed the potential incremental impacts associated with this rulemaking. The analysis focused specifically on the subset of target

housing and child-occupied facilities affected by this rulemaking. Although the DLHS and DLCL do not compel specific actions under the LBP Activities Rule to address identified LBP hazards, the DLHS and DLCL are directly incorporated by reference into certain requirements mandated by HUD in the housing subject to HUD's Lead Safe Housing Rule (LSHR). As such, the analysis estimates incremental costs and benefits for two categories of events: (1) where dust-wipe testing occurs to comply with the LSHR and (2) where dust wipe testing occurs in response to blood lead testing that detects a blood lead level (BLL) above state or Federal action levels. This rule would result in reduced exposure to lead, yielding benefits to residents of pre-1978 housing from avoided adverse health effects. For the subset of adverse health effects that were quantified (*i.e.,* the effect of avoided IQ decreases on lifetime earnings as an indicator of improved cognitive function), the estimated monetized and annualized benefits are $1.069 billion to $4.684 billion per year using a 3% discount rate, and $231 million to $1.013 billion per year using a 7% discount rate. These benefits calculations are sensitive to the discount rate used and the range in the estimated number of lead hazard reduction events triggered by children with tested BLLs above state or Federal action levels. With respect to the latter, the wide range is driven largely by uncertainty about the BLLs at which action might be taken, since in many states the action level is currently higher than the Federal blood lead reference value. Additionally, there are unquantified benefits. These additional benefits include avoided adverse health effects in children, including decreased attention-related behavioral problems, decreased cognitive performance, reduced post-natal growth, delayed puberty, and decreased kidney function. These additional unquantified benefits also include avoided adverse health effects in adults, including cardiovascular mortality and impacts on reproductive function and outcomes. This rule is estimated to result in quantified costs of $536 million to $784 million per year using both a 3% and a 7% discount rate. These costs are expected to accrue to landlords, owners and operators of child-occupied facilities, residential remodelers, and abatement firms. Real estate agents and brokers may incur negligible costs related to the target housing definition amendment. The cost calculations are highly sensitive to the range in the estimated number of lead hazard reduction events triggered by children with elevated BLLs. In the events affected by this rule, incremental costs can be incurred for specialized cleaning used to reduce dust-lead loadings (*i.e.,* quantity of lead per unit of surface area) to below the clearance levels. In some instances, floors will also be sealed, overlaid, or replaced, or window sills will be sealed or repainted. Additional costs may result from the retesting of lead dust levels. Because of the lower laboratory reporting limits necessary for testing lead dust levels under this rule, incremental laboratory test costs are likely to increase.

Risks: This rulemaking addresses the risk of adverse health effects associated with dust-lead exposures in children living in pre-1978 housing and child-occupied facilities, as well as associated potential health effects in this subpopulation.

Timetable:

Action	Date	FR Cite
NPRM	08/01/23	88 FR 50444
Final Rule	10/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Additional Information: Related to RIN 2070–AK66.

Sectors Affected: 92511 Administration of Housing Programs; 541350 Building Inspection Services; 624410 Child Day Care Services; 236 Construction of Buildings; 611110 Elementary and Secondary Schools; 541330 Engineering Services; 531110 Lessors of Residential Buildings and Dwellings; 92811 National Security; 611519 Other Technical and Trade Schools; 531 Real Estate; 562910 Remediation Services; 531311 Residential Property Managers; 238 Specialty Trade Contractors; 541380 Testing Laboratories.

URL For More Information: https://www.epa.gov/lead.

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RIN: 2070–AK91

EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

Final Rule Stage

216. Designating PFOA and PFOS as CERCLA Hazardous Substances [2050–AH09]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 9602

CFR Citation: 40 CFR 302.

Legal Deadline: None.

Abstract: Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA'' or ''Superfund''), the Environmental Protection Agency (EPA or the Agency) is moving to finalize the designation of perfluorooctanoic acid (PFOA) and perfluoro octane sulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances. CERCLA authorizes the Administrator to promulgate regulations designating as hazardous substances such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Such a designation would ultimately facilitate cleanup of contaminated sites and reduce human exposure to these ''forever'' chemicals.

Statement of Need: Designating PFOA and PFOS as CERCLA hazardous substances will require reporting of releases of PFOA and PFOS that meet or exceed the reportable quantity assigned to these substances. This will enable Federal, State, Tribal and local authorities to collect information regarding the location and extent of releases.

Summary of Legal Basis: No aspect of this action is required by statute or court order.

Alternatives: The Agency identified through the 2019 PFAS Action Plan that one of the goals was to designate PFOA and PFOS as hazardous substances. EPA determined that we have enough information to propose this designation.

Anticipated Cost and Benefits: The EPA is analyzing the potential costs and benefits associated with this action with respect to the reporting of any release of the subject hazardous substances to the Federal, State, and local authorities. Currently EPA expects to estimate lower and upper-bound reporting cost scenarios.

Risks: This is a reporting rule and will enable Federal, State, Tribal and local authorities to collect information regarding the location and extent of releases.

Timetable:

Action	Date	FR Cite
NPRM	09/06/22	87 FR 54415
NPRM Comment Period End.	11/07/22	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State, Tribal.

Additional Information:

Sectors Affected: 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing; 811192 Car Washes; 314110 Carpet and Rug Mills; 332813 Electroplating, Plating, Polishing, Anodizing, and Coloring; 922160 Fire Protection; 488119 Other Airport Operations; 325510 Paint and Coating Manufacturing; 322121 Paper (except Newsprint) Mills; 322130 Paperboard Mills; 424710 Petroleum Bulk Stations and Terminals; 324110 Petroleum Refineries; 325992 Photographic Film, Paper, Plate, and Chemical Manufacturing; 562212 Solid Waste Landfill.

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RIN: 2050–AH09

EPA—OLEM

217. Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments [2050–AH14]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 6907(a); 42 U.S.C. 6912(a); 42 U.S.C. 6944; 42 U.S.C. 6945(a)(d)

CFR Citation: 40 CFR 257.

Legal Deadline: None.

Abstract: On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments. On August 21, 2018, the D.C. Circuit Court of Appeals issued its opinion in the case of *Utility Solid Waste Activities Group, et al* v. *EPA*, which vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR rule. In May 2023, EPA proposed regulations to implement this part of the court decision for inactive CCR surface impoundments at inactive utilities, or ''legacy CCR surface impoundments''. This proposal included adding a new definition for legacy CCR surface impoundments. EPA also proposed to require such legacy CCR surface impoundments to follow existing regulatory requirements for fugitive dust, groundwater monitoring, and closure, or other technical requirements. Finally, EPA proposed requirements for CCR management units including a facility evaluation and to follow existing regulatory requirements for groundwater monitoring, corrective action, and closure for all CCR contamination (regardless of how or when that CCR was placed) at a regulated facility. After reviewing the public comments on the proposed rule, EPA will take final action.

Statement of Need: On April 17, 2015, the EPA finalized national regulations to regulate the disposal of Coal Combustion Residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA) (2015 CCR final rule). In response to the *Utility Solid Waste Activities Group* v. *EPA* decision, this proposed rulemaking, if finalized, would bring inactive surface impoundments at inactive facilities (legacy surface impoundments) into the regulated universe.

Summary of Legal Basis: No statutory or judicial deadlines apply to this rule. The EPA is taking this action in response to an August 21, 2018, court decision that vacated and remanded the provision that exempted inactive impoundments at inactive electric utilities from the 2015 CCR final rule. The proposed rule would be established under the authority of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HWSA) and the Water Infrastructure Improvements for the Nation Act of 2016.

Alternatives: The Agency issued an advance notice of proposed rulemaking (ANPRM) on October 14, 2020 (85 FR 65015), which included public notice and opportunity for comment on this effort. We have not identified at this time any significant alternatives for analysis.

Anticipated Cost and Benefits: The Agency will determine anticipated costs and benefits later as it is currently too early in the process.

Risks: The Agency will estimate the risk reductions and impacts later as it is currently too early in the process.

Timetable:

Action	Date	FR Cite
ANPRM	10/14/20	85 FR 65015
NPRM	05/18/23	88 FR 31982
NPRM Comment Period End.	07/17/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State.

Additional Information: EPA–HQ–OLEM–2020–0107.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation.

URL For More Information: https://www.epa.gov/coalash.

URL For Public Comments: https://www.regulations.gov/docket/EPA-HQ-OLEM-2020-0107.

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RIN: 2050–AH14

EPA—OLEM

218. Clean Water Act Hazardous Substance Facility Response Plans [2050–AH17]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1321

CFR Citation: 40 CFR 142, subpart B.

Legal Deadline: NPRM, Judicial, March 12, 2022, 19–cv–02516–VM. A March 12, 2020, consent decree requires EPA to sign a proposed rule within 24 months (by 3/12/2022) and sign a final rule within 30 months of publication of the proposed rule.

Final, Judicial, September 30, 2024, 19–cv–02516–VM. Requires EPA to sign a proposed rule within 24 months (by 3/12/2022) and sign a final rule within 30 months of publication of the proposed rule (estimating by 9/30/2024).

Abstract: The Clean Water Act (CWA) provides that regulations shall be issued ''which require an owner or operator of a tank vessel or facility . . . to prepare and submit . . . a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of . . . a hazardous substance.'' EPA was sued for failure to fulfill this mandatory duty imposed by Congress. This regulatory action is being conducted under the terms of a consent decree entered into on March 12, 2020, which requires that a proposed action is signed within 24 months of the final agreement and that a final action follow within 30 months of the publication of the proposed rule. Subsequently, the Environmental Protection Agency proposed a regulatory action to require planning for worst case discharges of CWA hazardous substances under section 311(j)(5)(A). EPA plans to promulgate a final rule by Spring 2024 meet the terms of the Consent Decree.

Statement of Need: Worst case discharges of CWA hazardous substances could result in impacts to drinking water; impacts to industrial and agricultural water uses; commercial and recreational waterway closures; impacts to fish and other aquatic life; impacts to ecosystems and the environment; injuries, hospitalizations, and fatalities; emergency response costs; transaction costs; direct property impacts; property value impacts; costs from sheltering in place and evacuations; impacts to sensitive or vulnerable populations; and fiscal revenue impacts. The purpose of this regulation would be to plan for and mitigate these damages.

Summary of Legal Basis: CWA Section 311(j)(5) directs the president to issue regulations to ''require an owner or operator of a tank vessel or facility . . . to prepare and submit . . . a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of . . . a hazardous substance.'' The EPA was sued for not promulgating the hazardous substance worst case planning regulations and entered into a consent decree with the plaintiffs that requires the EPA to publish a proposed rule by March 12, 2022 and take final action by September 12, 2024.

Alternatives: The EPA is considering a regulatory program modeled on EPA's Facility Response Plan program for worst case discharges of oil.

Anticipated Cost and Benefits: The Agency will determine anticipated costs and benefits later as it is currently too early in the process.

Risks: To help determine the risks to be addressed by this rulemaking, EPA is reviewing historical data on discharges of CWA hazardous substances.

Timetable:

Action	Date	FR Cite
NPRM	03/28/22	87 FR 17890
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Local, Tribal.

Additional Information:

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RIN: 2050–AH17

EPA—OLEM

219. Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention [2050–AH22]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 7412

CFR Citation: 40 CFR 68.

Legal Deadline: None.

Abstract: On August 31, 2022, the Environmental Protection Agency (EPA) published proposed amendments to its Risk Management Program (RMP) regulations as a result of Agency review. The proposed revisions included several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. Such amendments seek to improve chemical process safety; assist in planning, preparedness, and responding to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources. EPA plans to publish the final rule in December 2023.

Statement of Need: On January 13, 2017, the EPA published a final RMP rule (2017 Amendments) to prevent and mitigate the effect of accidental releases of hazardous chemicals from facilities that use, manufacture, and store them. The 2017 Amendments were a result of Executive Order 13650, Improving Chemical Facility Safety and Security, which directed EPA (and several other Federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 Amendments rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements, emergency coordination with local responders, and information availability to the public. EPA received three petitions for reconsideration of the 2017 Amendments rule under CAA section 307(d)(7)(B). On December 19, 2019, EPA promulgated a final RMP rule (2019 Revisions) that acts on the reconsideration. The 2019 Revisions rule repealed several major provisions of the 2017 Amendments and retained other provisions with modifications. On January 20, 2021, Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis (E.O. 13990), directed federal agencies to review existing regulations and take action to address priorities established by the new administration including bolstering resilience to the impact of climate change and prioritizing environmental justice. The EPA is considering developing a regulatory action to revise the current RMP regulations. The proposed rule would address the administration's priorities and focus on regulatory revisions completed since 2017. The proposed rule would also expect to contain a number of proposed modifications to the RMP regulations based in part on stakeholder feedback received from RMP public listening sessions held on June 16 and July 8, 2021.

Summary of Legal Basis: The CAA section 112(r)(7)(A) authorizes the EPA Administrator to promulgate accidental release prevention, detection, and correction requirements, which may include monitoring, record keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. The CAA section 112(r)(7)(B) authorizes the Administrator to promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to

such releases by the owners or operators of the sources of such releases.

Alternatives: The EPA currently plans to prepare a notice of proposed rulemaking that would provide the public an opportunity to comment on the proposal, and any regulatory alternatives that may be identified within the preamble to the proposed rulemaking.

Anticipated Cost and Benefits: Costs may include the burden on regulated entities associated with implementing new or revised requirements including program implementation, training, equipment purchases, and recordkeeping, as applicable. Some costs could also accrue to implementing agencies and local governments, due to new or revised provisions associated with emergency response. Benefits will result from avoiding the harmful accident consequences to communities and the environment, such as deaths, injuries, and property damage, environmental damage, and from mitigating the effects of releases that may occur. Similar benefits will accrue to regulated entities and their employees.

Risks: The proposed action would address the risks associated with accidental releases of listed regulated toxic and flammable substances to the air from stationary sources. Substances regulated under the RMP program include highly toxic and flammable substances that can cause deaths, injuries, property and environmental damage, and other on- and off-site consequences if accidentally released. The proposed action would reduce these risks by potentially making accidental releases less likely, and by mitigating the severity of releases that may occur. The proposed action would not address the risks of non-accidental chemical releases, accidental releases of non-regulated substances, chemicals released to other media, and air releases from mobile sources.

Timetable:

Action	Date	FR Cite
NPRM	08/31/22	87 FR 53556
NPRM Comment Period End.	10/31/22	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Sectors Affected: 325 Chemical Manufacturing; 49313 Farm Product Warehousing and Storage; 42491 Farm Supplies Merchant Wholesalers; 311511 Fluid Milk Manufacturing; 311 Food Manufacturing; 221112 Fossil Fuel Electric Power Generation; 311411 Frozen Fruit, Juice, and Vegetable Manufacturing; 49311 General Warehousing and Storage; 31152 Ice Cream and Frozen Dessert Manufacturing; 311612 Meat Processed from Carcasses; 211112 Natural Gas Liquid Extraction; 32519 Other Basic Organic Chemical Manufacturing; 42469 Other Chemical and Allied Products Merchant Wholesalers; 49319 Other Warehousing and Storage; 322 Paper Manufacturing; 42471 Petroleum Bulk Stations and Terminals; 32411 Petroleum Refineries; 311615 Poultry Processing; 49312 Refrigerated Warehousing and Storage; 22132 Sewage Treatment Facilities; 11511 Support Activities for Crop Production; 22131 Water Supply and Irrigation Systems.

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RIN: 2050–AH22

EPA—OFFICE OF WATER (OW)

Final Rule Stage

220. Federal Baseline Water Quality Standards for Indian Reservations [2040–AF62]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1313(c)(4)(B)

CFR Citation: 40 CFR 131.

Legal Deadline: None.

Abstract: On April 27, 2023, the Environmental Protection Agency (EPA) Administrator signed a proposed rule to establish water quality standards (WQS) for waters on Indian reservations that do not have WQS under the Clean Water Act (CWA). This rule will help advance President Biden's commitment to strengthening the nation-to-nation relationships with Indian country. Fifty years after enactment of the CWA, over 80% of Indian reservations do not have this foundational CWA protection for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Promulgating baseline WQS would provide more scientific rigor and regulatory certainty to National Pollutant Discharge Elimination System (NPDES) permits for discharges to these waters. Consistent with EPA's regulations, the baseline WQS include designated uses, water quality criteria to protect those uses, and antidegradation policies to protect high quality waters. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the summer of 2023, concurrent with the public comment period associated with the proposal.

Statement of Need: The Federal government has recognized 574 tribes. More than 300 of these tribes have reservation lands and are eligible to apply for ''treatment in a similar manner as a state'' (TAS) to administer a WQS program. Only 84 tribes, out of over 300 tribes with reservations, currently have such TAS authorization to administer a WQS program. Of these 84 tribes, only 47 tribes to date have adopted WQS and submitted them to EPA for review and approval under the Clean Water Act (CWA). As a result, 50 years after enactment of the CWA, over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the CWA for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Although it is EPA's preference for tribes to obtain TAS and develop WQS tailored to the tribes' individual environmental goals and reservation waters, EPA's promulgation of baseline WQS would serve to safeguard water quality until tribes obtain TAS and adopt and administer CWA WQS themselves.

Summary of Legal Basis: While CWA section 303 clearly contemplates WQS for all waters of the United States, it does not explicitly address WQS for Indian country waters where tribes lack CWA-effective WQS. Under CWA section 303(a) states were required to adopt WQS for all interstate and intrastate waters. Where a state does not establish such standards, Congress directed EPA to do so under the CWA section 303(b). These provisions are consistent with Congress' design of the CWA as a general statute applying to all waters of the United States, including those within Indian country. Several provisions of the CWA provide EPA with the authority to propose this rule. Section 501(a) of the CWA provides that ''[t]he Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.'' Section 303(c)(4)(B) of the CWA provides that ''[t]he Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water

quality standard for the navigable waters involved . . . in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of [the Act].'' In 2001 the EPA Administrator made an Administrator's Determination that new or revised WQS are necessary for certain Indian country waters. Today's action is the first step toward fulfilling that outstanding Determination.

Alternatives: No other alternatives considered.

Anticipated Cost and Benefits: Total cost estimates range from $15.51 million in annualized costs over 20 years at a 3 percent discount rate (with $6.1 million in one-time costs) to $30.54 in annualized costs over 20 years at a 3 percent discount rate (with $1.23 million in one-time costs). Using a discount rate of 7 percent over 20 years, total annualized costs range from $18.94 million (also with $6.1 million in one-time costs) to $36.45 million (also with $1.23 million in one-time costs). Total one-time costs are larger in the low estimate than in the high estimate because one-time WQS variance costs are often used in lieu of annualized effluent treatment costs for facility-specific low estimates for certain pollutants.

Promulgating baseline WQS for Indian reservation waters would promote the implementation of pollution control measures and best practices to help improve water quality and prevent future degradation of Indian reservation waters, as well as potentially providing positive water quality benefits to waters in adjacent jurisdictions. Improved water quality for Indian reservation waters will benefit Tribes as well as anyone who recreates on Indian reservation waters or values environmental quality regardless of their current or anticipated uses of Indian reservation waters. Although implementation of baseline WQS is likely to yield significant benefits, estimating the dollar value of these improvements to Tribes may not be feasible. First, Tribes often express the difficulty of placing a monetary value on ecosystem services, given the belief that these resources are sacred and beyond any earthly value. Second, estimating the value of water quality improvements to visitors of Indian reservations is challenging due to the lack of data on site-specific visitation, use (*e.g.,* recreational fishing) and valuation. Therefore, EPA provided a qualitative description of benefits categories that may stem from baseline WQS. These benefits include those related to human health, ceremonial and subsistence harvests of fish and shellfish, recreation, and other social welfare improvements. EPA anticipates, however, that the abovementioned benefits will ultimately outweigh the potential estimated incremental costs associated with promulgation of this rule and that this rule will help address the environmental challenges Tribes are currently facing.

Risks: EPA is continuing to evaluate potential risks.

Timetable:

Action	Date	FR Cite
ANPRM	09/29/16	81 FR 66900
NPRM	05/05/23	88 FR 29496
NPRM Comment Period End.	08/03/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: State, Tribal, Federal.

Additional Information:

URL For More Information: https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act.

Agency Contact: James Ray, Environmental Protection Agency Office of Water, Mail Code 4305T, 200 Pennsylvania Avenue NW Washington, DC 20460, *Phone:* 202 566–1433, *Email: ray.james@epa.gov.*

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RIN: 2040–AF62

EPA—OW

221. Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights [2040–AG17]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1371

CFR Citation: 40 CFR 131.

Legal Deadline: None.

Abstract: Many tribes hold reserved rights to resources on lands and waters where states establish water quality standards, through treaties, statutes, or other sources of federal law. The U.S. Constitution defines treaties as the supreme law of the land. On November 28, 2022, the EPA Administrator signed a proposed rule that would revise the federal water quality standards regulation to ensure that water quality standards do not impair tribal reserved rights by giving clear direction on how to develop water quality standards where tribes hold reserved rights. This proposed rule would help EPA ensure protection of resources reserved to tribes in treaties, statutes, or other sources of federal law when establishing, revising, and reviewing water quality standards. The development of this rule helps advance President Biden's commitment to strengthening nation-to-nation relationships with tribes. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the winter of 2023, concurrent with the public comment period for the proposed rule. EPA is working to expeditiously finalize the proposed rule, taking into account public comments.

Statement of Need: This rule would establish a durable and transparent national framework outlining how tribal reserved rights to aquatic-dependent resources must be protected in water quality standards (WQS) for waters in which such rights apply. In 2016 EPA took actions in Maine and Washington to protect tribal reserved rights, requiring that human health criteria for waters in those states where tribes reserved the rights to fish for subsistence be set at more stringent levels to protect tribal fish consumers. In 2019 EPA disavowed the approach it took to protecting tribal reserved rights in the 2016 Maine and Washington actions and concluded that states and EPA can always protect tribal reserved rights by simply applying EPA's existing regulations and guidance, with no additional consideration of such rights. EPA has now reconsidered its past assertions that tribal reserved rights do not impose any additional requirements in the WQS context. The changes in EPA's position regarding consideration of reserved rights in the water quality standards context over the years have resulted in confusion for tribes, states, stakeholders and the public about how tribal reserved rights must be considered in establishment of WQS. In addition, states and industry groups criticized EPA for taking its actions in 2016 without first going through a national notice and comment rulemaking on its approach.

Summary of Legal Basis: In exercising its CWA section 303(c) authority, EPA has an obligation to ensure that its actions are consistent with treaties, statutes, executive orders, and other sources of Federal law reflecting tribal reserved rights. EPA's implementing regulation at 40 CFR part 131 specifies requirements for states and authorized tribes to develop WQS for EPA review that are consistent with the Act. EPA is exercising its discretion in implementing CWA section 303(c) to establish new regulatory requirements

to ensure that WQS give effect to rights to aquatic and aquatic-dependent resources reserved in Federal laws.

Alternatives: No other options considered.

Anticipated Cost and Benefits: EPA estimated the potential incremental administrative burdens and costs that may be associated with the proposed rule, beyond the burden and costs associated with implementation of the current WQS regulation. EPA estimated the total, one-time costs for the proposed rule to range from $989,112 to $4,945,562, with no recurring costs. This rule would not establish any requirements directly applicable to regulated entities, such as industrial dischargers or municipal wastewater treatment facilities, but could ultimately lead to additional compliance costs to meet permit limits put in place to comply with new WQS adopted by states. However, because of the uncertainty in the specific outcome of application of this rule, both in terms of location and pollutants involved, EPA is unable to provide estimates of costs to those regulated entities. EPA was likewise unable to quantify the estimated benefits of the proposed rule. EPA anticipates that the rule would enhance the ability of states and tribes to protect their water resources by clarifying and prescribing how to protect waters with applicable tribal reserved rights and improving coordination between Federal, state, and tribal governments.

Risks: EPA is continuing to evaluate potential risks.

Timetable:

Action	Date	FR Cite
NPRM	12/05/22	87 FR 74361
NPRM Comment Period End.	03/06/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, State, Tribal.

Additional Information: OW–2021–0791.

URL For More Information: https://www.epa.gov/wqs-tech/revising-federal-water-quality-standards-regulations-protect-tribal-reserved-rights.

URL For Public Comments: https://www.regulations.gov/docket/EPA-HQ-OW-2021-0791.

Agency Contact: Jennifer Brundage, Environmental Protection Agency, Office of Water, 4305T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1265, *Email: brundage.jennifer@epa.gov.*

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RIN: 2040–AG17

EPA—OW

222. PFAS National Primary Drinking Water Regulation Rulemaking [2040–AG18]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 300f *et seq.* Safe Drinking Water Act

CFR Citation: 40 CFR 141; 40 CFR 142.

Legal Deadline: NPRM, Statutory, March 3, 2023, Safe Drinking Water Act.

Final, Statutory, September 3, 2024, Safe Drinking Water Act.

Abstract: On March 3, 2021, the Environmental Protection Agency (EPA) published the Fourth Regulatory Determinations in the **Federal Register**, including a determination to regulate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in drinking water. Per the Safe Drinking Water Act, following publication of the Regulatory Determination, the Administrator shall propose a maximum contaminant level goal (MCLG) and a national primary drinking water regulation (NPDWR) not later than 24 months after determination and promulgate a NPDWR within 18 months after proposal (the statute authorizes a 9-month extension of this promulgation date). EPA issued a proposed national primary drinking water regulation for PFOA and PFOS as well as other PFAS on March 29, 2023 as part of this action. This action provides a key commitment in EPA's ''PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024.''

Statement of Need: EPA has determined that PFOA and PFOS may have adverse health effects; that PFOA and PFOS occur in public water systems with a frequency and at levels of public health concern; and that, in the sole judgment of the Administrator, regulation of PFOA and PFOS presents a meaningful opportunity for health risk reduction for persons served by public water systems.

Summary of Legal Basis: The EPA is developing a PFAS NPDWR under the authority of the Safe Drinking Water Act (SDWA), including sections 1412, 1413, 1414, 1417, 1445, and 1450 of the SDWA. Section 1412 (b)(1)(A) of the SDWA requires that EPA shall publish a maximum contaminant level goal and promulgate a NPDWR if the Administrator determines that (1) the contaminant may have an adverse effect on the health of persons, (2) is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at a level of public health concern, and (3) in the sole judgment of the Administrator there is a meaningful opportunity for health risk reduction for persons served by public water systems. EPA published a final determination to regulate PFOA and PFOS on March 3, 2021 after considering public comment (86 FR 12272). Section 1412 (b)(1)(E) of the SDWA requires that EPA publish a proposed Maximum Contaminant Level Goal and a NPDWR within 24 months of a final regulatory determination and that the Agency promulgate a NPDWR within 18 months of proposal.

Alternatives: Undetermined.

Anticipated Cost and Benefits: Undetermined.

Risks: Studies indicate that exposure to PFOA and/or PFOS above certain exposure levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breast-fed infants (*e.g.,* low birth weight, accelerated puberty, skeletal variations), cancer (*e.g.,* testicular, kidney), liver effects (*e.g.,* tissue damage), immune effects (*e.g.,* antibody production and immunity), and other effects (*e.g.,* cholesterol changes). Both PFOA and PFOS are known to be transmitted to the fetus via the placenta and to the newborn, infant, and child via breast milk. Both compounds were also associated with tumors in long-term animal studies.

Timetable:

Action	Date	FR Cite
Notice	02/09/22	87 FR 7412
NPRM	03/29/23	88 FR 18638
NPRM Comment Period End.	05/30/23	
Final Rule	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Additional Information:

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20460, *Phone:* 202 564–0841, *Email: lan.alexis@epa.gov.*

RIN: 2040–AG18

EPA—OW

223. Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category [2040–AG23]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 1361; 33 U.S.C. 1318; 33 U.S.C. 1317; 33 U.S.C. 1316; 33 U.S.C. 1311; 33 U.S.C. 1314

CFR Citation: 40 CFR 423.

Legal Deadline: None.

Abstract: On March 29, 2023, EPA published a proposed rule to potentially strengthen the Steam Electric Effluent Limitations Guidelines and Standards (ELGs) (40 CFR 423). EPA previously revised the Steam Electric ELGs in 2015 and 2020. The proposed rule would establish more stringent ELGs for two waste streams addressed in the 2020 ''Steam Electric Reconsideration Rule'' (flue gas desulfurization wastewater and bottom ash transport water). In addition, the proposal would establish more stringent effluent limitations and standards for an additional waste stream (combustion residual leachate) and takes comment on potential revisions to limitations and standards for a fourth waste stream (legacy wastewater). The first two waste streams mentioned above are the subject of current litigation pending in the U.S. Court of Appeals for the Fourth Circuit. *Appalachian Voices, et al.* v. *EPA*, No. 20–2187 (4th Cir.). The 2015 limitations for combustion residual leachate and legacy wastewater discharged by existing sources were vacated by the U.S. Court of Appeals for the Fifth Circuit in *Southwestern Electric Power Co., et al.* v. *EPA*, 920 F.3d 999 (5th Cir. 2019).

Statement of Need: Under Executive Order 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (January 20, 2021), EPA was directed to review the 2020 Steam Electric Reconsideration Rule.

Summary of Legal Basis: Sections 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

Alternatives: EPA considered four regulatory options at the proposed rule stage. Three alternatives varied in the stringency of limitations for flue gas desulfurization wastewater and bottom ash transport water while subcategorizing early adopters while the fourth option did not include this new subcategory. All four regulatory options removed the existing high flow and low utilization subcategories included in the 2020 final rule. For further information, visit: *https://www.federalregister.gov/documents/2023/03/29/2023-04984/supplemental-effluent-limitations-guidelines-and-standards-for-the-steam-electric-power-generating.*

Anticipated Cost and Benefits: At proposal, EPA estimated that the proposed rule will cost $200 million per year in social costs and result in $1,557 million per year in monetized benefits using a three percent discount rate and will cost $216 million per year in social costs and result in $1,290 million per year in monetized benefits using a seven percent discount rate.

Risks: At proposal, EPA estimated that the rule would reduce risks to human health and ecological receptors via multiple pathways including via air pollution, surface water contamination, and disinfection byproduct formation in drinking water systems.

Timetable:

Action	Date	FR Cite
Notice	08/03/21	86 FR 41801
NPRM	03/29/23	88 FR 18824
NPRM Comment Period End.	05/30/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State.

Federalism: Undetermined.

Additional Information: EPA–HQ–OW–2009–0819.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation.

Agency Contact: Jesse Pritts, Environmental Protection Agency, Office of Water, Mail Code 4303T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1038, *Email: pritts.jesse@epa.gov.*

Related RIN: Split from 2040–AG28

RIN: 2040–AG23

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission, or Agency) is to ensure equality of opportunity in employment by vigorously enforcing and educating the public about the following Federal statues: title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex (including pregnancy, sexual orientation, and gender identity), religion, or national origin); the Equal Pay Act of 1963, as amended (makes it illegal to pay unequal wages to persons of different sexes performing substantially equal work under similar working conditions at the same establishment); the Age Discrimination in Employment Act of 1967, as amended (prohibits employment discrimination based on age of 40 or older); titles I and V of the Americans with Disabilities Act, as amended, and sections 501 and 505 of the Rehabilitation Act, as amended (prohibits employment discrimination based on disability); title II of the Genetic Information Nondiscrimination Act (prohibits employment discrimination based on genetic information and limits acquisition and disclosure of genetic information); section 304 of the Government Employee Rights Act of 1991 (protects certain previously exempt state and local government employees from employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability); and the Pregnant Workers Fairness Act (requires covered entities to provide reasonable accommodation to qualified applicants' and employees' known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions, unless doing so would cause an undue hardship).

The EEOC has authority to issue legislative regulations under the Age Discrimination in Employment Act (ADEA), title I of the Americans with Disabilities Act (ADA), title II of the Genetic Information Nondiscrimination Act (GINA), and under the Pregnant Workers Fairness Act (PWFA). Under title VII of the Civil Rights Act, the EEOC's authority to issue legislative regulations is limited to procedural, record keeping, and reporting matters.

Nine pending items are identified in the EEOC's Fall 2023 Regulatory Agenda, five at the proposed rule stage and four at the final rule stage. One of those items is singled out as a key priority in this Regulatory Plan: the recently published proposed rule implementing the PWFA, for which a final rule will be drafted after consideration of public comments received from the full range of EEOC stakeholders.

The PWFA went into effect on June 27, 2023, and it requires employers with

15 or more employees to provide reasonable accommodations to job applicants and employees for known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions, unless doing so would cause an undue hardship for the employer. While other laws enforced by the EEOC, including title VII and the ADA, provide some protections and accommodations for pregnant workers, the PWFA fills gaps in these federal legal protections. Under the ADA, unless the individual's pregnancy, childbirth, or related medical condition rose to the level of a disability as defined in that statute, an employer would not be obligated to provide a reasonable accommodation to do the job. Under title VII, the pregnant employee would need to show that the employer provided the accommodation to a similarly situated worker who was not pregnant in order to get the accommodation. The PWFA requires covered entities to provide reasonable accommodations to a qualified employee's or applicant's known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity. The PWFA provides some examples of potential reasonable accommodations for pregnant employees, such as: a change in the food or drink policies to allow the pregnant worker to have a water bottle or food; a reduction in lifting requirements; the ability to sit; additional breaks to use the bathroom, eat, and rest; being excused from activities that involve exposure to compounds unsafe for pregnancy; and providing appropriately sized uniforms and safety apparel.

On August 11, 2023, the EEOC issued proposed regulations soliciting public input and comment before the PWFA regulations become final. *See* ***Federal Register****: Regulations To Implement the Pregnant Workers Fairness Act.* The EEOC announced a 60-day public comment period, starting on August 11, 2023 and ending on October 10, 2023. Additionally, through media exposure, including press interviews, the Commission continues to inform the public of these new employee protections. The EEOC also conducted trainings so that employers and employees better understand their rights and responsibilities under the PWFA, and it will continue to do so in the months and years ahead.

Consistent with Executive Order 12866, as reaffirmed and amended in Executive Order 13563, and subsequently reaffirmed and supplemented by Executive Order 14094, this statement was reviewed and approved by the Chair of the Agency.

EEOC

Final Rule Stage

224. Regulations To Implement the Pregnant Workers Fairness Act [3046–AB30]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 117–328, 136 Stat. 4459, division II

CFR Citation: 29 CFR 1636.

Legal Deadline: Final, Statutory, December 29, 2023.

Abstract: The Equal Employment Opportunity Commission (EEOC) will issue a rule to implement the Pregnant Workers Fairness Act, a new law that requires covered entities to provide reasonable accommodations to a qualified worker's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship.

Statement of Need: The Pregnant Workers Fairness Act (PWFA) is a new law. It requires a covered entity to provide reasonable accommodations, absent undue hardship, to a qualified employee or applicant with a known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The PWFA requires the EEOC to issue regulations by December 29, 2023. 42 U.S.C. 2000gg–3(a).

Summary of Legal Basis: The PWFA requires the EEOC to issue regulations by December 29, 2023. 42 U.S.C. 2000gg–3(a).

Alternatives: The EEOC will consider possible alternatives for its regulation. However, the possible alternatives are limited by certain provisions in the statute that set out what employers are covered, when the statute goes into effect, the procedures for enforcement, and require the EEOC to issue regulations.

Anticipated Cost and Benefits: The EEOC anticipates that the regulation will have significant benefits for workers, including benefits that are difficult to quantify such as a reduction in discrimination and improvements in the economic security and health outcomes for pregnant workers. The costs of the regulation and statute will be for employers that have to provide reasonable accommodations and one-time administrative costs for covered employers to come into compliance with the statute and regulation. The EEOC anticipates that both of these costs will be low for individual employers.

Risks: The rule imposes no new or additional risks to employers. The rule does not address risks to public safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	08/11/23	88 FR 54714
NPRM Comment Period End.	10/10/23	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State.

Federalism: Undetermined.

Agency Contact:

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RIN: 3046–AB30

BILLING CODE 6570–01–P

GENERAL SERVICES ADMINISTRATION (GSA)

Regulatory Plan—October 2023

The U.S. General Services Administration (GSA) delivers value and savings in real estate, acquisition, technology, and other mission-support services across the Federal Government. GSA's acquisition solutions supply Federal purchasers with cost-effective, high-quality products and services from commercial vendors. GSA provides workplaces for Federal employees and oversees the preservation of historic Federal properties. GSA helps keep the Nation safe and efficient by providing tools, equipment, and non-tactical vehicles to the U.S. military, and by providing State and local governments with law enforcement equipment, firefighting and rescue equipment, and disaster recovery products and services.

As GSA is developing its regulations, it seeks to increase participation and engagement of members of the public affected by its regulations, including in the development of its regulatory priorities. In its Regulatory Plan, it details engagement efforts that have helped to inform its priorities to date, as well as future engagement it has

planned. In support of Executive Order 14094, GSA is ensuring that it hears from members of the public who have not typically participated in the regulatory process, including families eligible for assistance, communities affected by climate change, and rural workers, among others.

GSA serves the public by delivering products and services directly to its Federal customers through the Federal Acquisition Service (FAS), the Public Buildings Service (PBS), and the Office of Government-wide Policy (OGP). GSA has a continuing commitment to its Federal customers and the U.S. taxpayers by providing those products and services in the most cost-effective manner possible.

Federal Acquisition Service

FAS is the lead organization for procurement of products and services (other than real property) for the Federal Government. The FAS organization leverages the buying power of the Government by consolidating Federal agencies' requirements for common goods and services. FAS provides a range of high-quality and flexible acquisition services to increase overall Government effectiveness and efficiency by aligning resources around key functions.

Public Buildings Service

PBS is the largest public real estate organization in the United States. As the landlord for the civilian Federal Government, PBS acquires space on behalf of the Federal Government through new construction and leasing and acts as a manager for Federal properties across the country. PBS is responsible for over 370 million rentable square feet of workspace for Federal employees; has jurisdiction, custody, and control over more than 1,600 federally owned assets totaling over 180 million rentable square feet; and contracts for more than 7,000 leased assets, totaling over 180 million rentable square feet.

In fiscal year (FY) 2023, GSA expects to update the existing internal guidance and issue a new PBS Order following the release of the Implementing Instructions for Executive Order 14057 on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability that was issued on December 8, 2021.

Office of Government-Wide Policy

OGP sets Government-wide policy in the areas of personal and real property, mail, travel, motor vehicles, relocation, transportation, information technology, regulatory information, and the use of Federal advisory committees. OGP also helps direct how all Federal supplies and services are acquired, as well as GSA's own acquisition programs. Pursuant to Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993), and Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), the Regulatory Plan and Unified Agenda provides notice regarding OGP's regulatory and deregulatory actions within the Executive Branch.

GSA prepared a list of actions in the areas of Climate Risk Management, Resilience, and Adaptation; Environmental Justice; Greenhouse Gas Reduction; Clean Energy; Energy Reduction; Water Reduction; Performance Contracting; Waste Reduction; Sustainable Buildings; and Electronics Stewardship and Data Centers. Detailed information on actions GSA is considering taking through December 31, 2025, to implement the Administration's policy set by Executive Orders 13990 and 14008 were provided in GSA's Executive Order 13990 90-day response, the GSA Climate Change Risk Management Plan, and the GSA 2021 Sustainability Plan. More specifics will be known on the Sustainability Plan when feedback is obtained from the Council on Environmental Quality and the Office of Management and Budget.

Office of Asset and Transportation Management

The Office of Asset and Transportation Management and Office of Acquisition Policy are prioritizing rulemaking focused on initiatives that:

- Promote the country's economic resilience and improve the buying power of U.S. citizens;
- Support underserved communities, promoting equity in the Federal Government; and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

The Fall 2023 Unified Agenda consists of 14 active Office of Asset and Transportation Management (MA) agenda items, of which 6 active actions are included in the Federal Travel Regulation (FTR) and 8 active actions are included in the Federal Management Regulation (FMR).

The FTR enumerates the travel and relocation policy for all title 5 Executive Agency civilian employees. The Code of Federal Regulations (CFR) is available at *https://ecfr.federalregister.gov/*. The FTR is contained in chapters 300 through 304 of title 41 of the CFR, which implements statutory requirements and Executive branch policies for travel by Federal civilian employees and others authorized to travel at Government expense. The FMR is contained in chapter 102 of title 41 of the CFR, and establishes policy for Federal aircraft management, mail management, transportation, personal property, real property, motor vehicles, and committee management.

Past or Ongoing Public or Community Engagement That Informed the Development of GSA Rules

Although focused primarily on agency management and personnel, most rules issued by the Office of Asset and Transportation Management are preceded by proposed rules to encourage public participation. In FY 2022, two Federal Management Regulations (Real Estate Acquisition; and Replacement of Personal Property Pursuant to the Exchange/Sale Authority) and two Federal Travel Regulation proposed rules (Common Carrier Transportation; and Constructive Cost) were published. One final rule (Federal Management Regulation; Soliciting Union Memberships Among Contractors in GSA-Controlled Buildings), was issued as a final rule with a 60-day comment period for future rulemaking.

In FY 2023, two Federal Travel Regulation proposed rules (Alternative Fuel Vehicle Usage During Relocations; and Relocation Allowance—Temporary Quarters Subsistence Expenses (TQSE)) were published. One GSA proposed rule (General Services Administration Property Management Regulations (GSPMR) Social Security Number Fraud Prevention) and one joint agency proposed rule (Use of Federal Real Property To Assist the Homeless: Revisions to Regulations) were published. Collectively, the public provided 11 comments on the FY 2023 proposed rules. This input was used in the formulation of the final rules.

In FY 2024, the Office of Asset and Transportation Management will continue to issue proposed rules with a 60-day comment period to obtain public feedback. Four proposed rules are anticipated including: FMR Case 2018–102–1, Safety and Environmental Management; FMR 2022–01, Federal Advisory Committee Management; FTR Case 2022–04, Relocation Allowance—Allowance for Miscellaneous Expenses; FTR Case 2020–301–1 E-Gov Travel Services updates; and Federal Management Regulation; Interagency Fleet Management Systems; FMR Case 2019–102–2.

Rulemaking That Tackles Climate Change

FTR Case 2022–03, Alternative Fuel Vehicle Usage During Relocations, allows greater agency flexibility for authorizing shipment of a relocating employee's alternative fuel-based privately owned vehicle (POV), as some POVs, primarily electric vehicles, cannot be driven more than a short distance without being recharged. Because of the topic area being of great public interest in recent years, this rule did attract a small number of comments from the public. The comments reflected both support of the proposal and dislike of spending funds on Federal employee relocation, and caused GSA to think more about whether the ideas presented were workable and had merit. While ultimately GSA decided some of the ideas had merit, but were not within GSA's authority, it was helpful to see the public's perspective.

FMR Case 2023–102–1, Sustainable Siting, promotes economy and efficiency in the planning, acquisition, utilization, and management of Federal facilities. The rule will incorporate the concepts of several Administration priorities, including sustainability, equity, and environmental justice. This rule will help reduce emissions across Federal workplaces by requiring that all new construction, modernization projects, and leases implement a number of energy efficient, sustainable, and climate-resilient building practices for Federal facilities.

Rulemaking That Supports Equity and Underserved Communities

FTR Case 2022–05, Updating the FTR With Diversity, Equity, Inclusion, and Accessibility Language, updates the entirety of the FTR to ensure that its language reflects inclusivity by replacing gender-specific pronouns (*e.g.,* he, she, his, her) with non-gendered pronouns and other language that reflects inclusivity and equity.

FMR Case 2022–01, Federal Advisory Committee Management, the Federal Advisory Committee Act (FACA) is a transparency statute designed to provide Congress, interested stakeholders, and the public with information on, and access to, the activities, membership, meetings, and costs, of Federal advisory committees established by the Executive Branch. Under section 7 of FACA, GSA is responsible for preparing regulations for implementing FACA. The proposed rule revisions will provide updates and clarification to policies and processes, and further incorporate diversity, equity, inclusion, and accessibility policies into the Federal advisory committee program government-wide, which is an Administration priority.

FMR Case 2021–01, Use of Federal Real Property to Assist the Homeless, will streamline the process by which excess Federal real property is screened for potential conveyance to homeless interests.

Rulemaking That Supports National Security

FMR Case 2021–102–1, ''Real Estate Acquisition,'' will clarify the policies for entering into leasing agreements for high security space (*i.e.,* space with a Facility Security Level of III, IV, or V) in accordance with the Secure Federal LEASEs Act (Pub. L. 116–276).

Office of Acquisition Policy

The Fall 2023 Unified Agenda consists of 17 active Office of Acquisition Policy (MV) agenda items, all of which are for the General Services Administration Acquisition Regulation (GSAR).

Office of Acquisition Policy—General Services Administration Acquisition Regulation

GSA's rules and practices on how it buys goods and services from its business partners are covered by the GSAR, which implements and supplements the Federal Acquisition Regulation (FAR). The GSAR establishes agency acquisition regulations that affect GSA's business partners (*e.g.,* prospective offerors and contractors) and acquisition of leasehold interests in real property. The latter are established under the authority of 40 U.S.C. 121(c) and 585. The GSAR implements contract clauses, solicitation provisions, and standard forms that control the relationship between GSA and its contractors and prospective contractors.

Significant Determinations in Accordance With Executive Order 12866 Section (f)(1)

No GSAR rules in the previous Regulatory Plan or this Regulatory Plan are anticipated to have a monetary annual effect of $200 million or more.

Past or Ongoing Public or Community Engagement That Informed the Development of GSAR Cases

- For rules that GSA expects to have significant public interest, GSA's Office of Acquisition Policy (OAP) may issue an Advanced Notice of Proposed Rulemaking (ANPR) in order to involve the public at the earliest stages. For example, an ANPR was issued to assist in GSA's formulation of GSAR Case 2022–G517, Single-use Plastic Packaging Reduction.
- When issuing proposed rules, OAP regularly requests public comment to help in the formulation of the final rule.
- OAP regularly meets with the Council of Defense and Space Industry Associations (CODSIA). CODSIA represents member associations representing numerous small, medium, and large companies. Examples of these member associations include the Professional Services Council (PSC), Information Technology Industry Council (ITI), and the Associated General Contractors (AGC) to name a few. OAP anticipates continuing these meetings into the foreseeable future.
- Future opportunities OAP intends to pursue to increase public engagement in the development of regulatory acquisition rules includes partnering with GSA's Office of Small and Disadvantaged Business Utilization (OSDBU) in their industry outreach events. GSA's OSDBU services small and disadvantaged businesses and works with advocacy groups, chambers of commerce, and small business coalitions in order to bring small businesses to the forefront of federal procurement opportunities.

Rulemaking That Tackles the Climate Change Emergency

GSAR Case 2022–G517, Single-use Plastic Packaging Reduction, explores regulation that will reduce single-use plastic consumption by the agency. Single-use plastic poses an environmental risk that is documented as having the potential to impact biodiversity. The case focuses on packaging materials with the overall intent of addressing not only the items that the Government intentionally consumes, but those products that the Government unintentionally consumes (such as packaging) that then have to be disposed of once the item is delivered.

Rulemaking That Advances Equity and Supports Underserved, Vulnerable and Marginalized Communities

GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules, will clarify the requirements for use of the FSS by eligible non-Federal entities, such as State and local governments. The regulatory changes are intended to increase understanding of the existing guidance and expand access to GSA sources of supply by eligible non-Federal entities, as authorized by historic statutes, including the Federal Supply Schedules Usage Act of 2010.

Rulemaking That Reflects Actions That Create and Sustain Good Jobs With a Free and Fair Choice To Join a Union and Promote Economic Resilience in General

GSAR Case 2021–G530, Labor Requirements for Lease Acquisitions, will increase efficiency and cost savings in the work performed for leases with the Federal Government by increasing the hourly minimum wage paid to those contractors in accordance with Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors,'' dated April 27, 2021, and U.S. Department of Labor regulations at 29 CFR part 23.

GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment (EPA), will clarify, update, and incorporate Federal Supply Schedule (FSS) program policies and procedures regarding economic price adjustment, including updating related prescriptions and clauses. Ultimately, the case aims to streamline the EPA process for FSS business partners and GSA's acquisition workforce.

GSAR Case 2021–G530, Extension of Federal Minimum Wage to Lease Acquisitions, will increase efficiency and cost savings in the work performed for leases with the Federal Government by increasing the hourly minimum wage paid to those contractors in accordance with Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors,'' dated April 27, 2021, and U.S. Department of Labor regulations at 29 CFR part 23.

Rulemaking Reflecting Actions That Improve Service Delivery, Customer Experience, and Reduce Administrative Burdens

GSAR Case 2022–G506, Standardizing the Identification of Deviations in the GSAR, standardizes the identification, including number, title, date, and deviation label, of any provision or clause listed in the General Services Administration Regulation (GSAR) that has an authorized deviation. Standardizing this information will add clarity and uniformity, therefore reducing burden, for both the GSA acquisition workforce and GSA's industry partners.

Dated: August 15, 2023.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

BILLING CODE 6820–14

BILLING CODE 6820–34–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

The National Aeronautics and Space Administration's (NASA) aim is to increase human understanding of the solar system and the universe that contains it and to improve American aeronautics ability. NASA's basic organization consists of the Headquarters, nine field Centers, the Jet Propulsion Laboratory (a federally funded research and development center), and several component installations which report to Center Directors. Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters, located in Washington, DC.

NASA continues to implement programs according to its 2022 Strategic Plan. The Agency's mission is to ''explore the unknown in air and space, innovate for the benefit of humanity, and inspire the world through discovery.'' The 2022 Strategic Plan (available at 2022 NASA Strategic Plan) guides NASA's program activities through a framework of the following four strategic goals:

- Strategic Goal 1: Expand human knowledge through new scientific discoveries.
- Strategic Goal 2: Extend human presence deeper into space and to the Moon for sustainable long-term exploration and utilization.
- Strategic Goal 3: Catalyze economic growth and drive innovations to address national challenges.
- Strategic Goal 4: Enhance capabilities and operations to catalyze current and future mission success.

NASA's Regulatory Philosophy and Principles

The Agency's rulemaking program strives to be responsive, efficient, and transparent. NASA adheres to the general principles set forth in Executive Order 12866, Regulatory Planning and Review. NASA is a signatory to the Federal Acquisition Regulatory (FAR) Council. The FAR at 48 Code of Federal Regulations (CFR), chapter 1, contains procurement regulations that apply to NASA and other Federal agencies. Pursuant to 41 United States Code (U.S.C.), section 1302, and FAR 1.103(b), the FAR is jointly prepared, issued, and maintained by the Secretary of Defense, the Administrator of General Services, and the Administrator of NASA, under several of their statutory authorities.

NASA is also mindful of the importance of international regulatory cooperation, consistent with domestic law and the United States (U.S.) trade policy, as noted in Executive Order 13609, Promoting International Regulatory Cooperation. NASA, along with the Departments of State, Commerce, and Defense, engage with other countries in the Wassenaar Arrangement, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime through which the international community develops a common list of items that should be subject to export controls. NASA also has been a key participant in interagency efforts to overhaul and streamline the U.S. Munitions List and the Commerce Control List. These efforts help facilitate transfers of goods and technologies to allies and partners while helping prevent transfers to countries of national security and proliferation concerns.

NASA Priority Regulatory Actions

NASA is highlighting the priorities summarized below in this agenda.

Procedures for Implementing the National Environmental Policy Act (NEPA)

NASA is finalizing its regulations for implementing the National Environmental Policy Act of 1969 and the Council on Environmental Quality regulations. These amendments will update 14 CFR subpart 1216.3, Procedures for Implementing the NEPA, to incorporate the Agency's review of its Categorical Exclusions and streamline the NEPA process to better support NASA's evolving mission.

NASA Federal Acquisition Regulation (FAR) Supplement (NFS)

NASA is finalizing its regulations in the NFS at 48 CFR, chapter 18. These amendments will remove the Solicitation Provision and the Determination of Compensation Reasonableness to align with FAR requirements and changes made in 10 U.S.C. pursuant to a section of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). The Agency will also issue a proposed rule to amend chapter 18 to align with changes made in the FAR that reflects an updated ''commercial item'' definition pursuant to a section of the John S. McCain NDAA for FY 2019 (Pub. L. 115–232).

Public Outreach and Engagement

As NASA develops regulations, we seek to increase public participation and community outreach to be better informed of and address issues from

members of the public affected by our regulations. For example, our Office of Communications is currently beta testing a revised website to enhance NASA's interactions with the public. The revised site will include a ''Doing Business With NASA'' page; opportunities and advice on providing public comment on NASA regulations, and information on forming partnerships with the Agency using NASA's Other Transactional Authorities, such as Space Act Agreements.

NASA uses **Federal Register** notices, website postings, press releases, and social media releases to notify the public of the dates and times for input on NASA programs. NASA offices also work to support roundtables and similar engagements so stakeholder organizations can meet with NASA leaders to discuss and share information about NASA policies and programs. Currently, the Agency sponsors 12 Federal advisory committee providing NASA the opportunity to engage with external subject matter experts on key topics of Agency interest. All advisory meetings are announced in the **Federal Register**, allowing an opportunity for the public to obtain information on committee work before it leads to recommendations for Agency consideration.

NASA engages with the public on procurement-related regulations in several ways. In addition to publishing abstracts and anticipated publication dates for upcoming rules in the biannual Unified Agenda, members of the public can track the progress of any open and pending NASA regulation upon publication of NASA Federal Acquisition Regulations (FAR) Supplement (NFS) rules in the **Federal Register** (FR).

NASA also meets with industry associations on a quarterly basis both for its own regulations and as a signatory to the FAR. Industry associations that regularly participate in these discussions include members of Council of Defense and Space Industry Associations (CODSIA). CODSIA current member associations include:

- Aerospace Industries Association
- American Council of Engineering Companies
- Associated General Contractors
- Computing Technology Industry Association Federal Procurement Council
- Information Technology Industry Council
- National Defense Industrial Association
- Professional Services Council

During these meetings, NASA often provides information on open FAR rules which is publicly accessible in the FAR Case Status Report at *https://www.acq.osd.mil/dpap/dars/far_case_status.html,* and may provide an update on companion NFS acquisition rules. Occasionally, while NFS or FAR rules are out for public comment, NASA will hold a public meeting to allow the public to provide feedback in an open forum. Information regarding a public meeting is typically provided the rule document upon publication for comment.

NASA's Acquisition also conveys policy changes through publications the following websites:

- Procurement Class Deviations at *https://www.hq.nasa.gov/office/procurement/regs/pcd.pdf.*
- Procurement Notices (*https://www.hq.nasa.gov/office/procurement/regs/pn.pdf*).
- Procurement Information Circulars at *https://www.hq.nasa.gov/office/procurement/regs/pic.pdf.*

NASA actively engages the public through **Federal Register** publications. For example, two Requests for Information [86 FR 31735 and 88 FR 21725] were published to gather input on the obstacles and difficulties hindering involvement of individuals from underserved communities (as defined in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, and Executive Order 14091 Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) in NASA's procurement, grants, and cooperative agreements. Currently, public responses are being reviewed by the Agency. In the interim, NASA has taken action to increase its outreach efforts aimed at reaching underserved communities; specifically providing additional virtual training seminars and webinars to engage members of underserved communities on understanding NASA programs and on how to do business with NASA.

In addition to these program-specific efforts, NASA regularly seeks feedback from customers in the form of information collections under the Paperwork Reduction Act (PRA). The Agency maintains several generic PRA clearances allowing the Agency to rapidly engage the public.

2700–0153, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

This collection of information allows the Agency to engage members of the public and stakeholders through quick surveys, small discussion or focus groups, and can highlight areas where communication, training, or changes in operations which could improve delivery of products or services. For example, the Artemis Student Challenges (ASC) provides foundational learning opportunities to prepare students to learn and engage in Artemis-focused challenges that align with the technological needs of the Artemis missions and/or that will provide the Artemis generation with new, authentic, high- quality student challenge experiences. ASC provides students with the opportunity to design, build, and test technologies.

2700–0159, Generic Clearance for the NASA Office of Education Performance Measurement and Evaluation (Testing)

This collection supports NASA's Office of STEM Engagement which administers the Agency's national education activities in support of the Space Act. This collection allows the Agency to validate the forms and instruments used by educators, students and NASA interns for program application forms, customer satisfaction questionnaires, focus group protocols, and project activity survey instruments.

2700–0181, Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

This information collection is used to garner customer and stakeholder feedback in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11. The Circular established government-wide standards for mature customer experience organizations in government to identify their highest-impact customer journeys and select touchpoints or transactions within those journeys to collect feedback. These results will be used to improve the delivery of Federal services and programs and will provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs.

NASA's SBIR/STTR team is currently considering how to leverage this collection to:

- Develop a user-friendly interface for online applications to make it easier for small businesses to navigate the submission process.

- Simplify the application process to reduces administrative burden.

• Seek feedback from applicants and stakeholders to identify areas for improvement.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

The National Archives and Records Administration (NARA) primarily issues regulations directed to other federal agencies. These regulations include records management, information services, and information security. For example, records management regulations directed to federal agencies concern the proper management and disposition of federal records. Through the Information Security Oversight Office (ISOO), NARA also issues Government-wide regulations concerning information security classification, controlled unclassified information (CUI), and declassification programs; through the Office of Government Information Services, NARA issues Government-wide regulations concerning the Freedom of Information Act (FOIA) dispute resolution services and FOIA ombudsman functions; and through the Office of the Federal Register, NARA issues regulations concerning publishing federal documents in the **Federal Register**, *Code of Federal Regulations,* and other publications.

NARA regulations directed to the public primarily address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and other Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

Proposed Changes to Rescheduling Requirements

In the second quarter of FY 2024, NARA will issue a draft rule with changes to 36 CFR 1225.22 regarding requirements for agencies to reschedule their records. All rescheduling requirements will be in section 1225.22. NARA will remove and reserve sections 1225.24 and 1225.26 to eliminate the media neutral notification requirement, which is no longer relevant.

Enhancing Oversight Requirements for Records Management

We also propose to amend 36 CFR part 1239. We are removing subpart B—Program Assistance, as it is out-of-date and informational, and provides no agency requirements. We are proposing to update the remaining subparts to provide clarity and specificity to our agency oversight requirements. We propose to move unauthorized disposition requirements from 36 CFR part 1230 to 36 CFR part 1239 and strengthen them.

Streamlining Requirements for Agencies Dealing With General Records Schedules and GAO

We propose updating 36 CFR 1225.20 and removing 1225.12(h) to make it easier for agencies applying the General Records Schedules (GRS) by minimizing the instances where the General Accounting Office (GAO) must be consulted. Now, agencies will only need GAO approval for deviations from GRS 1.1, item 010, which relates to accountable officer records. They won't need GAO approval for deviations from other parts of the GRS. Also, they won't need GAO approval for program records schedules that are less than three years old.

New Digitization Standards for Permanent Still Image Film Records

The next step for digitization standards in NARA's Regulations will include technical standards for digitizing various permanent still image film records, such as transparencies, negatives, radiographic, microfiche, and microfilm. These standards will be added to subpart E of 36 CFR part 1236.

Revising Provisions for Digital Photographs

We propose revising the provisions stated in 36 CFR 1237.28(d), which addresses special concerns for digital photographs. This revision is essential because the recent publication of subpart E of 36 CFR part 1236 introduces new and more detailed requirements for digitizing photographic prints.

Authorization for Disposing of Digitized Temporary Records

In June 2023, NARA released GRS Transmittal 34, introducing GRS 4.5 Digitizing Records. As a result, we propose updating the regulations in 36 CFR 1236.36 to ensure appropriate authorization for disposing of temporary records after they have been digitized. Furthermore, we propose aligning the language used throughout 36 CFR subpart D with the newly published subpart E of 36 CFR part 1236.

Improving Regulations for Electronic Message Preservation

On January 1, 2021, the Federal Records Act was amended. The updated law now requires the Archivist of the United States to create regulations for federal agencies on preserving electronic messages that are considered records. In response to this, we are proposing changes to our regulations by revising section 1236.22, which covers the additional requirements for managing electronic mail records. The aim is to clearly outline the records management requirements for electronic messages and systems.

These records management regulatory priorities align with the goals and initiatives of our Strategic Plan 2022–2026.

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NATIONAL SCIENCE FOUNDATION

Overview

The National Science Foundation (NSF) is an independent federal agency created by Congress in 1950 ''to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense . . .'' NSF is vital because we support basic research and people to create knowledge that transforms the future. This type of support:

- Is a primary driver of the U.S. economy
- Enhances the nation's security
- Advances knowledge to sustain global leadership

With an annual budget of $9.5 billion (FY 2023), we are the funding source for approximately 23% of the total federal budget for basic research conducted at U.S. colleges and universities. In many fields such as mathematics, computer science and the social sciences, NSF is the major source of federal backing.

We fulfill our mission chiefly by issuing limited-term grants—currently about 11,200 new awards per year, with an average duration of three years—to fund specific research proposals that have been judged the most promising by a rigorous and objective merit-review system. Most of these awards go to individuals or small groups of investigators. Others provide funding for research centers, instruments and facilities that allow scientists, engineers, and students to work at the outermost frontiers of knowledge.

NSF's goals—discovery, learning, research infrastructure and stewardship—provide an integrated strategy to advance the frontiers of knowledge, cultivate a world-class, broadly inclusive science and engineering workforce and expand the scientific literacy of all citizens, build the nation's research capability through

investments in advanced instrumentation and facilities, and support excellence in science and engineering research and education through a capable and responsive organization. We like to say that NSF is ''where discoveries begin.''

NSF is committed to expanding the opportunities in STEM to people of all racial, ethnic, geographic, and socioeconomic backgrounds, sexual orientations, gender identities and to persons with disabilities.

We value diversity and inclusion, demonstrate integrity and excellence in our devotion to public service and prioritize innovation and collaboration in our support of the work of the scientific community and of each other.

While broadening participation in STEM is included in NSF's merit review criteria, some programs go beyond the standard review criteria. These investments—which make up NSF's Broadening Participation in STEM Portfolio—use different approaches to build STEM education and research capacity, catalyze new areas of STEM research, and develop strategic partnerships and alliances.

Many of the discoveries and technological advances have been truly revolutionary. In the past few decades, NSF-funded researchers have won some 236 Nobel Prizes as well as other honors too numerous to list. These pioneers have included the scientists or teams that discovered many of the fundamental particles of matter, analyzed the cosmic microwaves left over from the earliest epoch of the universe, developed carbon-14 dating of ancient artifacts, decoded the genetics of viruses, and created an entirely new state of matter called a Bose-Einstein condensate.

NSF also funds equipment that is needed by scientists and engineers but is often too expensive for any one group or researcher to afford. Examples of such major research equipment include giant optical and radio telescopes, Antarctic research sites, high-end computer facilities and ultra-high-speed connections, ships for ocean research, sensitive detectors of very subtle physical phenomena and gravitational wave observatories.

Another essential element in NSF's mission is support for science and engineering education, from pre-K through graduate school and beyond. The research we fund is thoroughly integrated with education to help ensure that there will always be plenty of skilled people available to work in new and emerging scientific, engineering, and technological fields, and plenty of capable teachers to educate the next generation.

No single factor is more important to the intellectual and economic progress of society, and to the enhanced well-being of its citizens, than the continuous acquisition of new knowledge. NSF is proud to be a major part of that process.

Specifically, the Foundation's organic legislation authorizes us to engage in the following activities:

A. Initiate and support, through grants and contracts, scientific and engineering research, and programs to strengthen scientific and engineering research potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

B. Award graduate fellowships in the sciences and in engineering.

C. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

D. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

E. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating our research and educational programs with other federal and non-federal programs.

F. Provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other federal agencies.

G. Determine the total amount of federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

H. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

I. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

J. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education innovation in the sciences and engineering, including independent research by individuals, throughout the United States.

K. Support activities designed to increase the participation of women and minorities and others underrepresented in science and technology. The Louis Stokes Alliances for Minority Participation (LSAMP) program is an alliance-based program. The program's theory is based on the Tinto model for student retention referenced in the 2005 LSAMP program evaluation (cleared under 3145–0190 and now covered by 3145–0226). The overall goal of the program is to assist universities and colleges in diversifying the nation's science, technology, engineering, and mathematics (STEM) workforce by increasing the number of STEM baccalaureate and graduate degrees awarded to populations historically underrepresented in these disciplines: African Americans, Hispanic Americans, American Indians, Alaska Natives, Native Hawaiians, and Native Pacific Islanders. LSAMP's efforts to increase diversity in STEM are aligned with the goals of the Federal Government's five-year strategic plan for STEM education, Charting a Course for Success: America's Strategy for STEM Education.

With this fall regulatory agenda, NSF highlights the *Robert Noyce Teacher Scholarship (Noyce) Program (RIN 3145–AA65).* This program provides funding to institutions of higher education for scholarships to STEM major undergraduates and professionals to become effective certified K–12 STEM teachers and experienced, exemplary K–12 teachers to become master teacher leaders in high-need school districts. Undergraduate and post-baccalaureate STEM professionals receiving funding must teach two years in a high-need school district for each year in which they have received financial support. Post-baccalaureate STEM professionals must teach for four years in a high-need school district during which time they receive annual salary supplements from the grant funds. Experienced, exemplary K–12 teachers of mathematics or science in high-need school districts receiving financial support may be supported for one year in obtaining a master's degree and then receive a salary supplement from grant funds for four years as they continue to teach in a high-need school district. Individuals who already possess a master's degree can be supported for five years with salary supplements from grant funds as they continue to teach in a high-need school

district. NSF, in consultation with the Secretary of Education, plans to l propose regulations on the process of treating scholarships as Federal unsubsidized student loans for repayment purposes when the scholarship recipients fail to meet their required service obligations under the Noyce Program.

Consistent with the President's Executive Order on Modernizing Regulatory Review (Apr. 6, 2023), NSF intends to consider a variety of methods, beyond publication of the proposed regulation for public comment in the **Federal Register**, to encourage the participation and input of potentially affected individuals and entities. These additional efforts may include notices, bulletins, emails, phone calls, meetings, surveys, ''office hours,'' or other means of communication, information gathering, and dialogue with academic institutions that receive or have received Noyce scholarship funding, as well as similar outreach, by NSF or these institutions, to past and present individual Noyce scholarship recipients, to obtain their views.

In addition, NSF regularly seeks feedback from customers in the form of information collections under the Paperwork Reduction Act (PRA). NSF maintains three generic PRA clearances allowing the Agency to rapidly engage the public: two clearances allow NSF to collect customer feedback on service delivery for NSF programs such as principal investigator workshops and website redesigns (OMB Control Number 3145–0215, *Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery* and OMB Control Number 3145–0254, *Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)*), and a third to allow NSF to collect information for evaluation, research, and evidence building in order to improve surveys conducted by the National Center for Science, Engineering and Statistics programs (OMB Control Number 3145–0174, *SRS-Generic Clearance of Survey Improvement Projects for the Division of Science Resources Statistics*). Additional information regarding these collections—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain.*

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U.S. OFFICE OF PERSONNEL MANAGEMENT

Statement of Regulatory and Deregulatory Priorities

Fall 2023 Unified Agenda

The Office of Personnel Management (OPM) serves as the chief human resources agency and personnel policy manager for the Federal Government. We are champions of talent for the Federal Government, leading Federal agencies in workforce policies, programs, and benefits in service to the American people. We seek to position the Federal Government as a model employer through innovation, inclusivity, and leadership, as we build a rewarding culture that empowers the Federal workforce to tackle some of our nation's toughest challenges.

OPM's regulatory agenda is aligned with these core mission areas and advances multiple Biden-Harris Administration priorities. Indeed, each of OPM's regulations is focused on improving the efficiency and effectiveness of government—a key Administration priority. In addition, several of OPM's regulations are:

- Actions that empower workers and increase their wages;
- Actions that promote racial and gender equity and LGBTQI+ equality and address issues of disability, religious discrimination, persistent poverty, and immigration;
- Actions that address pandemic preparedness and access to healthcare; and
- Actions that improve access to and delivery of public programs and services by reducing administrative burden.

While OPM is committed to promoting inclusiveness in the regulatory process, most of our regulations are focused on organizational and personnel matters and, therefore, agency engagement with the general public is limited. In cases where OPM regulations do have public impact, OPM actively engages with stakeholders who may be affected by our regulations directly or indirectly through the social groups they represent. Public participation through petitions, job fairs, webinars, meetings, and the public comment process have informed the development of a few of our rulemakings at the initiation phase of the process and are summarized in this Statement, where applicable. Generally, however, OPM's engagement in developing its regulatory program focuses on engagement with agencies (such as through the Chief Human Capital Officers Council) and employee representative groups (such as labor unions).

We will continue to encourage and provide opportunities for meaningful participation to inform regulatory planning in the future.

I. Actions That Empower Workers and Increase Their Wages

OPM is committed to recruiting, retaining, and supporting a world-class Federal workforce. This means providing pathways to Federal service, working to make every Federal job a good job, and strengthening Federal labor unions. OPM's regulatory agenda advances each of these goals and reflects the inputs received from members of the public during different phases of the rulemaking process.

- *Pathways Programs (3206–AO25)*

OPM is finalizing modifications to the Pathways Programs to align the three constituent programs to better meet the Federal government's needs for recruiting and hiring interns and recent graduates. OPM proposes to update the regulations for the Pathways Programs to facilitate a better applicant experience, to improve developmental opportunities for Pathways Program participants, and to streamline agencies' ability to hire participants in the Pathways Programs, especially those who have successfully completed their Pathways requirements and are eligible for conversion to a term or permanent position in the competitive service. Robust Pathways Programs with appropriate safeguards to promote its use as a supplement to, and not a substitute for, the competitive hiring process is essential to boosting the Federal government's ability to recruit and retain early career talent.

This rule was informed by feedback from various stakeholders over the past decade, including applicants, educational institutions, Federal employees, and agencies. Major sources of this feedback include outreach events like job fairs and presentations/webinars on the Pathways Programs. Email inquiries from applicants and participants about how the Programs work provided additional opportunities to receive feedback. Based on these inputs, OPM is modifying current regulations to allow Recent Graduate and Presidential Management Fellows participants to be converted to term or permanent positions in any agency, when appropriate. After publishing the proposed rule, OPM further engaged stakeholders to ensure awareness and encourage the submission of comments that may inform the development of the final rule.

• *Time-Limited Promotions [3206–A052]*

The Office of Personnel Management (OPM) is issuing a proposed rule to clarify that bargaining- unit employees who are detailed or temporarily promoted to higher grade duties of a higher- graded position should be paid appropriately for performing these duties, when ordered by an arbitrator, administrative body, or court, under a collective bargaining agreement and the employees were assigned these duties outside of competitive hiring procedures. Similarly, the proposed rule clarifies that non-bargaining unit employees should also be paid appropriately for performing these duties if ordered by an administrative body or court. At present, non-competitive temporary promotions and non-competitive details to duties of higher-graded positions are limited to no more than 120 days under OPM regulations regardless of the bargaining-unit status of the employee. Current regulations prohibit employees from being appropriately paid for higher-graded duties performed in excess of 120 days and assigned without competition. As a result, the principle of equal pay for equal work is absent and bargaining unit employees are unable to have meaningful recourse through their negotiated collective bargaining agreement.

OPM's decision to issue this proposed rule was informed by engagement with the National Treasury Employees Union (NTEU) and the National Federation of Federal Employees (NFFE). In 2022, NTEU submitted a written petition to OPM seeking the issuance of a rule under 5 U.S.C. 553(e). This petition outlined the problem to be addressed with recommended changes. In addition, NFFE raised similar suggestions in meetings with OPM in late 2022. When the proposed rule is issued, OPM anticipates further engagement with national unions and other Federal employee groups.

• *Upholding Civil Service Protections and Merit System Principles [3206–A056]*

OPM plans to finalize a rule to uphold civil service protections and merit system principles after consideration of comments on OPM's proposal. OPM proposed to clarify that employees who are moved involuntarily from the competitive to the excepted service, or from one excepted service schedule to another, retain the status and adverse action rights they had at the time of movement. OPM's proposal also required Federal agencies to follow specific procedures upon moving any employees without their consent from the competitive service to the excepted service or, if already in the excepted service, to a different excepted service schedule. Finally, OPM proposed to define positions of a ''confidential, policy-determining, policy-making, or policy- advocating character,'' in accordance with legislative history and Congressional intent, to mean political appointments.

In late 2022, the National Treasury Employees Union (NTEU) submitted a written petition to OPM outlining their views on regulatory changes that would reinform civil service protections and merit system principles. Subsequently in early 2023, the Federal Workers Alliance (FWA) sent a letter to OPM expressing support for the NTEU petition. OPM anticipates engagement with national unions and other Federal employee groups during the notice and comment period as part of the standard regulatory process.

II. Actions That Promote Racial and Gender Equity and LGBTQI+ Equality and Address Issues of Disability, Religious Discrimination, Persistent Poverty, and Immigration

In fact, many of the regulations noted above—in particular, those focused on providing pathways into the Federal Government—emphasize equity. Additional work in this area focuses on promoting pay equity and OPM has made efforts to encourage feedback on the proposals from stakeholders.

• *Advancing Pay Equity in Governmentwide Pay Systems (3206–AO39)*

OPM is issuing a final rule to advance pay equity in the General Schedule (GS) pay system, Prevailing Rate Systems, Administrative Appeals Judge (AAJ) pay system, and Administrative Law Judge (ALJ) pay system by revising the criteria for making salary determinations based on salary history. After the proposed rule was published, OPM shared it with more than 990 stakeholders to ensure awareness and encourage the submission of comments that may inform the development of the final rule.

III. Actions That Address Pandemic Preparedness and Access to Healthcare

OPM has helped to lead the Federal Government throughout the COVID–19 pandemic—serving as a co-chair of the Safer Federal Workforce Task Force, supporting agencies with implementation of a maximum telework posture, and providing meaningful benefits to Federal employees. OPM will continue this important work through its regulatory agenda.

• *Scheduling of Annual Leave for Employees Responding to COVID–19 (3206–AO04)*

OPM is finalizing regulations to assist agencies and employees responding to the National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak and for future national emergencies. The regulations provide that employees who would forfeit annual leave in excess of the maximum annual leave allowable carryover because of their work to support the nation during a national emergency will have their excess annual leave deemed to have been scheduled in advance and subject to leave restoration.

• *Evacuation During a Public Health Emergency (3206–AO34)*

OPM is proposing a new subpart Q within 5 CFR part 550, which would amend, expand, and reorganize regulations that currently provide agencies with the authority to evacuate employees during a pandemic health crisis. The revised regulations will provide agencies with the authority to evacuate an employee or groups of employees during either a public health emergency declaration or a pandemic health crisis. The current authority to evacuate employees during a pandemic health crisis is found at 5 CFR 550.409. This revision and reorganization of the regulations will enable OPM to capitalize on lessons learned from the COVID–19 pandemic.

• *Postal Service Health Benefits Program (3206–AO43)*

OPM is finalizing an interim final rule that implemented the Postal Service Health Benefits (PSHB) Program within the Federal Employees Health Benefits (FEHB) Program pursuant to the Postal Service Reform Act of 2022. This regulation will ensure continuity of health insurance coverage for Postal Service employees, annuitants, and their family members who will no longer be eligible for FEHB in January 2025; enable enrollees access to more prescription drug coverage options and potential reduction in prescription drug costs for Medicare Part D eligible enrollees; reduce the Postal Service's premiums by approximately $5.7 billion over 10 years (CBO Analysis) and reduce its future liability for retiree health benefits; and enable use of a central enrollment portal that will reduce administrative burden for enrollment, which will ensure more accurate payment of plans, allow more

frequent sharing of enrollment data with plans, and limit human error.

IV. Actions That Improve Access to and Delivery of Public Programs and Services by Reducing Administrative Burden

OPM's work in this area focuses on improving efficiency and providing agencies additional flexibilities in the hiring process.

• *Hiring Authority for Post-Secondary Students (3206–AN86)*

OPM is finalizing regulations establishing hiring authorities for post-secondary students to positions in the competitive service to provide additional flexibility in hiring eligible and qualified individuals. These revisions will implement section 1108 of Public Law 115–232, John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

• *Hiring Authority for College Graduates (3206–AN79)*

OPM is finalizing regulations establishing hiring authorities for certain college graduates to positions in the competitive service. This rule will provide additional flexibility in hiring eligible and qualified individuals by implementing section 1108 of Public Law 115–232, the NDAA for FY 2019.

• *Rule of Many (3206–AN80)*

OPM is finalizing regulations to implement changes—known as the ''rule of many''—authorized by the NDAA for FY 2019 governing the selection of candidates from competitive lists of eligibles. The statute eliminates the requirement that an agency select only from the top three candidates at any given juncture (the rule of three) in numerical rating and ranking and instead authorizes agencies to certify and consider a sufficient number of candidates, no fewer than three, using a cut-off score or other mechanism established through this rulemaking. This change also affects how agencies may make selections under 5 CFR part 302, titled ''Employment in the Excepted Service.'' These changes will provide expanded flexibility to agencies in the selection of candidates.

• *Noncompetitive Appointment of Certain Military Spouses (3206–AO57)*

OPM is issuing interim final regulations to implement section 1111 of Public Law 117–263, the NDAA for FY 2023. These revisions extend the eligibility criteria for any spouse married to an active-duty military member through December 31, 2028, and remove the agency reporting requirements established under section 573(d) of Public Law 115–232. The intended effect of the Authority is to increase the hiring of military spouses in the Federal Government.

• *Recruitment and Relocation Incentive Waivers (3206–AO36)*

OPM is issuing a proposed rule to expand the authority to approve waivers of the normal payment limitations on recruitment and relocation incentives, so that agencies have access to higher payment limitations based on a critical need without requesting approval from OPM. Currently, agencies have the authority to approve a recruitment or relocation incentive without OPM approval for payments of up to 25 percent of an employee's annual rate of basic pay times the number of years in a service agreement (not to exceed 4 years or 100 percent of annual basic pay). Under a waiver, agencies could approve a recruitment or relocation incentive without OPM approval for payments of up to 50 percent of an employee's annual rate of basic pay times the number of years in a service agreement (not to exceed 100 percent of annual basic pay).

• *Recruitment and Selection Through Competitive Examination (3206–AO24)*

OPM is finalizing revisions implementing the Competitive Service Act of 2015, Public Law 114–137, to allow an appointing authority (*i.e.,* the head of a federal agency or department) to share a competitive certificate of eligibles with one or more appointing authorities for the purpose of making selections of qualified candidates.

• *Selective Service Registration (3206–AO37)*

OPM is proposing regulations to enable executive agencies to make initial determinations as to whether failure to register with the Selective Service System was knowing and willful.

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PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

The Pension Benefit Guaranty Corporation (PBGC or Corporation) is a federal corporation created under title IV of the Employee Retirement Income Security Act of 1974 (ERISA) to protect the retirement security of over 33 million American workers, retirees, and beneficiaries in both single-employer and multiemployer private-sector pension plans. PBGC administers two insurance programs—one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans. In addition, PBGC administers a special financial assistance (SFA) program for eligible financially troubled multiemployer plans.

• *Single-Employer Program.* Under the single-employer program, when a plan terminates with insufficient assets to cover all plan benefits (distress and involuntary terminations), PBGC pays plan benefits that are guaranteed under title IV. PBGC also pays nonguaranteed plan benefits to the extent funded by plan assets or recoveries from employers. In fiscal year (FY) 2022, PBGC paid over $7.0 billion in benefits to more than 960,000 participants. Operations under the single-employer program are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

• *Multiemployer Program.* The multiemployer program covers collectively bargained plans involving more than one unrelated employer. PBGC provides traditional financial assistance (technically in the form of a loan, though almost never repaid) to the plan if the plan is insolvent and thus unable to pay benefits at the guaranteed level. The guarantee is structured differently from, and is generally significantly lower than, the single-employer guarantee. In FY2022, PBGC provided $217 million in traditional financial assistance to 115 insolvent multiemployer plans covering 93,525 participants receiving guaranteed benefits. Those plans also cover an additional 46,480 participants entitled to receive benefits in the future. PBGC also provided a final payment of $9 million in financial assistance to facilitate the merger of two multiemployer plans. Operations under the multiemployer program generally are financed by insurance premiums and investment income.

• *Special Financial Assistance Program.* The American Rescue Plan (ARP) Act of 2021 added section 4262 of ERISA, which requires PBGC to provide SFA to certain financially troubled multiemployer plans upon application for assistance. PBGC's SFA Program requires plans to demonstrate eligibility for SFA and to calculate the amount of assistance pursuant to ARP and PBGC's regulations. This program is funded by general tax revenues.

For the second year in a row, both PBGC's Multiemployer Program and Single-Employer Program have a positive net position at fiscal year-end. The financial status of the single-employer program improved from a positive net financial position of $30.9 billion at the end of FY 2021 to $36.6 billion at the end of FY 2022. The net financial position of the multiemployer program improved from a positive net position of $481 million at the end of FY 2021 to $1.1 billion at the end of FY 2022.

ARP substantially improves the financial condition and the outlook for PBGC's multiemployer program. By forestalling the near-term insolvency of the most troubled multiemployer plans, the multiemployer program is no longer expected to go insolvent in FY 2026 and can accumulate a greater level of reserve assets in its insurance fund in the near-term.

To carry out its statutory functions, PBGC issues regulations on such matters as how to pay premiums, when reports are due, what benefits are covered by the insurance programs, how to terminate a plan, the liability for underfunding, and how withdrawal liability works for multiemployer plans. PBGC follows a regulatory approach that seeks to encourage the continuation and maintenance of securely-funded defined benefit plans. In developing new regulations and reviewing existing regulations, PBGC seeks to reduce burdens on plans, employers, and participants, and to ease and simplify employer compliance wherever possible. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans. In all such efforts, PBGC's mission is to protect the retirement incomes of plan participants.

Regulatory/Deregulatory Objectives and Priorities

PBGC's regulatory/deregulatory objectives and priorities are developed in the context of the Corporation's statutory purposes, priorities, and strategic goals.

Pension plans and the statutory framework in which they are maintained and terminated are complex. Despite this complexity, PBGC is committed to issuing simple, understandable, flexible, and timely regulations to help affected parties. PBGC's regulatory/deregulatory objectives and priorities are:

- To enhance the retirement security of workers and retirees;
- To implement regulatory actions that ease compliance burdens and achieve maximum net benefits while protecting retirement security; and
- To simplify existing regulations and reduce burden.

PBGC endeavors in all its regulatory and deregulatory actions to promote clarity and reduce burden on the public.

Small Businesses

PBGC considers very seriously the impact of its regulations and policies on small entities. PBGC attempts to minimize administrative burdens on plans and participants, improve transparency, simplify filing, and assist plans to comply with applicable requirements. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans. In all such efforts, PBGC's mission is to protect the retirement incomes of plan participants.

Open Government and Public Engagement

PBGC encourages public participation in the regulatory process. For example, PBGC's ''**Federal Register** Notices Open for Comment'' web page highlights when there are opportunities to comment on proposed rules, information collections, and other **Federal Register** notices. PBGC encourages comments on an ongoing basis as it continues to look for ways to further improve the agency's regulations. PBGC staff also actively participate in conferences focused on employee retirement benefits and engage with plan participant advocacy groups to understand where there may be concerns with PBGC regulations. Efforts to reduce regulatory burden in the projects discussed below are in substantial part a response to public comments and engagement.

American Rescue Plan

The American Rescue Plan (ARP) Act of 2021 added a new section 4262 of ERISA to create a program to provide funding to severely underfunded multiemployer pension plans to ensure that millions of America's workers, retirees, and their families receive the pension benefits they earned through many years of hard work.

Under new section 4262 of ERISA, PBGC was required within 120 days to prescribe in regulations or other guidance the requirements for SFA applications. To implement the program, on July 9, 2021, PBGC released an interim final rule (RIN 1212–AB53) adding a new part 4262 to its regulations, ''Special Financial Assistance by PBGC,'' which was published in the **Federal Register** on July 12, 2021. Part 4262 provides guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an application for SFA, the process of applying, PBGC's review of applications, and restrictions and conditions on plans that receive SFA. PBGC received over 100 public comments on many provisions of the interim rule including the methodology plans must use to calculate the amount of SFA, permissible investments of SFA funds, and the conditions imposed on plans that receive SFA. PBGC published a final rule on July 8, 2022, that makes various changes to part 4262 in response to public comments. The provisions of the final rule became effective on August 8. PBGC included a 30-day public comment period solely on the change to the condition to require a phased recognition of SFA assets for purposes of computing employer withdrawal liability. In response to comments received, PBGC added an exception process for the withdrawal liability conditions that apply to a plan that receives SFA, which was published in a final rule that was effective on January 26, 2023.

Multiemployer Plans

PBGC published a proposed rule on October 14, 2022, that would prescribe actuarial assumptions which may be used by a multiemployer plan actuary in determining an employer's withdrawal liability (RIN 1212–AB54). Section 4213(a) of ERISA permits PBGC to prescribe by regulation such assumptions.

Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. Withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-

guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

The rulemaking is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability. The rulemaking would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates. PBGC plans to publish a final rule that responds to the public comments received on the proposed rule.

PBGC also plans to propose a rulemaking that would add a new part 4022A to PBGC's regulations to provide guidance on determining the monthly amount of multiemployer plan benefits guaranteed by PBGC (''Multiemployer Plan Guaranteed Benefits,'' RIN 1212–AB37). For example, the proposed rule would explain what multiemployer plan benefits are eligible for PBGC's guarantee, how to determine credited service, how to determine a benefit's accrual rate, and how to calculate the guaranteed monthly benefit amount.

Rethinking Existing Regulations

Most of PBGC's regulatory/deregulatory actions are the result of its ongoing retrospective review to identify and correct unintended effects, inconsistencies, inaccuracies, and requirements made irrelevant over time. For example, PBGC is proposing miscellaneous updates, clarifications, and improvements (RIN 1212–AB51) to its regulations that are in part a response to frequently asked questions and comments received from stakeholders, such as to annual financial and actuarial information filings (part 4010) and filings for termination of single-employer plans (part 4041). This action also addresses SECURE Act changes affecting premium rates (part 4006), benefits payable in terminated single-employer plans (part 4022), and part 4044 (allocation of assets in single-employer plans). PBGC's regulatory review also identified a need to improve PBGC's recoupment of benefit overpayment rules (''Improvements to Rules on Recoupment of Benefit Overpayments,'' RIN 1212–AB47). Other rulemakings would modernize PBGC's regulations and policies by adopting up-to-date assumptions and methods that are more consistent with best practices within the pension community. For example, PBGC is considering modernizing the interest, mortality, and expense load assumptions used to determine the present value of benefits under the asset allocation regulation (for single-employer plans) and for determining mass withdrawal liability payments (for multiemployer plans) (RIN 1212–AA55) among other purposes.

PBGC

Final Rule Stage

225. Actuarial Assumptions for Determining an Employer's Withdrawal Liability [1212–AB54]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 29 U.S.C. 1393; 29 U.S.C. 1302(b)(3)

CFR Citation: 29 CFR 4213.

Legal Deadline: None.

Abstract: This final rule responds to public comments received on the proposed rule. It would prescribe actuarial assumptions which may be used by a multiemployer plan actuary in determining an employer's withdrawal liability.

Statement of Need: Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. Withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

This rulemaking is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability in all circumstances. The rulemaking would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates.

Anticipated Cost and Benefits: PBGC estimates that, in the 20 years following the final rule's effective date, there will be a nominal increase in cumulative withdrawal liability payments ranging between $804 million and $2.98 billion. While PBGC expects that the rulemaking will deter employer withdrawals, it will do so only at the margin, and this impact is difficult to estimate. Accordingly, this analysis does not model any change to the rate of employer withdrawals or decrease in contributions due to improved plan funding attributable to these changes because doing so would be too speculative.

The major expenses associated with a withdrawal liability dispute are attorney fees, arbitration fees (including fees to initiate arbitration and fees charged by an arbitrator), and fees charged by expert witnesses. Though costs will vary greatly from plan to plan based on the plan's benefit formula, size of the plan, attorney and expert witness rates, and other factors, PBGC estimates that a withdrawal liability arbitration, measuring from a request for plan sponsor review of a withdrawal liability determination through the end of arbitration would range from $82,500 to $222,000. For lengthy litigation, costs can be over $1 million. Assuming some arbitrations and litigation would be avoided entirely, and others would be less complex because they would not include disputes over interest assumptions, PBGC estimates that this rulemaking would result in an annual savings of $500,000 to $1 million, split evenly between plans and employers.

Timetable:

Action	Date	FR Cite
NPRM	10/14/22	87 FR 62316
NPRM Comment Period End.	11/14/22	
NPRM Comment Period Extended.	11/10/22	87 FR 67853
NPRM Comment Period End.	12/13/22	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Hilary Duke, Assistant General Counsel for Regulatory Affairs, Pension Benefit

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RIN: 1212–AB54

BILLING CODE 7709–02–P

U.S. SMALL BUSINESS ADMINISTRATION

Statement of Regulatory Priorities

Overview

The mission of the U.S. Small Business Administration (SBA or Agency) is to maintain and strengthen the nation's economy by helping Americans start, grow, and build resilient businesses and recover after disasters. In accomplishing this mission, SBA strives to improve the economic environment for small businesses, including those in rural areas, those in areas that have significantly higher unemployment and lower income levels than the nation's averages, and those in traditionally underserved markets.

SBA has several financial, procurement, and technical assistance programs that provide a crucial foundation for Americans starting or growing a small business. For example, the Agency serves as a guarantor of SBA program loans to small businesses and licenses Small Business Investment Companies that make equity and debt investments in qualifying small businesses using a combination of privately raised capital and SBA guaranteed leverage. SBA also helps small businesses, including those owned by women, service-disabled veterans, minorities, and other historically underrepresented groups, gain access to federal government contracting opportunities. In addition, the Agency funds various small business training and mentoring programs and provides management and technical assistance to existing or potential small business owners through grants, cooperative agreements, and contracts. Finally, as an essential part of its purpose, SBA provides direct financial assistance to homeowners, renters, and businesses to repair or replace their property in the aftermath of a disaster. Beyond providing a crucial foundation for business-owners, SBA's assistance to small businesses, including access to capital, generates new jobs to help create a strong, innovative, and sustainable American economy.

Reducing Burden on Small Businesses

SBA's regulatory policy reflects a commitment to developing regulations that reduce or eliminate the burden on the public, particularly the Agency's core constituents—small businesses. SBA's regulatory process generally includes an assessment of the costs and benefits of the regulations as required by Executive Order No. 12866, 1993, ''Regulatory Planning and Review''; Executive Order No. 13563, 2011, ''Improving Regulation and Regulatory Review''; and the Regulatory Flexibility Act. SBA's program offices are particularly invested in finding ways to reduce the burden imposed on the public by the Agency's core activities in its loan, grant, innovation, and procurement programs.

Openness and Transparency

SBA promotes transparency, collaboration, and public participation in its rulemaking process. To that end, SBA makes a conscious effort to engage those members of the public eligible for SBA programs or affected by SBA regulations beyond the standard notice-and-comment process. SBA engages in tribal consultations when proposing changes to its government contracting regulations and often receives input on access and burdens associated with SBA program regulations and policies. For example, SBA conducted five tribal consultations or listening sessions about a proposal contained within the 8(a) Ownership and Control Rule (RIN 3245–AH70) mentioned below, leading to the elimination of the proposal in the final rule. For SBA's Small Business Innovation Research (SBIR) program, the Agency coordinates a road tour around the country, on which SBA and other agencies engage small businesses and provide them with information about the application process and upcoming SBIR topics for grant or contract awards. The Historically Underutilized Business Zones (HUBZones) program office regularly provides webinars about the program to prospective and current program participants, who are encouraged to provide feedback, and holds ''office hours'' twice a week, during which firms are encouraged to inquire about the certification process or provide feedback. SBA's Office of Government Contracting & Business Development (GCBD) and its attorneys routinely attend trade association conferences concerning its programs, including the annual conferences hosted by the National 8(a) Association and HUBZone Council. SBA's 8(a) Business Development (BD) program office periodically uses its monthly *Straight Talk* call to obtain input from external stakeholders. For example, in fall 2022, the office invited stakeholders to provide feedback on ways to improve the 8(a) application. SBA has also in the past entered interagency agreements with the Department of the Interior to conduct customer satisfaction surveys to gain a broad understanding of customer experience and customer satisfaction with the availability of information about SBA programs.

In addition to these program-specific efforts, SBA regularly seeks feedback from customers in the form of information collections under the Paperwork Reduction Act (PRA). SBA maintains two generic PRA clearances that allow the Agency to rapidly engage the public: one clearance allows SBA to collect customer feedback on service delivery for SBA programs such as GCBD and Boots to Business, and the other allows SBA to collect information for evaluation, research, and evidence building in order to improve programs like GCBD, Community Navigators, and SBA's capital programs.

Regulatory Framework

SBA's Strategic Plan for fiscal years 2022 through 2026 provides a framework for strengthening, streamlining, and simplifying SBA programs and leverages collaborative relationships with other agencies and the private sector to provide small businesses with the tools they need to drive innovation and strengthen the economy through business revenue and job growth. The Strategic Plan serves as the foundation for the regulations that the Agency will develop during the next twelve to twenty-four months.

SBA developed the Strategic Plan in consultation with multiple stakeholder groups through its *Strategic Plan Working Group,* which comprised members at all levels of SBA and across numerous Agency programs, allowing the themes revealed during the stakeholder engagement process to be incorporated throughout the Agency. SBA also partnered with the General Services Administration (GSA) to solicit input and feedback from federal employees whose roles support the implementation of SBA programs across the government or who work with other small business development programs. In addition, the Agency conducted community outreach across the country, including by conducting listening sessions with community development organizations in eight cities, from Portland, Maine, to Portland, Oregon, which provided SBA with input from entrepreneurs of all kinds and highlighted place-based and sector-specific issues. Finally, SBA solicited feedback through the **Federal Register**, *SBA.gov* posting, an SBA daily newsletter, a social media campaign,

and outreach to key stakeholder organizations.

Based on the input received during this stakeholder engagement process, SBA identified the following imperatives and integrated them into its Strategic Plan: increase collaboration with resource partners and stakeholders to amplify SBA's reach and better communicate the Agency's products and services, and improve SBA's data transparency so that researchers, resource partners, community organizations, and the public can better understand how the SBA supports the small business and entrepreneurial ecosystem. The Strategic Plan, in turn, sets out three strategic goals: (1) ensure equitable and customer-centric design and delivery of programs to support small businesses and innovative startups; (2) build resilient businesses and a sustainable economy; and (3) implement strong stewardship of resources for greater impact.

The regulations reported in SBA's semi-annual Regulatory Agenda and Plan are intended to facilitate achievement of these goals while meeting the needs of the members of the public eligible for our programs or affected by our regulations. Over the past twelve months, SBA developed rulemakings designed to support the Administration's Invest in America initiative and advance the country's economic growth and resiliency.

SBA continues to take regulatory action as necessary to adjust and adapt requirements for its programs to better support the country's economy. In the upcoming twelve to twenty-four months, SBA will focus on implementing recently finalized rules that increase competition in the market for small business credit, incentivize patient investments in innovative startups, and reduce barriers in access to capital for underserved communities. The Agency will also focus on advancing proposed rules that further remove barriers to credit across its loan programs for justice-involved entrepreneurs and make SBA's contracting and counseling programs accessible and impactful for a wider range of small businesses.

Administration's Priorities

To the extent possible and consistent with the Agency's statutory purpose, SBA will take action to support the Administration's priorities highlighted in the Fall 2023 Data Call for the *Unified Agenda of Federal Regulatory and Deregulatory Actions* (07/19/2023), namely: (1) tackling the climate change emergency; (2) advancing equity and supporting underserved, vulnerable, and marginalized communities; (3) creating and sustaining good jobs with a free and fair choice to join a union, and promoting economic resilience in general; and (4) improving service delivery and customer experience and reducing administrative burdens. In fact, many of the Agency's rulemakings cut across multiple priorities. For example, SBA's amendments to Small Business Investment Company (SBIC) program regulations (RIN 3245–AH90, described below) not only support the Administration's priority to advance equity and support underserved communities, but also aim to improve SBA response times and enable SBA to focus on customer relationships and monitoring funds, efforts that broadly advance the Administration's fourth priority. Highlighted below are some of SBA's most important regulatory actions arranged by Administration priority, including actions SBA has completed since the spring 2023 Unified Agenda and actions that SBA plans to take in the upcoming 12–24 months.

Priority (1)—Actions That Tackle the Climate Change Emergency

Over the past year, SBA has continued to make efforts toward its a multi-year priority goal to help prepare and rebuild resilient communities by enhancing communication efforts for disaster mitigation. Under the Small Business Act, SBA is authorized to make disaster loans for efforts to repair, rehabilitate, or replace property damaged or destroyed as a result of a disaster. SBA's regulations in 13 CFR part 123 contain the legal framework for the SBA Disaster Loan program, which delivers SBA financing specifically targeted for pre-disaster and post-disaster mitigation projects. SBA can also tap into its other financing programs for funding to put toward disaster mitigation measures. No regulations are necessary to implement either of these options. In addition to its regulatory actions, SBA will continue to focus its efforts on educating the public on the benefits of investing in mitigation and resilience projects and on increasing awareness of SBA loan programs that small businesses can take advantage of to purchase, renovate, or retrofit buildings and equipment in order to reduce greenhouse gas emissions, improve energy efficiency, and enable the development of innovative solutions that support the green economy.

i. Disaster Assistance Loan Program Changes to Maximum Loan Amounts and Miscellaneous Updates (RIN 3245–AH91)

SBA continues to develop regulatory actions that enhance and modernize its procurement and capital assistance programs in order to combat the climate crisis. A direct final rule for the Disaster Loan program, effective July 31, 2023, aimed to increase disaster survivors' access to much needed funds to repair or replace damaged property by, among other things, increasing home loan lending limits, extending the deferment period, and expanding mitigation options.

Specifically, the final rule increased the lending limits on amounts for repair and replacement of disaster damaged real and personal property, for refinancing, for mitigation, and for contractor malfeasance. These were necessary changes as current home loan lending limits had not been adjusted since 1994, but inflation, housing prices, and construction and labor costs have increased over time. From 2018 through 2022, approximately 8.5% of borrowers were unable to fully restore their real estate and replace their personal property due to the current home loan lending limits. In some cases, the numbers were even higher; for example, 64.2% of recipients of home loans for damage caused by the 2021 Colorado Wildfires and 17.6% of such borrowers from Hurricanes Fiona and Ian were unable to fully restore their real estate and replace personal property. Before this rule, this shortfall was expected only to continue to increase and impact greater numbers of disaster survivors in other regions as disasters and disaster recovery becomes more frequent, widespread, and expensive. With respect to deferment periods, the final rule increased the initial deferment period from 5 months to 12 months, reducing the immediate financial burden for disaster survivors, a crucial change as repair and replacement timelines often extend beyond the prior 5-month deferment period. Additionally, the final rule expanded the allowable use of disaster loan funds used to protect damaged or destroyed real property from possible future ''similar'' disasters to simply all possible future disasters. By eliminating the word ''similar,'' SBA has provided a disaster loan recipient the flexibility to use loan funds allocated for mitigation to protect against *any* type of disaster and thus better protect their property from future disasters. The amended regulations also allow the Administrator to increase the maximum loan amounts

to homeowners and renters under a specific disaster declaration based on appropriate economic indicators, such as current building costs, regional median home prices, and the Consumer Price Index (CPI) and the Producer Price Index (PPI) for the region(s).

As a direct final rule, the public was invited to comment until July 17, 2023. SBA did not receive significant adverse comment, and the rule became effective on July 31, 2023.

Priority (2)—Actions That Advance Equity and Support Underserved, Vulnerable and Marginalized Communities

SBA continues to make efforts to improve access of underserved communities to capital, federal government procurement and contracting opportunities, disaster assistance, and small business services like counseling and training. In addition to SBA's actions to promote access to its programs—namely addressing language, cultural differences, and socio-economic factors, expanding the lending network to groups that work with underserved communities, leveraging technology, and addressing the digital/technological divide—SBA continues to make efforts to identify gaps and develop a more targeted outreach by revising information collection instruments and commissioning federal statistical agencies to gather demographic data on programs participants and service recipients.

SBA also continues to explore regulatory actions that can supplement its Equity Action Plan objectives and support underserved, vulnerable, and marginalized communities. For example, SBA is prioritizing development of a rulemaking to standardize the regulatory requirements that govern its certification programs: the 8(a) BD program, HUBZone, the Women-Owned Small Business (WOSB) program, and the Veteran Small Business Certification program (VetCert). This is consistent with SBA's ongoing efforts to support businesses in underserved markets and remove barriers to entry in SBA's small business contracting programs. In addition, the final rule for the SBIC program (RIN 3245–AH90, discussed below) intends to implement Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* by reducing financial and administrative barriers to participation in the SBIC program and modernizing the program's license offerings to align with a more diversified set of new funds investing in underserved small businesses.

i. Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program (RIN 3245–AH70)

The 8(a) BD program helps firms owned and controlled by socially and economically disadvantaged individuals strengthen their ability to compete effectively in the economy by providing training and various forms of technical, financial, and procurement assistance. This final rule, effective April 27, 2023, made several changes to the program, including, among other things, recognizing a process for allowing a change of ownership in a former participant that is still performing one or more 8(a) contracts. Program regulations previously stated that a program participant awarded one or more 8(a) contracts could substitute one disadvantaged individual for another disadvantaged individual without requiring the termination of those contracts or a request for waiver. The rule clarified the regulation's language to make clear that, just like current program participants, former participants performing 8(a) contract(s) may change ownership, provided the new ownership claims a socially and economically disadvantaged status, without the requirement for contract termination or a waiver. As a result, individual entrepreneurs and entities (*i.e.,* tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs)) can acquire an existing platform of capabilities and past performance, as well as an established contract revenue stream with fewer administrative burdens.

In addition, the rule clarified that an applicant or participant firm that settles its debts with the federal government is not barred from participating in the program. Specifically, where a firm or its principals can demonstrate that any financial obligations owed have been settled and discharged by the federal government, that firm will be eligible for the 8(a) BD program. The rule also clarified that a business concern can use its successful performance of state, local, or federal government contracts to demonstrate its ''potential for success,'' a requirement for program eligibility, and expanded the means by which tribally-owned businesses can demonstrate potential for success, by allowing such applicants to submit financial statements as evidence of their potential in lieu of federal income tax returns, which not all tribally-owned small businesses file. The rule also made several changes relating to 8(a) contracts, including clarifying that a contracting officer cannot limit an 8(a) competition to participants having more than one certification (*e.g.,* 8(a) and HUBZone), ensuring that 8(a) competition remains available to all eligible program participants. The rule clarified not only the prohibition against an agency requiring one or more other certifications in addition to its 8(a) certification, but also makes similar clarifications to the regulations for the SDVO, HUBZone, and WOSB programs.

The final rule reflects feedback SBA received during five tribal consultations and listening sessions about a proposal to add certain reporting and Community Benefits Plan requirements for entities having one or more participants in the 8(a) BD program. Based on that feedback, SBA eliminated the proposal in the final rule. In addition, the rule reflects extensive feedback in the form of over 650 comments received from 125 commenters, with most comments supporting the rule's substantive changes. SBA adopted suggested changes, made clarifications to the rule's language as appropriate, or explained its rationale for rejecting suggestions. In addition to accepting feedback on the rule in general, SBA sought comments on specific issues, including issues relating to 8(a) and Timber Set-Aside program waivers, sole-source 8(a) follow-on procurement, and Community Benefits Plans. SBA developed the sections of the final rule that were focused on these issues based on the feedback received.

ii. Criminal Justice Reviews for the SBA Business Loan Programs and Surety Bond Guaranty Program (RIN 3245–AI03)

SBA is proposing to amend regulations governing SBA's business loan programs (the 7(a) Loan program, 504 Loan program, Microloan program, Intermediary Lending Pilot (ILP) program, and Surety Bond Guarantee (SBG) program) and the Disaster Loan program (except for the COVID Economic Injury Disaster Loan (EIDL) program) to modify how SBA considers applicants with criminal history. The amendments are designed to improve equitable access based on criminal background review of applicants seeking to participate in one or more of these programs. After conducting a comprehensive study of SBA capital programs' current policies on individuals with criminal histories, SBA believes the proposed changes honor and incorporate the statutory mandates of 15 U.S.C. 631 that emphasize both the importance of small business development in general and SBA's responsibility to increase opportunities

for certain groups that historically may not have had equitable opportunities for small business ownership. Aside from these statutory mandates, the rule is based on how state and local governments and the private sector have broadened access to business capital and employment opportunities and is supported by data and empirical research demonstrating the public safety and economic benefits of such broadened access. Federal laws have also evolved regarding recidivism and second chances for formerly incarcerated individuals. SBA has determined that there is a need to update regulations to reduce barriers to participation in these programs for equitable support for small business entrepreneurs with criminal history records.

Priority (3): Actions That Create and Sustain Good Jobs With a Free and Fair Choice To Join a Union and Promote Economic Resilience in General

Small businesses form the foundation of the U.S. economy. They create two-thirds of net new jobs and drive American innovation and competitiveness. SBA continues to focus on helping small businesses develop economic resilience. SBA's Office of Capital Access has two goals: to increase the capital available to start and grow the small businesses that would not otherwise be able to access capital through conventional sources and to provide disaster assistance in the form of home and business loans for disaster survivors. SBA's loan guaranty and microloan programs provide credit-worthy small businesses with access to capital they would otherwise not receive because they cannot qualify for a loan under conventional credit standards. The Agency's disaster assistance programs help small businesses prepare for disasters and restore small businesses and their communities struck by disaster.

SBA aims to develop economic resilience not only in small businesses, but broadly within the U.S. economy, by helping ensure small businesses receive their fair share of federal contracting dollars. This is a crucial aspect of the government-wide effort to strengthen the federal supply chain. To that end, SBA continues to look for regulatory avenues to enhance its contracting assistance programs, which help small businesses win federal contracts. As noted, SBA is prioritizing development of a rulemaking that will standardize the certification requirements and process for SBA's contracting assistance programs—the 8(a) BD program, HUBZone, WOSB, and VetCert. The streamlined certification regulations and process will eliminate unnecessary bureaucratic obstacles for eligible small businesses seeking multiple certifications, which will allow federal contracting dollars to flow more easily to eligible small businesses. The proposed updates will also ensure regulatory consistency among the programs to the extent possible. In streamlining the certification regulations and process, SBA aims to facilitate federal contracting of eligible small businesses, and thereby assist the federal government as a whole more effectively diversify its supply chains and strengthen its economic resilience. In addition, SBA continues to identify gaps in small business investment and develop rules that aim to plug those gaps.

i. Small Business Investment Company Investment Diversification and Growth (RIN 3245–AH90)

A final rule for the SBIC program, effective August 17, 2023, aims to significantly reduce barriers to program participation of new SBIC fund managers and funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. SBA believes it must reduce barriers to participation and diversify its patient capital and long-term loan program to ensure long-term program stability and mission effectiveness.

The rule introduces new types of SBICs, termed Accrual SBICs and Reinvestor SBICs, through which SBA will increase program investment diversification and patient capital financing for small businesses. It also introduces a new Accrual Debenture for issuance by these Accrual SBICs. This new structure is intended to attract new investors by reducing perceived disadvantages of being an SBIC. The Accrual Debenture aligns with cash flows of equity-focused strategies by offering an alternative to a semi-annual interest payment Debenture structure for all SBIC licensees either (1) not taking a control-position in small businesses and or (2) with over 75% of capital earmarked for long-term equity investment in small businesses to help them grow and scale. This alternative structure accommodates a longer horizon for investments in small businesses that might require more patient capital. In introducing this new structure, SBA aims to increase the equity funding available to underserved small business owners and unlock equity as a source of funding for many small business owners. Importantly, SBA believes it can offer this new structure while maintaining a zero-subsidy cost in the program.

During the rulemaking process, SBA received comments on both the rule and the SBIC program generally. SBA incorporated the recommendations of many of the comments, even those that were not directly within scope of the rulemaking. For example, in response to comments urging an expedited SBIC licensing process, SBA elected to introduce an expedited subsequent fund licensing process for eligible applicants and modify its standard operating procedures to increase transparency in the licensing process and decrease potential tail-end delays. SBA is also making efforts to implement recommendations that the Agency publish the names and dates of licensed SBICs in the **Federal Register**, collect certain data and financial metrics, and modernize certain aspects of the program, including the ''reinvestment'' restrictions which prohibit Section 301(c) Licensees from investing in a fund-of-funds capacity in emerging managers and licensing fees.

Among changes to the rule itself, after consideration of all public comments, SBA modified the final rule to make the Accrual Debenture available only to Accrual SBICs and Reinvestor SBICs, to align with the types of long-duration growth investing they primarily perform, and to exclude Standard SBICs, which may issue only Standard Debentures and Discount Debentures. This change limits the Accrual Debenture to SBICs that focus on stimulating small businesses. In addition, based on public comment, the final rule does not apply the new modified distribution waterfall to Standard Debenture Licensees, but instead applies it exclusively to the Accrual Debenture instrument. The final rule thus separated distribution requirements based on three categories of SBICs: (1) Non-leveraged Licensees; (2) Standard Debenture SBICs; and (3) Accrual SBICs and Reinvestor SBICs. SBA also decided against moving forward with modifications to Examination fees based on public comment. In addition, SBA modified the final rule to modify an exception to the restriction prohibiting licensees from making investments into relenders or reinvestors to permit reinvestors which are Accrual SBICs to make equity investments in certain underserved reinvestors.

Priority (4): Actions That Improve Service Delivery, Customer Experience, and Reduce Administrative Burdens

SBA continues to make efforts to improve service delivery and customer experience and reduce administrative burdens wherever possible. In fact, many of the rules already mentioned under other priorities aim to support this priority. For example, SBA's amendments to the Disaster Loan program (RIN 3245–AH91) removed a business loan limit on amounts for landscaping or recreational facilities. Prior to the removal, SBA would make exceptions to the limit based on documented functional need on a case-by-case basis. The change provides consistency with home loans, removes the need for administrative exceptions, and reduces administrative burden on the disaster survivor and SBA in securing resources to repair or replace damaged property. SBA's amendments to the 8(a) BD program (RIN 3245–AH70) advance this priority in several ways, including by making SBA's approval of a participant's business plan part of that participant's eligibility determination in certain situations, by streamlining the reapplication process for small businesses whose application was denied solely due to size that was later found to be small in connection with a formal size determination, providing that such applicants shall be immediately certified as eligible for the program, and by making it easier to meet the bona fide place of business requirement for 8(a) construction contracts (when imposed), which commenters noted would reduce overhead costs and provide needed flexibility to meet client needs more efficiently at a lower cost. And, as previously mentioned, SBA's amendments to the SBIC program (RIN 3245–AH90) include streamlined regulatory filing and reductions in duplicative data collections and bureaucratic processes to improve its response times and enable a greater focus on customer relationships and fund monitoring. For example, the rule allows approval to be granted at licensing of an SBIC's Total Intended Leverage Commitment, creates safe harbors for certain conflicts of interest that eliminate the need for explicit SBA approval, and allows automatic approval of GAAP-compliant valuations for non-leveraged licensees, changes which SBA believes will decrease the time and cost associated with applying for an SBIC license. In addition, SBA is prioritizing a rulemaking designed to standardize the regulatory requirements that govern its certification programs: the 8(a) BD program, HUBZone, the WOSB program, and VetCert.

Following revisions to the requirements in SBA's 8(a) BD program and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs, SBA is issuing conforming revisions to its affiliation rules that govern all small business procurement programs and to the WOSB

program. These revisions will ensure consistent requirements for ownership and control across SBA's procurement programs.

i. Affiliation in Small Business Procurement Program (RIN 3245–AH97)

SBA is proposing to amend its regulations on affiliation to expand access to credit and capital for small businesses, particularly those involved in government contracting. The proposed rule will address an inconsistency between SBA's affiliation rule and the rule on ownership and control in the SDVOSB program. On November 29, 2022, SBA published a final rule on procedures for certifying Veteran-Owned Small Business (VOSB) concerns and SDVOSB concerns. 87 FR 73400 (Nov. 29, 2022). That rule included changes to SBA's ownership and control rules for service-disabled veteran-owned small business concerns. In particular, SBA's rules allow a non-veteran to participate in certain extraordinary corporate decisions without causing the business to lose its veteran-owned status. SBA listed such extraordinary circumstances as: (1) the company's addition of a new equity stakeholder; (2) the dissolution of the company; (3) the sale of the company or all assets of the company; (4) the merger of the company; and (5) the company's declaration of bankruptcy. See also 83 FR 48908 (Sept. 28, 2018). Under that provision in the SDVOSB program, a non-veteran could have authority to do any of those five extraordinary actions, but SBA's affiliation rule still could cause the non- veteran's authority to be deemed ineligible as a small business concern under the negative control provision in 13 CFR 121.103(a)(3). Accordingly, this proposed rule makes the negative- control rule in SBA's affiliation rule consistent with ownership-and-control rules in the SDVOSB program. The proposal also would better define what stock holdings and merger agreements lead to affiliation.

ii. WOSB Program Updates and Clarifications (RIN 3245–AI04)

The WOSB regulations were updated in 2020 to implement a certification program as mandated by Congress. Certified WOSB program participants are required to re-certify as to their eligibility every three years, which means the first group of firms will begin the re- certification process in October of 2023. In conjunction with this anniversary, SBA is updating the regulations for clarity and ease of use. After three years of feedback from applicants, program participants, contracting officers, advocacy groups, Congressional staffers, and the Small Business Procurement Advisory Council, among others, SBA looks forward to refining the regulations to provide clear, accessible guidance for all stakeholders.

SBA also plans to align WOSB regulations with SBA's other government contracting programs, such as VetCert and 8(a), where appropriate. Such changes are especially important because the WOSB program has certification reciprocity with both programs. The 8(a) regulations were significantly revised earlier this year, and the VetCert regulations are also new as of January, so the WOSB proposed updates will ensure regulatory consistency to the extent possible.

iii. Small Business Development Center Program Revisions (RIN 3245–AE05)

SBA plans to issue a final rule to update its regulations for the Small Business Development Centers (SBDC) program. The program links the resources of federal, state and local governments with the resources of the educational community and the private sector to provide assistance to the small business community. In partnership with SBA's Office of Small Business Development Centers (OSBDC) and District Offices, SBDCs develop business counseling and training programs, informational tools, and other services that enhance the economic development goals and objectives of SBA in their respective service areas and local funding partners. Although Congress has amended the statute authorizing the SBDC program at least 17 times, SBDC regulations have not been comprehensively updated since 1995. This final rule will incorporate updates to the Uniform Guidance, *i.e.,* the administrative requirements, cost principles, and audit requirements for federal awards. It will also align SBDC regulations with current SBA policy and guidance as well as modernize and clarify the regulations to be more efficient, effective, and transparent. Among other changes, the rule clarifies the role of the District Office regarding oversight activities, defines and clarifies the various roles, procedures, documents, and categories of funding,

and codifies the current Lead Center Director selection process used by SBDCs.

The intent of the changes is to make program operations less onerous for recipient organizations. Current program policies and requirements are set forth in the annual notice of funding opportunity and the SBDC cooperative agreements, in addition to the agency- and government-wide guidance, including the Uniform Guidance. The above changes will simplify these governing documents by moving select policy language to the regulations. In addition, by consolidating programmatic guidance, the rule will ensure consistency in program administration and enhance program oversight. The rule will also include policy and procedural changes identified by the Agency as necessary to preserve the integrity and legislative intent of the program.

Pursuant to the Small Business Act's requirement that SBA consult with the recognized association of SBDCs in any SBDC rulemaking action, SBA shared the draft proposed rule and subsequently met with *America's SBDC* in March 2022 to incorporate the association's feedback as appropriate and briefed the nationwide network during its Annual Conference and Spring Leadership meeting. SBA also participated in three tribal consultations that addressed the SBDC program, including the regulations. In addition, SBA considered the more than 400 comments on the proposed rule it received during the notice-and-comment process and is incorporating many of the suggestions in its revisions to the proposed rule. Nearly ten percent of the comments related to the ability of the networks to partner with local organizations to deliver services to small businesses. SBA intends to adopt the comments and expand and allow the SBDC Lead Center to partner not only with the institutions of higher education, but also with other community organizations, such as Chambers of Commerce.

Conclusion

Through these and other regulatory actions, SBA aims to better help Americans start, grow, and build resilient businesses and recover after disasters and thereby strengthen the American economy. In developing its rules, the Agency will continue to advance the Administration's priorities to tackle the climate change emergency; advance equity and support underserved, vulnerable, and marginalized communities; create and sustain good jobs with a free and fair choice to join a union and promote economic resilience in general; and improve service delivery and customer experience while reducing administrative burdens.

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION (SSA)

I. Statement of Regulatory Priorities

We administer the Retirement, Survivors, and Disability Insurance programs under title II of the Social Security Act (Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and the Special Veterans Benefits program under title VIII of the Act. As directed by Congress, we also assist in administering portions of the Medicare program under title XVIII of the Act. Our regulations codify the requirements for eligibility and entitlement to benefits and our procedures for administering these programs. Generally, our regulations do not impose burdens on the private sector or on State or local governments, except for the States' Disability Determination Services. However, our regulations can impose burdens on the private sector in the course of evaluating a claimant's initial or continued eligibility. We fully fund the Disability Determination Services in advance or via reimbursement for necessary costs in making disability determinations.

As we are developing our regulations, we seek to increase participation and engagement with members of the public affected by our regulations, including in the development of our regulatory priorities. In this Regulatory Plan, we note engagement efforts that have helped to inform our priorities to date. We seek to hear from members of the public who have not typically participated in the regulatory process.

The entries in our regulatory plan represent issues of major importance to the Agency. Through our regulatory plan, we intend to:

A. Simplify a specific policy within the SSI program by no longer considering food in In-Kind Support and Maintenance (ISM) calculations (RIN 0960–AI60);

B. Expand the definition of a Public Assistance (PA) Household to include an additional means- tested assistance program (RIN 0960–AI81);

C. Expand the rental subsidy exception beyond the seven states to which it already applies so that it applies nationwide (RIN 0960–AI82); and

D. Revise the disability adjudication process regarding how we consider past work to reduce the application time burden on claimants and expedite the disability application and determination process (RIN 0960–AI83).

II. Regulations in the Proposed Rule Stage

We are not including any of our regulations in the proposed rule stage in this statement of regulatory priorities.

III. Regulations in the Final Rule Stage

Our final regulations would expand the definition of a PA household for purposes of our programs to include the Supplemental Nutrition Assistance Program (SNAP) as an additional means-tested public income maintenance (PIM) program, decreasing the amount of income we would be required to deem to SSI applicants. This proposal reflects feedback we received from advocacy groups representing claimants and beneficiaries during listening sessions conducted under the authority of Executive Order (E.O.) 12866. These listening sessions took place in Fall 2022, during the development of the omitting food from the ISM calculations proposed rule. During the public comment period for the omitting food ISM proposed rule, several of these advocacy groups also submitted comments relating to the definition of PA household. Across both the listening session and the public comment submission, these groups expressed that the expansion of the definition of a PA household should include additional means-tested programs to help underserved families more easily access benefits. Advocates conveyed this was a top priority for them. (RIN 0960–AI81).

Our final regulations would also apply nationwide the ISM rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States, by recognizing that a ''business arrangement'' exists when the amount of required monthly rent equals or exceeds the presumed maximum value. This proposal would bring nationwide uniformity to our rules and improve equality in the application of the rental subsidy policy. This proposed rule was also informed by the Executive Order 12866 listening sessions conducted during the development of the omitting food from the ISM calculations regulation. (RIN 0960–AI82).

Our final regulations revise the period that we consider when determining whether an individual's past work is relevant for purposes of making disability determinations and decisions,

which would reduce the reporting burden for individuals seeking disability benefits and decrease the time associated with the overall disability application and decision process. The development of this proposed rule was informed by a listening session conducted by our Office of Communications with advocacy groups representing claimants and beneficiaries. (RIN 0960–AI83).

Lastly, our final regulations target changes to the ISM policy in our SSI program, including this regulation on food provided by others. The changes would simplify a specific policy within the SSI program by no longer considering food in the calculation of ISM. In Fall 2022, we heard from advocacy groups representing claimants and beneficiaries during two Executive Order 12866 listening sessions. We incorporated our listening session notes in the rulemaking record via *www.regulations.gov,* under docket SSA–2021–0014. (RIN 0960–AI60).

Retrospective Review of Existing Regulations

Pursuant to section 6 of Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), SSA regularly engages in retrospective review and analysis for multiple existing regulatory initiatives. These initiatives may be proposed or completed actions, and they do not necessarily appear in The Regulatory Plan. You can find more information on these completed rulemakings in past publications of the Unified Agenda at *www.reginfo.gov* in the ''Completed Actions'' section for the Social Security Administration.

SSA

Final Rule Stage

226. Omitting Food From In-Kind Support and Maintenance Calculations [0960–AI60]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C.1382; 42 U.S.C. 1382a; 42 U.S.C. 1382b; 42 U.S.C. 1382c(f); 42 U.S.C. 1382j; 42 U.S.C. 1383; 42 U.S.C. 1382 note; . . .

CFR Citation: 20 CFR 416.1102; 20 CFR 416.1130; 20 CFR 416.1131; 20 CFR 416.1103; 20 CFR 416.1104; 20 CFR 416.1121; 20 CFR 416.1124; 20 CFR 416.1132; 20 CFR 416.1133; 20 CFR 416.1140; 20 CFR 416.1147; 20 CFR 416.1148; 20 CFR 416.1149; 20 CFR 416.1157; . . .

Legal Deadline: None.

Abstract: This final rule removes food from the calculation of In-Kind Support and Maintenance (ISM). Accordingly, we would calculate ISM based only on shelter expenses (*i.e.,* costs associated with room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services). The changes simplify our policy and promote equity by not disadvantaging an already vulnerable population when they receive food assistance.

In the Fall of 2022, we heard from advocacy groups representing claimants and beneficiaries during two E.O. 12866 listening sessions. We incorporated our notes in the rulemaking record via *www.regulations.gov,* under docket SSA–2021–0014.

Statement of Need: This change would remove food costs when we calculate ISM. By doing so, it streamlines the ISM policy and resulting SSI program complexity.

Summary of Legal Basis: We are removing food from our ISM calculations. This will streamline the policy and reduce the program complexity of ISM.

Alternatives: The current proposal streamlines the SSI process.

Anticipated Cost and Benefits: We estimate that implementation of this proposed rule for all eligibility and payment determinations effective April 1, 2023 and later will result in an increase in Federal SSI payments of a total of about $1.5 billion over the period of fiscal years 2023 through 2032.

Risks: We do not anticipate risk to the integrity of our program.

Timetable:

Action	Date	FR Cite
NPRM	02/15/23	88 FR 9779
Final Action	03/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Scott Logan, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 966–5927, *Email: scott.logan@ssa.gov.*

RIN: 0960–AI60

SSA

227. Expand the Definition of a Public Assistance (PA) Household [0960–AI81]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 405(a)

CFR Citation: 20 CFR 416.1142; 416.1161; 416.1163; 416.1165.

Legal Deadline: None.

Abstract: We propose expanding the definition of a Public Assistance (PA) Household to include additional means-tested assistance programs. This will decrease the number of applicants and recipients charged in-kind support and maintenance, which will simplify living arrangement development within the Supplemental Security Income (SSI) program.

This proposal reflects feedback we received from advocacy groups representing claimants and beneficiaries during listening sessions conducted under the authority of Executive Order (E.O.) 12866. These listening sessions took place during the development of the omitting food from the ISM calculations regulation in Fall 2022. We also received public comments submitted by these advocacy groups during the public comment period associated with the omitting food from ISM calculations NPRM. The Agency heard from these advocacy groups that the expansion of the definition of a PA household to include additional means-tested programs could help underserved families more easily access benefits and that this was a top priority.

Statement of Need: This change, adding SNAP to our regulatory definition of a public assistance household, would decrease the number of SSI applicants and recipients charged with in-kind support and maintenance (ISM). By doing so, it streamlines the ISM policy and resulting SSI program complexity, which supports the economic security of households who receive nutrition assistance.

Summary of Legal Basis: We are adding SNAP as a means-tested public income maintenance program to our regulatory definition of a public assistance household. This will streamline the policy and reduce the program complexity of ISM.

Alternatives: The current proposal streamlines the SSI process.

Anticipated Cost and Benefits: We estimate that implementation of this proposed rule would result in a total increase in Federal SSI payments of $14.8 billion over fiscal years 2024 through 2033, assuming implementation of this rule on May 15, 2024.

Risks: We do not anticipate risk to the integrity of our program.

Timetable:

Action	Date	FR Cite
NPRM	09/29/23	88 FR 67148
NPRM Comment Period End.	11/28/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Tamara Levingston, Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, *Phone:* 410 966–7384, *Email: tamara.levingston@ssa.gov.*

RIN: 0960–AI81

SSA

228. Nationwide Expansion of the Rental Subsidy Policy for SSI Recipients [0960–AI82]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 405(a)

CFR Citation: 20 CFR 416.1130(b).

Legal Deadline: None.

Abstract: We propose expanding the rental subsidy exception beyond the 7 states to which it already applies so that it applies nationwide. Accordingly, our nationwide policy would be that a business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value or the current market value, whichever is less. We expect that the proposed change would improve service delivery by making our policy uniform throughout the country and reducing administrative burdens for individuals seeking access to the Supplemental Security Income (SSI) program.

This was informed in part by the Executive Order 12866 listening sessions conducted during the development of the omitting food from the ISM calculations regulation.

Statement of Need: This proposal streamlines the agency's policy on In-Kind Support and Maintenance (ISM) and reduces SSI program complexity.

Summary of Legal Basis: Social Security Administration general rulemaking authority 42 U.S.C. 405(a); 42 U.S.C. 1383(d)(1).

Alternatives: The current proposal streamlines the SSI process.

Anticipated Cost and Benefits: We estimate that implementation of this proposed rule would result in a total increase in Federal SSI payments of $971 million over fiscal years 2024 through 2033, assuming implementation of this rule on April 29, 2024.

Risks: We do not anticipate risk to the integrity of our program.

Timetable:

Action	Date	FR Cite
NPRM	08/24/23	88 FR 57910
NPRM Comment Period End.	10/23/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Tamara Levingston, Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, *Phone:* 410 966–7384, *Email: tamara.levingston@ssa.gov.*

RIN: 0960–AI82

SSA

229. Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work [0960–AI83]

Priority: Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 405(a); 42 U.S.C. 1383(d)(1)

CFR Citation: 20 CFR 404 Subpart P; 20 CFR 416 Subpart I; 20 CFR 404.1560(b); 20 CFR 416.960(b).

Legal Deadline: None.

Abstract: We propose to develop intermediate improvements to reduce the burden in our current disability adjudication process as a step towards longer-term reforms to ensure our disability program remains current and supports equitable outcomes. Actions could include decreasing the years of past work we consider when making a disability determination, as well as other potential regulatory changes.

The development of this regulation was informed by a listening session conducted by our Office of Communications with advocacy groups representing claimants and beneficiaries.

Statement of Need: Reducing the reporting requirements for prior work to a 5-year period instead of 15 years will reduce the burden on individuals seeking disability benefits while still providing us with enough relevant information to make accurate disability determinations and decisions.

Summary of Legal Basis: Social Security Administration general rulemaking authority 42 U.S.C. 405(a); 42 U.S.C. 1383(d)(1).

Alternatives: We make disability determinations consistent with statutes and our current regulations. Taking actions such as exploring revising the definition of past relevant work would reduce the burden on individuals and improve customer service.

Anticipated Cost and Benefits: We estimate that implementation of the proposed rule would result in an increase in scheduled SSDI benefits of $22.9 billion, a net reduction in scheduled old-age and survivors insurance (OASI) benefits of $6.5 billion, and an increase in Federal SSI payments of $3.9 billion in total over fiscal years 2024 through 2033, assuming implementation for all decisions made on or after May 6, 2024.

Risks: Risks not yet identified.

Timetable:

Action	Date	FR Cite
NPRM	09/29/23	88 FR 67135
NPRM Comment Period End.	11/28/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Mary Quatroche, Director, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 966–4794, *Email: mary.quatroche@ssa.gov.*

RIN: 0960–AI83

BILLING CODE 4191–02–P

FEDERAL ACQUISITION REGULATION (FAR)

The Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space are members of the Federal Acquisition Regulatory Council (FAR Council), and jointly issue and maintain a single Government-wide procurement regulation known as the Federal Acquisition Regulation (FAR). The FAR provides uniform policies and procedures for the acquisition of supplies and services by executive agencies. The FAR Council, which is chaired by the Administrator of Federal Procurement Policy, assists in the direction and coordination of Government-wide procurement policies to be implemented in the FAR.

Public Engagement

The FAR Council engages with the public on rules that will affect the FAR in several ways. First, in addition to publishing abstracts of and anticipated publication dates for upcoming

rulemakings in the Office of Information and Regulatory Affairs biannual Unified Agenda, members of the public can track the progress of any open and pending FAR rule via the ''Open FAR Cases'' report, which is publicly available at *https://www.acq.osd.mil/dpap/dars/far_case_status.html.* The report is updated on a weekly basis and includes the following information: a case number, title, FAR parts anticipated to be impacted by the rule, a summary of the basis for the rule, and the rule status. Members of the public who are interested in a particular FAR case are encouraged to monitor the Open FAR Cases Report to track where a particular rule is in the rulemaking process.

In addition to the Open FAR Cases report, the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) independently engage with several industry associations on a quarterly basis including, but not limited to, the Aerospace Industries Association, the National Defense Industrial Association, and the Professional Services Council. During these meetings, DoD, GSA, and NASA often provide updates on open FAR cases and association representatives are able to provide feedback from their various members or member groups on upcoming rulemakings.

While developing certain FAR rules, DoD, GSA, and NASA may seek input from the public by publishing in the **Federal Register** an advance notice of proposed rulemaking (ANPR) or a general request for information (RFI). Such notices normally include a summary of the overarching policy objectives of the rule and a list of questions seeking input that will help the Government develop a proposed rule. Information on whether DoD, GSA, and NASA plan on publishing an ANPR or RFI is included in both the Open FAR Cases Report and OIRA's biannual Unified Agenda.

Occasionally, while a proposed or interim FAR rule is out for public comment, DoD, GSA, and NASA may hold a public meeting to provide an overview of the rule and allow the public to provide feedback to the Government in an open forum. Information about whether DoD, GSA, and NASA plan on holding a public meeting on a rule is normally included in the proposed or interim rule when it is published for public comment. Presentations made during the public meeting are included in the rule docket and made publicly available. Information provided during the public meeting is also considered during development of the final rule.

DoD, GSA, and NASA are also rethinking the types of supporting documentation that should be published with proposed or interim rules to facilitate public understanding of the rule. For example, for FAR Case 2022–006, Sustainable Procurement (RIN: 9000–AO43), DoD, GSA, and NASA included, as a supporting document in the rule docket at *www.regulations.gov,* a slide show that illustrates the overarching restructuring of existing content in FAR part 23, a visual aid intended to make clear the extensive edits presented in the amendatory language of the rule.

Finally, DoD, GSA, and NASA independently conduct outreach to industry regarding upcoming rulemakings. For example, the GSA Federal Acquisition Service (FAS) holds webinars with its industry partners to provide an update on the current policy landscape, including summaries of upcoming FAR rules expected to have a significant impact on industry. As part of these webinars, which are available to the public at *https://buy.gsa.gov/interact/community/11/activity-feed,* GSA FAS includes information on the rulemaking process, how to monitor FAR and GSA FAR supplement rules, and best practices for submitting public comments.

Rulemaking Priorities

Pursuant to Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993), as reaffirmed and amended in Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), and Executive Order 14094, ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Plan and Unified Agenda provide public notice about the FAR Council's proposed regulatory and deregulatory actions within the Executive Branch. The Fall 2023 Unified Agenda consists of 56 active agenda items.

The FAR Council is required to amend the Federal Acquisition Regulation to implement statutory and policy initiatives. The FAR Council prioritization is focused on initiatives that:

- Tackle the climate change emergency,
- Advance equity and support underserved, vulnerable and marginalized communities,
- Promote economic resilience,
- Improve service delivery, customer experience, and reduce administrative burdens, and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

Rulemaking That Tackles Climate Change

FAR Case 2022–006, ''Sustainable Procurement,'' will implement requirements for the procurement of sustainable products and services per Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, and Office of Management and Budget Memorandum M–22–06. The rule will also reorganize FAR part 23 for consistency and clarity.

FAR Case 2021–015, ''Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk,'' will require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk, and to set science-based reductions targets per section 5(b)(i) of Executive Order 14030, ''Climate-Related Financial Risk.''

FAR Case 2021–016, ''Minimizing the Risk of Climate Change in Federal Acquisitions,'' will ensure agencies minimize the risk of climate change and consider the social cost of greenhouse gas emissions in major procurements per section 5(b)(ii) of Executive Order 14030, ''Climate-Related Financial Risk.'' An advance notice of proposed rulemaking was published in October of 2021 seeking input from the public on ways in which the Government could consider greenhouse gas emissions and climate risks in Federal procurement. The feedback is being considered in the development of the proposed rule.

Rulemaking That Advances Equity and Supports Underserved Communities

FAR Case 2022–009, ''Certification of Service-Disabled Veteran-Owned Small Businesses,'' will clarify the certification requirements for service-disabled veteran-owned small businesses (SDVOSB) concerns to be eligible for the award of a sole source or set-aside SDVOSB contract.

FAR Case 2021–011, ''Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors,'' will permit small business first-tier subcontractors and joint venture members, in certain situations, to submit the past performance and experience they gained under these arrangements with their offers on Federal contracts. Contracting officers will be required to consider the capabilities and past performance provided by first-tier subcontractors and

joint venture members in certain situations.

FAR Case 2023–011, ''Small Business Participation on Certain Multiple Award Contract,'' will update and clarify market research, acquisition planning, small business coordination, and the use of set-asides during the placement of orders against certain multiple award contracts to increase small business participation in certain multiple award contracts.

Rulemaking That Promotes Economic Resilience

FAR Case 2022–004, ''Enhanced Price Preference for Critical Items,'' will add a list of critical items, along with their associated enhanced price preference, that will apply to acquisitions subject to the Buy American statute. This rule completes the framework added to the FAR as part of implementation of section 8 of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

FAR Case 2020–009, ''List of Domestically Nonavailable Articles,'' will amend the list of domestically nonavailable articles under the Buy American Act and the protocols to update the list. An advance notice of proposed rulemaking was published in May of 2020 seeking input from the public to assist in identifying domestic capabilities and for evaluating whether some articles on the list at FAR 25.104(a) should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. The feedback is being considered in the development of the proposed rule.

FAR Case 2022–011, ''Nondisplacement of Qualified Workers Under Service Contracts,'' will require contractors and subcontractors to offer qualified employees employed under predecessor contracts a right of first refusal of employment under successor contracts in accordance with Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts and the associated Department of Labor regulations at 29 CFR part 9.

FAR Case 2022–003, ''Use of Project Labor Agreement for Federal Construction Projects,'' will require the use of project labor agreements for large-scale construction projects with a total estimated value of $35 million or more in accordance with Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects. Project labor agreements are often effective in preventing labor-related disruptions on projects by using dispute-resolution processes to resolve worksite disputes and by prohibiting work stoppages, including strikes and lockouts.

Rulemakings That Improve Service Delivery and Customer Experience

FAR Case 2019–015, ''Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment,'' will bring the procedures on suspension and debarment in the FAR into closer alignment with the Nonprocurement Common Rule (NCR) procedures, creating a more consistent experience for industry.

FAR Case 2021–001, ''Increased Efficiencies with Regard to Certified Mail, In-person Business, Mail, Notarization, Original Documents, Seals, and Signatures,'' will streamline certain essential contracting procedures by increasing flexibilities and efficiencies with regards to certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This rule makes permanent policy flexibilities introduced during the pandemic.

Rulemakings That Support National Security

FAR Case 2021–017, ''Cyber Threat and Incident Reporting and Information Sharing,'' will increase the sharing of information about cyber threats and incident information and require certain contractors to report cyber incidents to the Federal Government to facilitate effective cyber incident response and remediation pursuant to sections 2(b), (c), (g)(i) and 8(b) of Executive Order 14028, ''Improving the Nation's Cybersecurity.''

FAR Case 2021–019, ''Standardizing Cybersecurity Requirements for Unclassified Information Systems,'' will standardize cybersecurity contractual requirements across Federal agencies for unclassified information systems pursuant to sections 2(i) and 8(b) of Executive Order 14028, Improving the Nation's Cybersecurity.

FAR Case 2023–002, ''Supply Chain Software Security,'' will require suppliers of software available for purchase by Federal agencies to comply with, and attest to complying with, applicable secure software development practices pursuant to section 4(n) and 4(k) of Executive Order 14028, Improving the Nation's Cybersecurity, and Office of Management and Budget Memorandum 22–18 and 23–16.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

BILLING CODE 6820–EP–P

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, CPSC, among other things:

- develops mandatory product safety standards or bans to address safety hazards, including where required by statute;
- obtains repairs, replacements, or refunds for defective products that present a substantial product hazard;
- develops information and education campaigns about the safety of consumer products;
- participates in the development or revision of voluntary product safety standards; and
- follows other statutory mandates.

Unless otherwise directed by congressional mandate, when deciding which of these approaches to take in any specific case, CPSC gathers and analyzes data about the nature and extent of the risk presented by the product. The Commission's rules at 16 CFR 1009.8 require the Commission to consider the following criteria, among other factors, when deciding the level of priority for any particular project:

- the frequency and severity of injuries;
- the causality of injuries;
- chronic illness and future injuries;
- costs and benefits of Commission action;
- the unforeseen nature of the risk;
- the vulnerability of the population at risk;
- the probability of exposure to the hazard; and
- additional criteria that warrant Commission attention.

Significant Regulatory Actions

Currently, the Commission is considering acting in the next 12 months on three rules—Regulatory Options for Table Saws (RIN 3041–AC31); Portable Generators (RIN 3041–AC36); and Gas Appliance Carbon Monoxide Sensors (RIN 3041–AD70)—which would constitute ''significant regulatory actions'' under the definition of that term in Executive Order 12866, although the Commission's rulemaking is not subject to E.O. 12866 review.

These priority levels are included to provide an analogous criterion through which the Commission can provide this information to the public.

CPSC

Proposed Rule Stage

230. Regulatory Options for Table Saws [3041–AC31]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 5 U.S.C. 553(e); 15 U.S.C. 2056; 15 U.S.C. 2058

CFR Citation: 16 CFR 1245.

Legal Deadline: None.

Abstract: In 2006, the Commission granted a petition asking that the Commission issue a rule to prescribe performance standards for an active injury mitigation (AIM) system to reduce or prevent injuries from contacting the blade of a table saw. The Commission subsequently issued a notice of proposed rulemaking (NPRM) that would establish a performance standard requiring table saws to limit the depth of cut to 3.5 millimeters when a test probe, acting as a surrogate for a human body/finger, contacts the table saw's spinning blade. Staff has conducted several studies to provide information for the rulemaking. Staff is assigned to submit a final rule briefing package to the Commission in fiscal year 2023.

Statement of Need: In the NPRM, the Commission preliminarily determined that there is an unreasonable risk associated with blade-contact injuries on table saws. Based on injury data reviewed in 2015, there were an estimated 33,400 table saw, emergency department treated injuries. Of these, staff estimated that 30,800 (92 percent) are likely related to the victim making contact with the saw blade. Of the 30,800 ED treated blade-contact injuries, an estimated 28,900 injuries (93.8 percent) involved the finger, with 4,700 amputations (15.2 percent).

Summary of Legal Basis: Table saws are consumer products that can be regulated by the Commission under the authority of the CPSA. See 15 U.S.C. 2052(a). Section 7 of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance requirements for a consumer product or that sets forth requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 20512084. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA.

Alternatives: The Commission could (1) pursue table saw voluntary standard activities; (2) extend the effective dates of a possible rule; (3) exempt certain categories of table saws from the draft proposed rule; (4) limit the applicability of the performance requirements to some, but not all, tables saws; or (5) pursue an information and education campaign to inform the public of the hazards of blade contact and the benefits of the AIM technology.

Anticipated Cost and Benefits: The expected gross benefits range from about $970 million to $2.45 billion over the product life of 1 year of sales. The expected costs of the draft proposed rule will range from about $168 million to about $345 million annually. Based on staff's benefit and cost estimates, net benefits (*i.e.,* benefits minus costs) for the market were estimated to amount to about $625 million to $2.3 billion over the product life of 1 year of table saw sales.

Risks: The CPSC has determined preliminarily that there may be an unreasonable risk of blade-contact injuries associated with table saws. Each year, approximately 30,000 table saw blade contact injuries are treated in emergency room departments. The most common diagnoses in blade-contact injuries were lacerations (60 percent), fractures (20 percent), and amputations (10 percent).

Timetable:

Action	Date	FR Cite
Commission Decision to Grant Petition.	07/11/06	
ANPRM	10/11/11	76 FR 62678
Notice of Extension of Time for Comments.	12/02/11	76 FR 75504
Comment Period End.	02/10/12	
Notice to Reopen Comment Period.	02/15/12	77 FR 8751
Reopened Comment Period End.	03/16/12	
Staff Sent NPRM Briefing Package to Commission.	01/17/17	
Commission Decision.	04/27/17	
NPRM	05/12/17	82 FR 22190
NPRM Comment Period End.	07/26/17	
Public Hearing	08/09/17	82 FR 31035
Staff Sent 2016 NEISS Table Saw Type Study Status Report to Commission.	08/15/17	
Staff Sent 2017 NEISS Table Saw Special Study to Commission.	11/13/18	
Notice of Availability of 2017 NEISS Table Saw Special Study.	12/04/18	83 FR 62561
Staff Sends a Status Briefing Package on Table Saws to Commission.	08/28/19	
Commission Decision.	09/10/19	
Staff Sends SNPRM Briefing Package to Commission.	09/21/23	
Commission Decision.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2225, *Email: cpaul@cpsc.gov.*

RIN: 3041–AC31

CPSC

231. Safety Standard for Residential Gas Furnaces and Boilers [3041–AD70]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 15 U.S.C. 2056; 15 U.S.C 2058

CFR Citation: None.

Legal Deadline: None.

Abstract: Over several years, staff has conducted research and worked with voluntary standards organizations

concerning the risk of injury and death associated with carbon monoxide (CO) production and leakage from residential gas furnaces and boilers. This proposed rule would establish a performance requirement, under which gas furnaces or boilers would be required to shut off or modulate when CO levels reach a specified level for a specified duration of time. In 2019, the Commission issued an advance notice of proposed rulemaking (ANPRM) to initiate rulemaking under the Consumer Product Safety Act and requested comments on the risk of injury and alternative approaches to address the risk. On September 24, 2021, the Commission voted to change the fiscal year 2022 deliverable from a notice of proposed rulemaking (NPRM) to Data Analysis and/or Technical Review (DA/TR). On February 9, 2022, staff provided a summary and status update in a public briefing to the Commission. Staff continues to investigate sensing technology to automatically adjust or shut off major gas appliances, such as furnaces and boilers, in response to dangerous operating levels of carbon monoxide in their combustion products and will share its findings with the relevant voluntary standards organizations. Staff is finalizing an NPRM briefing package and will submit it to the Commission in fiscal year 2023.

Statement of Need: From 2014 through 2018, there were 108 deaths from CO poisoning from gas furnaces and boilers, with 30,587 nonfatal injuries in the same time period.

Summary of Legal Basis: This notice of proposed rulemaking is authorized by the CPSA. 15 U.S.C. 2051–2084. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA.

Alternatives: The Commission could: (1) continue to work and advocate for change through the voluntary standards process; (2) rely on the use of residential CO alarms; (3) continue to conduct education and information campaigns; and (4) take no action.

Anticipated Cost and Benefits: The proposed rule is estimated to avert 576 deaths (19.20 deaths per year) and 126,387 injuries (roughly 5,357 injuries per year) over 30 years. Overall, the draft proposed rule has total annualized benefits of $356.52 million, discounted at 3 percent, and for every $1 in direct cost to consumers and manufacturers, the draft proposed rule generates $0.59 in benefits from mitigated deaths and injuries.

Risks: For the 20-year period, 2000 through 2019, these products were associated with a total of 539 CO deaths.

Timetable:

Action	Date	FR Cite
Staff Sent ANPRM Briefing Package to Commission.	07/31/19	
Commission Voted to Publish ANPRM.	08/07/19	
ANPR Published in FR.	08/19/19	84 FR 42847
ANPRM Comment Period End.	10/18/19	
Staff Sent FR Notice to Commission to Reopen Comment Period.	10/23/19	
Commission Voted to Reopen Comment Period.	11/01/19	
Notice to Reopen Comment Period Published in FR.	11/07/19	84 FR 60010
ANPRM Comment Period End.	01/06/20	
Commission Vote to Change Deliverable from NPRM to DA/TR.	09/24/21	
Public Briefing to Commission.	02/09/22	
Staff Sends NPRM Briefing Package to Commission.	09/25/23	
Commission Decision.	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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RIN: 3041–AD70

CPSC

Final Rule Stage

232. Portable Generators [3041–AC36]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 15 U.S.C. 2056; 15 U.S.C 2058

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: In 2006, the Commission issued an advance notice of proposed rulemaking (ANPRM) under the Consumer Product Safety Act (CPSA) concerning portable generators. The ANPRM discussed regulatory options that could reduce deaths and injuries related to portable generators, particularly those involving carbon monoxide (CO) poisoning. In fiscal year 2006, staff awarded a contract to develop a prototype generator engine with reduced CO in the exhaust. Also, in fiscal year 2006, staff entered into an interagency agreement (IAG) with the National Institute of Standards and Technology (NIST) to conduct tests with a generator, in both off-the-shelf and prototype configurations, operating in the garage attached to NIST's test house. In fiscal year 2009, staff entered into a second IAG with NIST with the goal of developing CO emission performance requirements for a possible proposed regulation that would be based on health effects criteria. After additional staff and contractor work, the Commission issued a notice of proposed rulemaking (NPRM) in 2016, proposing a performance standard that would limit the CO emission rates from operating portable generators. In 2018, two voluntary standards, UL 2201 and PGMA G300, adopted different CO-mitigation requirements intended to address the CO poisoning hazard associated with portable generators. Staff developed a simulation and analysis plan to evaluate the effectiveness of those voluntary standards' requirements. In 2019, the Commission sought public comments on staff's plan. In August 2020, staff submitted to the Commission a draft notice of availability of the modified plan, based on staff's review and consideration of the comments, for evaluating the voluntary standards; the Commission published the notice of availability in August 2020. In February 2022, staff delivered a briefing package to the Commission with the results of the effectiveness analysis and information on the availability of compliant generators in the marketplace. Staff concluded that the CO hazard-mitigation requirements of one standard are more effective than the

other, but conformance to either standard is low. Staff provided a supplemental NPRM (SNPRM) on portable generators to the Commission on March 8, 2023. The Commission published the SNPRM on April 20, 2023. The comment period closed on June 20, 2023. A final rule briefing package is scheduled to be sent to the Commission in fiscal year 2023.

Statement of Need: From 2004 through 2021, there were an annual average of 74 consumer CO poisoning deaths and an estimated 4,314 medically-attended consumer CO poisoning injuries caused by generators over this 18-year period. The Commission expects that the proposed rule would be highly effective in avoiding generator-related CO incidents, producing benefits that far exceed the estimated costs. For every $1 in estimated direct cost to consumers and manufacturers, the proposed rule generates more than $7 in benefits from mitigated deaths and injuries.

Summary of Legal Basis: This supplemental notice of proposed rulemaking is authorized by the CPSA. 15 U.S.C. 2051–2084. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA.

Alternatives: The Commission could (1) implement the draft proposed rule with the exception of the CO emission requirements and CO concentrations for shutoff included in voluntary standard UL 2201; (2) rely on voluntary standard stakeholders to adopt the requirements included in the draft proposed rule into either existing voluntary standard, UL 2201 or PGMA G300; (3) require portable generators to comply with either UL 2201 (2nd Edition; 2019) or PGMA G300–2018; or (4) rely on continued education and information campaigns.

Anticipated Cost and Benefits: The proposed rule is estimated to avert 2,148 deaths (nearly 72 deaths per year) and 126,387 injuries (roughly 4,213 injuries per year) over 30 years. Overall, the draft proposed rule has net benefits (benefits over and above costs) of $897.06 million on an annualized basis at a 3 percent discount rate, and for every $1 in direct cost to consumers and manufacturers, the draft proposed rule generates $7.02 in benefits from mitigated deaths and injuries.

Risks: As of May 10, 2022, CPSC databases contained reports of at least 770 generator-related consumer CO-poisoning deaths resulting from 588 incidents that occurred from 2011 through 2021.

Timetable:

Action	Date	FR Cite
Staff Sent ANPRM to Commission.	07/06/06	
Staff Sent Supplemental Material to Commission.	10/12/06	
Commission Decision.	10/26/06	
Staff Sent Draft ANPRM to Commission.	11/21/06	
ANPRM	12/12/06	71 FR 74472
ANPRM Comment Period End.	02/12/07	
Staff Releases Research Report for Comment.	10/10/12	
NPRM	11/21/16	81 FR 83556
NPRM Comment Period Extended.	12/13/16	81 FR 89888
Public Hearing for Oral Comments.	03/08/17	82 FR 8907
NPRM Comment Period End.	04/24/17	
Staff Sends Notice of Availability to the Commission.	06/26/19	
Commission Decision.	07/02/19	
Notice of Availability.	07/09/19	84 FR 32729
Staff Sends Notice of Availability to Commission.	08/12/20	
Commission Decision.	08/19/20	
Notice of Availability.	08/24/20	85 FR 52096
Staff Report on Effectiveness Evaluation of Voluntary Standards.	02/16/22	
Staff Sends (S)NPRM Briefing Package to Commission.	03/08/23	
Commission Decision.	04/05/23	
NPRM	04/20/23	88 FR 24346
NPRM Comment Period End.	06/20/23	
Staffs Sends Briefing Package to Commission.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 3041–AC36

BILLING CODE 6355–01–P

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities (2023)

The Federal Trade Commission is an independent agency charged with rooting out unfair methods of competition and unfair or deceptive acts or practices. Its mission is vital to the national interest because, when markets are fair and competitive, honest businesses and the public all benefit. The Commission also protects people who cannot protect themselves—from powerful corporate interests looking to squeeze out, trick, erode the wealth of, or otherwise undermine the economic autonomy of consumers. The Commission works to ensure well-functioning markets that protect people's economic freedom, choice, and liberty. The agency's vision is of ''a vibrant economy fueled by fair competition and an empowered, informed public.'' [1]

The Commission has a unique set of tools to carry out its mission, such as its market study tool, as well as traditions like public workshops and open comment dockets, to receive a wide breadth of information about a topic on which it is considering making policy.[2] Another tool is its ability to issue rules.[3] The Commission is committed to deploying all its tools, including issuing

[1] Fed. Trade Comm'n, Strategic Plan for Fiscal Years 2022–2026, at 13 (Aug. 26, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf.*

[2] *See* 5 U.S.C. 46(b); *see also* Fed. Trade Comm'n, A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority (May 2021), *https://www.ftc.gov/about-ftc/mission/enforcement-authority.*

[3] *See* 5 U.S.C. 46(g).

new rules and updating old ones, to achieve its mission.

I. The Commission Is Using All Available Tools To Advance Its Missions

a. Rulemakings

The Administrative Procedure Act rulemaking process creates significant opportunity for public participation to ensure that the agency is making well-considered policy decisions.[4] The rulemaking process for rules issued under section 18 of the FTC Act creates additional procedures to ensure participation.[5] Pursuant to these statutes, the Commission has been actively engaging members of the public to solicit their input in the Commission's means of pursuing its mission to ensure fair and competitive markets. Accordingly, the Commission and its staff continue to study the problems that rules can address, publish rulemaking documents, and engage with stakeholders and the public.

As to newly proposed consumer-protection rulemakings or rulemaking proceedings, in December 2021, the Commission published an ANPR (advance notice of proposed rulemaking) focused on the impersonation of government and businesses.[6] None of the public comments submitted in response to the ANPR opposed proceeding with the rulemaking. The Commission subsequently issued a proposed rule in October 2022.[7] This NPRM (notice of proposed rulemaking) would make it unlawful for persons to misrepresent that they are or are affiliated with a government or government officer or a business or business officer.[8] It also would make it unlawful to provide the means and instrumentalities for violations set out in this proposed rule.[9] This NPRM offered interested parties the opportunity to request an informal hearing, if they wished to present their position orally.[10] The opportunity to make an oral statement at an informal hearing is afforded by section 18 of the Federal Trade Commission Act and implemented in the Commission's Rules of Practice. The Commission received a timely request for an informal hearing. The hearing was held on May 4, 2023.[11] The Commission is reviewing comments submitted as part of the informal hearing along with those submitted in response to the Commission's NPRM.

On October 20, 2022, the Commission extended the comment period on another ANPR focused on issues concerning commercial surveillance and data security.[12] This ANPR described how Americans must routinely surrender their personal information to participate in basic aspects of modern life.[13] It canvassed the Commission's decades-long effort to protect Americans' privacy through case-by-case enforcement, policy work, and implementation of sectoral privacy laws, concluding that rulemaking could be a useful addition to the effort to protect individuals' personal privacy. The ANPR requested comment on 95 questions to ascertain whether unfair or deceptive practices relating to commercial surveillance and data security are prevalent and whether proceeding with one or more proposed rules is worthwhile.

Updating existing rules to meet new challenges is another important part of the Commission's rulemaking work. For example, as part of its regular review cycle, the Commission issued a NPRM proposing to revise its Health Breach Notification Rule to, among other things, clarify its scope, including its coverage of developers of many health applications; revise certain definitions; clarify what it means for a vendor of personal health records to draw PHR (personal health records) identifiable health information from multiple sources; modernize notice and expand the content of the notice.[14]

As part of the Eyeglass Rule regulatory review, the Commission hosted a public workshop [15] to explore information relating to the Rule changes proposed in its NPRM.[16] This workshop covered several topics, such as the costs and benefits related to the proposals set out in the NPRM. Staff is reviewing the 47 comments it received in response to this workshop.

The Commission also continues its general consumer protection work. For example, problematic negative option practices continue to be a source of consumer harm. These practices, among other things, saddle shoppers with recurring payments for products and services they never intended to purchase or did not want to continue buying. To address these ongoing problems, the Commission proposed amending the current Negative Option Rule with the objective of setting clear, enforceable performance-based requirements for all negative option features in all media.[17] These proposed changes are designed to ensure consumers understand what they are purchasing, to allow them to cancel their participation without undue burden or complication, and to address the most important issues related to negative option marketing, including misrepresentations, disclosures, consent, and cancellation.

As for its competition mission, the Commission continues to explore whether new rules that specify ''unfair methods of competition'' prohibited by section 5 of the FTC Act would help achieve the agency's mission. In its most recent strategic plan, the Commission observed that ''[r]ules . . . inform businesses and their legal advisers about antitrust risks and can deter anticompetitive mergers and business practices'' and that promoting competition can benefit all market participants, including workers.[18] In January 2023, the Commission proposed a rule addressing non-compete clauses in the labor market.[19] The Commission's proposal discusses the startling prevalence of non-compete clauses in states where they are unenforceable, which can have a chilling effect on competitive conditions—just as enforceable clauses do. Clear rules that are easily understood help to clear up these misconceptions and achieve the desired results—in this case, more optimal job switching and matching. During the comment period for this NPRM, some commenters requested that this comment period be extended to give them additional time to respond; other commenters opposed such an extension and any potential delay. The Commission reviewed the extension requests and agreed to allow the public additional time to prepare and file comments. Thus, the comment period was extended until April 19, 2023, to provide commenters a total of 104 days from the public release of the NPRM.[20] To additionally ensure that all viewpoints were heard during the

[4] Fed. Trade Comm'n, Public Participation in the Rulemaking Process, *https://www.ftc.gov/enforcement/rulemaking/public-participation-rulemaking-process.*

[5] *See id.*

[6] 87 FR 72901 (Dec. 23, 2021).

[7] 87 FR 62741 (Oct. 17, 2022).

[8] 87 FR at 62746, 62747.

[9] *Id.*

[10] *Id.* at 62741.

[11] 88 FR 19024–25 (Mar. 30, 2023).

[12] 87 FR 63738 (Oct. 20, 2022).

[13] 87 FR 51273 (Aug. 22, 2022).

[14] 88 FR 37819 (June 9, 2023).

[15] 88 FR 18266 (Mar. 28, 2023).

[16] 88 FR 248 (Jan. 3, 2023).

[17] 88 FR 24716, 24726 (Apr. 24, 2023).

[18] Fed. Trade Comm'n, FTC Strategic Plan for Fiscal Years 2022 to 2026, at 16 (Aug. 26, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf.* Other competition problems could also be addressed by new rules. *Cf.* Exec. Order No. 14036, section 5(h)(i)–(vii) (July 9, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.*

[19] 88 FR 3482 (Jan. 19, 2023).

[20] 88 FR 20441 (Apr. 6, 2023).

public comment period before determining how to proceed, the Commission also hosted a public forum on February 16, 2023, which examined this proposed rule and provided an opportunity for interested parties to directly share their experiences with non-compete clauses. In the months since proposing this rule, the Commission received more than 21,000 public comments, including from nurses, doctors, fast food workers, and hairdressers. Staff is reviewing the comments.

Also in furtherance of its competition mission, the Commission has been working for the past year with the Department of Justice (DOJ) to examine how the agencies can more readily detect potentially problematic mergers and acquisitions. Pursuant to the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, the Commission, with the concurrence of the DOJ Assistant Attorney General, issues rules to ensure that the agencies receive the information needed to identify anticompetitive mergers and investigate them fully to determine whether to seek to block any the effect of which may be substantially to lessen competition or to tend to create a monopoly. After conducting a comprehensive review of the information that market participants currently submit in premerger notification filings, the Commission initiated a rulemaking to propose the collection of additional information that the agencies need to more effectively and efficiently identify transactions that warrant deeper investigation.[21] This proposed rule would also implement provisions of the Merger Filing Fee Modernization Act of 2022, which requires companies to disclose information in their HSR filings about subsidies received from certain foreign governments and entities.

b. Service Delivery

The Commission also takes actions that improve service delivery and customer experience and that reduce administrative burdens for the public. For example, the Commission plans to issue a final rule by early 2024 to update the filing system for Hart-Scott-Rodino Form and Instructions to the new cloud-based e-filing system, which will eliminate paper filings. As part of this process, FTC staff engaged with internal and external customers, including usability testing of beta software processes for submitting electronic HSR filings.

In sum, the Commission continues seeking public input and learning from its law-enforcement, consumer-education, market-monitoring, and other work to identify additional opportunities for new or improved rules to complement its other tools and the vital work of partner agencies and the states. Meaningful public engagement in rulemakings or for improvements to service delivery can deliver important benefits to the public and honest businesses, so the Commission will continue to seek the views of all affected communities.

II. Updates on Other Ongoing Rulemakings

a. Periodic Regulatory Review Program

In 1992, the Commission implemented a program to review its rules and guides on a regular basis. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's review program is also consistent with section 5(a) of Executive Order 12866, which directs executive branch agencies to reevaluate periodically all their significant regulations.[22] Under the Commission's program, rules and guides are typically reviewed on a ten-year schedule that results in more frequent reviews than are generally required by the Regulatory Flexibility Act. The public can obtain information on rules and guides under review and the Commission's regulatory review program generally at *https://www.ftc.gov/enforcement/rules/retrospective-review-ftc-rules-guides.*

The program provides an ongoing, systematic approach for obtaining information about the costs and benefits of rules and guides and whether there are changes that could minimize any adverse economic effects, not just a ''significant economic impact upon a substantial number of small entities.'' [23] As part of each review, the Commission requests public comment on, among other things, the economic impact and benefits of the rule; possible conflict between the rule and state, local, or other federal laws or regulations; and the effect on the rule of any technological, economic, or other industry changes. Reviews may lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently. Pursuant to this program, the Commission has rescinded 40 rules and guides promulgated under the FTC's general authority and updated dozens of other rules and guides since the program's inception.

(1) Newly Initiated and Upcoming Periodic Reviews of Rules and Guides

During Fall 2023, the Commission plans to issue an updated ten-year review schedule. The Commission has initiated or announced plans to initiate periodic reviews of the following rules and guides:

Alternative Fuels Rule, 16 CFR part 309. On October 26, 2023, as part of the systematic review of all Commission rules, the Commission initiated a periodic review of the Alternative Fuels Rule (formally ''Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles'') by publishing a notice seeking public comments on the effectiveness and impact of the Rule. 88 FR 73549 (Oct. 26, 2023). The public comment period will close on December 26, 2023.

Cooling-Off Rule, 16 CFR part 429. By the end of 2023, as part of the systematic review of all Commission rules, the Commission plans to initiate a periodic review of the Cooling-Off Rule (formally ''Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations'') by publishing a notice seeking public comments on the effectiveness and impact of the Rule.

Most recently, on January 9, 2015, the Commission amended the Cooling-Off Rule by increasing the exclusionary limit for all door-to-door sales at locations other than a buyer's residence from $25 up to $130.[24] Under that final rule, the revised definition of door-to-door sale now distinguishes between sales at a buyer's residence and those at other locations. The revised definition retained coverage for sales made at a buyer's residence that have a purchase price of $25 or more. The final rule amendment was effective on March 13, 2015.

Rules. During 2024, the Commission plans to initiate periodic review of Rules and Regulations under the Wool Products Labeling Act of 1939, 16 CFR part 300, Rules and Regulations under Fur Products Labeling Act, 16 CFR part 301, Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR part 303, the Mail, internet, or Telephone Order Merchandise Rule, 16 CFR part 435, and Retail Food Store Advertising and Marketing Practices (Unavailability Rule), 16 CFR part 424.

[21] 88 FR 42178 (June 29, 2023).

[22] Exec. Order No. 12866, 58 FR 51735 (Sept. 30, 1993).

[23] 5 U.S.C. 610(a).

[24] 80 FR 1329 (Jan. 9, 2015).

Guides. During 2024, the Commission plans to initiate periodic review of the Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry, 16 CFR part 20, and the Guides for Advertising Allowances and Other Merchandising Payments and Services (Fred Meyer Guides), 16 CFR part 240.

(2) Ongoing Periodic Reviews of Rules and Guides

The following proceedings for the retrospective review of Commission rules and guides described in the 2022 Regulatory Plan are ongoing:

Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR parts 801–803. On December 1, 2020, the Commission initiated the periodic review of the Hart- Scott-Rodino Antitrust Improvements Act's Coverage, Exemption, and Transmittal Rules (HSR Rules) as part of the Commission's systematic review of all current Commission rules and guides.[25] The comment period closed on February 1, 2021. The HSR Rules and the Antitrust Improvements Act Notification and Report Form (HSR Form) was adopted pursuant to section 7A of the Clayton Act, which requires firms of a certain size contemplating mergers, acquisitions, or other transactions of a specified size to file notification with the FTC and the DOJ and to wait a designated period of time before consummating the transaction. On June 29, 2023, the Commission issued a notice of proposed rulemaking on substantive HSR Form changes, including implementing congressionally mandated reporting requirements on foreign subsidies.[26] The extended public comment period closed on September 27, 2023.[27] Staff is reviewing the public comments. By February 2024, staff anticipates that the Commission will issue a final rule to transition the HSR Form and Instructions to the new cloud-based e-filing system.

Business Opportunity Rule, 16 CFR part 437. On November 25, 2022, the Commission initiated a periodic review of the Business Opportunity Rule.[28] The Commission sought comments on, among other things, the economic impact, and benefits of this rule; possible conflict between the rule and State, local, or other Federal laws or regulations; and the effect on the rule of any technological, economic, or other industry changes. The comment period as extended closed on January 31, 2023. Staff is currently reviewing the public comments. Effective in 2012, the Rule requires business-opportunity sellers to furnish prospective purchasers with a disclosure document that provides information regarding the seller, the seller's business, and the nature of the proposed business opportunity, as well as additional information to substantiate any claims about actual or potential sales, income, or profits for a prospective business-opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

Children's Online Privacy Protection Rule, 16 CFR part 312. On July 25, 2019, the Commission issued a request for public comment on its Children's Online Privacy Protection Rule (''COPPA Rule'').[29] Although the Commission's last COPPA Rule review ended in 2013, the Commission initiated this review early in light of changes in the marketplace. Following an extension, the public comment period closed on December 9, 2019.[30] The FTC sought comment on all major provisions of the COPPA Rule, including its definitions, notice and parental-consent requirements, exceptions to verifiable parental consent, and safe-harbor provision. The FTC hosted a public workshop to address issues raised during the review of the COPPA Rule on October 7, 2019. Staff is analyzing and reviewing public comments.

Eyeglass Rule, 16 CFR part 456. As part of the systematic review process, the Commission sought public comments about the Trade Regulation Rule on Ophthalmic Practice Rules (Eyeglass Rule) on September 3, 2015,[31] and the comment period closed on October 26, 2015. Commission staff completed review of the 868 comments received from consumers, eye care professionals, industry members, trade associations, and consumer advocates. The Eyeglass Rule requires that an optometrist or ophthalmologist give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agree to purchase ophthalmic goods from the optometrist or ophthalmologist. On January 3, 2023, the Commission issued a notice of proposed rulemaking that would require ophthalmologists and optometrists to provide patients with a copy of their prescription immediately after the completion of a refractive eye exam, get a signed statement from the patient confirming that they have received their prescription, and keep a record of that confirmation for at least three years.[32] The comment period closed on March 6, 2023, and staff is reviewing the comments. The Commission held a public workshop on May 18, 2023, and staff is reviewing the comments.[33]

Franchise Rule, 16 CFR part 436. On March 15, 2019, the Commission initiated a periodic review of the Franchise Rule (formally ''Disclosure Requirements and Prohibitions Concerning Franchising'').[34] The comment period closed on April 21, 2019. The Commission then held a public workshop on November 10, 2020. The closing date for written comments related to the issues discussed at the workshop was December 17, 2020.[35] Staff continues to evaluate the record and review the public comments. The Rule is intended to give prospective purchasers of franchises the material information they need to weigh the risks and benefits of such an investment. The Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. Required disclosure topics include, for example, the franchise's litigation history; past and current franchisees and their contact information; any exclusive territory that comes with the franchise; assistance the franchisor provides franchisees; and the cost of purchasing and starting up a franchise.

Health Breach Notification Rule, 16 CFR part 318. On May 22, 2020, the Commission initiated a periodic review of the Health Breach Notification Rule.[36] The comment period closed on August 20, 2020. On June 9, 2023, the Commission proposed to amend the Rule in seven ways and requested comment on the proposed changes.[37] The comment period closed on August 8, 2023, and staff is reviewing the comments. The Rule requires vendors of personal health records (PHR) and PHR-related entities to provide: (1) notice to consumers whose unsecured personally identifiable health information has been breached; and (2) notice to the

[25] 85 FR 77042 (Dec. 1, 2020).
[26] 88 FR 42178 (June 29, 2023).
[27] 88 FR 54256 (Aug. 10, 2023).
[28] 87 FR 72428 (Nov. 25, 2022).
[29] 84 FR 35842 (July 25, 2019).
[30] 84 FR 56391 (Oct. 22, 2019).
[31] 80 FR 53274 (Sept. 3, 2015).
[32] 88 FR 248 (Jan. 3, 2023).
[33] 88 FR 18266 (Mar. 28, 2023).
[34] 84 FR 9051 (Mar. 13, 2019).
[35] 85 FR 55850 (Sept. 10, 2020).
[36] 85 FR 31085 (May 22, 2020).
[37] 88 FR 37819 (June 9, 2023).

Commission. Under the Rule, vendors must notify both the FTC and affected consumers whose information has been affected by a breach ''without unreasonable delay and in no case later than 60 calendar days'' after discovery of a data breach. Among other information, the notices must provide consumers with steps they can take to protect themselves from harm.

Identity Theft Rules, 16 CFR part 681. In December 2018, the Commission initiated a periodic review of the Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule.[38] FTC staff is reviewing the comments received. The Red Flags Rule requires financial institutions and creditors to develop and implement a written identity theft prevention program (a ''Red Flags Program''). By identifying red flags for identity theft in advance, businesses can be better equipped to spot suspicious patterns that may arise and take steps to prevent potential problems from escalating into a costly episode of identity theft. The Card Issuer Rule requires credit and debit card issuers to implement reasonable policies and procedures to assess the validity of a change of address if they receive notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards, also receive a request for an additional or replacement card for the same account.

Leather Guides, 16 CFR part 24. On March 6, 2019, the Commission initiated a periodic review of the Leather Guides, formally known as the Guides for Select Leather and Imitation Leather Products.[39] The comment period closed on April 22, 2019. The Leather Guides apply to the manufacture, sale, distribution, marketing, or advertising of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. The Guides address misrepresentations regarding the composition and characteristics of specific leather and imitation leather products.

Negative Option Rule, 16 CFR part 310. On October 2, 2019, the Commission issued an advance notice of proposed rulemaking seeking public comment on the effectiveness and impact of the Trade Regulation Rule on Use of Prenotification Negative Option Plans (Negative Option Rule).[40] On April 24, 2023, the Commission published a notice of proposed rulemaking to amend the existing Rule to implement new requirements to provide important information to consumers, obtain consumers' express informed consent, and ensure consumers can easily cancel these programs when they choose.[41] The comment period closed on June 23, 2023. Staff is currently reviewing the public comments.

b. Proposed Rules

Since the publication of the 2022 Regulatory Plan, the Commission has initiated or plans to take further steps as described below in the following rulemaking proceedings:

Energy Labeling Rule, 16 CFR part 305. The Energy Labeling Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. On October 25, 2022, the Commission issued an advance notice of proposed rulemaking that sought public comment on potential amendments to the Rule, including energy labels for several new consumer product categories, other possible amendments to improve the Rule's effectiveness, and reducing unnecessary burdens.[42] The comment period as extended closed on January 31, 2023.[43] Staff is currently reviewing the public comments.

Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR part 432. On December 18, 2020, the Commission initiated a periodic review of the Amplifier Rule (formally ''Power Output Claims for Amplifiers Utilized in Home Entertainment Products Rule'').[44] The Commission sought comments on, among other things, the economic impact, and benefits of this Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Amplifier Rule establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of amplifier-equipment performance attributes. On July 27, 2022, the Commission sought public comment on a proposal to amend the Rule to require sellers making power-related claims to calculate power output using uniform testing methods to allow consumers to easily compare amplifier sound quality.[45] Additionally, for multichannel home theater amplifiers the Commission sought comment about how to set test conditions to reflect typical consumer use. The comment period closed on September 26, 2022. On August 21, 2023, the Commission issued a supplemental notice of proposed rulemaking.[46] The comment period closed on October 23, 2023.

Telemarketing Sales Rule, 16 CFR part 310. On August 11, 2014, the Commission initiated a periodic review of the Telemarketing Sales Rule (TSR).[47] The comment period as extended closed on November 13, 2014.[48] On June 3, 2022, the Commission issued a notice of proposed rulemaking seeking public comment on proposed amendments to the TSR.[49] The proposed amendments would require telemarketers and sellers to maintain additional records of their telemarketing transactions, prohibit material misrepresentations and false or misleading statements in business-to-business telemarketing transactions, and add a new definition for the term ''previous donor.'' The comment period closed on August 2, 2022, and the Commission has received 25 comments to date. Also on June 3, 2022, the Commission issued an advance notice of proposed rulemaking seeking public comment on whether the TSR should continue to exempt telemarketing calls to businesses, whether the TSR should require a notice and cancellation mechanism with negative option sales, and whether to extend the TSR to apply to telemarketing calls that consumers initiate to a telemarketer (*i.e.,* inbound telemarketing calls) regarding computer technical support services.[50] The comment period closed on August 2, 2022. Staff is reviewing the comments.

Non-Compete Clause Rule, proposed to be codified at 16 CFR part 901. On January 19, 2023, the Commission proposed the Non-Compete Clause Rule.[51] The proposed rule would, among other things, provide that it is an unfair method of competition for an employer to enter into or attempt to enter into a non-compete clause with a worker; to maintain with a worker a non-compete clause; or, under certain circumstances, to represent to a worker that the worker is subject to a non-compete clause. On February 16, 2023, the Commission hosted a public forum that examined the FTC's proposed rule and provided an opportunity for interested parties to directly share their experiences with non-compete clauses.

[38] 83 FR 63604 (Dec. 11, 2018).
[39] 84 FR 8045 (Mar. 6, 2019).
[40] 84 FR 52393 (Oct. 2, 2019).
[41] 88 FR 24716 (Apr. 24, 2023).
[42] 87 FR 64399 (Oct. 25, 2022).
[43] 88 FR 4796 (Jan. 25, 2023).
[44] 85 FR 82391 (Dec. 18, 2020).
[45] 87 FR 45047 (July 27, 2022).
[46] 88 FR 56780 (Aug. 21, 2023).
[47] 79 FR 46732 (Aug. 11, 2014).
[48] 79 FR 61267 (Oct. 10, 2014).
[49] 87 FR 33677 (June 3, 2022).
[50] 87 FR 33662 (June 3, 2022).
[51] 88 FR 3482 (Jan. 19, 2023).

The comment period as extended closed on April 19, 2023. Staff is reviewing the comments.

Motor Vehicle Dealers Trade Regulation Rule, proposed to be codified at 16 CFR part 463. On July 13, 2022, the Commission issued a notice of proposed rulemaking soliciting public comment on a proposed Rule regarding unfair or deceptive acts or practices under its authority with respect to motor vehicle dealers described in section 1029(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[52] The proposed rule would prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles; require accurate pricing disclosures in dealers' advertising and sales discussions; require dealers to obtain consumers' express, informed consent for charges; prohibit the sale of any add-on product or service that confers no benefit to the consumer; and require dealers to keep records of advertisements and customer transactions. The public comment period closed on September 12, 2022. Staff is reviewing the public comments.

Trade Regulation Rule on Impersonation of Government and Businesses, proposed to be codified at *16 CFR part 461.* On October 17, 2022, the Commission issued a notice of proposed rulemaking to address certain deceptive or unfair acts or practices of impersonation of government and business officials.[53] The public comment period closed on December 16, 2022. An informal hearing was held on May 4, 2023, at which oral testimony [54] was provided and additional written testimony was accepted. Staff is reviewing the comments.

Earnings Claims Trade Regulation Rule, proposed to be codified at 16 CFR part 462. On March 11, 2022, the Commission issued an advance notice of proposed rulemaking seeking public comment about a potential rule to address deceptive or unfair marketing using earnings claims.[55] The comment period closed on May 10, 2022. Staff is reviewing the comments.

Trade Regulation Rule on Commercial Surveillance, 16 CFR part undetermined. On August 22, 2022, the Commission issued an advance notice of proposed rulemaking under section 18 of the FTC Act to limit privacy abuses, curb lax security practices, and ensure that algorithmic decision-making does not result in unlawful discrimination.[56] The Commission sought public comment on whether new rules are needed to protect people's privacy and information in the commercial surveillance economy. On September 8, 2022, the Commission hosted a public forum regarding its ANPR on commercial surveillance and data security practices that harm consumers and competition. The public forum included panel discussions and members of the public provided remarks. The ANPR's extended public comment period closed on November 21, 2022.[57] Staff is reviewing the public comments.

Funeral Rule, 16 CFR part 453. On February 14, 2020, the Commission initiated a periodic review of the Funeral Industry Practices Rule (Funeral Rule).[58] The comment period as extended closed on June 15, 2020.[59] The Funeral Rule, which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit or call a funeral home. On November 2, 2022, the Commission issued an advance notice of proposed rulemaking seeking comment on potential updates to modernize the Funeral Rule, including improvements to the public accessibility of funeral home price information.[60] The comment period closed on January 3, 2023. The Commission also issued a staff report that summarizes the results of staff's review of almost 200 funeral provider websites.[61] The Commission held a public workshop on September 7, 2023.[62] The workshop explored issues relating to the Funeral Rule's General Price List requirements, including whether and how funeral providers should be required to provide price lists electronically or online, and other issues raised in the comments received in response to the 2022 ANPR. The comment period for any written comments related to the issues discussed at the workshop closed on October 10, 2023. Staff is reviewing the public comments.

Unfair or Deceptive Fees Trade Regulation Rule, proposed to be codified at 16 CFR part 464. On November 8, 2022, the Commission issued an advance notice of proposed rulemaking to address certain deceptive or unfair acts or practices related to fees.[63] The public comment period closed on January 9, 2023. On October 11, 2023, the Commission announced that it was publishing a notice of proposed rulemaking to promulgate a trade regulation rule entitled ''Rule on Unfair or Deceptive Fees,'' which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The public comment period will close 60 days after publication in the **Federal Register**.

Trade Regulation Rule on the Use of Reviews and Endorsements, proposed to be codified at 16 CFR part 465. On November 8, 2022, the Commission issued an advance notice of proposed rulemaking to address certain deceptive or unfair acts or practices concerning reviews and endorsements.[64] The public comment period closed on January 9, 2023. On July 31, 2023, the Commission issued a notice of proposed rulemaking seeking public comments concerning the utility and scope of the proposed trade regulation rule to prohibit the specified unfair or deceptive acts or practices.[65] The comment period closed on September 29, 2023, and staff is reviewing the comments.

c. Final Actions

Since the publication of the 2022 Regulatory Plan, the Commission has issued the following final agency actions in rulemaking and guide proceedings:

Endorsement Guides, 16 CFR part 255. On July 26, 2023, the Commission adopted revised Endorsement Guides to reflect the ways advertisers now reach consumers to promote products and services, including through social media

[52] 87 FR 42012 (July 13, 2022).

[53] 87 FR 62741 (Oct. 17, 2022).

[54] *See* Fed. Trade Comm'n, Transcript of Informal Hearing Before the Administrative Law Judge on Government and Business Impersonation Rule (May 4, 2023), *https://www.ftc.gov/system/files/ftc_gov/pdf/impersonationruleinformalhearingtranscript.pdf.*

[55] 87 FR 13951 (Mar. 11, 2022).

[56] 87 FR 51273 (Aug. 22, 2022).

[57] FR 63738 (Oct. 20, 2022).

[58] 85 FR 8490 (Feb. 14, 2020).

[59] 85 FR 20453(Apr. 13, 2020).

[60] 87 FR 66096 (Nov. 2, 2022).

[61] *See* Fed. Trade Comm'n, FTC Seeks to Improve the American Public's Access to Funeral Service Prices Online (Oct. 20, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-seeks-improve-american-publics-access-funeral-service-prices-online.*

[62] 88 FR 33011 (May 23, 2023).

[63] 87 FR 67413 (Nov. 8, 2022); *see also* Fed. Trade Comm'n, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees.*

[64] 87 FR 67424 (Nov. 8, 2022); *see also* Fed. Trade Comm'n, Federal Trade Commission to Explore Rulemaking to Combat Fake Reviews and Other Deceptive Endorsements (Oct. 20, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-explore-rulemaking-combat-fake-reviews-other-deceptive-endorsements.*

[65] 88 FR 49364 (July 31, 2023).

and reviews.[66] The Guides provide agency guidance to businesses and others to ensure that advertising using reviews or endorsements is truthful. The final revised Guides took the public comments received into consideration and make a number of revisions including: (1) articulating a new principle regarding procuring, suppressing, boosting, organizing, publishing, upvoting, downvoting, or editing consumer reviews so as to distort what consumers think of a product; (2) addressing incentivized reviews, reviews by employees, and fake negative reviews of a competitor; (3) adding a definition of ''clear and conspicuous'' and saying that a platform's built-in disclosure tool might not be an adequate disclosure; (4) changing the definition of ''endorsements'' to clarify the extent to which it includes fake reviews, virtual influencers, and tags in social media; (5) better explaining the potential liability of advertisers, endorsers, and intermediaries; and (6) highlighting that child-directed advertising is of special concern. In many instances the revisions responded to comments by adding to or modifying the hypothetical examples that illustrate the principles of the Guides. For example, within section 255.2 concerning consumer endorsements, staff modified Example 8 to clarify that a particular seller must display reviews about its own customer service but need not display reviews about the customer service of a different seller.

Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR part 314. On December 9, 2021, the Commission issued a supplemental notice of proposed rulemaking that proposes to amend the Safeguards Rule to require financial institutions to report to the Commission any security event where the financial institutions have determined misuse of customer information has occurred or is reasonably likely and that at least 1,000 consumers have been affected or reasonably may be affected.[67] The comment period closed on February 7, 2022. On October 27, 2023, the Commission announced a final rule amendment that requires covered financial institutions to notify the FTC as soon as possible, and no later than 30 days after discovery, of a security breach involving the information of at least 500 consumers. Such an event requires notification if unencrypted customer information has been acquired without the authorization of the individual to which the information pertains. The notice to the FTC must include certain information about the event, such as the number of consumers affected or potentially affected. The breach notification requirement becomes effective 180 days after publication of the rule in the **Federal Register**.

d. Significant Regulatory Actions

The Commission has three proposed rules that would be a ''significant regulatory action'' under the definition in section 3(f) of Executive Order 12866: the proposed Motor Vehicle Dealers Trade Regulation Rule, to be codified at 16 CFR part 463, the proposed Non-Compete Clause Rule to be codified at 16 CFR 910,and the proposed substantive HSR form changes under the Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR parts 801–803.

The Commission has no proposed rule that would have significant international impacts or any international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, as defined in Executive Order 13609.

Summary

The actions under consideration advance the Commission's mission by informing and protecting consumers while minimizing burdens on honest businesses. The Commission continues to identify and weigh the costs and benefits of proposed regulatory actions and possible alternative actions.

BILLING CODE 6750–01–P

U.S. NUCLEAR REGULATORY COMMISSION

Statement of Regulatory Priorities for Fiscal Year 2024

I. Introduction

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the U.S. Nuclear Regulatory Commission (NRC) regulates the possession and use of source, byproduct, and special nuclear material. Our regulatory mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure the adequate protection of public health and safety and promote the common defense and security. As part of our mission, we regulate the operation of nuclear power plants and fuel cycle facilities; the safeguarding of nuclear materials from theft and sabotage; the safe transport, storage, and disposal of radioactive materials and wastes; the decommissioning and safe release for other uses of licensed facilities that are no longer in operation; and the medical, industrial, and research applications of nuclear material. In addition, we license the import and export of radioactive materials.

As part of our regulatory process, we routinely conduct comprehensive regulatory analyses that examine the costs and benefits of contemplated regulations. We have developed internal procedures and programs to ensure that we impose only necessary requirements on our licensees and we review existing regulations to determine whether the requirements imposed are still necessary.

Our regulatory priorities for fiscal year (FY) 2024 reflect our safety and security mission and will enable us to achieve our three strategic goals described in NUREG–1614, Volume 8, ''Strategic Plan: Fiscal Years 2022–2026,'' issued April 2022 (*https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v8/index.html*): (1) ensure the safe and secure use of radioactive materials, (2) continue to foster a healthy organization, and (3) inspire stakeholder confidence in the NRC.

II. Regulatory Priorities

This section contains information on some of our most important and significant regulatory actions that we are considering issuing in proposed or final form during FY 2024. This report does not include the NRC's high-priority rulemakings titled ''American Society of Mechanical Engineers 2021–2022 Code Editions'' (RIN 3150–AK21; NRC–2018–0289), ''American Society of Mechanical Engineers Code Cases and Update Frequency'' (RIN 3150–AK23; NRC–2018–0291), ''Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors'' (RIN 3150–AK31; NRC–2019–0062), ''Advanced Nuclear Reactor Generic Environmental Impact Statement'' (RIN 3150–AK55; NRC 2020–0101), and ''Reporting Nuclear Medicine Injection Extravasations as Medical Events'' (RIN 3150–AK91; NRC–2022–0218) as the timeframe for reporting is only through FY 2024; the agency expects to publish the final rules during FY 2025. The agency's portion of the Unified Agenda of Regulatory and Deregulatory Actions contains additional information on NRC rulemaking activities and a broader spectrum of our upcoming regulatory actions. We also provide additional information on planned rulemakings and petition for rulemaking activities,

[66] 88 FR 48092 (July 26, 2023).

[67] 86 FR 70062 (Dec. 9, 2021).

including priority and schedule, on our website at *https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html.*

A. NRC Priority Rulemakings

Proposed Rules

Integrated Low-Level Radioactive Waste Disposal (RIN 3150–AI92; NRC–2011–0012): This rulemaking would amend the NRC's regulations in Title 10 of the *Code of Federal Regulations* Part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste,'' to revise the licensing requirements for low-level radioactive waste disposal and address requirements for disposal of greater-than-Class C and transuranic waste.

Final Rules

Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing (RIN 3150–AI66; NRC–2009–0196): This rulemaking would amend the NRC's regulations for the licensing of new reactors. The rule would align requirements between the two licensing processes provided in the NRC's regulations to ensure that all new reactor applications conform to the NRC's policies and requirements, regardless of the selected licensing approach. The rule would address lessons learned from NRC reviews conducted for combined licenses, design certifications, early site permits, and operating licenses.

Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (RIN 3150–AJ59; NRC–2015–0070): This rulemaking would amend the NRC's regulations to provide an appropriate regulatory framework for nuclear power reactors transitioning from operations to decommissioning.

Cyber Security for Fuel Facilities (RIN 3150–AJ64; NRC–2015–0179): This rulemaking would amend the NRC's regulations to require certain fuel cycle facilities to establish, implement, and maintain a cyber security program that is designed to protect public health and safety and the common defense and security.

Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296): This rulemaking would amend the NRC's environmental protection regulations by updating the environmental effect findings of renewing the operating license of a nuclear power plant. These findings would be based on a programmatic analysis under the National Environmental Policy Act. The rule will affect operating power reactor licensees that seek an initial or subsequent renewed operating license.

Radioactive Source Security and Accountability (RIN 3150–AK83; NRC–2022–0103): The NRC is amending its regulations to require safety and security equipment to be in place before the agency grants a license for possession and use of radioactive materials. This rule also would require a licensee transferring category 3 quantities of radioactive material to verify that the recipient's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred, and that such verification be conducted through the License Verification System or by contacting the license-issuing authority. Lastly, the NRC would implement a more stringent license verification method for licensees relying upon an oral certification to process an emergency shipment of radioactive material and remove an obsolete verification method for obtaining sources of information. This rulemaking would affect applicants for a radioactive material license and licensees that transfer category 3 quantities of radioactive material.

B. Significant Final Rules

The rulemaking activity below meets the requirements of a significant regulatory action in Executive Order 12866, ''Regulatory Planning and Review,'' signed September 30, 1993, because it is likely to have an annual effect on the economy of $100 million or more.

Revision of Fee Schedules: Fee Recovery for FY 2024 (RIN 3150–AK74; NRC–2022–0046): This rule amends the NRC's fee schedules for licensing, inspection, and annual fees charged to agency applicants and licensees.

BILLING CODE 7590–01–P

[FR Doc. 2024–00476 Filed 2–8–24; 8:45 am]

BILLING CODE 6820–27–P

FEDERAL REGISTER

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Part III

Department of Agriculture

Semiannual Regulatory Agenda

DEPARTMENT OF AGRICULTURE

Office of the Secretary

2 CFR Subtitle B, Ch. IV

5 CFR Ch. LXXIII

7 CFR Subtitle A; Subtitle B, Chs. I–XI, XIV–XVIII, XX, XXV–XXXVIII, XLII

9 CFR Chs. I–III

36 CFR Ch. II

48 CFR Ch. 4

Semiannual Regulatory Agenda, Fall 2023

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Orders (E.O.) 12866, ''Regulatory Planning and Review,'' 13563, ''Improving Regulation and Regulatory Review,'' and 14094, ''Modernizing Regulatory Review.'' The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96–354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions as well as any regulation consistent with Executive Orders 13563 and 14094.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

USDA's complete regulatory agenda is available online at *www.reginfo.gov.* Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), USDA's printed agenda entries include only:

(1) Rules that are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules identified for periodic review under section 610 of the Regulatory Flexibility Act.

For this edition of the USDA regulatory agenda, the most important regulatory actions are summarized in a Statement of Regulatory Priorities that is included in the Regulatory Plan, which appears in both the online regulatory agenda and in part II of the **Federal Register** that includes the abbreviated regulatory agenda.

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action. For general comments or inquiries about the agenda, please contact Mr. Michael Poe, Office of Budget and Program Analysis, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–3257.

Dated: September 28, 2023.

Michael Poe,

Legislative and Regulatory Staff.

AGRICULTURAL MARKETING SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
233	Natural Grass Sod Promotion, Research, and Information Order (AMS–LP–21–0028)	0581–AE07
234	Organic Market Development for Mushrooms and Pet Food (AMS–NOP–22–0063)	0581–AE13

AGRICULTURAL MARKETING SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
235	Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045) **(Reg Plan Seq No. 2)**.	0581–AE05

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

AGRICULTURAL MARKETING SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
236	Organic Aquaculture Standards	0581–AD34
237	Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008)	0581–AE02
238	Organic Apiculture Production Standards	0581–AE12

AGRICULTURAL MARKETING SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
239	Dairy Donation Program (AMS–DA–21–0013)	0581–AE00
240	Preserving Trust Benefits Under the Packers and Stockyards Act (AMS–FTPP–21–0015)	0581–AE01
241	Transparency in Poultry Grower Contracting and Tournaments (AMS–FTPP–21–0044)	0581–AE03
242	Organic Livestock and Poultry Standards (AMS–NOP–21–0073)	0581–AE06
243	Economic Adjustment Assistance for Textile Mills	0581–AE26

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
244	National List of Reportable Animal Diseases	0579–AE39
245	Revision to Horse Protection Act Regulations	0579–AE70
246	AQI User Fees	0579–AE71

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
247	Animal Disease Traceability; Electronic Identification	0579–AE64

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
248	Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs; Cage Standards for Domestic Dogs.	0579–AE58

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
249	Importation of Bovine Meat From Paraguay	0579–AE73

FOOD AND NUTRITION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
250	National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010.	0584–AE11
251	Technical Changes for Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems	0584–AE37
252	Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP)	0584–AE61
253	Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP).	0584–AE71
254	Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program.	0584–AE85

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Proposed Rule Stage

233. Natural Grass Sod Promotion, Research, and Information Order (AMS–LP–21–0028) [0581–AE07]

Legal Authority: 7 U.S.C. 7411 to 7425

Abstract: This action would establish of an industry-funded promotion, research, and information program for natural grass sod products. The proposed Natural Grass Sod Promotion, Research, and Information Order was submitted to the U.S. Department of Agriculture by Turfgrass Producers International, a group of natural grass sod producers. The program would conduct research, marketing, and promotion activities that will benefit the entire industry. Primary goals of the program would include educating consumers and stakeholders of the benefits of natural grass and providing producers with marketing tools they can use to grow their business. The goals identified in the proposed rule would only be attainable through a national research and promotion program for natural grass sod.

Timetable:

Action	Date	FR Cite
NPRM	10/16/23	88 FR 71306
Proposed Rule: Referendum Procedures.	10/16/23	88 FR 71302
NPRM Comment Period End.	12/15/23	
Comment Period End: Referendum Procedures.	12/15/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeana Harbison, Deputy Director of Livestock and Poultry Program, Department of Agriculture, Agricultural Marketing Service, Washington, DC 20024, *Phone:* 202 690–3192, *Email:* *jeana.m.harbison@usda.gov*.

RIN: 0581–AE07

234. Organic Market Development for Mushrooms and Pet Food (AMS–NOP–22–0063) [0581–AE13]

Legal Authority: 7 U.S.C. 6501

Abstract: This action seeks comments on proposed amendments to the USDA organic regulations that would clarify production and handling requirements for a) organic pet food standards and b) organic mushrooms. These products are currently certified organic to the standards for similar products like those

for human consumption (pet food) or for crops (mushrooms). The proposed action seeks to increase regulatory certainty for these markets. Past National Organic Standards Board recommendations, public comments from the National Organic Program's March 2022 public listening session, and input from mushroom and pet food stakeholders have indicated a need for this rule.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Tucker, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 202 260–8077, *Email: jennifer.tucker@usda.gov*.

RIN: 0581–AE13

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Final Rule Stage

235. Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045) [0581–AE05]

Regulatory Plan: This entry is Seq. No. 2 in part II of this issue of the **Federal Register**.

RIN: 0581–AE05

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Long-Term Actions

236. Organic Aquaculture Standards [0581–AD34]

Legal Authority: 7 U.S.C. 6501 to 6522

Abstract: This action would establish standards for organic production and certification of farmed aquatic animals and their products in the USDA organic regulations. This action would also add aquatic animals as a scope of certification and accreditation under the National Organic Program (NOP).

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Tucker, *Phone:* 202 260–8077, *Email: jennifer.tucker@usda.gov*.

RIN: 0581–AD34

237. Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008) [0581–AE02]

Legal Authority: 7 U.S.C. 6501 to 6524

Abstract: Based on comments received from the September 2022 Advance Notice of Proposed Rulemaking and recommendations from the National Organic Standards Board (NOSB) expected in Fall 2024, this action would replace outdated references in USDA's organic regulations to U.S. Environmental Protection Agency (EPA) policy on inert ingredients in pesticides. Inerts, also identified as ''other ingredients'' on pesticide labels, are any substances other than the active ingredient that are intentionally added to pesticide products. References to outdated EPA policy appear in the USDA organic regulations in the National List of Allowed and Prohibited Substances (National List) and identify the inert ingredients allowed in pesticides for organic production.

Timetable:

Action	Date	FR Cite
ANPRM	09/02/22	87 FR 54173
ANPRM Comment Period Extended.	10/11/22	87 FR 61268
ANPRM Comment Period End.	11/01/22	
ANPRM Comment Period Extended End.	12/31/22	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Tucker, *Phone:* 202 260–8077, *Email: jennifer.tucker@usda.gov*.

RIN: 0581–AE02

238. Organic Apiculture Production Standards [0581–AE12]

Legal Authority: 7 U.S.C. 6501

Abstract: This action proposes to amend the USDA organic regulations to reflect an October 2010 recommendation submitted to the Secretary by the National Organic Standards Board (NOSB) concerning the production of organic apicultural (or beekeeping) products.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Tucker, *Phone:* 202 260–8077, *Email: jennifer.tucker@usda.gov*.

RIN: 0581–AE12

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Completed Actions

239. Dairy Donation Program (AMS–DA–21–0013) [0581–AE00]

Legal Authority: Pub. L. 116–260, sec. 762

Abstract: This rulemaking would finalize the Dairy Donation Program, which was authorized in the Consolidated Appropriations Act of 2021. The Dairy Donation Program is a voluntary program that reimburses eligible dairy organizations for milk used to make eligible dairy products donated to non-profit groups for distribution to low-income persons.

Completed:

Action	Date	FR Cite
Final Rule	08/24/23	88 FR 57861
Final Rule Effective.	08/25/23	
Final Rule; Removal of Expiration Date.	08/31/23	88 FR 60105
Final Rule Effective.	08/31/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Erin Taylor, *Phone:* 202 720–7311, *Email: erin.taylor@ams.usda.gov*.

RIN: 0581–AE00

240. Preserving Trust Benefits Under the Packers and Stockyards Act (AMS–FTPP–21–0015) [0581–AE01]

Legal Authority: Pub. L. 116–260, sec. 763

Abstract: This action revised the Packers and Stockyards regulations to add provisions for written notifications related to the new livestock dealer trust. The revisions outlined the process for livestock sellers to notify livestock dealers and the Secretary of the seller's intent to preserve their interest in trust benefits should the dealer fail to pay for livestock purchased. The revisions also required livestock sellers to acknowledge in writing that they forfeit rights to the dealer trust under the terms

of credit sales to dealers. These provisions mirror existing regulatory provisions related to livestock and poultry sales under the Packers and Stockyards Act.

Completed:

Action	Date	FR Cite
Final Rule	06/23/23	88 FR 41015
Final Action Effective.	07/24/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stuart Frank, *Phone:* 515 323–2586, *Email: stuart.frank@usda.gov*.

RIN: 0581–AE01

241. Transparency in Poultry Grower Contracting and Tournaments (AMS–FTPP–21–0044) [0581–AE03]

Legal Authority: 7 U.S.C. 181 to 229c

Abstract: This action would amend regulations issued under the Packers and Stockyards Act (P&S Act), revising the list of disclosures and information live poultry dealers must furnish to poultry growers and sellers with whom dealers make poultry growing arrangements. The rule would establish parameters for the use of poultry grower ranking systems by dealers to determine settlement payments for poultry growers. Amendments are intended to promote transparency in poultry production contracting and to give poultry growers relevant information with which to make business decisions.

Completed:

Action	Date	FR Cite
Final Rule	11/28/23	88 FR 83210
Final Rule Effective.	02/12/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael V. Durando, *Phone:* 202 720–0219.

RIN: 0581–AE03

242. Organic Livestock and Poultry Standards (AMS–NOP–21–0073) [0581–AE06]

Legal Authority: 7 U.S.C. 6501 to 6524

Abstract: This action would establish additional practice standards for organic livestock and poultry production. The rule would amend the USDA organic regulations related to: livestock and poultry living conditions (for example, outdoor access, housing environment, and stocking densities); animal health care (for example, physical alterations, administering medical treatment, and euthanasia); animal transport; and slaughter.

Completed:

Action	Date	FR Cite
Final Rule	11/02/23	88 FR 75394
Final Rule Effective.	01/02/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Erin Healy, *Phone:* 202 617–4942, *Email: erin.healy@usda.gov*.

RIN: 0581–AE06

243. Economic Adjustment Assistance for Textile Mills [0581–AE26]

Legal Authority: 7 U.S.C. 9037(c)

Abstract: The Agricultural Marketing Service (AMS) revises the regulation providing guidance for domestic manufacturers that consume Upland Cotton and voluntarily participate in the Economic Adjustment Assistance for Textile Mills Program. The revisions add definitions and codify certain participant responsibilities currently outlined in the existing user Agreement. The changes made by this rule are intended to strengthen management controls that have been added into the Agreement to prevent fraud, waste, and abuse. This action provides the necessary legal support for program administration.

Timetable:

Action	Date	FR Cite
Final Rule; With request for Comments.	10/31/23	88 FR 74330
Final Rule Effective.	10/31/23	
Final Rule Comment Period End.	11/30/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dan Schofer, Cotton Program Manager, AMS, Fair Trade Practice Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 202 690–2434.

RIN: 0581–AE26

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Proposed Rule Stage

244. National List of Reportable Animal Diseases [0579–AE39]

Legal Authority: 7 U.S.C. 8301 to 8317

Abstract: This rulemaking amends our disease regulations to provide for a National List of Reportable Animal Diseases, along with reporting responsibilities for animal health professionals that encounter or suspect cases of communicable animal diseases and disease agents. The changes are necessary to streamline Federal cooperative animal disease detection, response, and control efforts. This action will consolidate and enhance current disease reporting mechanisms, and it will complement and supplement existing animal disease tracking and reporting at the State level. The Animal and Plant Health Inspection Service is evaluating the comments received during the revised proposed rule in fall 2023 and the reopening of the comment period.

Timetable:

Action	Date	FR Cite
NPRM	04/02/20	85 FR 18471
NPRM Comment Period End.	06/01/20	
NPRM Comment Period Reopened.	08/18/20	85 FR 50796
NPRM Comment Period Reopened End.	08/21/20	
Revising Proposed Rule and Reopening Comment Period.	08/28/23	88 FR 58524
NPRM Comment Period End.	09/27/23	
Reviewing Comments from Revised Proposed Rule.	11/27/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jane Rooney, NLRAD Coordinator, Center for Epidemiology and Animal Health, Strategy and Policy, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 2150 Centre Avenue, Building B, Mailstop 2E6, Fort Collins, CO 80526, *Phone:* 970 494–7397.

RIN: 0579–AE39

245. Revision to Horse Protection Act Regulations [0579–AE70]

Legal Authority: 15 U.S.C. 1823

Abstract: Current Horse Protection Act (HPA) regulations require Designated Qualified Persons (DQPs) to be licensed directly through Horse Industry Organizations (HIOs). DQPs conduct inspections of horses at HIO-affiliated shows, sales, auctions, and exhibitions to determine compliance with the HPA. We are proposing to amend the Horse Protection regulations by eliminating the role of HIOs and assigning inspection authority solely to Animal and Plant Health Inspection Service (APHIS) Veterinary Medical Officers and other third parties authorized and trained by APHIS. Other changes are also being contemplated. APHIS hosted a Tribal webinar to determine whether this rule would adversely impact Tribes, and received no concerns.

Timetable:

Action	Date	FR Cite
NPRM	08/21/23	88 FR 56924
NPRM Comment Period End.	10/23/23	
Reviewing Comments.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lance Bassage, VMD, Director, National Policy Staff, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road Unit 84, Riverdale, MD 20737, *Phone:* 301 851–3748, *Email: lance.h.bassage@usda.gov.*

RIN: 0579–AE70

246. AQI User Fees [0579–AE71]

Legal Authority: 21 U.S.C. 136a

Abstract: We are proposing multiple revisions to our AQI user fee regulations in order to facilitate full cost recovery as required by 21 U.S.C. 136a. We are proposing to update the fees using more current operational data, as well as update the fees to incorporate recurring costs such as capital improvements and staffing needs. Inflation would also be incorporated into our model. Other changes are also being contemplated. APHIS conducted a Tribal listening session to determine whether this action could adversely impact Tribes, and received no concerns.

Timetable:

Action	Date	FR Cite
NPRM	08/11/23	88 FR 54796
NPRM Comment Period End.	10/10/23	
Reviewing Comments.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: George Balady, PEIP Cost and Fee Analysis, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737, *Phone:* 301 851–2338.

RIN: 0579–AE71

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Final Rule Stage

247. Animal Disease Traceability; Electronic Identification [0579–AE64]

Legal Authority: 7 U.S.C. 8301 *et seq.*

Abstract: This action amends APHIS' animal disease traceability regulations, currently codified at 9 CFR part 86. The primary change requires that APHIS will only recognize identification devices (*e.g.,* ear tags) as official identification for cattle and bison covered by the regulations if the devices have both visual and electronic readability (EID). Other changes clarify language and requirements in several sections of part 86. These changes will enhance the U.S. traceability system to better achieve goals of rapidly tracing diseased and exposed animals and containing outbreaks. APHIS' Animal Disease Traceability program has a long-standing relationship with Tribal nations to ensure the program incorporates Tribal feedback. APHIS provided webinars to Tribal nations in 2021 and 2022 to notify Tribes of this rulemaking and solicit requests for consultation. APHIS subsequently was in contact with an alliance of Western Tribes to apprise them of the status of the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	01/19/23	88 FR 3320
NPRM Comment Period End.	03/20/23	
NPRM Comment Period Extended.	03/20/23	88 FR 16576
NPRM Comment Period Extended End.	04/19/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Aaron Scott Ph.D., DACVPM, Director, Department of Agriculture, Animal and Plant Health Inspection Service, National Animal Disease Traceability and Veterinary Accreditation Center, APHIS Veterinary Services Strategy and Policy, 2150 Centre Avenue, Building B (Mail Stop 3E87), Fort Collins, CO 80526, *Phone:* 970 494–7249, *Email: traceability@usda.gov.*

RIN: 0579–AE64

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Long-Term Actions

248. Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs; Cage Standards for Domestic Dogs [0579–AE58]

Legal Authority: 7 U.S.C. 2131 to 2159

Abstract: We are proposing to amend the regulations regarding the importation of live dogs by requiring all live dogs imported into the United States for resale purposes to be microchipped for permanent identification, and to require importers to procure a microchip reader and make it available to port-of-entry officials as requested. This action would also add microchipping as one of three identification options for dogs and cats used by dealers, exhibitors and research facilities. In addition, APHIS is proposing to require a verifiable signature on the health certificate and rabies certificate accompanying imported live dogs, an endorsement of the health certificate by a government official in the country of origin, and the mandatory use of forms provided by APHIS. Additionally, we are proposing to update cage standards for dogs held domestically by dealers or exhibitors who are licensed under the Animal Welfare Act or used in research at registered facilities. Other changes are also being contemplated.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lance Bassage, *Phone:* 301 851–3748, *Email: lance.h.bassage@usda.gov.*

RIN: 0579–AE58

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Completed Actions

249. Importation of Bovine Meat From Paraguay [0579–AE73]

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

Abstract: We are amending the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from Paraguay. Based on the evidence from a risk analysis, we have determined that fresh beef can safely be imported from Paraguay, provided certain conditions are met. This action will provide for the importation of fresh beef from Paraguay into the United States while continuing to protect the United States against the introduction of foot-and-mouth disease.

Completed:

Reason	Date	FR Cite
Final Rule	11/14/23	88 FR 77883
Final Rule Effective.	12/14/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ingrid Kotowski, *Phone:* 919 855–7732.

RIN: 0579–AE73

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE (USDA)

Food and Nutrition Service (FNS)

Long-Term Actions

250. National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010 [0584–AE11]

Legal Authority: Pub. L. 111–296

Abstract: This rule amends National School Lunch Program (NSLP) regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 regarding equity in school lunch pricing and revenue from non-program foods sold in schools. This rule requires school food authorities participating in the NSLP to provide the same level of financial support for lunches served to students who are not eligible for free or reduced-price lunches as is provided for lunches served to students eligible for free lunches. This rule also requires that all food sold in a school and purchased with funds from the nonprofit school food service account other than meals and snacks reimbursed by the Department of Agriculture must generate revenue at least proportionate to the cost of such foods. This rulemaking will impact schools that participate in NSLP and households with students who participate in NSLP at the paid rate. USDA received stakeholder input on this rulemaking through the public comment process on the interim final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/17/11	76 FR 35301
Interim Final Rule Effective.	07/01/11	
Interim Final Rule Comment Period End.	09/15/11	
Final Rule	09/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael DePiro, *Phone:* 703 305–2876, *Email: michael.depiro@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE11

251. Technical Changes for Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems [0584–AE37]

Legal Authority: Pub. L. 113–79

Abstract: The Food and Nutrition Service (FNS) will propose changes that collectively modernize SNAP benefit issuance and increase program integrity while streamlining program administration, offering greater flexibility to State agencies, and improving customer service. The rule will propose to codify provisions of the 2014 Farm Bill, the 2018 Farm Bill, and respond to 2018 OIG audit findings. The rule will propose to codify 2014 Farm Bill provisions requiring most SNAP-authorized retailers to pay the costs associated with EBT equipment, supplies and related services and requirements pertaining to the online SNAP payment option. This rule would also propose to codify waivers that have been granted to State agencies to implement practices that have proven beneficial as the EBT system has developed and matured and update EBT system technical and functional requirements. FNS has not held any stakeholder engagement initiatives related to this rule but will evaluate the need for future initiatives as rule-making progresses. FNS does not anticipate any significant impacts on communities by this rule, as the proposed changes seek to codify existing program requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael DePiro, *Phone:* 703 305–2876, *Email: michael.depiro@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE37

252. Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP) [0584–AE61]

Legal Authority: Pub. L. 113–79; 7 U.S.C. 2011 to 2036

Abstract: The Agricultural Act of 2014 amended the Food and Nutrition Act of 2008 to increase the requirement that certain Supplemental Nutrition Assistance Program (SNAP) authorized retail food stores have available on a continuous basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of seven varieties. The Food and Nutrition Service (FNS) codified these mandatory requirements in 2016 though these provisions were subsequently blocked by Congress. This change will propose to provide some retailers participating in SNAP as authorized food stores with more flexibility in meeting the enhanced SNAP eligibility requirements. The stakeholder community includes SNAP applicant and authorized retailers required to meet eligibility requirements, public health and access focused advocacy organizations, and SNAP participants. Stakeholder engagement may include listening sessions with these stakeholders, though significant feedback is also available in comments submitted to the previously published proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	04/05/19	84 FR 13555
NPRM Comment Period End.	06/04/19	
NPRM Comment Period Reopened.	06/14/19	84 FR 27743
NPRM Comment Period Reopen End.	06/20/19	
Final Action	04/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael DePiro, *Phone:* 703 305–2876, *Email: michael.depiro@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE61

253. Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP) [0584–AE71]

Legal Authority: Pub. L. 113–79; Pub. L. 115–334

Abstract: This proposed rule would implement statutory provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), and other language intended to deter retailer fraud, abuse, and non-compliance in the Supplemental Nutrition Assistance Program (SNAP). Stakeholders are SNAP retailers and communities in which SNAP retailers provide SNAP participants access to food, other Programs that require SNAP authorization or where reciprocal actions impact participation, and SNAP participants. Stakeholder engagement may include listening sessions; however, significant feedback from stakeholders is also available in the public comments submitted on previously proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael DePiro, *Phone:* 703 305–2876, *Email: michael.depiro@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE71

254. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions and Food Delivery Revisions To Meet the Needs of a Modern, Data-Driven Program [0584–AE85]

Legal Authority: Pub. L. 111–296

Abstract: This final rulemaking addresses key regulatory barriers to online ordering in the WIC Program by making changes to the provisions that prevent online transactions and types of online capable stores from participating in the Program. This rule will also allow FNS to modernize WIC vendor regulations that do not reflect current technology and facilitate the Program's transition to EBT. To inform the development of the proposed rule, FNS reviewed materials developed by a variety of WIC stakeholders, including WIC providers, vendors, manufacturers, EBT processors, advocacy organizations, and WIC participants; as well as a report issued by a task force convened by USDA comprised of 18 organizations from multiple sectors to ensure a diverse range of input. FNS will consider public comments received during the proposed rulemaking stage in development of this final rule.

Timetable:

Action	Date	FR Cite
NPRM	02/23/23	88 FR 11516
NPRM Comment Period End.	05/24/23	
Final Action	02/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael DePiro, *Phone:* 703 305–2876, *Email: michael.depiro@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE85

[FR Doc. 2024–00517 Filed 2–8–24; 8:45 am]

BILLING CODE 3410–30–P

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Part IV

Department of Commerce

Semiannual Regulatory Agenda

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

19 CFR Ch. III

37 CFR Chs. I, IV, and V

48 CFR Ch. 13

50 CFR Chs. II, III, IV, and VI

Fall 2023 Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: In compliance with Executive Order 12866, entitled ''Regulatory Planning and Review,'' and the Regulatory Flexibility Act, as amended, the Department of Commerce (Commerce), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to pre-rulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2023 agenda. The purpose of the Agenda is to provide information to the public on regulations that are currently under review, being proposed, or recently issued by Commerce. It is expected that this information will enable the public to participate more effectively in the Department's regulatory process.

Commerce's fall 2023 regulatory agenda includes regulatory activities that are expected to be conducted during the period November 1, 2023, through October 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Specific: For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

General: Comments or inquiries of a general nature about the agenda should be directed to Candida Harty, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230, telephone: 202–482–3410.

SUPPLEMENTARY INFORMATION: Commerce hereby publishes its fall 2023 Unified Agenda of Federal Regulatory and Deregulatory Actions pursuant to Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration. By memorandum of July 19, 2023, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the fall 2023 Unified Agenda. The Regulatory Flexibility Act requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda that contains a brief description of the subject of any rule likely to have a significant economic impact on a substantial number of small entities.

The internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov,* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

In this edition of Commerce's regulatory agenda, a list of the most important significant regulatory and deregulatory actions and a Statement of Regulatory Priorities are included in the Regulatory Plan, which appears in both the online Unified Agenda and in part II of the issue of the **Federal Register** that includes the Unified Agenda.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act, Commerce's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the internet. In addition, for fall editions of the Agenda, Commerce's entire Regulatory Plan will continue to be printed in the **Federal Register**.

Within Commerce, the Office of the Secretary and various operating units may issue regulations. Among these operating units, the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office issue the greatest share of Commerce's regulations.

A large number of regulatory actions reported in the Agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of NMFS' programs, an ''Explanation of Information Contained in NMFS Regulatory Entries'' is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (the Act) governs the management of fisheries within the Exclusive Economic Zone of the United States (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. For fisheries that require conservation and management measures, eight Regional Fishery Management Councils (Councils) prepare and submit to NMFS Fishery Management Plans (FMPs) for the fisheries within their respective areas in the EEZ. Membership of these Councils is comprised of representatives of the commercial and recreational fishing sectors in addition to environmental, academic, and government interests. Council members are nominated by the governors and ultimately appointed by the Secretary of Commerce. The Councils are required by law to conduct public hearings on the development of FMPs and FMP amendments. Consistent with applicable law, environmental and other analyses are developed that consider alternatives to proposed actions.

Pursuant to the Magnuson-Stevens Act, the Councils also recommend actions to NMFS deemed necessary or appropriate to implement FMPs. The proposed regulations, FMPs, and FMP amendments are subject to review and approval by NMFS, based on consistency with the Magnuson-Stevens Act and other applicable law. The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

Commerce's fall 2023 regulatory agenda follows.

Leslie Kiernan,

General Counsel.

GENERAL ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
255	Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures.	0605–AA60

GENERAL ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
256	Securing the Information and Communications Technology and Services Supply Chain	0605–AA51

INTERNATIONAL TRADE ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
257	Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414.	0625–AB21

BUREAU OF INDUSTRY AND SECURITY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
258	Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities.	0694–AJ35

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
259	Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals	0648–BJ52
260	Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act **(Reg Plan Seq No. 13)**.	0648–BG11
261	Amendment 126 to the Fishery Management Plans for Groundfish of the Bering Sea/Aleutian Islands Management Area and Amendment 114 to the Fishery Management Plan for Groundfish of the Gulf of Alaska.	0648–BM40
262	Amendment 16 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska; Cook Inlet.	0648–BM42
263	Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery Vessel Tracking for the Federal American Lobster Fishery.	0648–BM38
264	Atlantic Highly Migratory Species; Electronic Reporting Requirements	0648–BM23
265	International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty.	0648–BG04
266	Amendment 56 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico: Modifications to Catch Limits, Sector Allocation, and Recreational Fishing Seasons for Gulf of Mexico Gag.	0648–BM46
267	Notice of Proposed Rulemaking for the Designation Pacific Remote Islands National Marine Sanctuary	0648–BM52

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
268	Designation of Critical Habitat for the Threatened Caribbean Corals	0648–BG26
269	Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule **(Reg Plan Seq No. 14)**	0648–BI88
270	Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act.	0648–BK04
271	Designation of Critical Habitat for Nassau Grouper Under the Endangered Species Act	0648–BL53
272	Designation of Marine Critical Habitat for Six Distinct Population Segments of Green Sea Turtles Under the Endangered Species Act.	0648–BL82
273	Designation of Critical Habitat for Rice's Whale Under the Endangered Species Act	0648–BL86
274	Atlantic Large Whale Take Reduction Plan Modifications to Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast.	0648–BM31

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—FINAL RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
275	Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit.	0648–BL42
276	Framework Adjustment 65 to the Northeast Multispecies Fishery Management Plan	0648–BL95
277	Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management.	0648–BI10
278	Atlantic Highly Migratory Species; Prohibiting Retention of Oceanic Whitetip Sharks in U.S. Atlantic Waters and Hammerhead Sharks in the Caribbean Sea.	0648–BK54
279	Atlantic Highly Migratory Species; Amendment 16 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan.	0648–BM08
280	International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort Limits in Purse Seine Fisheries.	0648–BL25
281	Amendment 51 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 51).	0648–BM03

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
282	Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood.	0648–BH87
283	Seafood Import Permitting and Reporting Procedures	0648–BK85
284	Rulemaking to Modify the 2023–2027 Halibut Individual Fishing Quota (IFQ) Vessel Harvest Limitations in IFQ Regulatory Areas 4A, 4B, 4C, and 4D.	0648–BM18

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
285	Amendment 14 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska	0648–BK31
286	Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program.	0648–BL08
287	Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Consideration of Expanded Harvester and Biological Sampling Requirements for American Lobster.	0648–BF01
288	Atlantic Highly Migratory Species; Atlantic Bluefin Tuna General Category Restricted-Fishing Days for 2023.	0648–BL94
289	Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions.	0648–BI79
290	Interim Measures to Reduce Overfishing of Gulf of Mexico Gag	0648–BL89
291	Amendment 54 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico: Modifications to the Greater Amberjack Catch Limits, Sector Allocation, and Rebuilding Plan.	0648–BM00
292	Amendment 53 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 53).	0648–BM27
293	Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan to Implement an Electronic Monitoring Program for Bottom Trawl and Non-Whiting Midwater Trawl Vessels.	0648–BH70
294	2023 Pacific Whiting Harvest Specifications and Interim Tribal Allocation; Pacific Coast Groundfish	0648–BM07

PATENT AND TRADEMARK OFFICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
295	Setting and Adjusting Patent Fees **(Reg Plan Seq No. 17)**	0651–AD64
296	Setting and Adjusting Trademark Fees **(Reg Plan Seq No. 18)**	0651–AD65

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEPARTMENT OF COMMERCE (DOC)

General Administration (ADMIN)

Proposed Rule Stage

255. Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures [0605–AA60]

Legal Authority: Not Yet Determined

Abstract: The Department is seeking public input regarding establishing a licensing process for entities to seek pre-approval before engaging in or continuing to engage in potentially regulated ICTS Transactions under the ''Securing the Information and Communications Technology and Services Supply Chain'' rule.

Timetable:

Action	Date	FR Cite
ANPRM	03/29/21	86 FR 16312
ANPRM Comment Period End.	04/28/21	
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Katelyn Christ, Department of Commerce, 1401 Constitution Avenue, Washington, DC 20230, *Phone:* 202 482–3064, *Email: katelyn.christ@bis.doc.gov.*

RIN: 0605–AA60

DEPARTMENT OF COMMERCE (DOC)

General Administration (ADMIN)

Final Rule Stage

256. Securing the Information and Communications Technology And Services Supply Chain [0605–AA51]

Legal Authority: 50 U.S.C. 1701; 3 U.S.C. 301

Abstract: Pursuant to Executive Order 13873 of May 15, 2019, ''Securing the Information and Communications Technology and Services Supply Chain,'' (Executive Order) the Department of Commerce (the Department) is implementing the process and procedures that the Secretary of Commerce (Secretary) will use to identify, assess, and address transactions that pose an undue risk to the security, integrity, and reliability of information and communications technology and services provided and used in the United States.

Timetable:

Action	Date	FR Cite
NPRM	11/27/19	84 FR 65316
NPRM Comment Period End.	12/27/19	
Interim Final Rule	01/19/21	86 FR 4909
Interim Final Rule Comment Period End.	03/22/21	
Interim Final Rule Effective Date.	03/22/21	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Katelyn Christ, Department of Commerce, 1401 Constitution Avenue, Washington, DC 20230, *Phone:* 202 482–3064, *Email: katelyn.christ@bis.doc.gov.*

RIN: 0605–AA51

DEPARTMENT OF COMMERCE (DOC)

International Trade Administration (ITA)

Final Rule Stage

257. Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414 [0625–AB21]

Legal Authority: Proc 10414, 87 FR 35067; 19 U.S.C. 1318

Abstract: In accordance with Presidential Proclamation 10414 and pursuant to its authority under Section 318(a) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is issuing this final rule to implement Proclamation 10414. Specifically, Commerce is issuing a new rule that, in the event of an affirmative preliminary or final determination in the antidumping and countervailing duty (AD/CVD) circumvention inquiries described below, under Title VII of the Act, extends the time for, and waives, the suspension of liquidation, the application of certain AD/CVD duties, and the collection of cash deposits on applicable entries of certain crystalline silicon photovoltaic cells, whether or not assembled into modules, that are completed in the Kingdom of Cambodia (Cambodia), Malaysia, the Kingdom of Thailand (Thailand), and the Socialist Republic of Vietnam (Vietnam) using parts and components manufactured in the People's Republic of China (China), and that are not already subject to an antidumping or countervailing duty order.

Timetable:

Action	Date	FR Cite
NPRM	07/01/22	87 FR 39426
NPRM Comment Period End.	08/01/22	
Final Action	09/16/22	87 FR 56868
Final Action Effective.	11/15/22	
Next Action Undetermined.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nikki Kalbing, Department of Commerce, International Trade Administration, Washington, DC 20230, *Phone:* 202 717–3147, *Email: nikki.kalbing@trade.gov.*

RIN: 0625–AB21

DEPARTMENT OF COMMERCE (DOC)

Bureau of Industry and Security (BIS)

Proposed Rule Stage

258. • Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities [0694–AJ35]

Legal Authority: 50 U.S.C. 1701 *et seq.;* 50 U.S.C. 1601 *et seq.;* E.O. 13873, 84 FR 22689; E.O. 13984, 86 FR 6837

Abstract: Executive Order 13984 of January 19, 2021, Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities, (E.O. 13984 or the E.O.) directs the Secretary of Commerce (Secretary) to propose regulations requiring certain providers and resellers of certain Infrastructure as a Service (IaaS) products to verify the identity of their foreign customers permitting the Secretary, in consultation with Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, to grant exemptions to the verification requirement; and authorizing the Secretary to impose special measures on providers with regard to certain foreign jurisdictions or foreign persons. The Department of Commerce (Department) issues this notice of proposed rulemaking (NPRM) to solicit comment on proposed regulations to implement Sections 1, 2, and 5 of E.O. 13984.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Katelyn Christ, Department of Commerce, 1401 Constitution Avenue, Washington, DC 20230, *Phone:* 202 482–3064, *Email: katelyn.christ@bis.doc.gov.*

RIN: 0694–AJ35

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Proposed Rule Stage

National Marine Fisheries Service

259. Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals [0648–BJ52]

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: On November 27, 2020, we, NMFS, published in the **Federal Register** a proposal to designate 17 island units of critical habitat in the Pacific Islands Region for 7 Indo-Pacific coral species listed under the Endangered Species Act (ESA). Based on public comments and new information regarding the interpretation of the records of the listed corals and application to critical habitat, a substantial revision of the proposed rule is warranted. Accordingly, we are withdrawing the 2020 proposed rule and publishing this new proposed rule. We propose to designate critical habitat for five of the seven coral species that were addressed in the 2020 proposed rule: Acropora globiceps, Acropora retusa, Acropora speciosa, Euphyllia paradivisa, and Isopora crateriformis. Proposed critical habitat includes 16 island units encompassing approximately 251 square kilometers (km2; 97 square miles, mi2) of marine habitat. In the development of this proposed rule, NMFS considered economic, national security, and other relevant impacts of the proposed designations, but we are not proposing to exclude any areas from the critical habitat designations due to anticipated impacts.

Timetable:

Action	Date	FR Cite
NPRM	11/27/20	85 FR 76262
NPRM Comment Period End.	01/26/21	
NPRM Comment Period Extended.	12/23/20	85 FR 83899
NPRM Comment Period Extended End.	02/25/21	
Second NPRM Comment Period Extended.	02/09/21	86 FR 8749
Second Extended Comment Period End.	03/27/21	
Third NPRM Comment Period Extended.	03/29/21	86 FR 16325
Third NPRM Comment Period Extended End.	05/26/21	
Second NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

RIN: 0648–BJ52

260. Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act [0648–BG11]

Regulatory Plan: This entry is Seq. No. 13 in part II of this issue of the **Federal Register**.

RIN: 0648–BG11

261. • Amendment 126 to the Fishery Management Plans for Groundfish of the Bering Sea/Aleutian Islands Management Area and Amendment 114 to the Fishery Management Plan for Groundfish of the Gulf of Alaska [0648–BM40]

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

Abstract: In response to a recommendation by the North Pacific Fishery Management Council, this proposed rule would implement electronic monitoring for catcher vessels using pelagic trawl gear to harvest pollock and tender vessels delivering to processing plants in the Gulf of Alaska and the Bering Sea. The proposed action would implement a voluntary monitoring option that would allow a vessel to elect to use an electronic monitoring system accompanied by shoreside observers for biological data collections instead of carrying an at-sea observer under the North Pacific Observer Program. The purpose of this action is to advance cost efficiency and compliance monitoring through improved salmon accounting and reduced monitoring costs. This proposed action is needed to modify the current retention and discard requirements to allow participating catcher vessels to maximize retention of all species caught for the use of electronic monitoring as a compliance tool on trawl catcher vessels in the North Pacific Observer Program and meet monitoring objectives on trawl catcher vessels in the Bering Sea and Gulf of Alaska pelagic pollock fisheries. This proposed action will likely affect catcher vessels, tenders, and shoreside processors participating in the directed pelagic trawl pollock fishery in the Bering Sea and Gulf of Alaska. For this proposed action, NMFS uses authority under Section 304(b)(1)(A) and Section 313 of the Magnuson-Stevens Fishery Conservation and Management Act. The Council and NMFS developed the elements of this rule over several years based on feedback and public involvement in the North Pacific Fishery Management Council's Trawl Electronic Monitoring Committee process. NMFS will also hold public hearings in the states of Washington, Oregon, and Alaska to receive additional public input during the comment period on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7638, *Email: jon.kurland@noaa.gov.*

RIN: 0648–BM40

262. • Amendment 16 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska; Cook Inlet [0648–BM42]

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

Abstract: If approved, this action (Amendment 16) would incorporate the Cook Inlet EEZ into the Alaska Salmon FMP, thereby bringing the Cook Inlet EEZ and the salmon fisheries that occur within it under Federal management by the North Pacific Fishery Management Council (Council) and NMFS. Previously, the Cook Inlet EEZ was not included in a Federal fishery management plan (FMP), deferring management to the State of Alaska (State). Commercial fishermen challenged this as inconsistent with the Magnuson-Stevens Act (MSA). Ultimately, the Ninth Circuit held that the Cook Inlet EEZ must be included in an FMP. The Council previously took action to address this issue in 2020 and NMFS implemented their recommendation as Amendment 14,

which closed the Federal area to commercial salmon fishing. Amendment 14 was challenged by commercial fishermen and vacated. A new amendment addressing the area must be promulgated by May 1, 2024. Four management alternatives were considered: (1) no action, (2) delegating management authority to the State consistent with the MSA, (3) Federal management, and (4) Federal management that closes the area to commercial salmon fishing. Alternatives 1 and 4 were not viable given the court rulings, and the State would not accept delegated management. This left Alternative 3 as the only viable alternative. However, the Council did not take action and, NMFS must now take action through a Secretarial FMP amendment pursuant to MSA section 304(c) to meet the court's deadline. NMFS will implement Alternative 3 to federally manage all salmon fishing in the Cook Inlet EEZ. Federal management may reduce commercial salmon harvest in the EEZ area as a result of increased scientific and management uncertainty. Additional litigation is expected from commercial fishermen. NMFS developed the elements of this rule with input from the public during two North Pacific Fishery Management Council meetings, a virtual public hearing, and multiple meetings and consultations with Tribal entities.

Timetable:

Action	Date	FR Cite
NPRM	10/19/23	88 FR 72314
NPRM Comment Period End.	12/18/23	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7638, *Email: jon.kurland@noaa.gov.*

RIN: 0648–BM42

263. • Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery Vessel Tracking for the Federal American Lobster Fishery [0648–BM38]

Legal Authority: 16 U.S.C. 71

Abstract: The Atlantic States Marine Fisheries Commission, the body responsible for the interstate management of the American lobster fishery, recently approved Addendum XXIX to Amendment 3 to the Interstate Fishery Management Plan for American Lobster, which requires electronic tracking of vessels participating in the fishery, with state implementation beginning in 2023. The Commission is made up of representatives from each of the eastern coastal states, including members of the lobster industry, and voted unanimously in support of vessel tracking, which is similar to global positioning system (GPS) capabilities on a cellular/mobile telephone. These data are critical to improving stock assessments, informing discussions and management decisions related to protected species and marine spatial planning, and enhancing offshore enforcement. NOAA Fisheries is proposing complementary Federal regulations under the Atlantic Coastal Fisheries Cooperative Management Act, this would consider revising to regulations under 50 CFR 697. Federal fiscal year 2022 appropriations included approximately $14 million in assistance for lobster permit holders to comply with recent North Atlantic right whale risk reduction measures, including implementing electronic tracking requirements within the Northeast lobster fishery States have indicated they intend to use a portion of this money to defray the costs associated with the vessel tracking program, either through reimbursement or the bulk purchase and distribution of devices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9283, *Email: michael.pentony@noaa.gov.*

RIN: 0648–BM38

264. Atlantic Highly Migratory Species; Electronic Reporting Requirements [0648–BM23]

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

Abstract: Atlantic highly migratory species (HMS) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), *id.* 971 *et seq.,* the implementing statute for binding recommendations of the International Commission for the Conservation of Atlantic Tunas. The ANPRM considered options to: (1) streamline logbook reporting by converting existing commercial paper logbooks to electronic logbooks; (2) expand logbook reporting to recreational and commercial permit holders via electronic logbooks, to be consistent with Agency efforts in other fisheries and to augment data collected for fishery management; (3) collect additional information through existing electronic reporting mechanisms for dealers and recreational permit holders to augment data collected for fishery management; and (4) facilitate HMS reporting including considering ways to incentivize reporting compliance (or penalize noncompliance) and offering an electronic reporting platform for HMS Exempted Fishing Permit Program permit holders. This action is being taken pursuant to the rulemaking authority under section 304(c) of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. 1854(c). The ANPRM comment period ended in August 2023. The comments received provide helpful feedback on the potential issues and ways forward, which are under consideration by the Agency. The Agency's proposed actions for this rulemaking will be based in part on feedback and public comments received on the ANPRM.

Timetable:

Action	Date	FR Cite
ANPRM	05/12/23	88 FR 30699
ANPRM Comment Period End.	08/18/23	
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427–8500, *Email: kelly.denit@noaa.gov.*

RIN: 0648–BM23

265. International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty [0648–BG04]

Legal Authority: 16 U.S.C. 973 *et seq.*

Abstract: Under authority of the South Pacific Tuna Act of 1988, this rule would implement recent amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (also known as the South

Pacific Tuna Treaty). The rule would include modification to the procedures used to request licenses for U.S. vessels in the western and central Pacific Ocean purse seine fishery, including changing the annual licensing period from June-to-June to the calendar year, and modifications to existing reporting requirements for purse seine vessels fishing in the western and central Pacific Ocean. The rule would implement only those aspects of the Treaty amendments that can be implemented under the existing South Pacific Tuna Act.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sarah Malloy, Acting Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, *Phone:* 808 725–5000, *Email: sarah.malloy@noaa.gov.*

RIN: 0648–BG04

266. • Amendment 56 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico: Modifications to Catch Limits, Sector Allocation, and Recreational Fishing Seasons for Gulf of Mexico Gag [0648–BM46]

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

Abstract: Reef Fish Amendment 56 and the proposed rule would modify the status determination criteria, optimum yield, sector catch limits and catch targets and establish a rebuilding timeline for Gulf gag based on the most recent stock assessment (Southeast Data Assessment and Review (SEDAR) 72) and recommendations from the Gulf of Mexico Fishery Management Council's Scientific and Statistical Committee. The amendment and rule would also modify the recreational accountability measures and fishing season. The stock assessment indicated that Gulf gag is overfished and was undergoing overfishing as of 2019, and that a substantial reduction in the total allowable harvest is necessary to rebuild the stock. The amendment and proposed rule would also modify the allocation between the commercial and recreational sectors using adjusted recreational landings estimates. The need for this action is to use the best scientific information available to end overfishing of Gulf gag and rebuild the stock to a level commensurate with maximum sustainable yield, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	10/18/23	88 FR 71812
NPRM Comment Period End.	12/18/23	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew J. Strelcheck, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Email: andy.strelcheck@noaa.gov.*

RIN: 0648–BM46

NOS/ONMS

267. • Notice of Proposed Rulemaking for the Designation Pacific Remote Islands National Marine Sanctuary [0648–BM52]

Legal Authority: 16 U.S.C. 1431 *et seq.*

Abstract: NOAA's Office of National Marine Sanctuaries is considering a proposed rule designating a national marine sanctuary in the waters surrounding the Pacific Remote Islands. This proposed rule for designation under the National Marine Sanctuaries Act would supplement the existing National Marine Monument and further protect and conserve the natural environment and cultural heritage of the Pacific Remote Islands for future generations.

Timetable:

Action	Date	FR Cite
Notice	04/18/23	88 FR 23624
Comment Period End.	06/02/23	
NPRM	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jessica Kondel, Policy and Planning Division Chief, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East West Highway, Building SSMC4, Silver Spring, MD 20910, *Phone:* 240 676–4646.

RIN: 0648–BM52

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Final Rule Stage

National Marine Fisheries Service

268. Designation of Critical Habitat for the Threatened Caribbean Corals [0648–BG26]

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: NMFS listed 5 Caribbean corals as threatened under the Endangered Species Act on October 10, 2014. Critical habitat shall be designated to the maximum extent prudent and determinable at the time a species is proposed for listing (50 CFR 424.12). We concluded that critical habitat was not determinable for the 5 corals at the time of listing. However, we anticipated that critical habitat would be determinable in the future given on-going research. We, therefore, announced in the final listing rules that we would propose critical habitat in separate rulemakings. This rule proposes to designate critical habitat for the 5 Caribbean coral species listed in 2014. A separate proposed critical habitat rule is being prepared for the 15 Indo-Pacific corals listed as threatened in 2014. The proposed designation for the Caribbean corals may include marine waters in Florida, Puerto Rico, US Virgin Islands, Navassa Island, and Flower Garden Banks containing essential features that support all stages of life history of the corals. The proposed rule is not likely to have an annual effect on the economy of $100 million or more or adversely affect the economy. NMFS has contacted the Departments of the Navy, Air Force, and Army as well as the U.S. Coast Guard requesting information related to potential national security impacts that may result from the critical habitat designation. Based on information provided, we concluded that there will be an impact on national security in only 1 area offshore Dania Beach, FL, and will propose to exclude it from the designations.

Timetable:

Action	Date	FR Cite
NPRM	11/27/20	85 FR 76302
NPRM Comment Period End.	01/26/21	
Final Rule	08/09/23	88 FR 54026
Final Action Effective.	09/08/23	
Correction	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources,

Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

RIN: 0648–BG26

269. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [0648–BI88]

Regulatory Plan: This entry is Seq. No. 14 in part II of this issue of the **Federal Register**.

RIN: 0648–BI88

270. Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act [0648–BK04]

Legal Authority: 16 U.S.C. 1382 *et seq.*

Abstract: This rulemaking action under the Marine Mammal Protection Act (MMPA) will establish mandatory time-area closures of Hawaiian spinner dolphins' essential daytime habitats at five selected sites in the Main Hawaiian Islands (MHI). In considering public comments in response to a separate proposed rule related to spinner dolphin interactions (81 FR 57854), NMFS intends these regulatory measures to prevent take of Hawaiian spinner dolphins from occurring in inshore marine areas at essential daytime habitats, and where high levels of disturbance from human activities are most prevalent.

Timetable:

Action	Date	FR Cite
NPRM	09/28/21	86 FR 53844
NPRM Comment Period End.	12/27/21	
Final Action	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

RIN: 0648–BK04

271. Designation of Critical Habitat for Nassau Grouper Under the Endangered Species Act [0648–BL53]

Legal Authority: 16 U.S.C. 1533

Abstract: This rulemaking will designate critical habitat for the threatened Nassau grouper pursuant to section 4 of the Endangered Species Act (ESA). Specific occupied areas under consideration as critical habitat for this species include approximately 2,352.27 sq. kilometers (908.22 sq. miles) of marine habitat located in waters off southeastern coast of Florida, Puerto Rico, Navassa, and the United States Virgin Islands (USVI). For this critical habitat designation, the incremental costs of the rule are anticipated to be limited to the additional administrative effort required for section 7 consultations to consider impacts to the critical habitat. We have contacted the Departments of the Navy, Air Force, and Army as well as the U.S. Coast Guard requesting information related to potential national security impacts that may result from the critical habitat designation. Based on information they provided, national security impacts are not expected to arise as a result of this rule. NMFS also contacted the Department of Defense (DoD) to determine if any areas controlled by the DoD coincide with any of the areas under consideration for critical habitat, and none were found that would result in not designating critical habitat pursuant to section 4(a)(3)(B)(i) of the ESA. This rule is consistent with existing critical habitat regulations in the application of the ESA.

Timetable:

Action	Date	FR Cite
NPRM	10/17/22	87 FR 62930
NPRM Comment Period End.	12/16/22	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

RIN: 0648–BL53

272. Designation of Marine Critical Habitat for Six Distinct Population Segments of Green Sea Turtles Under the Endangered Species Act [0648–BL82]

Legal Authority: 16 U.S.C. 1533

Abstract: In 2012, NMFS and U.S. Fish and Wildlife Service (USFWS; collectively, the Services) were petitioned to identify and list distinct population segments (DPSs) of green sea turtles under section 4 of the Endangered Species Act (ESA; 16 U.S.C. 1533). In 2016, the Services listed six DPSs of green sea turtles occurring in U.S. waters, which triggered the requirement, under ESA section 4, to designate critical habitat to the maximum extent prudent and determinable for those DPSs. The Services did not do so within the statutory deadline, and subsequently entered into a settlement agreement to submit to the Office of the Federal Register for publication a proposed determination concerning the designation of critical habitat for the six DPSs by June 30, 2023. The rule would propose to designate critical habitat containing reproductive, migratory, foraging and resting features in waters from 0 to 20 m depth. The economic impact will affect Federal agencies, who are required under section 7 of the ESA to consult with the Services on their actions that may affect listed species and designated critical habitat. NMFS is working with the Department of Defense and Department of Homeland Security to review potential national security impacts. Regarding Broadening Public Participation and Community Engagement in the Regulatory Process, we are providing six (3 virtual, 3 in-person) public hearings. We will have Spanish at 2 virtual public hearings. Samoan, Chamorro, or Carolinian cultural liaisons are providing facilitation and translation at the 3 in-person public hearings. This is part of a pilot project meant to address requests made during the public comment period for NMFS' Equity and Environmental Justice Strategy.

Timetable:

Action	Date	FR Cite
NPRM	07/19/23	88 FR 46572
NPRM Comment Period End.	10/17/23	
Final Action	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

RIN: 0648–BL82

273. Designation of Critical Habitat for Rice's Whale Under the Endangered Species Act [0648–BL86]

Legal Authority: 16 U.S.C. 1533; 16 U.S.C. 1532

Abstract: Gulf of Mexico Bryde's whales (Balaenoptera edeni) were listed as endangered under the Endangered Species Act (ESA) by the National Marine Fisheries Service (NMFS) effective April 15, 2019 (84 FR 15446). On October 22, 2021, NMFS published

a final rule that revised the listing of Gulf of Mexico Bryde's whales to reflect the scientifically accepted taxonomy and nomenclature of the species (86 FR 47022). The revised common name for this species is Rice's whale and the scientific name is Balaenoptera ricei. The ESA requires that critical habitat be designated to the maximum extent prudent and determinable at the time a species is listed (16 U.S.C. 1533(a)(3)(i)). NMFS concluded that critical habitat was not yet determinable for the Rice's whale at the time of listing. However, NMFS indicated that they anticipated critical habitat would be determinable in the future given on-going research. NMFS, therefore, announced in the final listing rule that they would propose critical habitat in a separate rulemaking. This rule proposes to designate critical habitat for the endangered Rice's whale as one specific area within the Gulf of Mexico that extends from the Texas-Mexico border in the west to the Florida Keys in the east and lies between the 100m and 400m isobaths. NMFS will consult with the Department of Defense to assess any potential national security impacts as a result of the proposed critical habitat designation.

Timetable:

Action	Date	FR Cite
NPRM	07/24/23	88 FR 47453
NPRM Comment Period End.	09/22/23	
NPRM Comment Period Extension.	10/06/23	88 FR 62522
Final Action	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

RIN: 0648–BL86

274. • Atlantic Large Whale Take Reduction Plan Modifications To Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast [0648–BM31]

Legal Authority: 16 U.S.C. 1387

Abstract: The National Marine Fisheries Service (NMFS) is proposing a rule under the Atlantic Large Whale Take Reduction Plan (ALWTRP or Plan) to reduce the risk of North Atlantic right whale entanglement in commercial trap/pot fisheries along the U.S. East Coast. The proposed rule would modify the boundaries of the Massachusetts Restricted Area (MRA) to include a 200 square miles area known as the MRA Wedge to fill a gap in protections that occurs during the implementation of the current closure in Federal waters from February through April every year. This small gap area was inadvertently created by a 2021 modification to an existing MRA seasonal closure to buoy lines which mirrored a state water closure enacted by Massachusetts in early 2021. The resultant gap within the MRA created an opportunity for federally permitted vessels to fish or store buoyed trap gear in the MRA Wedge at great risk of incidental mortality and serious injury of North Atlantic right whales that are seasonally abundant in surrounding waters. Empirical gear and whale sightings collected during aerial surveys of the MRA Wedge during February–April demonstrate the high entanglement risk to right whales in this area. No novel management measures or policies are proposed; this Wedge area was closed through emergency rulemaking in 2021 and 2022, and this rule proposes to permanently implement a small expansion of an existing three-month seasonal restriction to fishing with buoy lines.

Timetable:

Action	Date	FR Cite
NPRM	09/18/23	88 FR 63917
NPRM Comment Period End.	10/18/23	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

RIN: 0648–BM31

275. Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit [0648–BL42]

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

Abstract: In response to a recommendation by the North Pacific Fishery Management Council (Council), this proposed action would implement Amendment 123 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). If approved by the Secretary of Commerce and implemented by NMFS, this action would determine the BSAI Amendment 80 commercial groundfish trawl fleet's (A80) halibut prohibited species catch (PSC) limit annually based on the most recent values from surveys conducted by the Alaska Fisheries Science Center and the International Pacific Halibut Commission (IPHC). The Council's intent in recommending Amendment 123 is to link annual halibut PSC limits in the A80 fleet with estimated halibut abundance. The reason for the change being considered is that the current PSC limit, currently set as a fixed annual amount of 1,745 mt, becomes an increasingly larger proportion of total halibut removals in the BSAI when halibut abundance declines. Over the last 6 years, the Council and its advisory bodies, stakeholders, and the public have considered several approaches for a halibut abundance-based management (ABM) program consistent with Council fishery management objectives and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Public testimony on this action over the years has focused on two primary concerns. The first is the importance of providing flexibility to the A80 fleet to prosecute their quotas. The second is concern about the decline in the directed halibut fishery catch as a result of a decline in halibut abundance, compounded by fixed PSC limits that further reduce the proportion of halibut available to the directed halibut fisheries.

Timetable:

Action	Date	FR Cite
NPRM	12/09/22	87 FR 75570
NPRM Comment Period End.	01/23/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7638, *Email: jon.kurland@noaa.gov.*

RIN: 0648–BL42

276. Framework Adjustment 65 to the Northeast Multispecies Fishery Management Plan [0648–BL95]

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

Abstract: The action would implement management measures included in Framework Adjustment 65 to the Northeast Multispecies Fishery Management Plan (Framework 65) that

were developed by the New England Fishery Management Council in response to new scientific information, pursuant to the rulemaking authorities under section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The action will revise the rebuilding plan for Gulf of Maine (GOM) cod, set annual specifications for fishing years (FY) 2023–2025 for 13 Northeast multispecies stocks, FY2023–2024 for Georges Bank (GB) cod, GB yellowtail flounder, FY2023 for white hake, and specify FY 2023–2024 total allowable catches (TAC) for the three U.S./Canada stocks eastern GB cod, eastern GB haddock, and GB yellowtail flounder. It would also make a temporarily modification to the accountability measures for GB cod. This rule also takes emergency action using our authority under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act to increase the fishing year 2023 specifications for Gulf of Maine (GOM) haddock. The purpose of this emergency action is to mitigate economic harm to industry by increasing the 2023 GOM haddock specifications.

Timetable:

Action	Date	FR Cite
NPRM	05/31/23	88 FR 34810
NPRM Comment Period End.	06/15/23	
Final Action	08/18/23	88 FR 56527
Comment Period End.	09/18/23	
Final Action Effective.	09/18/23	
Next Action Undetermined.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9283, *Email: michael.pentony@noaa.gov.*

RIN: 0648–BL95

277. Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management [0648–BI10]

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

Abstract: This rulemaking would address conducting research in areas currently closed to fishing for Atlantic highly migratory species (HMS)—during various times or by certain gear—to collect fishery-dependent data. A number of time/area closures or gear-restricted areas have been implemented over the years through various rulemakings, limiting fishing for Atlantic highly migratory species in those areas for a variety of reasons including reducing bycatch. These time/area closures have been implemented in consultation with the HMS Advisory Panel to protect species consistent with the Magnuson-Stevens Fisheries Conservation and Management Act (*e.g.,* to reduce bycatch in the pelagic longline fishery off the east coast of Florida), the Endangered Species Act (*e.g.,* to protect sea turtles in the North Atlantic), and the Atlantic Tunas Convention Act (*e.g.,* to protect spawning bluefin tuna in the Gulf of Mexico). Fishery-dependent data supports effective fisheries management, and areas that restrict fishing effort often have a commensurate decrease in fishery-dependent data collection. Programs to facilitate research and data collection, such as those that would be covered by this rulemaking, could assess the efficacy of closed areas, improve sustainable management of highly migratory species, and may provide benefits to commercial and recreational fishermen. The Agency's final actions for this rule will be based in part on feedback and public comments on the proposed rule and draft environmental impact statement, regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA). The comment period ends in September 2023. The comments received to date provide helpful feedback on the potential issues and ways forward.

Timetable:

Action	Date	FR Cite
NPRM	05/05/23	88 FR 29050
NPRM Comment Period Extension.	09/08/23	88 FR 62044
NPRM Comment Period End.	09/15/23	
NPRM Comment Period Extension End.	10/02/23	
Final Action	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427–8500, *Email: kelly.denit@noaa.gov.*

RIN: 0648–BI10

278. Atlantic Highly Migratory Species; Prohibiting Retention of Oceanic Whitetip Sharks in U.S. Atlantic Waters and Hammerhead Sharks in the Caribbean Sea [0648–BK54]

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

Abstract: Atlantic highly migratory species (HMS) fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). On May 15, 2020, NOAA Fisheries issued two Biological Opinions (BiOps) under Section 7(a)(2) of the Endangered Species Act (ESA). These BiOps covered the pelagic longline fishery for Atlantic HMS and the non-pelagic longline HMS fisheries, as managed under the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments. The BiOps concluded that the fisheries are not likely to jeopardize the continued existence of listed species nor adversely affect their designated critical habitat. The BiOps included conservation recommendations under Section 7(a)(1) of the ESA. These conservation recommendations encouraged the prohibition of the commercial and recreational retention of both scalloped hammerhead sharks (specifically in the Southwest and Caribbean distinct population segments) and oceanic whitetip sharks, both of which are listed as threatened under the ESA. As a result, this action considers implementing this conservation recommendation. Under existing regulations, retention and possession of oceanic whitetip and all hammerhead sharks are prohibited for commercial fishermen using pelagic longline gear; this action would extend the prohibition to commercial shark permit holders using other gears and to recreational permit holders who target or catch sharks. This action is being taken pursuant to the rulemaking authority under the Magnuson-Stevens Act, sec. 304(g), and ATCA. The Agency's final actions for this rule will be based in part on public comments on the proposed rule and draft environmental assessment, RIR, and IRFA. The comments received were generally supportive of the proposed action; some commenters requested additional protections for scalloped hammerhead sharks.

Timetable:

Action	Date	FR Cite
NPRM	03/22/23	88 FR 17171
NPRM Comment Period End.	05/22/23	

Action	Date	FR Cite
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427–8500, *Email: kelly.denit@noaa.gov.*

RIN: 0648–BK54

279. Atlantic Highly Migratory Species; Amendment 16 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan [0648–BM08]

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

Abstract: NMFS is developing a proposed rule for Amendment 16 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) pursuant to Magnuson-Stevens Fishery Conservation and Management Act (MSA) sections 304(c) and (g). The draft Amendment will include a draft environmental impact statement and other required analyses. Based on the mechanism used in establishing shark quotas and related management measures from Amendment 14 to the 2006 Consolidated HMS FMP, Amendment 16 would modify the acceptable biological catch (ABC) and annual catch limits (ACLs) for Atlantic sharks and the process used to account for carryover of underharvests of quotas. In this action, NMFS would also look at all commercial and recreational management measures related to the Atlantic shark fishery and make appropriate revisions. Amendment 16 would affect the bottom longline, gillnet, and pelagic longline fisheries, which fish for sharks throughout the entire range of the fishery (Atlantic Ocean, Gulf of Mexico, and Caribbean Sea). The Agency's proposed actions for this rule will be based in part on feedback and public comments received on the issues and options paper. The comment period ends in August 2023. The comments received to date provide helpful feedback on the potential issues and ways forward.

Timetable:

Action	Date	FR Cite
Notice of Intent	05/08/23	88 FR 29617
Notice of Intent Comment Period End.	08/18/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427–8500, *Email: kelly.denit@noaa.gov.*

RIN: 0648–BM08

280. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort Limits in Purse Seine Fisheries [0648–BL25]

Legal Authority: 16 U.S.C. 6901 *et seq.*

Abstract: Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), NMFS is implementing fishing effort limits for the U.S. purse seine fishery operating in the western and central Pacific Ocean (WCPO). Regulations at 50 CFR 300.223(a) currently limit U.S. WCPO purse seine fishing effort in a combined area of the high seas and U.S. exclusive economic zone (EEZ). Based on recent decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, this rulemaking would implement separate U.S. WCPO purse seine fishing effort limits for the high seas and U.S. EEZ. This rulemaking could have some economic effects on U.S. purse seine vessels, as the separate effort limits would reduce the operational flexibility provided by the combined effort limits. This rulemaking could also have some economic effects on American Samoa, as the separate limits could lead to a fishery closure earlier in the year than under the combined limits, which could reduce fish supply to the cannery based in American Samoa. Other elements of this rulemaking include modifications to the process for closing the fishery once an effort limit is reached, and modifications to the procedures for obtaining daily purse seine fishing effort reports.

Timetable:

Action	Date	FR Cite
NPRM	09/12/22	87 FR 55768
NPRM Comment Period End.	10/03/22	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sarah Malloy, Acting Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, *Phone:* 808 725–5000, *Email: sarah.malloy@noaa.gov.*

RIN: 0648–BL25

281. Amendment 51 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 51) [0648–BM03]

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

Abstract: NMFS is developing a final rule to implement Amendment 51. Amendment 51 and the rule will modify management of South Atlantic snowy grouper. Actions will revise annual catch limits, sector allocations, and the fishing season and accountability measures for the recreational sector. Amendment 51 and the rule will end overfishing of South Atlantic snowy grouper, continue to rebuild the stock, and achieve optimum yield while minimizing, to the extent practicable, adverse social and economic effects.

Timetable:

Action	Date	FR Cite
NPRM	05/30/23	88 FR 34460
NPRM Comment Period End.	06/29/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew J. Strelcheck, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Email: andy.strelcheck@noaa.gov.*

RIN: 0648–BM03

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Long-Term Actions

National Marine Fisheries Service

282. Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood [0648–BH87]

Legal Authority: 16 U.S.C. 1801 *et seq.;* Pub. L. 115–141

Abstract: On December 9, 2016, NMFS issued a final rule that established a risk-based traceability program to track seafood from harvest to entry into U.S. commerce. The final rule

included, for designated priority fish species, import permitting and reporting requirements to provide for traceability of seafood products offered for entry into the U.S. supply chain, and to ensure that these products were lawfully acquired and are properly represented. Shrimp and abalone products were included in the final rule to implement the Seafood Import Monitoring Program, but compliance with Seafood Import Monitoring Program requirements for those species was stayed indefinitely due to the disparity between Federal reporting programs for domestic aquaculture of shrimp and abalone products relative to the requirements that would apply to imports under Seafood Import Monitoring Program. In section 539 of the Consolidated Appropriations Act, 2018, Congress mandated lifting the stay on inclusion of shrimp and abalone in Seafood Import Monitoring Program and authorized the Secretary of Commerce to require comparable reporting and recordkeeping requirements for domestic aquaculture of shrimp and abalone. This rulemaking will establish permitting, reporting and recordkeeping requirements for domestic producers of shrimp and abalone from the point of production to entry into commerce.

Timetable:

Action	Date	FR Cite
NPRM	10/11/18	83 FR 51426
NPRM Comment Period End.	11/26/18	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexa Cole, *Phone:* 301 427–8286, *Email: alexa.cole@noaa.gov.*

RIN: 0648–BH87

283. Seafood Import Permitting and Reporting Procedures [0648–BK85]

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

Abstract: NMFS amends the regulations that require seafood import documentation under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The statute prohibits the importation of seafood that was harvested in violation of foreign laws, any treaty, or binding conservation measures of regional fisheries organizations to which the United States is a party. The import permitting, reporting and recordkeeping regulations facilitate enforcement of the statutory prohibition. To ensure compliance with the import monitoring program, NMFS clarifies what qualifies as the U.S. resident business address of the International Fisheries Trade Permit holder and the permit holder's obligation to ensure timely access to and production of the required supply chain records in the event of an audit NMFS also intends to include additional species under the program, such as expanding currently listed single-species to species groups and adding new species. U.S. seafood importers are likely to be affected by this rulemaking through increased reporting and recordkeeping requirements, but NOAA estimates the economic impact will be small because documentation is already completed, transmitted through the supply chain, and available to importers.

Timetable:

Action	Date	FR Cite
NPRM	12/28/22	87 FR 79836
NPRM Comment Period End.	03/28/23	
NPRM Comment Period Extension.	03/31/23	88 FR 19236
NPRM Comment Period Extension End.	04/27/23	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexa Cole, *Phone:* 301 427–8286, *Email: alexa.cole@noaa.gov.*

RIN: 0648–BK85

284. Rulemaking To Modify the 2023–2027 Halibut Individual Fishing Quota (IFQ) Vessel Harvest Limitations in IFQ Regulatory Areas 4A, 4B, 4C, and 4D [0648–BM18]

Legal Authority: 16 U.S.C. 773

Abstract: Commercial halibut fishing off the coast of Alaska is managed under an Individual Fishing Quota (IFQ) program implemented by Federal regulations under the authority of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 *et seq.* On February 10, 2023, the North Pacific Fishery Management Council (Council) recommended to temporarily remove IFQ halibut vessel caps for the 2023–2027 fishing years in IFQ regulatory areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action is needed to provide continued flexibility and consistency in the Pacific halibut fishery. This action would implement the temporary management measure that has been recommended by the Council and implemented by NMFS annually since 2020 for a 5-year period. This action would revise 50 CFR 679.42(h)(1) to remove vessels caps in those four areas for the 2023–2027 fishing year. This temporary action would provide consistency for fishery participants over the next five years, while the Council develops a long-term solution to modify vessel use caps in Area 4. Halibut IFQ holders with quota share in those four areas would be affected by this action, as well as Community Quota Entities in area 4B. This action would not modify any other aspects of the IFQ Program. Section 773c(c) of the Northern Pacific Halibut Act is the rulemaking authority.

Timetable:

Action	Date	FR Cite
NPRM	05/11/23	88 FR 30272
NPRM Comment Period End.	06/12/23	
Final Action	07/26/23	88 FR 48137
Final Action Effective.	07/26/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon Kurland, *Phone:* 907 586–7638, *Email: jon.kurland@noaa.gov.*

RIN: 0648–BM18

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Completed Actions

285. Amendment 14 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska [0648–BK31]

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

Abstract: This action would modify the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska (FMP) and implement regulations to manage the EEZ waters of Cook Inlet under the FMP and prohibit commercial fishing for salmon in this area. Currently, this area is excluded from the FMP and the State of Alaska manages commercial fishing for salmon in this area. If approved, this action would result in all commercial salmon fishing in Cook Inlet occurring within waters of the State of Alaska under State management plans. The North Pacific Fishery Management Council (Council) determined that this action is consistent with the Council's longstanding policy to facilitate management of salmon fishing by the State of Alaska and that the State is the authority best suited for

managing Alaska salmon fisheries given its existing infrastructure and expertise. The Council considered, but did not select, two other action alternatives that would delegate management of the Cook Inlet EEZ to the State of Alaska or establish Council and NMFS management of the commercial salmon fishery within the area. The Council did not select either of these alternatives because the State of Alaska was unwilling to accept delegation of management authority, and due to the substantial increase in management complexity and cost without corresponding benefits of both alternatives.

Timetable:

Action	Date	FR Cite
NPRM	06/04/21	86 FR 29977
NPRM Comment Period End.	07/06/21	
Final Action	11/03/21	86 FR 60568
Final Action Effective.	12/03/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7638, *Email: jon.kurland@noaa.gov.*

RIN: 0648–BK31

286. Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program [0648–BL08]

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

Abstract: In response to a recommendation by the North Pacific Fishery Management Council, this action implements Amendment 122 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), and the Pacific cod Trawl Cooperative Program (PCTC Program) which allocates quota share (QS) to groundfish License Limitation Program (LLP) license holders based on the harvest of BSAI Pacific cod during qualifying years. This Program also allocates QS to a processor permit holder based on processing history during the qualifying years. QS allocated under this program yields an exclusive harvest privilege to members of a PCTC Program cooperative. The Council's intent in recommending Amendment 122 and the PCTC Program is to improve the prosecution of the fishery by promoting safety and stability in the harvesting and processing sectors, increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery dependent communities, and ensuring the sustainability and viability of the Pacific cod resource in the BSAI. The Council initiated action on this Limited Access Privilege Program (LAPP) in response to industry requests to address increasing inefficiency in the BSAI Pacific cod trawl catcher vessel sector by implementing a catch share program. Owners and operators of harvesters and processors that participate in the BSAI Pacific cod trawl fishery would be affected by this action. Section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the rulemaking authority. Section 303A of the MSA authorizes the creation of LAPPs. The final rule included an incorrect cross reference and inadvertently left out two footnotes in a table and a correction notice fixed these errors.

Timetable:

Action	Date	FR Cite
NPRM	02/09/23	88 FR 8592
NPRM Comment Period End.	03/13/23	
Final Action	08/08/23	88 FR 53704
Correction	08/22/23	88 FR 57009
Final Action Effective.	09/07/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7638, *Email: jon.kurland@noaa.gov.*

RIN: 0648–BL08

287. Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Consideration of Expanded Harvester and Biological Sampling Requirements for American Lobster [0648–BF01]

Legal Authority: 16 U.S.C. 5101 *et seq.*

Abstract: In response to recommendations by the Atlantic States Marine Fisheries Commission, this rulemaking action will cap and reduce individual and aggregate trap caps in the Offshore Area 3 lobster fishery and cap the number of permits a permit holder may have in nearshore Area 2. It also implements components of the Commission's Addendum XXVI to the American Lobster Management Plan. Among other things, the Addendum requires the lobster harvesting states to implement a trip-level reporting requirement with expanded data elements for all lobster fishermen in their respective jurisdictions, and recommends complementary action for Federal lobster permit holders. We will implement the mandatory trip-level harvester reporting requirement through this action. Finally, this action also makes some minor administrative changes to the lobster trap transfer program, considers allowing the use of a substitute vessel to tend lobster gear in certain circumstances, and removes some outdated text from the Federal lobster regulation at 50 CFR 697.

Timetable:

Action	Date	FR Cite
ANPRM	11/15/17	82 FR 52871
ANPRM Comment Period End.	12/15/17	
Second ANPRM	06/14/18	83 FR 27747
Second ANPRM Comment Period End.	07/16/18	
NPRM	07/11/22	87 FR 41084
NPRM Comment Period End.	08/10/22	
Interim Final Rule	10/02/23	88 FR 67667
Interim Final Rule Effective.	11/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9283, *Email: michael.pentony@noaa.gov.*

RIN: 0648–BF01

288. Atlantic Highly Migratory Species; Atlantic Bluefin Tuna General Category Restricted-Fishing Days for 2023 [0648–BL94]

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

Abstract: Atlantic tunas are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), id. 971 *et seq.,* the implementing statute for the International Commission for the Conservation of Atlantic Tunas. This temporary final action established a schedule of restricted-fishing days (RFDs) for all Tuesdays, Fridays, and Saturdays from July 1 through November 20, 2023. On an RFD, vessels permitted in the Atlantic Tunas General category are prohibited from fishing for, including catch-and-release and tag-and-release fishing, possessing, retaining, landing, or selling Atlantic

bluefin tuna of all sizes. RFDs also apply to HMS Charter/Headboat permitted vessels when fishing commercially, but do not preclude such vessels from recreational fishing activity (under applicable Angling category regulations), including catch-and-release and tag-and-release fishing. This action was taken pursuant to the rulemaking authority under section 304(c) of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. 1855(d).

Timetable:

Action	Date	FR Cite
NPRM	03/06/23	88 FR 13771
NPRM Comment Period End.	04/05/23	
Final Action	05/25/23	88 FR 33839
Final Action Effective.	07/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427–8500, *Email: kelly.denit@noaa.gov.*

RIN: 0648–BL94

289. Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions [0648–BI79]

Legal Authority: 16 U.S.C. 6901 *et seq.*

Abstract: This final rule implements recent decisions adopted by the Western and Central Pacific Fisheries Commission, to which the United States is a member. Specifically, the final rule implements fish aggregating device design requirements for U.S. purse seine fishing vessels, expands requirements for U.S. fishing vessel owners to obtain numbers issued under the ship identification number scheme established by the International Maritime Organization, and implements bycatch restrictions for sharks and rays.

Timetable:

Action	Date	FR Cite
NPRM	10/07/21	86 FR 55790
NPRM Comment Period End.	11/08/21	
Final Action	05/12/23	88 FR 30671
Final Action Effective.	06/12/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sarah Malloy, Acting Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, *Phone:* 808 725–5000, *Email: sarah.malloy@noaa.gov.*

RIN: 0648–BI79

290. Interim Measures To Reduce Overfishing of Gulf of Mexico Gag [0648–BL89]s

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

Abstract: Gulf of Mexico (Gulf) gag is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico and the most recent stock assessment indicates that Gulf gag is overfished and is undergoing overfishing. The National Marine Fishery Service is implementing interim measures to reduce overfishing, as recommended by the Gulf of Mexico Fishery Management Council (Council), while the Council develops a plan amendment to end overfishing and rebuild the Gulf gag stock. The interim measures would reduce the Gulf gag catch limits consistent with one alternative the Council is considering in the plan amendment under development. The interim measures would also modify the recreational season start date in 2023 to increase the projected season length.

Timetable:

Action	Date	FR Cite
NPRM Temporary Rule.	02/03/23	88 FR 7388
NPRM Temporary Rule Comment Period End.	02/21/23	
Final Temporary Rule Action.	05/03/23	88 FR 27701
Final Action Effective.	05/03/23	
Final Temporary Rule Extension.	10/06/23	88 FR 69553
Final Temporary Rule Extension End.	05/02/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew J. Strelcheck, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Email: andy.strelcheck@noaa.gov.*

RIN: 0648–BL89

291. Amendment 54 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico: Modifications to the Greater Amberjack Catch Limits, Sector Allocation, and Rebuilding Plan [0648–BM00]

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

Abstract: Reef Fish Amendment 54 and the final rule would modify the Gulf greater amberjack overfishing limit, acceptable biological catch, and sector annual catch limits and annual catch targets based on the most recent stock assessment (Southeast Data Assessment and Review 70), which indicated that the stock continued to be overfished and undergoing overfishing, and recommendations from the Gulf of Mexico Fishery Management Council's Scientific and Statistical Committee. The stock assessment included historical recreational catch and effort data adjusted to be consistent with the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES), which replaced the MRIP Coastal Household Telephone Survey (CHTS) in 2018. Landings estimates generated using MRIP–FES are generally greater than those generated using MRIP–CHTS. Reef Fish Amendment 54 also modifies the allocation between the commercial and recreational sectors using the MRIP–FES adjusted landing estimates on a more recent time series (1993–2019) than the previous allocation (1981–2004) and only includes years after greater amberjack was identified to species. The need for this action is to end overfishing and rebuild the greater amberjack stock as required by the Magnuson-Stevens Fishery Conservation and Management Act, update existing greater amberjack catch limits and allocations to be consistent with best scientific information available, FMP objectives, and contemporary data collection methods.

Timetable:

Action	Date	FR Cite
NPRM	03/10/23	88 FR 14964
NPRM Comment Period End.	04/10/23	
Final Action	06/15/23	88 FR 39193
Final Action Effective.	07/17/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew J. Strelcheck, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Email: andy.strelcheck@noaa.gov.*

RIN: 0648–BM00

292. Amendment 53 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 53) [0648–BM27]

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

Abstract: NMFS is developing a proposed rule to implement Amendment 53. The rule will modify management of South Atlantic gag and black grouper. Because gag is overfished and undergoing overfishing, actions for gag include establishing a rebuilding plan, revising annual catch limits, sector allocations, management measures, and recreational accountability measures. Amendment 53 would also modify recreational management measures for black grouper. Amendment 53 and the proposed rule would end overfishing of South Atlantic gag, rebuild the stock, and achieve optimum yield while minimizing, to the extent practicable, adverse social and economic effects.

Timetable:

Action	Date	FR Cite
NPRM	07/13/23	88 FR 44764
NPRM Comment Period End.	08/14/23	
Final Action	09/21/23	88 FR 65135
Final Action Effective.	10/23/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew J. Strelcheck, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Email: andy.strelcheck@noaa.gov.*

RIN: 0648–BM27

293. Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan To Implement an Electronic Monitoring Program for Bottom Trawl and Non-Whiting Midwater Trawl Vessels [0648–BH70]

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

Abstract: The action implements a regulatory amendment to the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan to allow bottom trawl and midwater trawl vessels targeting non-whiting species the option to use electronic monitoring (video cameras and associated sensors) in place of observers to meet requirements for 100-percent observer coverage. By allowing vessels the option to use electronic monitoring to meet monitoring requirements, this action intends to increase operational flexibility and reduce monitoring costs for the fleet.

Timetable:

Action	Date	FR Cite
NPRM	03/01/22	87 FR 11382
NPRM Comment Period End.	03/31/22	
Final Action	10/03/22	87 FR 59705
Final Action Effective.	11/02/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Quan, Regional Administrator—West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, DC 20230, *Phone:* 562 980–4001, *Email: jennifer.quan@noaa.gov.*

RIN: 0648–BH70

294. 2023 Pacific Whiting Harvest Specifications and Interim Tribal Allocation; Pacific Coast Groundfish [0648–BM07]

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

Abstract: Through this rulemaking, NMFS sets the U.S. Total Allowable Catch (TAC) level based on the coastwide TAC determined under the terms of the Agreement with Canada on Pacific Hake/Whiting (Agreement) and the Pacific Whiting Act of 2006 (Whiting Act); the interim allocation for the tribal fishery; the fishery harvest guideline (HG), called the non-tribal allocation, for three commercial whiting sectors; and set-asides for research and bycatch. As in prior years, the interim tribal allocation is not intended to set a precedent for future years. This action will be implemented pursuant to the rulemaking authority under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) 304(b) (Regulations Deemed Necessary by Council) and MSA section 305(d) (Secretarial authority), and the Pacific Whiting Act of 2006. Pursuant to MSA section 305(d), this action is necessary to ensure that the Pacific Coast Groundfish Fishery Management Plan is implemented in a manner consistent with treaty rights of four treaty tribes to fish in their usual and accustomed grounds and stations in common with non-tribal citizens. *United States* v. *Washington,* 384 F. Supp. 313 (W.D. Wash. 1974).

Timetable:

Action	Date	FR Cite
NPRM	04/06/23	88 FR 20457
NPRM Comment Period End.	04/21/23	
Final Action	05/31/23	88 FR 34783
Final Action Effective.	05/31/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Quan, Regional Administrator—West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, DC 20230, *Phone:* 562 980–4001, *Email: jennifer.quan@noaa.gov.*

RIN: 0648–BM07

DEPARTMENT OF COMMERCE (DOC)

Patent and Trademark Office (PTO)

Proposed Rule Stage

295. Setting and Adjusting Patent Fees [0651–AD64]

Regulatory Plan: This entry is Seq. No. 17 in part II of this issue of the **Federal Register**.

RIN: 0651–AD64

296. Setting and Adjusting Trademark Fees [0651–AD65]

Regulatory Plan: This entry is Seq. No. 18 in part II of this issue of the **Federal Register**.

RIN: 0651–AD65

[FR Doc. 2024–00451 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part V

Department of Defense

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, and VII

33 CFR Ch. II

36 CFR Ch. III

48 CFR Ch. II

Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Defense (DoD).

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This agenda announces the regulatory actions the Department of Defense (DoD) plans to take in the next 12 months and those regulatory actions completed since the publication of the spring 2023 Unified Agenda. It was developed under the guidelines of Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review.'' This agenda includes regulatory actions that support the Administration's regulatory priorities, the Secretary of Defense's top priorities to defend the Nation, take care of our people, and succeed through teamwork, as well as those priorities of the National Defense Strategy. These actions include efforts to promote the country's economic resilience; address healthcare issues; support underserved communities and improve small business opportunities; promote competition in the American economy; promote diversity, equity, inclusion, and accessibility in the Federal workforce; support national security efforts, especially safeguarding Federal Government information and information technology systems; tackle the climate crisis; and address military family matters. Members of the public may submit comments on individual proposed and interim final rulemakings at *www.regulations.gov* during the comment period that follows publication in the **Federal Register**. Additionally, specific agenda entries include information on public participation and community outreach efforts conducted or planned for those regulatory entries.

This agenda updates the report published on June 13, 2023, and includes regulations expected to be issued and under review over the next 12 months. The next agenda will publish in the spring of 2024.

The complete Unified Agenda will be available online at *www.reginfo.gov.*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 602), which requires agencies to publish its regulatory flexibility agendas in the **Federal Register**, the Department of Defense's printed agenda entries in the **Federal Register** include only:

(1) rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Although printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements, additional information on these entries is in the Unified Agenda available online.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory program and for general semiannual agenda information, contact Ms. Patricia Toppings, telephone 571–372–0485, or write to Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155, or email: *patricia.l.toppings.civ@mail.mil.*

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600, telephone 703–695–1853, or email: *gerald.j.dziecichowicz.civ@mail.mil.*

For general information on Office of the Secretary regulations, other than those which are procurement- related, contact Ms. Patricia Toppings, telephone 571–372–0485, or write to Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155, or email: *patricia.l.toppings.civ@mail.mil.*

For general information on Office of the Secretary regulations which are procurement-related, contact Ms. Jennifer Johnson, telephone 703–717–8226, or write to Office of the Under Secretary of Defense for Acquisition and Sustainment, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060, or email: *jennifer.d.johnson1.civ@mail.mil.*

For general information on Department of the Army regulations, contact Mr. James ''Jay'' Satterwhite, telephone 571–515–0304, or write to the U.S. Army Records Management and Declassification Agency, ATTN: AAHS–RDO, Building 1458, 9301 Chapek Road, Ft. Belvoir, VA 22060–5605, or email: *james.w.satterwhite.civ@mail.mil.*

For general information on the U.S. Army Corps of Engineers regulations, contact Ms. Stacey Jensen, telephone 703–459–6026, or write to Office of the Assistant Secretary of the Army (Civil Works), 108 Army Pentagon, Room 3E441, Washington, DC 20310–0108, or email: *stacey.m.jensen.civ@army.mil.*

For general information on Department of the Navy regulations, contact LCDR Jessica Koningisor, telephone 703–614–5366, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066, or email: *jessica.e.koningisor.mil@us.navy.mil.*

For general information on Department of the Air Force regulations, contact Mr. Robert Bivins, telephone 703–693–7302, or write the Office of the Secretary of the Air Force, Chief, Information Dominance/Chief Information Officer (SAF CIO/A6), 1800 Air Force Pentagon, Washington, DC 20330–1800, or email: *usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil.*

For specific agenda items, contact the appropriate individual indicated for each regulatory action.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions reports on actions planned by the Office of the Secretary of Defense, the Military Departments, the Office of the Under Secretary of Defense for Acquisition and Sustainment for procurement-related actions, and the U.S. Army Corps of Engineers.

This agenda also identifies rules impacted by the:

a. Regulatory Flexibility Act.

b. Paperwork Reduction Act of 1995.

c. Unfunded Mandates Reform Act of 1995.

Generally, rules discussed in this agenda will contain five sections: (1) pre-rule stage; (2) proposed rule stage; (3) final rule stage; (4) completed actions; and (5) long-term actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Joo Y. Chung,

Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense.

OFFICE OF THE SECRETARY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
297	Cybersecurity Maturity Model Certification (CMMC) Program **(Reg Plan Seq No. 19)**	0790–AL49

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEFENSE ACQUISITION REGULATIONS COUNCIL—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
298	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041) **(Reg Plan Seq No. 23)**.	0750–AK81

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
299	TRICARE Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals.	0720–AB73

DEPARTMENT OF DEFENSE (DOD)

Office of the Secretary (OS)

Proposed Rule Stage

297. Cybersecurity Maturity Model Certification (CMMC) Program [0790–AL49]

Regulatory Plan: This entry is Seq. No. 19 in part II of this issue of the **Federal Register**.

RIN: 0790–AL49

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Proposed Rule Stage

298. Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041) [0750–AK81]

Regulatory Plan: This entry is Seq. No. 23 in part II of this issue of the **Federal Register**.

RIN: 0750–AK81

DEPARTMENT OF DEFENSE (DOD)

Office of Assistant Secretary for Health Affairs (DODOASHA)

Completed Actions

299. TRICARE Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals [0720–AB73]

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch. 55

Abstract: The Department of Defense, Defense Health Agency, revised its regulation on the reimbursement of ambulatory surgery centers (ASC) and outpatient services provided in Cancer and Children's Hospitals (CCHs). Revisions are in accordance with the statutory provision at section 1079(i)(2) of title 10 of the United States Code, that requires TRICARE's payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare. In accordance with this requirement, TRICARE adopted Medicare's payment methodology for ASC and adopted Medicare's payment methodology for outpatient services provided in CCHs. Although Medicare's reimbursement methods for ASC and CCHs are different, it was prudent to adopt both the Medicare ASC system and the Outpatient Prospective Payment System with hold-harmless adjustments (meaning the provider is not reimbursed less than their costs) for CCHs simultaneously to align with our statutory requirement to reimburse like Medicare at the same time. This rule made the modifications necessary to implement TRICARE reimbursement methodologies similar to those applicable to Medicare beneficiaries for outpatient services rendered in ASCs and CCHs.

Timetable:

Action	Date	FR Cite
NPRM	11/29/19	84 FR 65718
NPRM Comment Period End.	01/28/20	
Final Action	04/04/23	88 FR 19844
Final Action; Correction.	04/27/23	88 FR 25492
Final Action Effective.	10/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Elan Green, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 East Centretech Parkway, Aurora, CO 80011, *Phone:* 303 676–3907, *Email: elan.p.green.civ@mail.mil.*

RIN: 0720–AB73

[FR Doc. 2024–00516 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part VI

Department of Education

Semiannual Regulatory Agenda

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, Department of Education.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Secretary of Education publishes a semiannual agenda of Federal regulatory and deregulatory actions. The agenda is issued under the authority of section 4(b) of Executive Order 12866, ''Regulatory Planning and Review.'' The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the regulatory actions we plan to take.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Other questions or comments on this agenda should be directed to Leslie Carter, Program Specialist, or Levon Schlichter, Attorney, Department of Education, Room 6C128, 400 Maryland Avenue SW, Washington, DC 20202–2241; telephone: LaTanya Cannady (202) 401–9676 or Levon Schlichter (202) 453–6387. Individuals who are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in the Spring and Fall of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive Order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

□ An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.

□ An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).

□ A reference to where a reader can find the current regulations in the Code of Federal Regulations.

□ A citation of legal authority.

□ The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED's Principles for Regulating listed in its regulatory plan (78 FR 1361, published January 8, 2013), ED is committed to regulations that improve the quality and equality of services it provides to its customers. ED will regulate only if absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on any uncompleted actions in this agenda that ED plans to review under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine their economic impact on small entities.

This publication does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here. Dates of future regulatory actions are subject to revision in subsequent agendas.

Electronic Access to This Document: The entire Unified Agenda is published electronically and is available online at *www.reginfo.gov.*

Elizabeth Brown,

General Counsel.

OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
300	EDGAR Revisions **(Rulemaking Resulting From a Section 610 Review) (Reg Plan Seq No. 40)**	1875–AA14

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

OFFICE OF POSTSECONDARY EDUCATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
301	Factors of Financial Responsibility (**Section 610 Review**)	1840–AD64

DEPARTMENT OF EDUCATION (ED)

Office of Planning, Evaluation and Policy Development (OPE)

Proposed Rule Stage

300. EDGAR Revisions (Rulemaking Resulting From a Section 610 Review) [1875–AA14]

Regulatory Plan: This entry is Seq. No. 40 in part II of this issue of the **Federal Register**.

RIN: 1875–AA14

DEPARTMENT OF EDUCATION (ED)

Office of Postsecondary Education (OPE)

Completed Actions

301. Factors of Financial Responsibility (Section 610 Review) [1840–AD64]

Legal Authority: 20 U.S.C. 1094 and 1099c; sec. 4 of Pub. L. 95–452; 92 Stat. 1101–1109

Abstract: The Secretary plans to amend regulations in subpart L of 34 CFR part 668 on institution and program eligibility under the HEA, including regulations associated with the standards of financial responsibility an institution must maintain in order to be eligible to participate in programs under title IV of the HEA.

Timetable:

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rulemaking.	05/26/21	86 FR 28299
NPRM	05/19/23	88 FR 32300
NPRM Comment Period End.	06/20/23	
Final Action	10/31/23	88 FR 74568
Final Action Effective.	07/01/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gregory Martin, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 2C136, Washington, DC 20202, *Phone:* 202 453–7535, *Email: gregory.martin@ed.gov.*

RIN: 1840–AD64

[FR Doc. 2024–00583 Filed 2–8–24; 8:45 am]

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Part VII

Department of Energy

Semiannual Regulatory Agenda

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions

AGENCY: Department of Energy.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Department of Energy (DOE) has prepared and is making available its portion of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda), including its Regulatory Plan (Plan), pursuant to Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' as reaffirmed and amended in E.O. 13563, ''Improving Regulation and Regulatory Review,'' and E.O. 14094, ''Modernizing Regulatory Review,'' and the Regulatory Flexibility Act.

SUPPLEMENTARY INFORMATION: The Agenda is a government-wide compilation of upcoming and ongoing regulatory activity, including a brief description of each rulemaking and a timetable for action. The Agenda also includes a list of regulatory actions completed since publication of the last Agenda. The Department of Energy's portion of the Agenda includes regulatory actions called for by the Energy Policy and Conservation Act, as amended, and programmatic needs of DOE offices.

The internet is the basic means for disseminating the Agenda and providing users the ability to obtain information from the Agenda database. DOE's entire Fall 2023 Regulatory Agenda can be accessed online by going to *www.reginfo.gov.*

Publication in the **Federal Register** is mandated by the Regulatory Flexibility Act (5 U.S.C. 602) only for Agenda entries that require either a regulatory flexibility analysis or periodic review under section 610 of that Act. The Plan appears in both the online Agenda and the **Federal Register** and includes the most important of DOE's significant regulatory actions and a Statement of Regulatory and Deregulatory Priorities.

Samuel Walsh,

General Counsel.

ENERGY EFFICIENCY AND RENEWABLE ENERGY—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
302	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces.	1904–AD20
303	Energy Conservation Standards for Consumer Water Heaters **(Reg Plan Seq No. 46)**	1904–AD91
304	Energy Conservation Standards for Consumer Clothes Washers	1904–AD98
305	Energy Conservation Standards for Consumer Boilers	1904–AE82
306	Energy Conservation Standards for Miscellaneous Residential Refrigeration	1904–AF00

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

ENERGY EFFICIENCY AND RENEWABLE ENERGY—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
307	Energy Conservation Standards for Residential Conventional Cooking Products	1904–AD15
308	Energy Conservation Standards for Commercial Water Heating-Equipment	1904–AD34
309	Energy Conservation Standards: Computer Room Air Conditioners	1904–AF01
310	Energy Conservation Standards for Dedicated-Purpose Pool Pump Motors	1904–AF27
311	Energy Conservation Standards for 3-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h.	1904–AF32

DEPARTMENTAL AND OTHERS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
312	Statutory Updates to the Advanced Technology Vehicles Manufacturing Incentive Program	1901–AB60

DEPARTMENT OF ENERGY (DOE)

Energy Efficiency and Renewable Energy (EE)

Final Rule Stage

302. Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces [1904–AD20]

Legal Authority: 42 U.S.C. 6295(f)(4)(C); 42 U.S.C. 6295(m)(1); 42 U.S.C. 6295(gg)(3)

Abstract: The Energy Policy and Conservation Act, as amended, (EPCA) prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including the residential furnaces which are the subject of this rulemaking. (42 U.S.C. 6292(a)(5)) EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent amended standards would be technologically feasible and economically justified and would save a significant amount of energy (42 U.S.C. 6295(o)(2)(A) and (3)(B)). EPCA specifically provides that DOE must conduct two rounds of energy conservation standards rulemakings for the residential furnaces at issue (42 U.S.C. 6295(f)(4)(B) and (C)), and the statute also requires that not later than six years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product does not need to be amended, or a notice of proposed rulemaking (NOPR) including new proposed energy conservation standards (42 U.S.C. 6295(m)(1)). This rulemaking is being undertaken pursuant to the statutorily-required second round of rulemaking for

non-weatherized gas furnaces (NWGFs) and mobile home gas furnaces (MHGFs), and once completed, it will also satisfy the statutorily-required six-year-lookback review. In the July 7, 2022 NOPR, DOE proposes amended and new energy conservation standards for NWGFs and MHGFs pursuant to a court-ordered remand of DOE's 2011 rulemaking for these products and other statutory requirements. 87 FR 40590. Specifically, the NOPR proposes amended active mode annual fuel utilization efficiency (AFUE) standards at 95 percent for both NWGFs and MHGFs. It also proposes amended standby mode and off mode standards (in watts) at 8.5 watts for both NWGFs and MHGFs. If finalized, the proposed standards would apply to all NWGFs and MHGFs manufactured in, or imported into, the United States starting on the date five years after the publication of the final rule for this rulemaking.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting.	10/30/14	79 FR 64517
NPRM and Notice of Public Meeting.	03/12/15	80 FR 13120
NPRM Comment Period Extended.	05/20/15	80 FR 28851
NPRM Comment Period Extended End.	07/10/15	
Notice of Data Availability (NODA).	09/14/15	80 FR 55038
NODA Comment Period End.	10/14/15	
NODA Comment Period Reopened.	10/23/15	80 FR 64370
NODA Comment Period Reopened End.	11/06/15	
Supplemental NPRM and Notice of Public Meeting.	09/23/16	81 FR 65720
Supplemental NPRM Comment Period End.	11/22/16	
SNPRM Comment Period Reopened.	12/05/16	81 FR 87493
SNPRM Comment Period End.	01/06/17	
Notice of NPRM Withdrawal.	01/15/21	86 FR 3873
NPRM	07/07/22	87 FR 40590
NPRM Comment Period Extended, NODA and Notice of Public Meeting.	08/30/22	87 FR 52861
NPRM Comment Period Extended End.	10/06/22	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Julia Hegarty, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 597–6737, *Email: julia.hegarty@ee.doe.gov.*

RIN: 1904–AD20

303. Energy Conservation Standards for Consumer Water Heaters [1904–AD91]

Regulatory Plan: This entry is Seq. No. 46 in part II of this issue of the **Federal Register**.

RIN: 1904–AD91

304. Energy Conservation Standards for Consumer Clothes Washers [1904–AD98]

Legal Authority: 42 U.S.C. 6295(g); 42 U.S.C. 6295(m)

Abstract: Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as amended, the U.S. Department of Energy (DOE) is examining whether to amend the current energy conservation standards for consumer clothes washers found at 10 CFR 430.32(g). To this end, DOE must determine whether standards more stringent than those currently in place would result in a significant amount of energy savings and whether such amended standards would be technologically feasible and economically justified. DOE has tentatively proposed standards that represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these standard levels are already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed the burdens. Once completed, this rulemaking will fulfill DOE's statutory obligation to either propose amended standards for this product or determine that the standards do not need to be amended.

Additionally, EPCA directs DOE to provide interested persons an opportunity to present oral and written comments on matters related to any energy conservation standard proposed rule. To satisfy this requirement, DOE held an initial public meeting in November 2021 to discuss preliminary materials and a second meeting in March 2023 to specifically discuss the proposed rule. DOE intends address any feedback provided during the March 2023 public meeting in subsequent materials.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	08/02/19	84 FR 37794
RFI Comment Period Extended.	08/26/19	84 FR 44557
RFI Comment Period Extended End.	10/03/19	
RFI Comment Period Reopened.	10/03/19	84 FR 52818
RFI Comment Period Reopened End.	10/17/19	
Preliminary Analysis and Notice of Webinar.	09/29/21	86 FR 53886
Public Meeting	11/10/21	
Preliminary Analysis Comment Period Extended.	10/29/21	86 FR 59889
Preliminary Analysis Comment Period Extended End.	01/27/22	
Notice of Data Availability (NODA).	04/13/22	87 FR 21816
NODA Comment Period End.	05/13/22	
NODA Comment Period Reopened.	05/19/22	87 FR 30433
NODA Comment Period Reopened End.	05/27/22	
NPRM	03/03/23	88 FR 13520
Public Meeting	03/28/23	
NPRM Comment Period Extended.	05/01/23	88 FR 26511
NPRM Comment Period Extended End.	05/17/23	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Bryan D. Berringer, Building Technologies Office, EE–5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 586–0371, *Email: bryan.berringer@ee.doe.gov.*

RIN: 1904–AD98

305. Energy Conservation Standards for Consumer Boilers [1904–AE82]

Legal Authority: 42 U.S.C. 6295(m)(1)

Abstract: Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as

amended, the U.S. Department of Energy (DOE) is examining whether to amend the current energy conservation standards in place for consumer boilers found at 10 CFR 430.32(e). As a result of this effort, DOE may propose and adopt more-stringent standards or issue a determination that no amendments to the current standards are required. To this end, DOE must determine whether national standards more stringent than those currently in place would result in a significant amount of energy savings and whether such amended national standards would be technologically feasible and economically justified. Once completed, this rulemaking will fulfill DOE's statutory obligation to either propose and adopt amended standards for this product or determine that the existing standards do not need to be amended.

Timetable:

Action	Date	FR Cite
Request for Information (RFI); Early Assessment Review.	03/25/21	86 FR 15804
RFI Comment Period End.	04/26/21	
RFI; Early Assessment Comment Period Extended.	04/09/21	86 FR 18478
RFI; Early Assessment Comment Period Extended End.	05/26/21	
Notice of Webinar and Availability of Preliminary Technical Support Document.	05/04/22	87 FR 26304
Preliminary Technical Support Document Comment Period End.	07/05/22	
NPRM	08/14/23	88 FR 55128
Notice of Public Meeting and Webinar.	08/31/23	88 FR 60152
NPRM Comment Period End.	10/13/23	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Julia Hegarty, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 597–6737, *Email: julia.hegarty@ee.doe.gov.*

RIN: 1904–AE82

306. Energy Conservation Standards for Miscellaneous Residential Refrigeration [1904–AF00]

Legal Authority: 42 U.S.C. 6292(a)(20); 42 U.S.C. 6295(l); 42 U.S.C. 6295(m)

Abstract: The U.S. Department of Energy (DOE) has initiated an effort to consider amending the energy conservation standards for miscellaneous residential refrigeration (*e.g.,* wine coolers and certain other combination consumer refrigeration products). Once completed, this rulemaking will fulfill DOE's statutory obligation to either propose amended energy conservation standards for these products or determine that the existing standards do not need to be amended. To this end, DOE must determine whether national standards more stringent than those currently in place would result in a significant amount of energy savings and whether such amended national standards would be technologically feasible and economically justified.

In the notice of proposed rulemaking, DOE proposed standards that represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility products achieving these standard levels are already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards.

Timetable:

Action	Date	FR Cite
Request for Information (RFI); Early Assessment Review.	12/08/20	85 FR 78964
Comment Period End.	02/22/21	
Notification of Webinar and Availability of Preliminary Technical Support Document.	01/21/22	87 FR 3229
Notice of rescheduled public meeting to March 7, 2022.	02/09/22	87 FR 7396
Preliminary Analysis Comment Period End.	03/22/22	
NPRM	03/31/23	88 FR 19382
NPRM Comment Period End.	05/30/23	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lucas Adin, Project Manager, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Mail Stop EE–5B, Washington, DC 20585, *Phone:* 202 287–5904, *Email: lucas.adin@ee.doe.gov.*

RIN: 1904–AF00

DEPARTMENT OF ENERGY (DOE)

Energy Efficiency and Renewable Energy (EE)

Completed Actions

307. Energy Conservation Standards for Residential Conventional Cooking Products [1904–AD15]

Legal Authority: 42 U.S.C. 6295(m)(1); 42 U.S.C. 6292 (a)(10); 42 U.S.C. 6295(h)

Abstract: The Energy Policy and Conservation Act (EPCA), as amended by Energy Independence and Security Act of 2007 (EISA), prescribes energy conservation standards for various consumer products, including consumer conventional cooking products. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more stringent standards would be technologically feasible and economically justified and would result in a significant conservation of energy. In this rulemaking, DOE proposes new and amended energy conservation standards for consumer conventional cooking products and tentatively concludes that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy.

On September 25, 2023, the Association of Home Appliance Manufacturers and efficiency and consumer organizations and utilities, submitted a joint letter to DOE recommending new and amended efficiency standards for various home appliances for consideration including for conventional cooking products. Under the authority provided in 42 U.S.C. 6295(p)(4), DOE is now pursuing this effort through a direct final rule, see 1904–AF57.

Completed:

Reason	Date	FR Cite
Supplemental NPRM; Extension of Public Comment Period End.	04/17/23	
NODA Comment Period End.	04/03/23	
Withdrawn	11/03/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carl Shapiro, *Phone:* 240 315–4339.

RIN: 1904–AD15

308. Energy Conservation Standards for Commercial Water Heating-Equipment [1904–AD34]

Legal Authority: 42 U.S.C. 6313(a)(6)(C)(i) and (vi)

Abstract: The U.S. Department of Energy (DOE) has completed a rulemaking to amend energy conservation standards for commercial water heaters. Now completed, this rulemaking fulfills DOE's statutory obligation under the Energy Policy and Conservation Act, as amended, (EPCA) to either propose amended energy conservation standards for commercial water heaters and hot water supply boilers (CWHs), or determine that the existing standards do not need to be amended. (Unfired hot water storage tanks and commercial heat pump water heaters are being considered in a separate rulemaking.) DOE must determine whether national standards more stringent than those that are currently in place would result in a significant additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified. In the final rule, DOE concludes, based on clear and convincing evidence that the standards adopted are technologically feasible and economically justified, and would result in significant additional conservation of energy. Specifically, with regards to technological feasibility, CWH equipment achieving the adopted standard levels are already commercially available for all equipment classes covered by the final rule. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the adopted standards.

Completed:

Reason	Date	FR Cite
Final Action	10/06/23	88 FR 69686
Final Action Effective.	12/05/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Julia Hegarty, *Phone:* 240 597–6737, *Email: julia.hegarty@ee.doe.gov.*

RIN: 1904–AD34

309. Energy Conservation Standards: Computer Room Air Conditioners [1904–AF01]

Legal Authority: 42 U.S.C. 6313(a)6)(A); 42 U.S.C. 6313(a)(6)(C)(i)

Abstract: This rulemaking for Computer Room Air Conditioners (CRACs) is required under the Energy Policy and Conservation Act (EPCA), as amended, ASHRAE trigger provision at 42 U.S.C. 6313(a)(6)(A). Under the statute, U.S. Department of Energy (DOE) is required to either: (1) establish an amended uniform national standard for this equipment at the minimum level specified in the amended ASHRAE Standard 90.1; or (2) adopt a more-stringent standard, if supported by clear and convincing evidence. To adopt a more-stringent standard, the Secretary must determine, by rule published in the **Federal Register**, that adoption of such standard would result in significant additional conservation of energy and is technologically feasible and economically justified.

As noted previously, this rulemaking originally started under RIN 1904–AD92, with the publication of a notice of data availability and request for information addressing CRACs on September 11, 2019 (84 FR 48006). However, ASHRAE 90.1–2019 made additional revisions to the efficiency levels for CRACs and newly acted to amend the efficiency levels for 3-Phase Commercial Unitary Air-Cooled Air Conditioners and Heat Pumps Less Than 65,000 Btu/h. Consequently, DOE had bundled these two equipment categories in the rulemaking under RIN 1904–AF01. (Note that the earlier RIN 1904–AD92 also addressed Dedicated Outdoor Air Systems, but since that equipment category saw no further ASHRAE action, DOE is moving forward with that equipment category separately under that RIN.) However, DOE is now addressing consideration of potential amended energy conservation standards for 3-Phase Commercial Unitary Air-Cooled Air Conditioners and Heat Pumps Less Than 65,000 Btu/h in a separate rulemaking under RIN 1904–AF32. Consequently, RIN 1904–AF01 is currently limited to consideration of amended energy conservation standards for CRACs.

In the final rule, DOE is adopting amended energy conservation standards for CRACs that rely on a new efficiency metric and are equivalent to those levels specified in ASHRAE Standard 90.1 2019. DOE has determined that it lacks the clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard.

Completed:

Reason	Date	FR Cite
Final Rule	06/02/23	88 FR 36392
Final Rule Effective.	08/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Troy Watson, *Phone:* 240 449–9387, *Email: troy.watson@ee.doe.gov.*

RIN: 1904–AF01

310. Energy Conservation Standards for Dedicated-Purpose Pool Pump Motors [1904–AF27]

Legal Authority: 42 U.S.C. 6295(o); 42 U.S.C. 6316(a); 42 U.S.C. 6311(1)(A)

Abstract: The U.S. Department of Energy (DOE) published a final rule adopting energy conservation standards for dedicated-purpose pool pump motors (DPPP), which is a category of electric motor. DOE determined that the standards adopted represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, equipment are able to achieve these standard levels using technology options currently available in the DPPPM market. As for economic justification, DOE's analysis shows that the benefits of the standards exceed the burdens of the standards.

Completed:

Reason	Date	FR Cite
Final Action	09/28/23	88 FR 66966
Final Action Effective.	11/27/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeremy Dommu, *Phone:* 202 586–9870, *Email: jeremy.dommu@ee.doe.gov.*

RIN: 1904–AF27

311. Energy Conservation Standards for 3-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h [1904–AF32]

Legal Authority: 42 U.S.C. 6313(a)(6)(A); 42 U.S.C. 6313(a)(6)(C)(i)

Abstract: Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as amended, the Department of Energy (DOE) is examining whether to amend the current energy conservation standards for certain categories of Commercial Air Conditioning and Heating Equipment found at 10 CFR 431.97. As a result of this effort, DOE may either propose and adopt: (1) the amended ASHRAE standard 90.1–2019 levels; or (2) more-stringent standards if supported by ''clear and convincing'' evidence. DOE has proposed amended energy conservation standards that rely

on new efficiency metrics and align with the amended efficiency levels in the industry standard, ASHRAE 90.1–2019. DOE has preliminarily determined that it lacks clear and convincing evidence required by the EPCA to adopt standards more stringent than the levels specified in the industry standard. DOE has also proposed definitions for space-constrained commercial package air conditioning and heating equipment and for small-duct, high-velocity commercial package air conditioning and heating equipment.

In the final rule, DOE is adopting amended energy conservation standards for air cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h that rely on new efficiency metrics and align with amended efficiency levels in the industry standard. For the relevant equipment classes, DOE has determined that it lacks clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard.

Completed:

Reason	Date	FR Cite
Final Rule	06/02/23	88 FR 36368
Final Rule Effective.	08/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Troy Watson, *Phone:* 240 449–9387, *Email: troy.watson@ee.doe.gov.*

RIN: 1904–AF32

DEPARTMENT OF ENERGY (DOE)

Departmental and Others (ENDEP)

Final Rule Stage

312. Statutory Updates to the Advanced Technology Vehicles Manufacturing Incentive Program [1901–AB60]

Legal Authority: 42 U.S.C. 17013(d); 42 U.S.C. 17013(e)

Abstract: The U.S. Department of Energy (DOE) Loan Programs Office (LPO) intends to issue a direct final rule to amend the regulations applicable to the Advanced Technology Vehicles Manufacturing (ATVM) Loan Program authorized by section 136 of the Energy Independence and Security Act of 2007, as amended (42 U.S.C. 17013) to allow parties to apply for direct loans in connection with certain categories projects made eligible for such loans by the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act. Relatedly, LPO is also pursuing another rulemaking effort via 1901–AB55 to address additional changes for the ATVM Loan Program.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rebecca Limmer, Chief Counsel, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 586–1174, *Email: rebecca.limmer@hq.doe.gov.*

RIN: 1901–AB60

[FR Doc. 2024–00452 Filed 2–8–24; 8:45 am]

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Part VIII

Department of Health and Human Services

Semiannual Regulatory Agenda

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Ch. I

25 CFR Ch. V

42 CFR Chs. I–V

45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

Regulatory Agenda

AGENCY: Office of the Secretary, HHS.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Regulatory Flexibility Act of 1980 and Executive Order (E.O.) 12866 require the semiannual issuance of an inventory of rulemaking actions under development throughout the Department, offering for public review summarized information about forthcoming regulatory actions.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Gramling, Executive Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; (202) 690–5627.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) is the Federal government's lead agency for protecting the health of all Americans and providing essential human services. HHS enhances the health and well-being of Americans by promoting effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services.

This Agenda presents the regulatory activities that the Department expects to undertake in the foreseeable future to advance this mission. The purpose of the Agenda is to encourage more effective public participation in the regulatory process. The regulatory actions forecasted in this Agenda reflect the priorities of HHS Secretary Xavier Becerra and the Biden-Harris Administration. Accordingly, this Agenda contains rulemakings aimed at ensuring that the nation is well-prepared to manage COVID–19 going forward, building and expanding access to affordable, quality health care, addressing health disparities and promoting equity, and boosting the mental health and wellbeing of children and families, among other policy priorities.

The rulemaking abstracts included in this paper issue of the **Federal Register** cover, as required by the Regulatory Flexibility Act of 1980, those prospective HHS rulemakings likely to have a significant economic impact on a substantial number of small entities. The Department's complete Regulatory Agenda is accessible online at *http://www.RegInfo.gov.*

Elizabeth J. Gramling,

HHS Executive Secretary.

OFFICE FOR CIVIL RIGHTS—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
313	Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities **(Reg Plan Seq No. 48)**.	0945–AA15

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
314	Medications for the Treatment of Opioid Use Disorder	0930–AA39

CENTERS FOR DISEASE CONTROL AND PREVENTION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
315	Control of Communicable Diseases; Foreign Quarantine **(Reg Plan Seq No. 56)**	0920–AA75

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

FOOD AND DRUG ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
316	Medication Guide; Patient Medication Information	0910–AH68
317	Administrative Detention of Tobacco Products	0910–AI05
318	Conduct of Analytical and Clinical Pharmacology, Bioavailability, and Bioequivalence Studies	0910–AI57
319	Amendments to the Final Rule Regarding the List of Bulk Substances That Can Be Used to Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act **(Section 610 Review)**.	0910–AI70
320	Distribution of Compounded Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act **(Section 610 Review)**.	0910–AI71
321	Tobacco Product Standard for Nicotine Level of Certain Tobacco Products **(Reg Plan Seq No. 57)**	0910–AI76
322	Front-of-Package Nutrition Labeling **(Reg Plan Seq No. 58)**	0910–AI80
323	Medical Devices; Laboratory Developed Tests **(Reg Plan Seq No. 59)**	0910–AI85
324	Registration of Commercial Importers of Drugs; Good Importing Practice	0910–AI87

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

FOOD AND DRUG ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
325	Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, Neutral Manner in Advertisements in Television and Radio Format.	0910–AG27
326	Sunlamp Products; Amendment to the Performance Standard	0910–AG30
327	General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products	0910–AH14
328	Amendments to the List of Bulk Drug Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act.	0910–AH81
329	Requirements for Tobacco Product Manufacturing Practice	0910–AH91
330	Nutrient Content Claims, Definition of Term: Healthy **(Reg Plan Seq No. 61)**	0910–AI13
331	Tobacco Product Standard for Characterizing Flavors in Cigars **(Reg Plan Seq No. 62)**	0910–AI28
332	Tobacco Product Standard for Menthol in Cigarettes **(Reg Plan Seq No. 64)**	0910–AI60

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

FOOD AND DRUG ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
333	National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers	0910–AH11
334	Nicotine Toxicity Warnings	0910–AH24
335	Certain Requirements Regarding Prescription Drug Marketing (203 Amendment)	0910–AH56
336	Postmarketing Safety Reporting Requirements, Pharmacovigilance Plans, and Pharmacovigilance Quality Systems for Human Drug and Biological Products.	0910–AI61

FOOD AND DRUG ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
337	Revocation of Uses of Partially Hydrogenated Oils in Foods	0910–AI15

CENTERS FOR MEDICARE & MEDICAID SERVICES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
338	CY 2025 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1807) **(Section 610 Review)**.	0938–AV33
339	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2025 Rates (CMS–1808) **(Section 610 Review)**.	0938–AV34
340	CY 2025 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1809) **(Section 610 Review)**.	0938–AV35

CENTERS FOR MEDICARE & MEDICAID SERVICES—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
341	CY 2024 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1784) **(Section 610 Review)**.	0938–AV07
342	CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1786) **(Section 610 Review)**.	0938–AV09

CENTERS FOR MEDICARE & MEDICAID SERVICES—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
343	FY 2024 Skilled Nursing Facility (SNF) PPS and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS–1779) **(Completion of a Section 610 Review)**.	0938–AV02
344	CY 2024 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS–1780) **(Completion of a Section 610 Review)**.	0938–AV03
345	FY 2024 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS–1783) **(Completion of a Section 610 Review)**.	0938–AV06
346	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2024 Rates (CMS–1785) **(Completion of a Section 610 Review)**.	0938–AV08

CENTERS FOR MEDICARE & MEDICAID SERVICES—COMPLETED ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
347	FY 2024 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS–1787) **(Completion of a Section 610 Review)**.	0938–AV10
348	Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018–2022 (CMS–1793) **(Section 610 Review) (Reg Plan Seq No. 77)**.	0938–AV18

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

ADMINISTRATION FOR CHILDREN AND FAMILIES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
349	Supporting the Head Start Workforce and Other Quality Improvements **(Reg Plan Seq No. 80)**	0970–AD01
350	Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B **(Section 610 Review) (Reg Plan Seq No. 81)**.	0970–AD03

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office for Civil Rights (OCR)

Proposed Rule Stage

313. Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities [0945–AA15]

Regulatory Plan: This entry is Seq. No. 48 in part II of this issue of the **Federal Register**.

RIN: 0945–AA15

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Substance Abuse and Mental Health Services Administration (SAMHSA)

Final Rule Stage

314. Medications for the Treatment of Opioid Use Disorder [0930–AA39]

Legal Authority: 21 U.S.C. 823(g)(1)

Abstract: The Substance Abuse and Mental Health Services Administration (SAMHSA) will revise 42 CFR part 8 to make permanent some regulatory flexibilities for Opioid Treatment Programs (OTPs) granted under the COVID–19 Public Health Emergency (PHE), and to expand access to care for people with Opioid Use Disorder (OUD). Specifically, SAMHSA will update criteria pertaining to unsupervised doses of methadone and also initiation of buprenorphine via telemedicine. To expand access to care, SAMHSA will also update admission criteria, particularly those rules that may limit timely access to treatment in an OTP. To achieve this, sections of 42 CFR part 8 will require updating. SAMHSA's changes will impact roughly 1900 opioid treatment programs and state opioid treatment authorities.

In response to the Consolidated Appropriations Act of 2023, which removed the requirement to obtain a waiver in order to prescribe certain schedule III–V medications for the treatment of OUD, SAMHSA issued a supplemental notice of proposed rulemaking on Feb. 13, 2023, (88 FR 9221) calling for additional public comment on SAMHSA's plans to remove reference to the Drug Addiction Treatment Act of 2000 (*DATA* 2000-Waiver) from 42 CFR part 8.

Timetable:

Action	Date	FR Cite
NPRM	12/16/22	87 FR 77330
Supplemental NPRM.	02/13/23	88 FR 9221
NPRM Comment Period End.	02/14/23	
Supplemental NPRM Comment Period End.	03/14/23	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Neeraj Gandotra, Chief Medical Officer, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 18E67, Rockville, MD 20857, *Phone:* 202 823–1816, *Email: neeraj.gandotra@samhsa.hhs.gov.*

RIN: 0930–AA39

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention (CDC)

Final Rule Stage

315. Control of Communicable Diseases; Foreign Quarantine [0920–AA75]

Regulatory Plan: This entry is Seq. No. 56 in part II of this issue of the **Federal Register**.

RIN: 0920–AA75

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Proposed Rule Stage

316. Medication Guide; Patient Medication Information [0910–AH68]

Legal Authority: 21 U.S.C. 321 *et seq.;* 42 U.S.C. 262; 42 U.S.C. 264; 21 U.S.C. 371

Abstract: The rule will amend FDA medication guide regulations to require a new form of patient labeling, namely Patient Medication Information, for submission to and review by FDA for human prescription drug products and certain blood products used, dispensed, or administered on an outpatient basis. The rule will include requirements for the development and distribution of Patient Medication Information. The rule will require clear and concisely written prescription drug product information presented in a consistent and easily understood format to help patients use their prescription drug products safely and effectively.

Timetable:

Action	Date	FR Cite
NPRM	05/31/23	88 FR 35694
NPRM Comment Period End.	11/27/23	
Final Action	03/00/26	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chris Wheeler, Supervisory Project Manager, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 3330, Silver Spring, MD 20993, *Phone:* 301 796–0151, *Email: chris.wheeler@fda.hhs.gov.*

RIN: 0910–AH68

317. Administrative Detention of Tobacco Products [0910–AI05]

Legal Authority: 21 U.S.C. 334; 21 U.S.C. 371

Abstract: FDA is proposing a regulation to establish requirements for the administrative detention of tobacco products. This proposed rule, when finalized, would allow FDA to administratively detain tobacco products encountered during inspections of manufacturers or other establishments that manufacture, process, pack, or hold tobacco products that an authorized FDA representative conducting the inspection has reason to believe are adulterated or misbranded. The intent of administrative detention is to protect public health by preventing the distribution or use of tobacco products encountered during inspections that are believed to be adulterated or misbranded until FDA has had time to consider the appropriate action to take and, where appropriate, to initiate legal action.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Quynh Nguyen, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

Laura Chilaka, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AI05

318. Conduct of Analytical and Clinical Pharmacology, Bioavailability, and Bioequivalence Studies [0910–AI57]

Legal Authority: 21 U.S.C. 355; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 262

Abstract: FDA is proposing to amend 21 CFR 320, in certain parts, and establish a new 21 CFR 321 to clarify FDA's study conduct expectations for clinical pharmacology, and clinical and analytical bioavailability (BA) and bioequivalence (BE) studies that support marketing applications for human drug and biological products. The proposed rule would specify needed basic study conduct requirements to enable FDA to ensure those studies are conducted appropriately and to verify the reliability of study data from those studies. This regulation would align with FDA's other good practice regulations, would also be consistent with current industry best practices, and would harmonize the regulations more closely with related international regulatory expectations.

Timetable:

Action	Date	FR Cite
NPRM	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Joseph Folian, Supervisory Biologist, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5215, Silver Spring, MD 20993–0002, *Phone:* 240 402–4089, *Email: brian.folian@fda.hhs.gov.*

RIN: 0910–AI57

319. Amendments to the Final Rule Regarding the List of Bulk Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act (Section 610 Review) [0910–AI70]

Legal Authority: 21 U.S.C. 353a; 21 U.S.C. 351; 21 U.S.C. 371(a); 21 U.S.C. 352; 21 U.S.C. 355

Abstract: FDA has issued a regulation creating a list of bulk drug substances (active pharmaceutical ingredients) that can be used to compound drug products in accordance with section 503A of the Federal Food, Drug, and Cosmetic Act, although they are neither the subject of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph nor components of FDA-approved drug products (the 503A Bulks List). The proposed rule will identify certain bulk drug substances that FDA has considered and is proposing to place on the 503A Bulks List and certain bulk drug substances that FDA has considered and is proposing not to include on the 503A Bulks List.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rosilend Lawson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5197, Silver Spring, MD 20993, *Phone:* 240 402–6223, *Email: rosilend.lawson@fda.hhs.gov.*

RIN: 0910–AI70

320. Distribution of Compounded Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act (Section 610 Review) [0910–AI71]

Legal Authority: 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353a; 21 U.S.C. 353a–1; 21 U.S.C. 355; 21 U.S.C. 371

Abstract: The Food and Drug Administration is proposing rulemaking regarding statutory requirements under section 503A of the Federal Food, Drug, and Cosmetic Act for certain distributions of compounded human drug products. The proposed rule, if finalized, will include provisions regarding a standard memorandum of understanding (MOU) that describes the responsibilities of a State Board of Pharmacy or other appropriate State agency that chooses to sign the standard MOU in investigating complaints related to drug products compounded in such State and distributed outside such State and in addressing the interstate distribution of inordinate amounts of compounded human drug products. It will also, if finalized, include provisions regarding the statutory 5 percent limit on distribution of compounded human drug products out of the State in which they are compounded in States that do not sign the standard MOU. The rule, will also, if finalized, address communication with State boards of pharmacy.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dominic Markwordt, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Avenue, Building 51, Room 5104, Silver Spring, MD 20993, *Phone:* 301 796–9349, *Email: dominic.markwordt@fda.hhs.gov.*

RIN: 0910–AI71

321. Tobacco Product Standard for Nicotine Level of Certain Tobacco Products [0910–AI76]

Regulatory Plan: This entry is Seq. No. 57 in part II of this issue of the **Federal Register**.

RIN: 0910–AI76

322. Front-of-Package Nutrition Labeling [0910–AI80]

Regulatory Plan: This entry is Seq. No. 58 in part II of this issue of the **Federal Register**.

RIN: 0910–AI80

323. Medical Devices; Laboratory Developed Tests [0910–AI85]

Regulatory Plan: This entry is Seq. No. 59 in part II of this issue of the **Federal Register**.

RIN: 0910–AI85

324. Registration of Commercial Importers of Drugs; Good Importing Practice [0910–AI87]

Legal Authority: sec. 714 of the Food and Drug Administrative Safety and Innovation Act (FDASIA) of July 2012

Abstract: This proposed rulemaking meets the mandate of section 714 of the Food and Drug Administration Safety and Innovation Act and will establish registration and good importing practice requirements for commercial importers of drugs. Although manufacturers are subject to regulatory requirements to ensure such quality standards are met, there are few clear responsibilities for commercial importers of drugs to do the same.

Cost estimates of the rule include reading and understanding the rule, registering as a commercial importer through the Food and Drug Administration's (FDA) electronic importer registration system, annual updating of registration, establishing a quality management system, conducting risk evaluations of drugs and suppliers, shipment verifications, investigations, corrective actions, and records maintenance.

The unquantified benefits of the proposed rule include improvement in the safety of finished drugs allowed to enter the United States from the commercial drug importer's requirement to register with FDA and for increased due diligence required by the importer regarding the safety of the drugs. There would also be cost savings to both FDA and industry from facilitating the review of documentation that ensures compliance with our regulations prior to being allowed to enter the United States. This proposed rulemaking will also enhance FDA's ability to collect and analyze data to enable risk-informed decision-making while focusing on protecting the integrity of the global drug supply chain and ensuring safety, effectiveness, and quality of imported drugs.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Hanratty, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, WO 75, Rm. 1607A, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 240 402–4718, *Email: james.hanratty@fda.hhs.gov.*

RIN: 0910–AI87

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Final Rule Stage

325. Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, Neutral Manner in Advertisements in Television and Radio Format [0910–AG27]

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 360b; 21 U.S.C. 371; . . .

Abstract: The Food and Drug Administration (FDA) is amending its regulations concerning direct-to-consumer (DTC) advertisements of prescription drugs. Prescription drug advertisements presented through media such as TV and radio must disclose the product's major side effects and contraindications in what is sometimes called the major statement. The rule would revise the regulation to reflect the statutory requirement that in DTC advertisements for human prescription drugs presented in television or radio format and stating the name of the drug and its conditions of use, the major statement relating to side effects and contraindications of the advertised drug must be presented in a clear, conspicuous, and neutral manner. This rule also establishes standards for determining whether the major statement in these advertisements is presented in the manner required.

Timetable:

Action	Date	FR Cite
NPRM	03/29/10	75 FR 15376
NPRM Comment Period End.	06/28/10	
NPRM Comment Period Re-opened.	01/27/12	77 FR 4273
NPRM Comment Period End.	02/27/12	
NPRM Comment Period Re-opened.	03/29/12	77 FR 16973
NPRM Comment Period Re-opened End.	04/09/12	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Suzanna Boyle, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 51, Room 3214, Silver Spring, MD 20993, *Phone:* 240 402–4723, *Email: suzanna.boyle@fda.hhs.gov.*

RIN: 0910–AG27

326. Sunlamp Products; Amendment to the Performance Standard [0910–AG30]

Legal Authority: 21 U.S.C. 360ii; 21 U.S.C. 360kk; 21 U.S.C. 393; 21 U.S.C. 371

Abstract: FDA is updating the performance standard for sunlamp products and ultraviolet lamps intended for use in these products to improve safety, reflect new scientific information, and work towards harmonization with international standards. By harmonizing with the International Electrotechnical Commission, this rule will decrease the regulatory burden on industry and allow the Agency to take advantage of the expertise of the international committees, thereby also saving resources.

Timetable:

Action	Date	FR Cite
NPRM	12/22/15	80 FR 79505
NPRM Comment Period End.	03/21/16	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ian Ostermiller, Regulatory Counsel, Center for Devices and Radiological Health, Department of Health and Human Services, Food and

Drug Administration, 10903 New Hampshire Avenue, WO 66, Room 5454, Silver Spring, MD 20993, *Phone:* 301 796–5678, *Email: ian.ostermiller@fda.hhs.gov.*

RIN: 0910–AG30

327. General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products [0910–AH14]

Legal Authority: 21 U.S.C. 360j(e)

Abstract: This rule will apply device restrictions to sunlamp products. Sunlamp products include ultraviolet (UV) lamps and UV tanning beds and booths. The incidence of skin cancer, including melanoma, has been increasing, and a large number of skin cancer cases are attributable to the use of sunlamp products. The devices may cause about 400,000 cases of skin cancer per year, and 6,000 of which are melanoma. Beginning use of sunlamp products at young ages, as well as frequently using sunlamp products, both increases the risk of developing skin cancers and other illnesses, and sustaining other injuries. Even infrequent use, particularly at younger ages, can significantly increase these risks.

Timetable:

Action	Date	FR Cite
NPRM	12/22/15	80 FR 79493
NPRM Comment Period End.	03/21/16	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Daniel Schieffer, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Avenue, WO 75, Room 7613, Silver Spring, MD 20993, *Phone:* 301 796–3350, *Email: daniel.schieffer@fda.hhs.gov.*

RIN: 0910–AH14

328. Amendments to the List of Bulk Drug Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act [0910–AH81]

Legal Authority: 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353a; 21 U.S.C. 355; 21 U.S.C. 371

Abstract: FDA has issued a regulation creating a list of bulk drug substances (active pharmaceutical ingredients) that can be used to compound drug products in accordance with section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act), although they are neither the subject of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph nor components of FDA-approved drugs (the 503A Bulks List). FDA has proposed to amend the 503A Bulks List by placing additional bulk drug substances on the list. FDA has also identified bulk drug substances that FDA has considered and proposed not to include on the 503A Bulks List. Additional substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of future rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	09/05/19	84 FR 46688
NPRM Comment Period End.	12/04/19	
Final Rule	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rosilend Lawson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5197, Silver Spring, MD 20993, *Phone:* 240 402–6223, *Email: rosilend.lawson@fda.hhs.gov.*

RIN: 0910–AH81

329. Requirements for Tobacco Product Manufacturing Practice [0910–AH91]

Legal Authority: 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 381(a); 21 U.S.C. 387b; 21 U.S.C. 387c; 21 U.S.C. 387f; 21 U.S.C. 387i; . . .

Abstract: The rule would establish tobacco product manufacturing practice (TPMP) requirements for manufacturers of finished and bulk tobacco products. This rule, if finalized, would set forth requirements for the manufacture, pre-production design validation, packing, and storage of a tobacco product. This rule would help prevent the manufacture and distribution of contaminated and otherwise nonconforming tobacco products. This rule provides manufacturers with flexibility in the manner in which they comply with the requirements while giving FDA the ability to enforce regulatory requirements, thus helping to assure the protection of public health.

Timetable:

Action	Date	FR Cite
NPRM	03/10/23	88 FR 15174
NPRM Comment Period End.	09/06/23	
NPRM Comment Period Extension to Oct. 06, 2023.	08/29/23	88 FR 59481
Final Action	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Matthew Brenner, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AH91

330. Nutrient Content Claims, Definition of Term: Healthy [0910–AI13]

Regulatory Plan: This entry is Seq. No. 61 in part II of this issue of the **Federal Register**.

RIN: 0910–AI13

331. Tobacco Product Standard for Characterizing Flavors in Cigars [0910–AI28]

Regulatory Plan: This entry is Seq. No. 62 in part II of this issue of the **Federal Register**.

RIN: 0910–AI28

332. Tobacco Product Standard for Menthol in Cigarettes [0910–AI60]

Regulatory Plan: This entry is Seq. No. 64 in part II of this issue of the **Federal Register**.

RIN: 0910–AI60

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Long-Term Actions

333. National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers [0910–AH11]

Legal Authority: secs. 583 and 584 of the FD&C Act, as added by the DSCSA under Pub. L. 113–54, together with related FD&C Act authority added by the DSCSA

Abstract: The final rule establishes national standards for State licensing of prescription drug wholesale distributors and third-party logistics providers. The rulemaking also establishes a Federal system for wholesale drug distributor and third-party logistics provider licensing for use in the absence of a State licensure program.

Timetable:

Action	Date	FR Cite
NPRM	02/04/22	87 FR 6708
NPRM Comment Period End.	06/06/22	
NPRM Comment Period Extended.	05/24/22	87 FR 31439
NPRM Comment Period Extended End.	09/06/22	
Final Rule	04/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Aaron Weisbuch, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 4261, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–9362, *Email: aaron.weisbuch@fda.hhs.gov.*

RIN: 0910–AH11

334. Nicotine Toxicity Warnings [0910–AH24]

Legal Authority: 21 U.S.C. 301 *et seq.;* 21 U.S.C. 331; 21 U.S.C. 371; 21 U.S.C. 387f; . . .

Abstract: This rule would establish acute nicotine toxicity warning requirements for liquid nicotine and nicotine-containing e-liquid(s) intended for human consumption, and potentially for other tobacco products including, but not limited to, novel tobacco products such as dissolvables, lotions, gels, and drinks. This action is intended to increase consumer awareness and knowledge of the risks of acute toxicity due to accidental nicotine exposure from nicotine-containing e-liquids in tobacco products.

Timetable:

Action	Date	FR Cite
NPRM	04/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Laura Chilaka, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G355, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AH24

335. Certain Requirements Regarding Prescription Drug Marketing (203 Amendment) [0910–AH56]

Legal Authority: Section 503 and related provisions of the FD&C Act, as amended by Pub. L. 113–54

Abstract: The final rule amends Food and Drug Administration (FDA) regulations at 21 CFR 203 to remove provisions no longer in effect and incorporate conforming changes following enactment of the Drug Supply Chain Security Act (DSCSA). The final rule amends the regulations to clarify provisions and avoid causing confusion with the new standards for wholesale distribution established by DSCSA.

Timetable:

Action	Date	FR Cite
NPRM	02/04/22	87 FR 6443
NPRM Comment Period End.	04/05/22	
Final Rule	04/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Aaron Weisbuch, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 4261, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–9362, *Email: aaron.weisbuch@fda.hhs.gov.*

RIN: 0910–AH56

336. Postmarketing Safety Reporting Requirements, Pharmacovigilance Plans, and Pharmacovigilance Quality Systems for Human Drug and Biological Products [0910–AI61]

Legal Authority: 42 U.S.C. 262; 42 U.S.C. 264; 42 U.S.C. 300aa–25; 21 U.S.C. 321; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371; 21 U.S.C. 374; . . .

Abstract: The proposed rule would modernize FDA's regulations on postmarketing safety reporting and pharmacovigilance for human drug and biological products, including blood and blood components, by capturing important new safety-related information, improving the quality and utility of submitted reports, and supporting enhanced alignment with internationally harmonized reporting guidelines. Among other things, the proposed rule would require the submission of certain nonclinical and clinical data to FDA in a periodic safety report, rather than the annual report. The proposed rule also would require application holders for drug products and certain biological products to establish and maintain a pharmacovigilance quality system that reflects the application holder's unique needs and that may support a more streamlined, flexible approach to satisfying certain postmarketing safety reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janice L. Weiner, Principal Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Avenue, Building 51, Room 6270, Silver Spring, MD 20993–0002, *Phone:* 301 796–3475, *Fax:* 301 847–8440, *Email: janice.weiner@fda.hhs.gov.*

RIN: 0910–AI61

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Completed Actions

337. Revocation of Uses of Partially Hydrogenated Oils in Foods [0910–AI15]

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 341; 21 U.S.C. 342; 21 U.S.C. 343; 21 U.S.C. 348; 21 U.S.C. 371; 21 U.S.C. 379e

Abstract: In the **Federal Register** of June 17, 2015 (80 FR 34650), FDA published a declaratory order announcing our final determination that there is no longer a consensus among qualified experts that partially hydrogenated oils (PHOs) are generally recognized as safe (GRAS) for any use in human food. In the **Federal Register** of May 21, 2018 (83 FR 23382), we denied a food additive petition requesting that the food additive regulations be amended to provide for the safe use of PHOs in certain food applications. Next, on August 9, 2023, we issued a direct final rule and companion proposed rule that would update our regulations to remove all mention of PHOs from FDA's GRAS regulations and as an optional ingredient in standards of identity. This action would also revoke all prior sanctions for uses of PHOs in food.

Completed:

Reason	Date	FR Cite
NPRM	08/09/23	88 FR 53827
Direct Final Rule	08/09/23	88 FR 53764

Reason	Date	FR Cite
Direct Final Rule Effective.	12/22/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ellen Anderson, *Phone:* 240 402–1309, *Email: ellen.anderson@fda.hhs.gov.*

RIN: 0910–AI15

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Proposed Rule Stage

338. • CY 2025 Revisions To Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1807) (Section 610 Review) [0938–AV33]

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh; Pub. L. 117–169

Abstract: This annual proposed rule would revise payment polices under the Medicare physician fee schedule, and make other policy changes to payment under Medicare Part B. These changes would apply to services furnished beginning January 1, 2025. Additionally, this rule proposes updates to the Quality Payment Program. This proposed rule would also codify the inflation rebate program for Medicare Part B and Part D drugs established in the Inflation Reduction Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gift Tee, Director, Division of Physician Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, 7500 Security Boulevard, MS: C1–09–07, Baltimore, MD 21244, *Phone:* 410 786–9316, *Email: gift.tee@cms.hhs.gov.*

RIN: 0938–AV33

339. • Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2025 Rates (CMS–1808) (Section 610 Review) [0938–AV34]

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

Abstract: This annual proposed rule would revise the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This proposed rule would implement changes arising from our continuing experience with these systems. In addition, the rule proposes to establish new requirements or revise existing requirements for quality reporting by specific Medicare providers.

Timetable:

Action	Date	FR Cite
NPRM	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Donald Thompson, Director, Division of Acute Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6504, *Email: donald.thompson@cms.hhs.gov.*

RIN: 0938–AV34

340. • CY 2025 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1809) (Section 610 Review) [0938–AV35]

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

Abstract: This annual proposed rule would revise the Medicare hospital outpatient prospective payment system to implement statutory requirements and changes arising from our continuing experience with this system. The proposed rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule proposes changes to the ambulatory surgical center payment system list of services and rates. This proposed rule would also update and refine the requirements for the Hospital Outpatient Quality Reporting (OQR) Program and the ASC Quality Reporting (ASCQR) Program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Elise Barringer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9222, *Email: elise.barringer@cms.hhs.gov.*

RIN: 0938–AV35

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Final Rule Stage

341. CY 2024 Revisions To Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1784) (Section 610 Review) [0938–AV07]

Legal Authority: 42 U.S.C. 1395hh; 42 U.S.C. 1302

Abstract: This annual final rule revises payment polices under the Medicare physician fee schedule, and makes other policy changes to payment under Medicare Part B including, but not limited to, establishing payment policies for dental services prior to the initiation of immunotherapy services. These changes apply to services furnished beginning January 1, 2024. Additionally, this rule updates the Quality Payment Program.

Timetable:

Action	Date	FR Cite
NPRM	08/07/23	88 FR 52262
NPRM Comment Period End.	09/11/23	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gift Tee, Director, Division of Physician Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, 7500 Security Boulevard, MS: C1–09–07, Baltimore, MD 21244, *Phone:* 410 786–9316, *Email: gift.tee@cms.hhs.gov.*

RIN: 0938–AV07

342. CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1786) (Section 610 Review) [0938–AV09]

Legal Authority: 42 U.S.C. 1395hh; 42 U.S.C. 1302

Abstract: This annual final rule revises the Medicare hospital outpatient prospective payment system to implement statutory requirements and changes arising from our continuing experience with this system. The rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule makes changes to the ambulatory surgical center payment system list of services and rates. This rule also updates and refines the requirements for the Hospital Outpatient Quality Reporting (OQR)

Program and the ASC Quality Reporting (ASCQR) Program.

Timetable:

Action	Date	FR Cite
NPRM	07/31/23	88 FR 49552
NPRM Comment Period End.	09/11/23	
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Elise Barringer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9222, *Email: elise.barringer@cms.hhs.gov.*

RIN: 0938–AV09

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Completed Actions

343. FY 2024 Skilled Nursing Facility (SNF) PPS and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS–1779) (Completion of a Section 610 Review) [0938–AV02]

Legal Authority: 42 U.S.C. 1395hh; 42 U.S.C. 1302

Abstract: This annual final rule updates the payment rates used under the prospective payment system for SNFs for fiscal year 2024. The rule also includes changes for the SNF Quality Reporting Program (QRP) and for the Skilled Nursing Facility Value-Based Purchasing (VBP) Program that will affect Medicare payment to SNFs.

Timetable:

Action	Date	FR Cite
NPRM	04/10/23	88 FR 21316
NPRM Comment Period End.	06/05/23	
Final Action	08/07/23	88 FR 53200
Final Action Effective.	10/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tammy Luo, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5–06–17, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4325, *Email: tammy.luo@cms.hhs.gov.*

RIN: 0938–AV02

344. CY 2024 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS–1780) (Completion of a Section 610 Review) [0938–AV03]

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395(fff); 42 U.S.C. 1395(m)

Abstract: This annual final rule updates the national, standardized 30-day period payment rate, national per-visit rates used to calculate low utilization payment adjustments (LUPAs) and outlier payments under the Medicare prospective payment system for home health agencies based on the applicable home health payment update percentage. Additionally, this rule updates payment rates for home infusion therapy services and makes changes to the Medicare enrollment requirements for hospices. These changes apply to services furnished on or after January 1, 2024. This rule also makes changes to how the separate payment for negative pressure wound therapy using a disposable device is made as required by section 4136 of the Consolidated Appropriations Act of 2023 (CAA, 2023), and implements the permanent home intravenous immune globulin services (IVIG) benefit as required by section 4134 of the CAA, 2023. This rule addresses the scope of the Medicare Part B benefit for leg, arm, back, and neck braces under section 1861(s)(9) of the Social Security Act, and newer technology devices, as well as the implementation of the Medicare Part B benefit for lymphedema compression treatment items under section 1861(s)(2) of the Social Security Act.

Timetable:

Action	Date	FR Cite
NPRM	07/10/23	88 FR 43654
NPRM Comment Period End.	08/29/23	
Final Action	11/13/23	88 FR 77676
Final Action Effective.	01/01/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Slater, Director, Division of Home Health and Hospice, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–07–07, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–5229, *Email: brian.slater@cms.hhs.gov.*

RIN: 0938–AV03

345. FY 2024 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS–1783) (Completion of a Section 610 Review) [0938–AV06]

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395f; 42 U.S.C. 1395g; 42 U.S.C. 1395hh; . . .

Abstract: This annual final rule updates the prospective payment system for inpatient psychiatric facilities (IPF) with discharges beginning on October 1, 2023. The rule also includes updates to the IPF Quality Reporting Program.

Timetable:

Action	Date	FR Cite
NPRM	04/10/23	88 FR 21238
NPRM Comment Period End.	06/05/23	
Final Action	08/02/23	88 FR 51054
Final Action Effective.	10/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nicolas Brock, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5–05–27, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–5148, *Email: nicolas.brock@cms.hhs.gov.*

RIN: 0938–AV06

346. Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2024 Rates (CMS–1785) (Completion of a Section 610 Review) [0938–AV08]

Legal Authority: 42 U.S.C. 1395hh; 42 U.S.C. 1302

Abstract: This annual final rule revises the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This rule implements changes arising from our continuing experience with these systems. In addition, the rule establishes new requirements or revises existing requirements for quality reporting by specific Medicare providers.

Timetable:

Action	Date	FR Cite
NPRM	05/01/23	88 FR 26658
NPRM Comment Period End.	06/09/23	
Final Action	08/28/23	88 FR 58640
Final Action Effective.	10/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Donald Thompson, Director, Division of Acute Care,

Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6504, *Email: donald.thompson@cms.hhs.gov.*

RIN: 0938–AV08

347. FY 2024 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS–1787) (Completion of a Section 610 Review) [0938–AV10]

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

Abstract: This annual final rule updates the hospice payment rates and the wage index for fiscal year 2024. The rule also finalizes changes to the Hospice Quality Reporting program.

Timetable:

Action	Date	FR Cite
NPRM	04/04/23	88 FR 20022
NPRM Comment Period End.	05/30/23	
Final Action	08/02/23	88 FR 51164
Final Action Effective.	10/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Slater, Director, Division of Home Health and Hospice, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–07–07, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–5229, *Email: brian.slater@cms.hhs.gov.*

RIN: 0938–AV10

348. Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018–2022 (CMS–1793) (Section 610 Review) [0938–AV18]

Regulatory Plan: This entry is Seq. No. 77 in part II of this issue of the **Federal Register**.

RIN: 0938–AV18

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration for Children and Families (ACF)

Proposed Rule Stage

349. Supporting the Head Start Workforce and Other Quality Improvements [0970–AD01]

Regulatory Plan: This entry is Seq. No. 80 in part II of this issue of the **Federal Register**.

RIN: 0970–AD01

350. • Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B (Section 610 Review) [0970–AD03]

Regulatory Plan: This entry is Seq. No. 81 in part II of this issue of the **Federal Register**.

RIN: 0970–AD03

[FR Doc. 2024–00453 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part IX

Department of Homeland Security

Semiannual Regulatory Agenda

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chs. I and II

[DHS Docket No. OGC–RP–04–001]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, DHS.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This regulatory agenda is a semiannual summary of projected regulations, existing regulations, and completed actions of the Department of Homeland Security (DHS) and its components. This agenda provides the public with information about DHS's regulatory and deregulatory activity. DHS expects that this information will enable the public to be more aware of, and effectively participate in, the Department's regulatory and deregulatory activity. DHS invites the public to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General

Please direct general comments and inquiries on the agenda to the Regulatory Affairs Law Division, Office of the General Counsel, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Avenue SE, Mail Stop 0485, Washington, DC 20528–0485.

Specific

Please direct specific comments and inquiries on individual actions identified in this agenda to the individual listed in the summary portion as the point of contact for that action.

SUPPLEMENTARY INFORMATION: DHS provides this notice pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) and Executive Order 12866 ''Regulatory Planning and Review'' (Sept. 30, 1993) as incorporated in Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), which require the Department to publish a semiannual agenda of regulations. The regulatory agenda is a summary of existing and projected regulations as well as actions completed since the publication of the last regulatory agenda for the Department. DHS's last semiannual regulatory agenda was published online on June 13, 2023, at *https://www.reginfo.gov/public/do/eAgendaMain.*

Beginning in fall 2007, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov.*

The Regulatory Flexibility Act (5 U.S.C. 602) requires Federal agencies to publish their regulatory flexibility agendas in the **Federal Register**. A regulatory flexibility agenda shall contain, among other things, a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities. DHS's printed agenda entries include regulatory actions that are in the Department's regulatory flexibility agenda. Printing of these entries is limited to fields that contain information required by the agenda provisions of the Regulatory Flexibility Act. Additional information on these entries is available in the Unified Agenda published on the internet.

The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

OFFICE OF THE SECRETARY—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
351	Homeland Security Acquisition Regulation, Subcontractor Labor Hour Rates Under Time and Materials Contracts.	1601–AA65
352	Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Information (HSAR Case 2015–001).	1601–AA76

U.S. CITIZENSHIP AND IMMIGRATION SERVICES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
353	Modernizing H–1B Requirements and Oversight, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers **(Reg Plan Seq No. 90)**.	1615–AC70
354	Modernizing H–2 Program Requirements, Oversight, and Worker Protections **(Reg Plan Seq No. 91)**	1615–AC76
355	Petition for Immigrant Worker Reforms	1615–AC85
356	Modernizing Regulations Governing Nonimmigrant Workers	1615–AC88

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
357	U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements **(Reg Plan Seq No. 93)**.	1615–AC68

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. COAST GUARD—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
358	Claims Procedures Under the Oil Pollution Act of 1990	1625–AA03
359	Cybersecurity in the Marine Transportation System **(Reg Plan Seq No. 95)**	1625–AC77
360	MARPOL Annex VI; Prevention of Air Pollution From Ships **(Reg Plan Seq No. 96)**	1625–AC78

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. COAST GUARD—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
361	User Fees for Inspected Towing Vessels	1625–AC55
362	Lifejacket Approval Harmonization	1625–AC62

U.S. COAST GUARD—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
363	Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation	1625–AB85

TRANSPORTATION SECURITY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
364	Vetting of Certain Surface Transportation Employees	1652–AA69
365	Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA).	1652–AA70

FEDERAL EMERGENCY MANAGEMENT AGENCY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
366	Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard **(Reg Plan Seq No. 105)**.	1660–AB12

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
367	Ammonium Nitrate Security Program	1670–AA00
368	Chemical Facility Anti-Terrorism Standards (CFATS)	1670–AA01

DEPARTMENT OF HOMELAND SECURITY (DHS)

Office of the Secretary (OS)

Completed Actions

351. Homeland Security Acquisition Regulation, Subcontractor Labor Hour Rates Under Time and Materials Contracts [1601–AA65]

Legal Authority: 5 U.S.C. 301; 5 U.S.C. 302; 41 U.S.C. 418b(a); 41 U.S.C. 418b(b); 41 U.S.C. 414; 48 CFR 1, subpart 1.3; DHS Delegation Number 0700

Abstract: The Department of Homeland Security (DHS) is withdrawing its proposed rule titled Homeland Security Acquisition Regulation (HSAR) Subcontractor Labor Hour Rates Under Time and Materials Contracts (HSAR Case 2010–001) and providing a Notice of Withdrawal. The notice of proposed rulemaking proposed to amend the Homeland Security Acquisition Regulation (HSAR) parts 3016 and 3052 to require DHS contracts for time and material or labor hours (T&M/LH) to include separate labor hour rates for subcontractors and a description of the method that will be used to record and bill for labor hours for both contractors and subcontractors. DHS is withdrawing this proposed rule because of differing agency priorities and the staleness of the public comments. DHS will not take any further action on this proposal at this time.

Timetable:

Action	Date	FR Cite
NPRM	08/21/12	77 FR 50449
NPRM Comment Period End.	10/22/12	
Notice of Withdrawal.	09/19/23	88 FR 64399

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Catherine Benavides, Senior Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, Acquisition Policy & Oversight Division, 6595 Springfield Drive, Springfield, VA 22150, *Phone:* 202 875–1049, *Email: catherine.benavides@hq.dhs.gov*.

RIN: 1601–AA65

352. Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Information (HSAR Case 2015–001) [1601–AA76]

Legal Authority: 5 U.S.C. 301 to 302; 41 U.S.C. 1302, 1303 and 1707

Abstract: This Homeland Security Acquisition Regulation (HSAR) rule implements security and privacy measures to ensure Controlled Unclassified Information (CUI), such as Personally Identifiable Information (PII), is adequately safeguarded by DHS contractors. Specifically, the rule defines key terms, outlines security requirements and inspection provisions for contractor information technology (IT) systems that store, process or transmit CUI, institutes incident notification and response procedures, and identifies post-incident credit monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/19/17	82 FR 6429
NPRM Comment Period End.	03/20/17	
NPRM Comment Period Extended.	03/20/17	82 FR 14341
NPRM Comment Period Extended End.	04/19/17	
Final Rule	06/21/23	88 FR 40560
Final Rule Correction.	07/21/23	88 FR 47054
Final Rule Effective.	07/21/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Shaundra Ford, Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, 245 Murray Lane SW, Washington, DC 20528, *Phone:* 202 447–0056, *Email: shaundra.ford@hq.dhs.gov*.

Nancy Harvey, Policy Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3636–15, 301 7th Street SW, Washington, DC 20528, *Phone:* 202 447–0956, *Email: nancy.harvey@hq.dhs.gov*.

RIN: 1601–AA76

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Citizenship and Immigration Services (USCIS)

Proposed Rule Stage

353. Modernizing H–1B Requirements And Oversight, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers [1615–AC70]

Regulatory Plan: This entry is Seq. No. 90 in part II of this issue of the **Federal Register**.

RIN: 1615–AC70

354. Modernizing H–2 Program Requirements, Oversight, and Worker Protections [1615–AC76]

Regulatory Plan: This entry is Seq. No. 91 in part II of this issue of the **Federal Register**.

RIN: 1615–AC76

355. • Petition for Immigrant Worker Reforms [1615–AC85]

Legal Authority: 6 U.S.C. 112; 8 U.S.C. 1103(a); 8 U.S.C. 1153(b); 8 U.S.C. 1154(a)(1)(E) and (F); 8 U.S.C. 1182(a)(5)(C) and (r)

Abstract: The Department of Homeland Security (DHS) is proposing to amend its regulations governing employment-based immigrant petitions in the first, second, and third preference classifications. Petitions for these classifications are filed by employers, or in certain cases by noncitizens on their own behalf, to bring talent and skills to the United States. The proposed rule would, if finalized, codify current policy guidance and implement administrative decisions regarding successorship-in-interest and ability to pay; update provisions governing extraordinary ability and outstanding professors and researchers; modernize outdated provisions for individuals of extraordinary ability and outstanding professors and researchers; clarify evidentiary requirements for first preference classifications, second preference national interest waiver (NIW) classifications, and physicians of national and international renown; implement reforms to ensure the integrity of the I–140 program; and correct errors and omissions.

Timetable:

Action	Date	FR Cite
NPRM	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC85

356. • Modernizing Regulations Governing Nonimmigrant Workers [1615–AC88]

Legal Authority: 8 U.S.C. 1101; 8 U.S.C. 1184; 8 U.S.C. 1324a

Abstract: The Department of Homeland Security (DHS) proposes to amend its regulations governing certain nonimmigrant workers. The proposed changes include updating the employment authorization rules regarding dependent spouses of certain nonimmigrants; increasing flexibilities for certain nonimmigrant workers, including those who resign or are terminated from employment and religious workers who have reached their maximum period of stay or are waiting for immigrant visas to become available; and additional measures to modernize policies and procedures for Employment Authorization Documents.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mark Phillips, Residence and Naturalization Division Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC88

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Citizenship and Immigration Services (USCIS)

Final Rule Stage

357. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements [1615–AC68]

Regulatory Plan: This entry is Seq. No. 93 in part II of this issue of the **Federal Register**.

RIN: 1615–AC68

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Proposed Rule Stage

358. Claims Procedures Under the Oil Pollution Act of 1990 [1625–AA03]

Legal Authority: 33 U.S.C. 2713 and 2714

Abstract: The purpose of this project is to remove superseded regulations at 33 Code of Federal Regulations (CFR) part 135, and to finalize the Oil Pollution Act of 1990 (OPA90) claims procedures at 33 CFR part 136. The OPA90 claims procedures, implementing OPA90 section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement), were established by an interim rule, titled ''Claims under the Oil Pollution Act of 1990'' (Interim Rule) that has not been substantively amended since it was published in 1992. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/12/92	57 FR 36314
Correction	09/09/92	57 FR 41104
Interim Final Rule Comment Period End.	12/10/92	
Notice of Inquiry	11/01/11	76 FR 67385
Notice of Inquiry Comment Period End.	01/30/12	
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Benjamin White, Project Manager, Department of Homeland Security, U.S. Coast Guard, National Pollution Funds Center (NPFC), 2703 Martin Luther King Jr. Avenue SE, STOP 7605, Washington, DC 20593–7605, *Phone:* 202 795–6066, *Email: benjamin.h.white@uscg.mil.*

RIN: 1625–AA03

359. Cybersecurity in the Marine Transportation System [1625–AC77]

Regulatory Plan: This entry is Seq. No. 95 in part II of this issue of the **Federal Register**.

RIN: 1625–AC77

360. Marpol Annex VI; Prevention of Air Pollution From Ships [1625–AC78]

Regulatory Plan: This entry is Seq. No. 96 in part II of this issue of the **Federal Register**.

RIN: 1625–AC78

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Final Rule Stage

361. User Fees for Inspected Towing Vessels [1625–AC55]

Legal Authority: 46 U.S.C. 2103; 46 U.S.C. 2110; Pub. L. 115–282, sec. 815

Abstract: This rulemaking would revise user fees for towing vessels inspected under 46 CFR subchapter M and update the existing user fee in 46 CFR 2.10–101 for sea-going towing vessels inspected under 46 CFR subchapter I. These user fees are for services related to the inspection of these vessels and will reflect the differences in cost to the government to provide these services to vessels that use a safety management system involving a third party and vessels that do not.

Timetable:

Action	Date	FR Cite
NPRM	01/11/22	87 FR 1378
NPRM Comment Period End.	04/11/22	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hnatow, Project Manager, Department of Homeland Security, U.S. Coast Guard, Commercial Vessel Compliance (CG–CVC–1), 2703 Martin Luther King Jr. Avenue SE, STOP 7501, Washington, DC 20593–7501, *Phone:* 202 372–1216, *Email: jennifer.l.hnatow@uscg.mil.*

RIN: 1625–AC55

362. Lifejacket Approval Harmonization [1625–AC62]

Legal Authority: 46 U.S.C. 3306(a); 46 U.S.C. 3306(b); 46 U.S.C. 4102(a); 46 U.S.C. 4102(b); 46 U.S.C. 4302(a); 46 U.S.C. 4502(a); 46 U.S.C. 4502(c)(2)(B)

Abstract: The Coast Guard would amend the lifejacket approval requirements and follow-up program requirements by incorporating new bi-national standards. At the same time, the Coast Guard would amend lifejacket and personal flotation devices (PFDs) carriage requirements to allow for the use of equipment approved to the new standards, and to remove obsolete equipment approval requirements. The new standards are intended to replace the legacy standards. The amendments would streamline the process for approval of PFDs and allow manufacturers the opportunity to produce more innovative equipment that meets the approval requirements of both Canada and the United States, while reducing the burden for manufacturers in both the approval process and follow-up program. The rule is expected to provide a cost savings by reducing the regulatory burden on PFD manufacturers by harmonizing our PFD approval standards with Canada, requiring less frequent inspections of manufacturing facilities, providing lower cost PFD user manuals, and by potentially creating a new market in PFDs with a lower buoyancy rating. This rule is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Timetable:

Action	Date	FR Cite
NPRM	04/07/23	88 FR 21016
NPRM Correction	05/01/23	88 FR 26514
NPRM Comment Period End.	06/06/23	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jacqueline M. Yurkovich, Project Manager, Department of Homeland Security, U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1389, *Email: jacqueline.m.yurkovich@uscg.mil.*

RIN: 1625–AC62

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Long-Term Actions

363. Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation [1625–AB85]

Legal Authority: 46 U.S.C. 4502 and 5103; Pub. L. 111–281; Pub. L. 112–213

Abstract: The Coast Guard will implement 2010 and 2012 legislation that pertains to uninspected commercial fishing industry vessels. The requirements took effect upon enactment of the legislation but require amendments to Coast Guard regulations to be implemented. Coast Guard is changing the applicability of the regulations, and adding new requirements to safety training, equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of

unsafe operations. This rulemaking promotes the Coast Guard's maritime safety mission.

Timetable:

Action	Date	FR Cite
NPRM	06/21/16	81 FR 40437
NPRM Comment Period Extended.	08/15/16	81 FR 53986
NPRM Comment Period End.	09/19/16	
NPRM Comment Period Extended End.	12/18/16	
Final Rule	03/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joseph Myers, Project Manager, Department of Homeland Security, U.S. Coast Guard, Office of Commercial Vessel Compliance (CG–CVC–3), 2703 Martin Luther King Jr. Avenue SE, STOP 7501, Washington, DC 20593–7501, *Phone:* 202 372–1249, *Email: joseph.d.myers@uscg.mil.*

RIN: 1625–AB85

DEPARTMENT OF HOMELAND SECURITY (DHS)

Transportation Security Administration (TSA)

Long-Term Actions

364. Vetting of Certain Surface Transportation Employees [1652–AA69]

Legal Authority: 49 U.S.C. 114; Pub. L. 108–90, sec. 520; Pub. L. 110–53, secs. 1411, 1414, 1512, 1520, 1522, and 1531

Abstract: The 9/11 Act requires vetting of certain railroad, public transportation, and over-the-road bus employees. Also, 6 U.S.C. 469 requires TSA to collect fees to recover the costs of the vetting services. On May 23, 2023, the Transportation Security Administration (TSA) issued a proposed rule to establish the standards and procedures to conduct the required vetting and recover costs. This regulation is related to 1652–AA55, Security Training for Surface Transportation Employees.

Timetable:

Action	Date	FR Cite
NPRM	05/23/23	88 FR 33472
NPRM Comment Period End.	08/21/23	
NPRM Extension of Comment Period.	08/22/23	88 FR 57044
NPRM Extension Comment Period End.	10/01/23	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Victor Parker, Branch Manager, Policy Development Branch, Surface Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–3664, *Email: victor.parker@tsa.dhs.gov*.

James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, Email: *james.ruger@tsa.dhs.gov*.

Christine Beyer, Senior Counsel, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Chief Counsel's Office, 6595 Springfield Center Drive, Springfield, VA 20598–6002, *Phone*: 571 227–3653, *Email: christine.beyer@tsa.dhs.gov*.

RIN: 1652–AA69

365. Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA) [1652–AA70]

Legal Authority: Pub. L. 114–190, sec. 3405

Abstract: As required by the FESSA, TSA will propose a rule to revise its regulations, reflecting current knowledge of insider threat and intelligence, to enhance the eligibility requirements and disqualifying criminal offenses for individuals seeking or having unescorted access to any SIDA of an airport. Consistent with the statutory mandate, TSA will consider adding to the list of disqualifying criminal offenses and criteria, develop an appeal and waiver process for the issuance of credentials for unescorted access, and propose an extension of the lookback period for disqualifying crimes. As part of TSA's reevaluation of the eligibility and redress standards for aviation workers required by the Act, TSA is also reevaluating the current vetting process to minimize any security risks that may exist.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kevin Knott, Branch Manager, Airports Policy Branch-Aviation Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–4370, *Email: kevin.knott@tsa.dhs.gov*.

James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, *Email: james.ruger@tsa.dhs.gov*.

Christine Beyer, Senior Counsel, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Chief Counsel's Office, 6595 Springfield Center Drive, Springfield, VA 20598–6002, *Phone:* 571 227–3653, *Email: christine.beyer@tsa.dhs.gov*.

RIN: 1652–AA70

DEPARTMENT OF HOMELAND SECURITY (DHS)

Federal Emergency Management Agency (FEMA)

Proposed Rule Stage

366. Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard [1660–AB12]

Regulatory Plan: This entry is Seq. No. 105 in part II of this issue of the **Federal Register**.

RIN: 1660–AB12

DEPARTMENT OF HOMELAND SECURITY (DHS)

Cybersecurity and Infrastructure Security Agency (CISA)

Proposed Rule Stage

367. Ammonium Nitrate Security Program [1670–AA00]

Legal Authority: 6 U.S.C. 488 *et seq.*

Abstract: The Cybersecurity and Infrastructure Security Agency (CISA) is proposing a rulemaking to implement the December 2007 amendment to the Homeland Security Act titled ''Secure Handling of Ammonium Nitrate.'' This amendment requires the Department of Homeland Security to ''regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . . to prevent the misappropriation or use of

ammonium nitrate in an act of terrorism.'' CISA previously issued a Notice of Proposed Rulemaking (NPRM) on August 3, 2011. CISA is planning to issue a Supplemental Notice of Proposed Rulemaking (SNPRM).

Timetable:

Action	Date	FR Cite
ANPRM	10/29/08	73 FR 64280
ANPRM Correction.	11/05/08	73 FR 65783
ANPRM Comment Period End.	12/29/08	
NPRM	08/03/11	76 FR 46908
Notice of Public Meetings.	10/07/11	76 FR 62311
Notice of Public Meetings.	11/14/11	76 FR 70366
NPRM Comment Period End.	12/01/11	
Notice of Availability.	06/03/19	84 FR 25495
Notice of Availability Comment Period End.	09/03/19	
Supplemental NPRM.	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ryan Donaghy, Deputy Branch Chief for Chemical Security Policy, Rulemaking, and Engagement, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528, *Phone:* 571 532–4127, *Email: ryan.donaghy@cisa.dhs.gov*.

RIN: 1670–AA00

368. Chemical Facility Anti-Terrorism Standards (CFATS) [1670–AA01]

Legal Authority: 6 U.S.C. 621 to 629

Abstract: The Cybersecurity and Infrastructure Security Agency (CISA) previously invited public comment on an Advance Notice of Proposed Rulemaking (ANPRM) during August 2014 for potential revisions to the Chemical Facility Anti-Terrorism Standards (CFATS) regulations. The ANPRM provided an opportunity for the public to provide recommendations for possible program changes. In June 2020, CISA published for public comment a retrospective analysis of the CFATS program. And in January 2021, CISA invited additional public comment through an ANPRM concerning the removal of certain explosive chemicals from CFATS. CISA intends to address many of the subjects raised in both ANPRMs and the retrospective analysis in this regulatory action, including potential updates to CFATS cybersecurity requirements and Appendix A to the CFATS regulations.

Timetable:

Action	Date	FR Cite
ANPRM	08/18/14	79 FR 48693
ANPRM Comment Period End.	10/17/14	
ANPRM	01/06/21	86 FR 495
Announcement of Availability; Retrospective Analysis.	06/22/20	85 FR 37393
Announcement of Availability; Retrospective Analysis Comment Period End.	09/21/20	
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ryan Donaghy, Deputy Branch Chief for Chemical Security Policy, Rulemaking, and Engagement, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528, *Phone:* 571 532–4127, *Email: ryan.donaghy@cisa.dhs.gov*.

RIN: 1670–AA01

[FR Doc. 2024–00454 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part X

Department of the Interior

Semiannual Regulatory Agenda

DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Ch. I

30 CFR Chs. II and VII

36 CFR Ch. I

43 CFR Subtitle A, Chs. I and II

48 CFR Ch. 14

50 CFR Chs. I and IV

[167D0102DM; DS6CS00000; DLSN00000.00000; DX6CS25]

Semiannual Regulatory Agenda

AGENCY: Office of the Secretary, Interior.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This notice provides the semiannual agenda of Department of the Interior (Department) rules scheduled for review or development between Fall 2023 and Fall 2024. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

ADDRESSES: Unless otherwise indicated, all agency contacts are located at the Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Please direct all comments and inquiries about these rules to the appropriate agency contact. Please direct general comments relating to the agenda to the Office of Executive Secretariat and Regulatory Affairs, Department of the Interior, at the address above or at (202) 208–3181.

SUPPLEMENTARY INFORMATION: With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda. The Department's Statement of Regulatory Priorities is included in the Plan.

In some cases, the Department has withdrawn rules that were placed on previous agendas for which there has been no publication activity or for which a proposed or interim rule was published. There is no legal significance to the omission of an item from this agenda. Withdrawal of a rule does not necessarily mean that the Department will not proceed with the rulemaking. Withdrawal allows the Department to assess the action further and determine whether rulemaking is appropriate. Following such an assessment, the Department may determine that certain rules listed as withdrawn under this agenda are appropriate for promulgation.

Bivan R. Patnaik,

Deputy Director of Policy and Regulatory Affairs, Executive Secretariat and Regulatory Affairs.

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
369	Outer Continental Shelf Civil Penalties, Surety Bond Requirements When Filing an Appeal	1014–AA57

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
370	Revisions to Decommissioning Requirements on the OCS	1014–AA53

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
371	Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions.	1014–AA52

UNITED STATES FISH AND WILDLIFE SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
372	Importation, Exportation and Transportation of Wildlife; Updates to the Regulations	1018–BF16
373	Migratory Bird Hunting; 2024–25 Migratory Game Bird Hunting Regulations	1018–BG63
374	Migratory Bird Hunting; 2025–26 Migratory Game Bird Hunting Regulations	1018–BH65

UNITED STATES FISH AND WILDLIFE SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
375	Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations	1018–BF64

NATIONAL PARK SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
376	Commercial Visitor Services; Concession Contracts	1024–AE57

BUREAU OF LAND MANAGEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
377	Management and Protection of the National Petroleum Reserve in Alaska **(Section 610 Review) (Reg Plan Seq No. 145)**.	1004–AE95

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

BUREAU OF LAND MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
378	Conservation and Landscape Health **(Section 610 Review) (Reg Plan Seq No. 150)**	1004–AE92
379	Helium Contracts **(Section 610 Review)**	1004–AE93
380	Onshore Oil and Gas Operations-Annual Civil Penalties Inflation Adjustments **(Section 610 Review)**	1004–AE94

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Safety and Environmental Enforcement (BSEE)

Proposed Rule Stage

369. Outer Continental Shelf Civil Penalties, Surety Bond Requirements When Filing an Appeal [1014–AA57]

Legal Authority: Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 to 1356a

Abstract: This proposed rulemaking would clarify BSEE's existing regulatory authority under 30 CFR 250.1409, which establishes criteria that must be met before a party may proceed with an appeal of a civil penalty pursuant to 30 CFR part 290. Before filing an appeal to the Interior Board of Land Appeals (IBLA), an operator must either submit a surety bond to BSEE's sister agency, BOEM, in the amount of the penalty, or notify BOEM that they want their lease bond to be used as the bond for the penalty amount.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email: kirk.malstrom@bsee.gov.*

RIN: 1014–AA57

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Safety and Environmental Enforcement (BSEE)

Long-Term Actions

370. Revisions to Decommissioning Requirements on the OCS [1014–AA53]

Legal Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 to 1356a

Abstract: This proposed rule would address issues relating to (1) idle iron by adding a definition of this term to clarify that it applies to idle wells and structures on active leases; (2) abandonment in place of subsea infrastructure by adding regulations addressing when BSEE may approve decommissioning-in-place instead of removal of certain subsea equipment; and (3) other operational considerations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/24	
NPRM Comment Period End.	02/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email: kirk.malstrom@bsee.gov.*

RIN: 1014–AA53

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Safety and Environmental Enforcement (BSEE)

Completed Actions

371. Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions [1014–AA52]

Legal Authority: 43 U.S.C. 1331 to 1356a

Abstract: This rulemaking revises the Bureau of Safety and Environmental Enforcement (BSEE) regulations published in the 2019 final rule entitled ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions,'' 84 FR 21908 (May 15, 2019), for drilling, workover, completion and decommissioning operations. In accordance with Executive Order (E.O.) 13990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis) and the E.O.'s accompanying ''President's Fact Sheet: List of Agency Actions for Review,'' BSEE reviewed the 2019 final rule and is updating to subpart G of 30 CFR part 250 to ensure operations are conducted safely and in an environmentally responsible manner.

Timetable:

Action	Date	FR Cite
NPRM	09/14/22	87 FR 56354
NPRM Comment Period End.	11/14/22	
Final Action	08/23/23	88 FR 57334
Final Action Effective.	10/23/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166 *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email: kirk.malstrom@bsee.gov.*

RIN: 1014–AA52

DEPARTMENT OF THE INTERIOR (DOI)

United States Fish and Wildlife Service (FWS)

Proposed Rule Stage

372. Importation, Exportation and Transportation of Wildlife; Updates to the Regulations [1018–BF16]

Legal Authority: 16 U.S.C. 33 8(d)–(f); 16 U.S.C. 668; 16 U.S.C. 704; 16 U.S.C. 712; 16 U.S.C. 1382; 16 U.S.C. 1538(d)–(f); 16 U.S.C. 1540(f); 16 U.S.C. 3371 to 3378; 16 U.S.C. 4223 to 4244; 16 U.S.C. 4901 to 4916; 18 U.S.C. 42; 31 U.S.C. 42; 31 U.S.C. 9701; . . .

Abstract: This proposed rule would revise FWS's regulations governing the importation and exportation of wildlife. In this rulemaking, FWS would review all sections of 50 CFR part 14 and provide necessary revisions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Grace, Assistant Director, Office of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: LEO, Falls Church, VA 22041–3803 *Phone:* 703 358–1949, *Fax:* 703 358–1947, *Email: edward_grace@fws.gov.*

RIN: 1018–BF16

373. Migratory Bird Hunting; 2024–25 Migratory Game Bird Hunting Regulations [1018–BG63]

Legal Authority: 16 U.S.C. 703 *et seq.;* 16 U.S.C. 742a–j

Abstract: This rulemaking action would establish annual hunting regulations for certain migratory game birds. FWS annually prescribes the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. After these frameworks are established, States and Tribes may select season dates, bag limits, and other regulatory options for their hunting seasons.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Eric L. Kershner, Chief, Division of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email: eric_kershner@fws.gov.*

RIN: 1018–BG63

374. • Migratory Bird Hunting; 2025–26 Migratory Game Bird Hunting Regulations [1018–BH65]

Legal Authority: 16 U.S.C. 703 *et seq.;* 16 U.S.C. 742a–j

Abstract: This rulemaking action would establish annual hunting regulations for certain migratory game birds. FWS annually prescribes the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. After these frameworks are established, States and Tribes may select season dates, bag limits, and other regulatory options for their hunting seasons.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Eric L. Kershner, Chief, Division of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email: eric_kershner@fws.gov.*

RIN: 1018–BH65

DEPARTMENT OF THE INTERIOR (DOI)

United States Fish and Wildlife Service (FWS)

Completed Actions

375. Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations [1018–BF64]

Legal Authority: 16 U.S.C. 703 *et seq.;* 16 U.S.C. 742a–j

Abstract: This rulemaking action established annual hunting regulations for certain migratory game birds. FWS annually prescribes the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. After these frameworks are established, States and Tribes may select season dates, bag limits, and other regulatory options for their hunting seasons.

Timetable:

Action	Date	FR Cite
NPRM	11/03/22	87 FR 66247
NPRM Comment Period End.	12/05/22	
Proposed Frameworks.	01/30/23	88 FR 6054
Proposed Frameworks; Comment Period End.	03/01/23	
Proposed Tribal Regulations.	03/23/23	88 FR 17511
Proposed Tribal Regulations; Comment Period Ends.	05/08/23	
Final Frameworks	08/11/23	88 FR 54830
Final Frameworks Effective.	08/11/23	
Seasons and Bag Limits.	08/18/23	88 FR 56489
Seasons and Bag Limits Effective.	08/18/23	
Final Tribal Regulations.	09/01/23	88 FR 60375
Final Tribal Regulations Effective.	09/01/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Eric L. Kershner, Chief, Division of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email: eric_kershner@fws.gov.*

RIN: 1018–BF64

DEPARTMENT OF THE INTERIOR (DOI)

National Park Service (NPS)

Final Rule Stage

376. Commercial Visitor Services; Concession Contracts [1024–AE57]

Legal Authority: 54 U.S.C. 101926

Abstract: This final rule revises regulations that govern the solicitation, award, and administration of concessions contracts to provide commercial visitor services at National Park System units under the authority granted to the Secretary of the Interior by the Concessions Management Improvement Act of 1998 and the National Park Service Centennial Act. The revisions reduce administrative burdens and expand opportunities for sustainable, high quality, and contemporary concessioner-provided visitor services in park areas.

Timetable:

Action	Date	FR Cite
NPRM	07/20/20	85 FR 43775
NPRM Comment Period End.	09/18/20	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kurt M. Rausch, Chief, Contract Management, Department of the Interior, National Park Service, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 513–7207. *Email: kurt_rausch@nps.gov.*

RIN: 1024–AE57

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Land Management (BLM)

Proposed Rule Stage

377. Management and Protection of the National Petroleum Reserve in Alaska (Section 610 Review) [1004–AE95]

Regulatory Plan: This entry is Seq. No. 145 in part II of this issue of the **Federal Register**.

RIN: 1004–AE95

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Land Management (BLM)

Final Rule Stage

378. Conservation and Landscape Health (Section 610 Review) [1004–AE92]

Regulatory Plan: This entry is Seq. No. 150 in part II of this issue of the **Federal Register**.

RIN: 1004–AE92

379. Helium Contracts (Section 610 Review) [1004–AE93]

Legal Authority: 50 U.S.C. 167d (d)(1)

Abstract: The Department of the Interior, Bureau of Land Management is implementing the Helium Stewardship Act of 2013, which requires the disposal of the Federal Helium System and cessation of the In-Kind Program.

Timetable:

Action	Date	FR Cite
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Amy Hay, Division Chief, Division of Business Resources, Department of the Interior, Bureau of Land Management, Denver Federal Center, Building 50, Denver, CO 80225–0047, *Phone:* 703 870–8844, *Email: ahay@blm.gov.*

RIN: 1004–AE93

380. Onshore Oil and Gas Operations—Annual Civil Penalties Inflation Adjustments (Section 610 Review) [1004–AE94]

Legal Authority: Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734

Abstract: This annual rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Timetable:

Action	Date	FR Cite
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Kyle W. Moorman, Division Chief for Regulatory Affairs and Directives, Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 527–2433, *Email: kmoorman@blm.gov.*

RIN: 1004–AE94

[FR Doc. 2024–00448 Filed 2–8–24; 8:45 am]

BILLING CODE 4334–63–P

FEDERAL REGISTER

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Part XI

Department of Justice

Semiannual Regulatory Agenda

DEPARTMENT OF JUSTICE

8 CFR Ch. V

21 CFR Ch. I

27 CFR Ch. II

28 CFR Ch. I, V

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Department of Justice is publishing its fall 2023 regulatory agenda pursuant to Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. 601 to 612 (1988).

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania Avenue NW, Washington, DC 20530, (202) 514–8059.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda. The Department of Justice's Statement of Regulatory Priorities is included in the Plan.

Beginning with the fall 2007 edition, the internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database. Members of the public who wish to comment on proposed regulations that are open for comment may do so at the government-wide website *www.regulations.gov.*

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Justice's printed agenda entries include only:

Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including the Department of Justice's regulatory plan.

Dated: August 17, 2023.

Susan M. Davies,

Acting Assistant Attorney General, Office of Legal Policy.

CIVIL RIGHTS DIVISION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
381	Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities **(Reg Plan Seq No. 154)**.	1190–AA79

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEPARTMENT OF JUSTICE (DOJ)

Civil Rights Division (CRT)

Final Rule Stage

381. Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities [1190–AA79]

Regulatory Plan: This entry is Seq. No. 154 in part II of this issue of the **Federal Register**.

RIN: 1190–AA79

[FR Doc. 2024–00447 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part XII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, VII, and IX

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The internet has become the means for disseminating the entirety of the Department of Labor's semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This **Federal Register** Notice contains the regulatory flexibility agenda.

FOR FURTHER INFORMATION CONTACT: Albert T. Herrera, Director, Office of Regulatory and Programmatic Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–2312, Washington, DC 20210; (202) 693–5959.

Note: Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department's semiannual agenda is available online at *www.reginfo.gov.*

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory flexibility agenda. The Department's Regulatory Flexibility Agenda, published with this notice, includes only those rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department's semiannual regulatory agenda. The Department's Regulatory Flexibility Agenda does not include section 610 items at this time.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved and are invited to participate in and comment on the review or development of the regulations listed on the Department's agenda.

Julie A. Su,

Acting Secretary of Labor.

[FR Doc. 2024–00455 Filed 2–8–24; 8:45 am]

BILLING CODE 4510–FN–P

FEDERAL REGISTER

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Part XIII

Department of Transportation

Semiannual Regulatory Agenda

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Chs. I–III

23 CFR Chs. I–III

33 CFR Chs. I and IV

46 CFR Chs. I–III

48 CFR Ch. 12

49 CFR Subtitle A, Chs. I–VI, and Chs. X–XII

[DOT–OST–1999–5129]

Department Regulatory and Deregulatory Agenda; Semiannual Summary

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Unified Agenda of Federal Regulatory and Deregulatory Actions (Regulatory Agenda).

SUMMARY: The Regulatory Agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed rulemaking actions of the Department of Transportation (DOT). The Regulatory Agenda provides the public with information about DOT's planned regulatory activity for the next 12 months. This information enables the public to participate in the Department's regulatory process. The public is encouraged to submit comments on any aspect of this Regulatory Agenda.

FOR FURTHER INFORMATION CONTACT: Please direct all comments and inquiries on the Regulatory Agenda to Daniel Cohen, Assistant General Counsel for Regulation and Legislation, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366–4702.

To obtain a copy of a specific regulatory document in the Regulatory Agenda, you should communicate directly with the contact person listed with the regulation. We note that most such documents, including the Semiannual Regulatory Agenda, are available through the internet at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The Department is publishing this Regulatory Agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. The information contained in the Regulatory Agenda should enable the public to be aware of the Department's planned regulatory activities and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department about any specific item on the Regulatory Agenda. Regulatory action, in addition to the items listed, is not precluded.

Request for Comments

General

DOT's Regulatory Agenda is intended primarily for the use of the public. Since its inception, the Department has made modifications and refinements that provide the public with more helpful information, as well as making the Regulatory Agenda easier to use. We would like you, the public, to make suggestions or comments on how the Regulatory Agenda could be further improved.

Regulatory Flexibility Act

The Department has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our Regulatory Policies and Procedures require such reviews. DOT also has responsibilities under section 610 of the Regulatory Flexibility Act, Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (January 18, 2011) to conduct such reviews. We are committed to continuing our reviews of existing rules and, if it is needed, will initiate rulemaking actions based on these reviews. Generally, each DOT operating administration divides its rules into 10 different groups and plans to analyze one group each year. In each Fall Regulatory Agenda, each operating administration will publish the results of the analyses it has completed during the previous year. The most recent results appeared in the Department's 2022 Fall Regulatory Agenda Preamble, which was published in the **Federal Register** on February 22, 2023. The Department is interested in obtaining information on requirements that have a ''significant economic impact on a substantial number of small entities'' and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to the Department, along with your explanation of why they should be reviewed.

Consultation With State, Local, and Tribal Governments

Executive Orders 13132 and 13175 require the Department to develop a process to ensure ''meaningful and timely input'' by State, local, and Tribal officials in the development of regulatory policies that have federalism or tribal implications. These policies are defined in the Executive orders to include regulations that have ''substantial direct effects'' on States or Indian Tribes, on the relationship between the Federal Government and them, or on the distribution of power and responsibilities between the Federal Government and various levels of Government or Indian tribes. Therefore, we encourage State and local Governments or Indian Tribes to provide us with information about how the Department's rulemakings impact them.

Subash Iyer,

Acting General Counsel, Department of Transportation.

Appendix A—Review Plans for Section 610 and Other Requirements

Part I—The Plan

General

The Department of Transportation has responsibilities under section 610 of the Regulatory Flexibility Act and subsequent executive orders to conduct reviews of its existing regulations. We are committed to continuing our reviews of existing rules and, if it is needed, will initiate rulemaking actions based on these reviews. The Department began a new 10-year review cycle with the Fall 2018 Agenda.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that: (1) have been published within the last 10 years; and (2) have a ''significant economic impact on a substantial number of small entities'' (SEISNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. The Office of the Secretary and each of the Department's Operating Administrations have a 10-year review plan. These reviews comply with section 610 of the Regulatory Flexibility Act.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a presidentially mandated review. If there is any change to the review plan, we will note the change in the following Agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II—The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the publication annually of the fall Agenda. Most agencies provide historical information about the reviews that have occurred over the past 10 years. Thus, Year 1 (2018) begins in the fall of 2018 and ends in the fall of 2019; Year 2 (2019) begins in the fall of 2019 and ends in the fall of 2020, and so on. The exception to this general rule is the FAA, which provides information about the reviews it completed for this year and prospective information about the reviews it intends to complete in the next 10 years. Thus, for FAA Year 1 (2017) begins in the fall of 2017 and ends in the fall of 2018; Year 2 (2018) begins in the fall of 2018 and ends in the fall of 2019, and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have?

Section 610 Review

The agency will analyze each of the rules in each year's group to determine whether any rule has a SEISNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies' section 610 analyses listed each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to the Department early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each Fall Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEISNOSE, we will give a short explanation (*e.g.,* ''these rules only establish petition processes that have no cost impact'' or ''these rules do not apply to any small entities''). For parts, subparts, or other discrete sections of rules that do have a SEISNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, DOT will add an entry to the Agenda in the pre-rulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each Fall Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

Part III—List of Pending Section 610 Reviews

The Agenda identifies the pending DOT section 610 Reviews by inserting ''(Section 610 Review)'' after the title for the specific entry. For further information on the pending reviews, see the Agenda entries at *www.reginfo.gov.* For example, to obtain a list of all entries that are in section 610 Reviews under the Regulatory Flexibility Act, a user would select the desired responses on the search screen (by selecting ''advanced search'') and, in effect, generate the desired ''index'' of reviews.

Office of the Secretary

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 91 through 99 14 CFR parts 200 through 212 48 CFR parts 1201 through 1224	2018	2019
2	48 CFR parts 1227 through 1253 and new parts and subparts	2019	2020
3	14 CFR parts 213 through 232	2020	2021
4	14 CFR parts 234 through 254	2021	2022
5	14 CFR parts 255 through 298 and 49 CFR part 40	2022	2023
6	14 CFR parts 300 through 373	2023	2024
7	14 CFR parts 374 through 398	2024	2025
8	14 CFR part 399 and 49 CFR parts 1 through 15	2025	2026
9	49 CFR parts 17 through 28	2026	2027
10	49 CFR parts 29 through 39 and parts 41 through 89	2027	2028

Year 10 (Fall 2018) List of Rules Analyzed and Summary of Results

49 CFR part 30—Denial of Public Works Contracts to Suppliers of Goods and Services of Countries that Deny Procurement Market Access to U.S. Contractors

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

49 CFR part 31—Program Fraud Civil Remedies

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

49 CFR part 37—Transportation Services for Individuals with Disabilities (ADA)

• The U.S. Department of Transportation (DOT) Office of the Secretary (OST), with the assistance of its Operating Administrations, including the Federal Transit Administration (FTA), is in the process of issuing multiple rulemakings that call for changes to the regulatory language in 49 CFR part 37. Specifically, OST is administering a rulemaking titled: ''Transportation for Individuals with Disabilities; Service Animals and Other Amendments'' (RIN 2105–AF08) which would propose changes to the definition of ''service animal'' in 49 CFR part 37.3, and several other technical corrections to outdated provisions, such as that referencing a make and model of a lift that has been out of production for three decades (49 CFR part 37.165(g)). In addition, OST is developing a rulemaking titled ''Equitable Access to Transit Facilities'' (RIN 2105–AF07) in which DOT would consider requirements for secondary elevators, induction loops, and improvements in wayfinding in transit stations. In conjunction with these pending rulemakings, DOT will need to conduct a section 610 review of this part, and, if appropriate, initiate additional rulemaking(s) to minimize the SEISNOSE, bring the regulation into compliance with statutory requirements, and/or revise the regulation for plain language.

49 CFR part 38—Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles

• The U.S. Department of Transportation (DOT) Office of the Secretary (OST), with the assistance of its Operating Administrations, including the Federal Transit Administration (FTA), is in the process of issuing a rulemaking that calls for changes to the regulatory language in 49 CFR part 38. Specifically, OST is developing a rulemaking titled: ''Transportation for Individuals with Disabilities; Adoption of Accessibility Standards for Buses and Vans'' (RIN 2105–AF09) in order to consider new standards for accessible buses and vans based on updated accessibility guidelines issued by the U.S.

Access Board (USAB) on December 14, 2016. In conjunction with this pending rulemaking, OST will need to conduct a Section 610 review of this part, and, if appropriate, initiate additional rulemaking(s) to minimize the SEISNOSE, bring the regulation into compliance with statutory requirements, and/or revise the regulation for plain language.

49 CFR part 39—Transportation for Individuals with Disabilities: Passenger Vessels

• Section 610: The U.S. Department of Transportation (DOT) Office of the Secretary (OST) conducted a section 610 review of this part and found SEISNOSE. The regulation requires owners and operators of passenger vessels to 1) ensure their vessels and related facilities are accessible; and 2) take steps to accommodate passengers with disabilities. These requirements can entail significant investments from owners and operators of passenger vessels, many of whom qualify as small businesses as defined by the U.S. Small Business Administration. OST plans to explore whether it is appropriate to initiate a rulemaking to revise this regulation to minimize the SEISNOSE.

• General: In considering ways to minimize the SEISNOSE for Part 39, DOT plans to explore whether to modify the definition of ''service animal'' in 49 CFR 39.3. The current definition is inconsistent with the amendments made by the Department of Justice (DOJ) on July 23, 2010, (*see* 28 CFR 35.104 and 35.136), as well as the definition under DOT's Air Carrier Access Act regulations (*see* 14 CFR 382.3), as amended on December 10, 2020. The current requirement under 49 CFR 39.3 defines service animals as ''any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability.'' DOJ defines a service animal in terms of ''any *dog* that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability'' (*see* 28 CFR 35.104) (emphasis added). Under DOJ regulations at 28 CFR 35.136(i), reasonable modifications in policy and practices must also be made where necessary to accommodate miniature horses as service animals. In contrast, the passenger vessel industry operating under Part 39 remains subject to requirements for accommodating unusual service animals, such as reptiles and primates. Updating the definition of ''service animal'' under 49 CFR 39.3 would ensure consistency across Federal regulations and remove the confusion that results for individuals with service animals when different standards apply to different public facilities and modes of transportation. OST has already determined to consider updates to the ''service animal'' definition contained in 49 CFR 37.3 (Part 37 governs Transportation Services for Individuals with Disabilities (ADA)) for the aforementioned reasons and is in the process of developing a rulemaking on that issue titled: ''Transportation for Individuals with Disabilities; Service Animals and Technical Corrections'' (RIN 2105–AF08).

As a result, OST will consider whether to conduct a rulemaking to bring this regulation into compliance with the statutory requirements and to bring consistency to the regulatory regime governing different modes of transportation. OST's plain language review of this regulation indicates no need for substantial revision.

In addition to the above considerations, DOT notes that the U.S. Access Board (USAB) is in the process of developing guidelines under the Americans with Disabilities Act (ADA) for access to ferries, cruise ships, excursion boats, and other large passenger vessels. Those guidelines have not been finalized yet, however, and OST proposes incorporating only final guidelines into DOT's regulations.

49 CFR part 71—Standard Time Zone Boundaries

• Section 610: OST has reviewed these regulations and found no SEISNOSE.

• General: OST has reviewed these regulations and found that some nonsubstantive technical corrections are needed. OST has initiated a rulemaking to make these corrections.

49 CFR part 79—Medals of Honor

• Section 610: The U.S. Department of Transportation (DOT) Office of the Secretary (OST) conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

49 CFR part 92—Recovering Debts to the United States by Salary Offset

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision. Since the rule was enacted, however, the DOT Operating Administrations have changed. As a result, DOT will consider a rulemaking to update the agencies listed at 49 CFR 92.5(g)—Definitions to:

(g) *DOT operating element* (see 49 CFR 1.3) means a DOT Operating Administration including—

(1) The Office of the Secretary.
(2) Federal Aviation Administration.
(3) Federal Highway Administration.
(4) Federal Railroad Administration.
(5) National Highway Traffic Safety Administration.
(6) Office of the Inspector General.
(7) St. Lawrence Seaway Development Corporation.
(8) Maritime Administration.

OST will consider a rulemaking to make these revisions. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicated no need for substantial revision.

49 CFR part 98—Enforcement of Restrictions on Post-Employment Activities

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision. Since the rule was enacted, the U.S. Department of Transportation's organizational structure changed, and as a result DOT will consider updating the list of DOT Operating Administrations (OAs) listed in 49 CFR 98.2 to reflect the current listing of DOT OAs in 49 CFR 89.2(a), as follows: (1) references to the U.S. Coast Guard (at 49 CFR 98.2(a)(1)), Urban Mass Transportation Administration (at 49 CFR 98.2(a)(6), and Research and Special Programs Administration (at 49 CFR 98.2(a)(8) should be deleted; (2) reference to the Saint Lawrence Seaway Development Corporation at 49 CFR 98.2(a)(7) should be changed to the Great Lakes Saint Lawrence Seaway Development Corporation; and (3) references to the Federal Motor Carrier Safety Administration, Federal Transit Administration, and Pipeline and Hazardous Materials Safety Administration should be added. In addition, since the rule was enacted, the title of the Assistant General Counsel for Environmental, Civil Rights, and General Law has been updated to the Assistant General Counsel for General Law, so the following change would be considered in 49 CFR 98.3 and 98.4: references to the Assistant General Counsel for Environmental, Civil Rights, and General Law should be updated to the Assistant General Counsel for General Law. OST's plain language review of these rules indicates no need for substantial revision.

49 CFR part 99—Employee Responsibilities and Conduct

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

48 CFR parts 1201–1224

• Section 610: OST has reviewed the regulations at 48 CFR parts 1201–1224 and found no SEISNOSE.

• General: OST determined that updates were needed to the regulations at 48 CFR parts 1201–1224. The regulations were updated as part of RIN 2105–AE26 (Revisions to the Transportation Acquisition Regulations) The final rule published on October 7, 2022.

48 CFR part 1201—Federal Acquisition Regulations System
48 CFR part 1202—Definitions of Words and Terms
48 CFR part 1203—Improper Business Practices and Personal Conflicts of Interest
48 CFR part 1204—Administrative Matters
48 CFR part 1205—Publicizing Contract Actions
48 CFR part 1206—Competition Requirements
48 CFR part 1207—Acquisition Planning
48 CFR part 1208–1210—[Reserved]
48 CFR part 1211—Describing Agency Needs
48 CFR part 1213—Simplified Acquisition Procedures
48 CFR part 1214—Sealed Bidding
48 CFR part 1215—Contracting by Negotiation

48 CFR part 1216—Types of Contracts
48 CFR part 1217—Special Contracting Methods
48 CFR part 1219—Small Business Programs
48 CFR part 1222—Application of Labor Laws to Government Acquisitions
48 CFR part 1223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace
48 CFR part 1224—Protection of Privacy and Freedom of Information

Year 1 (Fall 2018) List of Rules That Are Under Ongoing Analysis

49 CFR part 93—Aircraft Allocation
14 CFR part 200—Definitions and Instructions
14 CFR part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code [Amended]
14 CFR part 203—Waiver of Warsaw Convention Liability Limits and Defenses
14 CFR part 204—Data to Support Fitness Determinations
14 CFR part 205—Aircraft Accident Liability Insurance
14 CFR part 206—Certificates of Public Convenience and Necessity: Special Authorizations and Exemptions
14 CFR part 207—Charter Trips by U.S. Scheduled Air Carriers
14 CFR part 208—Charter Trips by U.S. Charter Air Carriers
14 CFR part 211—Applications for Permits to Foreign Air Carriers
14 CFR part 212—Charter Rules for U.S. and Foreign Direct Air Carriers

Year 2 (Fall 2019) List of Rules Analyzed and Summary of Results

48 CFR parts 1227 through 1253 and new parts and subparts

• Section 610: OST has reviewed the regulations at 48 CFR parts 1227–1253 and found no SEISNOSE.

• General: OST determined that updates were needed to the regulations at 48 CFR parts 1227–1253. The regulations were updated as part of RIN 2105–AE26 (Revisions to the Transportation Acquisition Regulations) The final rule published on October 7, 2022.

48 CFR part 1227—Patents, Data, and Copyrights
48 CFR part 1228—Bonds and Insurance
48 CFR part 1231—Contract Costs Principles and Procedures
48 CFR part 1232—Contract Financing
48 CFR part 1233—Protests, Disputes, and Appeals
48 CFR part 1235—Research and Development Contracting
48 CFR part 1236—Construction and Architect-Engineer Contracts
48 CFR part 1237—Service Contracting
48 CFR part 1239—Acquisition of Information Technology
48 CFR part 1242—Contract Administration and Audit Services
48 CFR part 1245—Government Contracting
48 CFR part 1246—Quality Assurance
48 CFR part 1247—Transportation
48 CFR part 1252—Solicitation Provisions and Contract Clauses
48 CFR part 1253—Forms

Year 3 (Fall 2020) List of Rules Analyzed and Summary of Results

14 CFR parts 213 through 232
14 CFR 213—Terms, Conditions and Limitations of Foreign Air Carrier Permits

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR 214—Terms, Conditions, and Limitations for Foreign Air Carrier Permits Authorizing Charter Transportation Only

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR 215—Use and Change of Names of Air Carriers, Foreign Air Carriers and Commuter Air Carriers

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR 216—Commingling of Blind Sector Traffic by Foreign Air Carriers

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR 218—Lease by Foreign Air Carrier or Other Foreign Person of Aircraft with Crew

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR 221—TARIFFS

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: OST reviewed and has found that a non-substantive technical correction is necessary and will explore options to make this correction.

14 CFR 222—Intermodal Cargo Services by Foreign Air Carriers

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR 223—Free and Reduced-Rate Transportation

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

Year 6 (Fall 2024) List of Rules That Will Be Analyzed During the Next Year

14 CFR part 300—RULES OF CONDUCT IN DOT PROCEEDING UNDER THIS CHAPTER
14 CFR part 302—RULES OF PRACTICE IN PROCEEDINGS

• Section 610 (Subpart D): The U.S. Department of Transportation (DOT) Office of the Secretary (OST) conducted a Section 610 review of this part and found no SEISNOSE.

• General (Subpart D): No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision. Rule was updated in 2019.

14 CFR part 303—REVIEW OF AIR CARRIER AGREEMENTS
14 CFR part 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS

• Section 610: The U.S. Department of Transportation (DOT) Office of the Secretary (OST) conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision. Rule was updated in 2019.

14 CFR part 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT
14 CFR part 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS
14 CFR part 325—ESSENTIAL AIR SERVICE PROCEDURES
14 CFR part 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS
14 CFR part 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Federal Aviation Administration

Section 610 and Other Reviews

The Federal Aviation Administration (FAA) has elected to use the two-step, two-year process used by most Department of Transportation (DOT) modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table below. During the first year (the ''*analysis year*''), all rules published during the previous 10 years within a 10% block of the regulations will be *analyzed* to identify those with a significant economic impact on a substantial number of small entities (SEISNOSE). During the second year (the ''*review year*''), each rule identified in the analysis year as having a SEISNOSE will be *reviewed* in accordance with section 610 (b) to determine if it should be continued without change or changed to minimize impact on small entities. Results of those reviews will be published in the DOT Semiannual Regulatory Agenda.

Year	Regulations to be reviewed	Analysis year	Review year
1	14 CFR parts 141 through 147 and parts 170 through 187	2020	2021
2	14 CFR parts 189 through 198 and parts 1 through 16	2021	2022
3	14 CFR parts 17 through 33	2022	2023
4	14 CFR parts 34 through 39 and parts 400 through 405	2023	2024
5	14 CFR parts 43 through 49 and parts 406 through 415	2024	2025
6	14 CFR parts 60 through 77	2025	2026
7	14 CFR parts 91 through 107	2026	2027
8	14 CFR parts 417 through 460	2027	2028
9	14 CFR parts 119 through 129 and parts 150 through 156	2028	2029
10	14 CFR parts 133 through 139 and parts 157 through 169	2029	2030

Defining SEISNOSE for FAA Regulations

The RFA does not define ''significant economic impact.'' Therefore, there is no clear rule or number to determine when a significant economic impact occurs. However, the Small Business Administration (SBA) states that significance should be determined by considering the size of the business, the size of the competitor's business and the impact the same regulation has on larger competitors.

Likewise, the RFA does not define ''substantial number.'' However, the legislative history of the RFA suggests that a substantial number must be at least one but does not need to be an overwhelming percentage such as more than half. The SBA states that the substantiality of the number of small businesses affected should be determined on an industry-specific basis.

This analysis consisted of the following three steps:

1. Review of the number of small entities affected by the amendments to parts 34 through 39, and parts 400 through 405.

2. Identification and analysis of all amendments to parts 34 through 39, and parts 400 through 405 since 2013 to determine whether any still have or now have a SEISNOSE.

3. Review of the FAA's regulatory flexibility assessment of each amendment performed as required by the RFA.

Year 1 (Fall 2023) List of Rules Analyzed and Summary of Results

14 CFR part 34—Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 34 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR part 35—Airworthiness Standards: Propellers

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 35 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR part 36—Noise Standards: Aircraft Type and Airworthiness Certification

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 36 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed.

14 CFR part 39—Airworthiness Directives

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 39 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR part 400—Basis and Scope

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 400 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

14 CFR part 401—Organization and Definitions

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 401 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed.

14 CFR part 404—Petition and Rulemaking Procedures

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 404 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed.

14 CFR part 405—Compliance and Enforcement

Section 610: The agency conducted a Section 610 Review of this part and determined no amendments to 14 CFR part 405 promulgated since January 2013 has or will have a SEISNOSE.

General: No changes are needed.

Year 2 (2024) List of Rules To Be Analyzed the Next Year

14 CFR parts 43 through 49 and parts 406 through 415
14 CFR part 43—Maintenance, Preventive Maintenance, Rebuilding, and Alteration
14 CFR part 45—Identification and Registration Marking
14 CFR part 47—Aircraft Registration
14 CFR part 48—Registration and Marking Requirements for Small Unmanned Aircraft
14 CFR part 49—Recording of Aircraft Titles and Security Documents
14 CFR part 406—Investigations, Enforcement, and Administrative Review
14 CFR part 413—License Application Procedures
14 CFR part 414—Safety Element Approvals
14 CFR part 415—Launch License

Federal Highway Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	None	2018	2019
2	23 CFR parts 1 to 260	2019	2020
3	23 CFR parts 420 to 470	2020	2021
4	23 CFR part 500	2021	2022
5	23 CFR parts 620 to 637	2022	2023
6	23 CFR parts 645 to 669	2023	2024
7	23 CFR parts 710 to 924	2024	2025
8	23 CFR parts 940 to 973	2025	2026
9	23 CFR parts 1200 to 1252	2026	2027
10	New parts and subparts	2027	2028

Federal-Aid Highway Program

The Federal Highway Administration (FHWA) has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter I of title 23 of the U.S.C. 145, which expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to the requirements that States must meet to receive Federal funds for construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

Year 5 (Fall 2022) List of Rules Analyzed and a Summary of the Results

23 CFR part 620—Engineering

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 625—Design Standards for Highways

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA recently updated aspects of the part 625 regulations under RIN 2125–AF88 (87 FR 32, (January 3, 2022)). FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 626—Pavement Policy

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA is proposing to revise aspects of the part 626 regulations under RIN 2125–AF96. FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 627—Value Engineering

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 630—Preconstruction Procedures

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA is proposing to revise aspects of the part 630 regulations under RINs 2125–AG03 and 2125–AG05. FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 633—Required Contract Provisions

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA is proposing to revise aspects of the part 633 regulations under RIN 2125–AG11. FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 635—Construction and Maintenance

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA recently updated aspects of the part 635 regulations under RIN 2125–AF83 (87 FR 67553 (November 9, 2022)). FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 636—Design-build Contracting

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 637—Construction Inspection and Approval

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. FHWA's plain language review of the regulations indicates no need for substantial revision.

Year 6 (Fall 2023) List of Rules That Will Be Analyzed During the Next Year

23 CFR part 645—Utilities
23 CFR part 646—Railroads
23 CFR part 650—Bridges, Structures, and Hydraulics
23 CFR part 655—Traffic Operations
23 CFR part 656—Carpool and Vanpool Projects
23 CFR part 657—Certification of Size and Weight Enforcement
23 CFR part 658—Truck Size and Weight, Route Designations—Length, Width and Weight Limitations
23 CFR part 660—Special Programs (Direct Federal)
23 CFR part 661—Indian Reservation Road Bridge Program
23 CFR part 667—Periodic Evaluation of Facilities Repeatedly Requiring Repair and Reconstruction Due to Emergency Events
23 CFR part 668—Emergency Relief Program
23 CFR part 669—Enforcement of Heavy Vehicle Use Tax

Federal Motor Carrier Safety Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR part 386	2018	2019
2	49 CFR part 385	2019	2020
3	49 CFR parts 382 and 383	2020	2021
4	49 CFR part 380	2021	2022
5	49 CFR part 387	2022	2023
6	49 CFR part 398	2023	2024
7	49 CFR part 392	2024	2025
8	49 CFR part 375	2025	2026
9	49 CFR part 367	2026	2027
10	49 CFR part 395	2027	2028

Year 4 (2021) List of Rules With Ongoing Analysis

49 CFR part 380—Special Training Requirements

- Section 610: FMCSA analyzed 49 CFR part 380 and found no SEISNOSE.
- 49 CFR part 380 is comprised of two distinct training matters. Subparts A through D establish minimum requirements for operators of longer combination vehicles (LCVs) and LCV driver-instructors. These parts introduce minor administrative costs of retaining records in case of a future investigation and training costs as directed by statute.[1] It identifies prudent business-related costs that a small business desiring to

[1] Section 31307. Minimum training requirements for operators of longer combination vehicles (a) Definition. In this section, ''longer combination vehicle'' means a vehicle consisting of a truck tractor and more than one trailer or semitrailer that operates on the Dwight D. Eisenhower System of Interstate and Defense Highways with a gross vehicle weight of more than 80,000 pounds. (b) Requirements. The Secretary of Transportation shall maintain regulations establishing minimum training requirements for operators of longer combination vehicles. The training shall include certification of an operator's proficiency by an instructor who has met the requirements established by the Secretary.

provide such training would incur whether the rule existed or not.

• Subparts E through G address entry-level driver training. A major regulatory change was the introduction of the Entry-Level Driver Training (ELDT) rule which directed a compliance date of February 7, 2022.

• The rule was updated to ensure new entrant drivers are qualified. The rule affects entry-level drivers seeking a CDL or a hazardous material (H), passenger (P), or school bus (S) endorsement, motor carriers, and training providers. Entry-level drivers are not small entities as defined by the U.S. Small Business Administration (SBA) and are therefore not included in this analysis. This rule does not directly regulate motor carriers except in cases where the carrier elects to register as a certified trainer. The ELDT rule requires motor carriers to maintain training records which drives a minimal cost.

• Motor carriers and training/educational institutions seeking to register on the Training Provider Registry (TRP) as training providers must retain certain records and update the TPR website with company and student information. The costs are minimal. It also requires lesson plans and training criteria to comply with federal, state, and local requirements.

• General: There is no need for substantial revision. These regulations provide necessary/clear guidance to industry employers, drivers, and training providers. The regulations are written consistent with plain language guidelines, are cost-effective, and impose the least economic burden on the industry.

Year 5 (2022) List of Rules With Ongoing Analysis

49 CFR part 387—Minimum Levels of Financial Responsibility for Motor Carriers

• Section 610: FMCSA analyzed 49 CFR part 387 but found no SEIOSNOSE.

• Under 49 U.S.C. 31138 and 31139, FMCSA is required to establish minimum levels of financial responsibility at or above the levels set by Congress. FMCSA's regulations (49 CFR part 387 subparts A and B) require for-hire property, passenger motor carriers, and all motor carriers transporting hazardous materials to maintain financial responsibility at the statutory minimums set forth in 49 U.S.C. 31138 and 31139.

• 49 CFR part 387 affects a substantial number of small entities, but the cost of required minimums does not impose a significant economic impact because the industry standard imposed by most lenders requires a higher level of coverage. Also, because the financial responsibility requirements were imposed by an act of Congress, FMCSA cannot further reduce the burden and satisfy the statutory directive Beyond the costs of obtaining insurance, 49 CFR part 387, subpart C, requires for-hire motor carriers subject to the Agency's jurisdiction under 49 U.S.C. 13501 to file evidence of financial responsibility with FMCSA. The cost of this administrative activity is minimal and does not rise to the level of a significant economic impact.

General: There is no need for substantial revision. These regulations provide necessary/clear guidance to ''For-hire'' property and passenger motor carriers. The regulations are cost-effective and impose the least economic burden on the industry.

Year 6 (2023) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 398—Transportation of Migrant Workers

National Highway Traffic Safety Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR 571.223 through 571.500, and parts 575 and 579	2018	2019
2	23 CFR part 1300	2019	2020
3	49 CFR parts 501 through 526 and 571.213	2020	2021
4	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222	2021	2022
5	49 CFR 571.101 through 571.110, and 571.135, 571.136, 571.138 and 571.139	2022	2023
6	49 CFR 571.141, and 49 CFR parts 529 through 578, except parts 571 and 575.	2023	2024
7	49 CFR 571.111 through 571.129 and parts 580 through 588	2024	2025
8	49 CFR 571.201 through 571.212	2025	2026
9	49 CFR 571.214 through 571.219, except 571.217	2026	2027
10	49 CFR parts 591 through 595 and new parts and subparts	2027	2028

Years 1 Through 6 (Fall 2019–2024) List of Rules With Ongoing or Pending Analysis

49 CFR part 571.101—Controls and displays
49 CFR part 571.102—Transmission shift position sequence, starter interlock, and transmission braking effect
49 CFR part 571.103—Windshield defrosting and defogging systems
49 CFR part 571.104—Windshield wiping and washing systems
49 CFR part 571.105—Hydraulic and electric brake systems
49 CFR part 571.106—Brake hoses
49 CFR part 571.108—Lamps, reflective devices, and associated equipment
49 CFR part 571.109—New pneumatic tires for vehicles manufactured from 1949 to 1975, bias ply tires, and T-type spare tires
49 CFR part 571.110—Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less
49 CFR part 571.131—School Bus Pedestrian Safety Devices
49 CFR part 571.135—Light vehicle brake systems
49 CFR part 571.136—Electronic stability control systems for heavy vehicles
49 CFR part 571.138—Tire pressure monitoring systems
49 CFR part 571.139—New pneumatic radial tires for light vehicles
49 CFR 571.141—Minimum Sound Requirements for Hybrid and Electric Vehicles
49 CFR part 571.213—Child Restraint Systems
49 CFR part 571.217—Bus Emergency Exits and Window Retention and Release
49 CFR part 571.220—School Bus Rollover Protection
49 CFR part 571.221—School Bus Body Joint Strength
49 CFR part 571.222—School Bus Passenger Seating and Crash Protection
49 CFR part 571.223—Rear Impact Guards
49 CFR part 571.224—Rear Impact Protection
49 CFR part 571.225—Child Restraint Anchorage Systems
49 CFR part 571.226—Ejection Mitigation
49 CFR part 571.301—Fuel System Integrity
49 CFR part 571.302—Flammability of Interior Materials
49 CFR part 571.303—Fuel System Integrity of Compressed Natural Gas Vehicles
49 CFR part 571.304—Compressed Natural Gas Fuel Container Integrity
49 CFR part 571.305—Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection
49 CFR part 571.401—Interior Trunk Release
49 CFR part 571.403—Platform Lift Systems for Motor Vehicles
49 CFR part 571.404—Platform Lift Installations in Motor Vehicles
49 CFR part 571.500—Low-Speed Vehicles
49 CFR part 501—Organization and Delegation of Powers and Duties
49 CFR part 509—OMB Control Numbers for Information Collection Requirements
49 CFR part 510—Information Gathering Powers
49 CFR part 511—Adjudicative Procedures
49 CFR part 512—Confidential Business Information
49 CFR part 520—Procedures for Considering Environmental Impacts
49 CFR part 523—Vehicle Classification
49 CFR part 525—Exemptions from Average Fuel Economy Standards
49 CFR part 526—Petitions and Plans for Relief under the Automobile Fuel Efficiency Act of 1980
49 CFR part 529—Manufacturers of Multistage Automobiles
49 CFR part 531—Passenger Automobile Average Fuel Economy Standards
49 CFR part 533—Light Truck Fuel Economy Standards
49 CFR part 534—Rights and Responsibilities of Manufacturers in the Context of Changes in Corporate Relationships

49 CFR part 535—Medium- and Heavy-Duty Vehicle Fuel Efficiency Program
49 CFR part 536—Transfer and Trading of Fuel Economy Credits
49 CFR part 537—Automotive Fuel Economy Reports
49 CFR part 538—Manufacturing Incentives for Alternative Fuel Vehicles
49 CFR part 541—Federal Motor Vehicle Theft Prevention Standard
49 CFR part 542—Procedures for Selecting Light Duty Truck Lines to Be Covered by the Theft Prevention Standard
49 CFR part 543—Exemption from Vehicle Theft Prevention Standard
49 CFR part 545—Federal Motor Vehicle Theft Prevention Standard Phase-in and Small-Volume Line Reporting Requirements
49 CFR part 551—Procedural Rules
49 CFR part 552—Petitions for Rulemaking, Defect, and Noncompliance Orders
49 CFR part 553—Rulemaking Procedures
49 CFR part 554—Standards Enforcement and Defects Investigation
49 CFR part 555—Temporary Exemption from Motor Vehicle Safety and Bumper Standards
49 CFR part 556—Exemption for Inconsequential Defect or Noncompliance
49 CFR part 557—Petitions for Hearings on Notification and Remedy of Defects
49 CFR part 562—Lighting and Marking of Agricultural Equipment
49 CFR part 563—Event Data Recorders
49 CFR part 564—Replaceable Light Source and Sealed Beam Headlamp Information
49 CFR part 565—Vehicle Identification Number (VIN) Requirements
49 CFR part 566—Manufacturer Identification
49 CFR part 567—Certification
49 CFR part 568—Vehicles Manufactured in Two or More Stages—All Incomplete, Intermediate and Final-Stage Manufacturers of Vehicles Manufactured in Two or More Stages
49 CFR part 569—Regrooved Tires
49 CFR part 570—Vehicle in Use Inspection Standards
49 CFR part 572—Anthropomorphic Test Devices
49 CFR part 573—Defect and Noncompliance Responsibility and Reports
49 CFR part 574—Tire Identification and Recordkeeping
49 CFR part 575—Consumer Information
49 CFR part 576—Record Retention
49 CFR part 577—Defect and Noncompliance Notification
49 CFR part 578—Civil and Criminal Penalties
49 CFR part 579—Reporting of Information and Communications About Potential Defects
23 CFR part 1200—Uniform Procedures for State Highway Safety Grant Programs
23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs

Federal Railroad Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 200, 207, 209, and 210	2018	2019
2	49 CFR parts 211, 212, 213, 214, and 215	2019	2020
3	49 CFR parts 216, 217, 218, 219, and 220	2020	2021
4	49 CFR parts 221, 222, 223, 224, and 225	2021	2022
5	49 CFR parts 227, 228, 229, 230, and 231	2022	2023
6	49 CFR parts 232, 233, 234, 235, and 236	2023	2024
7	49 CFR parts 237, 238, 249, 240, and 241	2024	2025
8	49 CFR parts 242, 243, 244, 250, and 256	2025	2026
9	49 CFR parts 261, 262, 264, 266, and 268	2026	2027
10	49 CFR parts 269, 270, and 272	2027	2028

Year 5 (Fall 2022) List of Rules Analyzed and a Summary of Results

49 CFR part 227—Occupational Noise Exposure

- Section 610: There is no SEISNOSE.
- General: The main objective of the rule is to protect the occupational health and safety of employees whose predominant noise exposure occurs in the locomotive cab. Hearing loss is an important issue in the railroad industry and there is a continuing safety need for this rule. The rule prescribes minimum Federal health and safety noise standards for locomotive cab occupants. This rule does not restrict a railroad or railroad contractor from adopting and enforcing additional or more stringent requirements. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 228—Hours of Service of Railroad Employees

- Section 610: There is no SEISNOSE.
- General: This rule prescribes reporting and recordkeeping requirements regarding the hours of service of certain railroad employees, railroad contractors and subcontractors and establishes standards and procedures concerning the construction of sleeping quarters. In general, this rule promotes the safety of railroad operations and employees. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 229—Railroad Locomotive Safety Standards

- Section 610: There is a SEISNOSE.
- General: Since the rule prescribes minimum Federal safety standards for all locomotives except those propelled by steam power, these regulations are necessary to achieve better and effective compliance of railroad locomotive safety standards, and to minimize the number of casualties. FRA's plain language review of this rule indicates that there is no need for substantial revision.

49 CFR part 230—Steam Locomotive Inspection and Maintenance Standards

- Section 610: There is no SEISNOSE.
- General: The rule prescribes minimum Federal safety standards of inspection and maintenance for all steam locomotive operated on railroads. These requirements are necessary to ensure the protection and safety of railroad employees and the general public, and to minimize the number of casualties. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 231—Railroad Safety Appliances Standards

- Section 610: There is no SEISNOSE.
- General: The rule provides for railroad safety standards which are necessary to ensure the protection and safety of railroad employees and public, and to minimize the number of casualties. Small railroads generally purchase rail equipment that has already been used in transportation by Class I and Class II railroads. As a result, rail equipment used by small railroads is often in compliance with part 231 standards at the time of acquisition. In addition, small railroads are not substantially affected by rail equipment maintenance costs that are associated with part 231 requirements because most rail equipment repairs are performed by Class I and Class II railroads and/or billed to the car owner. Although part 231 may have some impact on small railroads, FRA has deemed any such impact to be necessary to ensure uniform and consistent equipment design requirements, which contribute to the safety of railroad employees who work on or about the rail equipment. FRA's plain language review of this rule indicates no need for substantial revision.

Year 6 (Fall 2023) List of Rules(s) That Will Be Analyzed During This Year

49 CFR part 232—Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices
49 CFR part 233—Signal Systems Reporting Requirements
49 CFR part 234—Grade Crossing Safety
49 CFR part 235—Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236
49 CFR part 236—Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of

Signal and Train Control Systems, Devices, and Appliances

Federal Transit Administration

Section 610 and Other Reviews

The Regulatory Flexibility Act of 1980 (RFA), as amended (sections 601 through 612 of title 5, United States Code), requires Federal regulatory agencies to analyze all proposed and final rules to determine their economic impact on small entities, which include small businesses, organizations, and governmental jurisdictions. Section 610 requires government agencies to periodically review all regulations that will have a significant economic impact on a substantial number of small entities (SEISNOSE).

In complying with this section, the Federal Transit Administration (FTA) has elected to use the two-step, two-year process used by most Department of Transportation (DOT) modes. As such, FTA has divided its rules into 10 groups as displayed in the table below. During the analysis year, the listed rules will be analyzed to identify those with a SEISNOSE. During the review year, each rule identified in the analysis year as having a SEISNOSE will be reviewed in accordance with section 610(b) to determine if it should be continued without change or changed to minimize the impact on small entities.

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 604, 605, and 624	2018	2019
2	49 CFR parts 609 and 640	2019	2020
3	49 CFR part 633	2020	2021
4	49 CFR part 611	2021	2022
5	49 CFR part 655	2022	2023
6	49 CFR parts 602 and 614	2023	2024
7	49 CFR parts 661 and 663	2024	2025
8	49 CFR parts 625, 630, and 665	2025	2026
9	49 CFR parts 613, 622, 670 and 674	2026	2027
10	49 CFR parts 650, 672 and 673	2027	2028

Year 5 (Fall 2022) List of Rules Analyzed and Summary of Results

49 CFR part 655—Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

- Section 610: FTA conducted a Section 610 review of 49 CFR part 655 and determined that it would not result in a SEISNOSE within the meaning of the RFA. The regulation implements statutorily required procedures for alcohol and controlled substance testing.
- General: No changes are needed. FTA amended the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations regulation in 2023 (88 FR 27596) to include oral fluid testing and to harmonize testing procedures with the Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Oral Fluid established by the U.S. Department of Health and Human Services.

The rule increases flexibility for small-entity transportation employers and drug test collection sites by allowing them to use oral fluid testing instead of urine testing to meet DOT testing requirements. Accordingly, FTA determined that the rule would not have a significant economic impact on a substantial number of small entities.

Year 6 (Fall 2023) List of Rules To Be Analyzed This Year

49 CFR part 602—Emergency Relief

49 CFR part 614—Transportation Infrastructure Management

Maritime Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	46 CFR parts 201 through 205, 46 CFR parts 315 through 340, 46 CFR part 345 through 347, and 46 CFR parts 381 and 382.	2018	2019
2	46 CFR parts 221 through 232	2019	2020
3	46 CFR parts 249 through 296	2020	2021
4	46 CFR parts 298	2021	2022
5	46 CFR parts 307 through 309	2022	2023
6	46 CFR part 310	2023	2024
7	46 CFR parts 315 through 340	2024	2025
8	46 CFR parts 345 through 381	2025	2026
9	46 CFR parts 382 through 389	2026	2027
10	46 CFR parts 390 through 393	2027	2028

Year 4 (2022) List of Rules Analyzed and Summary of Results

46 CFR 298—Vessel Financing Assistance

- Section 610: There is no SEISNOSE.
- General: MARAD has reviewed part 298 and found that while it does not have SEISNOSE, it is necessary to amend the rule to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors to align with more up-to-date vessel financing and federal credit best practices. Accordingly, MARAD has initiated a rulemaking to amend the rule. MARAD's rulemaking amending part 298 will include plain language revisions.

Year 5 (2023) List of Rules Analyzed and Summary of Results

46 CFR part 307—Mandatory Position Report System for Vessels

Section 307: There is no SEISNOSE.

- General: No changes are needed.

MARAD's plain language review of this rule indicated no need for substantial revision.

46 CFR part 308—War Risk Insurance

- Section 610: There is no SEISNOSE.
- General: No changes are needed.

MARAD's plain language review of this rule indicated no need for substantial revision.

46 CFR part 309—War Risk Ship Valuation

- Section 610: There is no SEISNOSE.
- General: No changes are needed.

MARAD's plain language review of this rule indicated no need for substantial revision.

Year 6 (2024) List of Rules With Ongoing Analysis

46 CFR part 310—Merchant Marine Training

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR part 178	2018	2019
2	49 CFR parts 178 through 180	2019	2020
3	49 CFR parts 172 and 175	2020	2021
4	49 CFR part 171, sections 171.15 and 171.16	2021	2022
5	49 CFR parts 106, 107, 171, 190, and 195	2022	2023
6	49 CFR parts 174, 177, and 199	2023	2024
7	49 CFR parts 176, 191 and 192	2024	2025
8	49 CFR parts 172 and 178	2025	2026
9	49 CFR parts 172, 173, 174, 176, 177, and 193	2026	2027
10	49 CFR parts 173 and 194	2027	2028

Year 5 (Fall 2023) List of Rules Analyzed and a Summary of Results

49 CFR part 106—RULEMAKING PROCEDURES

49 CFR part 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

49 CFR part 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

• Section 610: PHMSA conducted a review of these parts and found no SEISNOSE.

• General: PHMSA has reviewed these parts and found that while these parts do not have SEISNOSE, they could be revised to reflect new technologies and updated to reflect current practices. Therefore, PHMSA has initiated rulemakings that—where necessary—revise portions of parts 106, 107, and 171. Otherwise, PHMSA's plain language review of these parts indicates no need for substantial revision. Where confusing or ambiguous language has been identified, PHMSA plans to propose or finalize revisions by way of rulemakings.

As an example, the ''Hazardous Materials: Advancing Safety of Modal Specific Provisions'' (2137–AF41) rulemaking action is part of PHMSA's response to clarify current regulatory requirements and address public comments. This rulemaking also proposes to address a variety of petitions for rulemaking, specific to modal stakeholders, and other issues identified by PHMSA during its regulatory review. The impact that the 2137–AF41 rulemaking will have on small entities is not expected to be significant. The rulemaking is based on PHMSA's initiatives and correspondence with the regulated community, as well as PHMSA's consultation with its modal partners, including FMCSA, FRA, and the United States Coast Guard (USCG). The proposed amendments are expected to result in an overall net cost savings and ease the regulatory compliance burden for small entities, shippers, carriers, manufacturers, and requalifiers, specifically those modal-specific packaging and requalification requirements. This rulemaking is one example of PHMSA's review of rulemakings which ensures that our rules do not have a significant economic impact on a substantial number of small entities.

For a second example, the ''Hazardous Materials: Harmonization With International Standards'' (2137–AF57) rulemaking action is part of PHMSA's ongoing biennial process to harmonize the Hazardous Materials Regulations (HMR) with international regulations and standards. Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and promotes consistency of the HMR with international transport standards to the extent practicable. Federal hazardous materials law permits PHMSA to depart from international standards where appropriate, including to promote safety or other overriding public interests. However, Federal hazardous materials law otherwise encourages domestic and international harmonization (see 49 U.S.C. 5120). Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Safety is enhanced by creating a uniform framework for compliance, and as the volume of hazardous materials transported in international commerce continues to grow, harmonization becomes increasingly important. The impact that the 2137–AF57 rulemaking will have on small entities is not expected to be significant. The rulemaking will clarify provisions based on PHMSA's initiatives and correspondence with the regulated community and domestic and international stakeholders, which helps promote safety through increased regulatory compliance. The changes are generally intended to provide relief and, as a result, positive economic benefits to shippers, carriers, and packaging manufacturers and testers, including small entities. This rulemaking is expected to lead to both economic and safety benefits. The amendments are expected to result in net benefits for shippers engaged in domestic and international commerce, including trans-border shipments within North America. Additionally, the effective changes of this rulemaking will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. This rulemaking is a second example of PHMSA's review of rulemakings which helps ensure that the HMR do not have a significant economic impact on a substantial number of small entities.

49 CFR part 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

• Section 610: PHMSA conducted a review of this part and found no SEISNOSE.

• General: No changes are needed.

49 CFR part 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

• Section 610: PHMSA conducted a review of this part and found no SEISNOSE. However, PHMSA conducts regular regulatory reviews to ensure that the Office of Pipeline Safety regulations keep up to date with new technologies and to be responsive to petitions, mandates, recommendations, and safety issues. When necessary, PHMSA's Office of Pipeline Safety proposes amendments to provide relief to small businesses by clarifying and updating its regulations. Additionally, PHMSA's Office of Pipeline Safety regularly incorporates voluntary consensus standards—which are reviewed by committees representing government, industry, and material manufacturers—as a part of its rulemaking activities.

Year 6 (Fall 2024) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 174—CARRIAGE BY RAIL

49 CFR part 177—CARRIAGE BY PUBLIC HIGHWAY

49 CFR part 199—DRUG AND ALCOHOL TESTING

Great Lakes Saint Lawrence Seaway Development Corporation

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	*33 CFR parts 401 through 403	2018	2019

** The review for these regulations is recurring each year of the 10-year review cycle (currently 2018 through 2027).*

Year 1 (Fall 2018) List of Rules That Will Be Analyzed During the Next Year

33 CFR part 401—Seaway Regulations and Rules

33 CFR part 402—Tariff of Tolls

33 CFR part 403—Rules of Procedure of the Joint Tolls Review Board

OFFICE OF THE SECRETARY—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
396	Refunding Airline Tickets Ancillary Service Fees	2105–AF04

FEDERAL AVIATION ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
397	Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States.	2120–AK09
398	Requirements to File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects **(Section 610 Review)**.	2120–AK77

FEDERAL AVIATION ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
399	Registration and Marking Requirements for Small Unmanned Aircraft	2120–AK82

FEDERAL AVIATION ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
400	Regulation Of Flight Operations Conducted By Alaska Guide Pilots	2120–AJ78
401	Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Commuter or On-Demand Operations (FAA Reauthorization).	2120–AK26
402	Aircraft Registration and Airmen Certification Fees	2120–AK37
403	Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization)	2120–AK57

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
404	Self-Insurance Program Cost Recovery **(Section 610 Review)**	2126–AC58

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
405	Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States.	2126–AA35

FEDERAL RAILROAD ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
406	Positive Train Control Systems **(Section 610 Review)**	2130–AC95

FEDERAL RAILROAD ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
407	Train Crew Staffing	2130–AC88

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
408	Seaway Regulations and Rules: Periodic Update, Various Categories **(Completion of a Section 610 Review)**.	2135–AA55
409	Tariff of Tolls **(Completion of a Section 610 Review)**	2135–AA56

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
410	Pipeline Safety: Gas Pipeline Leak Detection and Repair	2137–AF51
411	Pipeline Safety: Pipeline Operational Status	2137–AF52
412	Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives	2137–AF53

MARITIME ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
413	Cargo Preference—U.S. Flag Vessels Regulatory Update **(Section 610 Review)**	2133–AB97

MARITIME ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
414	Amendment to the Federal Ship Financing Program Regulations; Financial Requirements **(Section 610 Review)**.	2133–AB98
415	Establishing Safe and Secure Merchant Marine Training **(Section 610 Review)**	2133–AB99

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary (OST)

Final Rule Stage

396. Refunding Airline Tickets Ancillary Service Fees [2105–AF04]

Legal Authority: 49 U.S.C. 41712; 49 U.S.C. 40101, 49 U.S.C. 41702

Abstract: The Department of Transportation has consistently interpreted 49 U.S.C. 41712, which prohibits U.S. air carriers, foreign air carriers, and ticket agents from engaging in unfair practices in the sale of air transportation, to require carriers and ticket agents to provide requested refunds to passengers when a carrier cancels or significantly changes a flight to, from, or within the United States. This rulemaking would clarify that, under the Department's rule requiring airlines to provide prompt refunds when ticket refunds are due and its rule requiring ticket agents to make refunds promptly when service cannot be performed as contracted, carriers and ticket agents must provide prompt ticket refunds to passengers when a carrier cancels or makes a significant change to a flight. This rulemaking would define cancellation and significant change, including addressing whether new itineraries involving delays of a certain length or additional stops constitute a significant change requiring a refund. This rulemaking would also address protections for consumers who are unable to travel due to government restrictions. In addition, the rulemaking under RIN 2105–AE53 has been merged into this rulemaking. As such, this rulemaking would also require airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner as provided by the FAA Extension, Safety and Security Act of 2016, and require airlines to promptly provide a refund to a passenger of any ancillary fees paid for services that the passenger did not receive as provided by the FAA Reauthorization Act of 2018. This rulemaking is informed by feedback received at four public meetings: three meetings of the Aviation Consumer Protection Advisory Committee on August 22, 2022, December 8, 2022, and January 12, 2023, and one public hearing on March 21, 2023. The docket for this rule was also open to public comment submission for approximately 130 days.

Timetable:

Action	Date	FR Cite
NPRM	08/22/22	87 FR 51550
NPRM Comment Period End.	03/28/23	
Final Rule	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Blane A. Workie, Assistant General Counsel, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–9342, *Fax:* 202 366–7153, *Email: blane.workie@dot.gov.*

RIN: 2105–AF04

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Proposed Rule Stage

397. Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States [2120–AK09]

Legal Authority: 14 CFR; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44707; 49 U.S.C. 44709; 49 U.S.C. 44717

Abstract: This rulemaking would require controlled substance testing of

some employees working in repair stations located outside the United States. The intended effect is to increase participation by companies outside of the United States in testing of employees who perform safety critical functions and testing standards similar to those used in the repair stations located in the United States. This rulemaking is a statutory mandate under section 308(d) of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95).

Timetable:

Action	Date	FR Cite
ANPRM	03/17/14	79 FR 14621
Comment Period Extended.	05/01/14	79 FR 24631
ANPRM Comment Period End.	05/16/14	
Comment Period End.	07/17/14	
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Julia Brady, Program Analyst, Program Policy Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–8083, *Email: julia.brady@faa.gov*.

RIN: 2120–AK09

398. Requirements To File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects (Section 610 Review) [2120–AK77]

Legal Authority: 49 U.S.C. 40103

Abstract: This rulemaking would add specific requirements for proponents who wish to construct meteorological evaluation towers at a height of 50 feet above ground level (AGL) up to 200 feet AGL to file notice of construction with the FAA. This rule also requires sponsors of wind turbines to provide certain specific data when filing notice of construction with the FAA. This rulemaking is a statutory mandate under section 2110 of the FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114–190).

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Juan Yanguas, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–1082, *Email: juan.s.yanguas@faa.gov*.

RIN: 2120–AK77

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Final Rule Stage

399. Registration and Marking Requirements for Small Unmanned Aircraft [2120–AK82]

Legal Authority: 49 U.S.C. 106(f), 49 U.S.C. 41703, 44101 to 44106, 44110 to 44113, and 44701

Abstract: This rulemaking would provide an alternative, streamlined and simple, web-based aircraft registration process for the registration of small, unmanned aircraft, including small unmanned aircraft operated exclusively for limited recreational operations, to facilitate compliance with the statutory requirement that all aircraft register prior to operation. It would also provide a simpler method for marking small, unmanned aircraft that is more appropriate for these aircraft. This action responds to public comments received regarding the proposed registration process in the Operation and Certification of Small Unmanned Aircraft notice of proposed rulemaking, the request for information regarding unmanned aircraft system registration, and the recommendations from the Unmanned Aircraft System Registration Task Force.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/16/15	80 FR 78593
Interim Final Rule Effective.	12/21/15	
OMB Approval of Information Collection.	12/21/15	80 FR 79255
Interim Final Rule Comment Period End.	01/15/16	
Final Rule	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Bonnie Lefko, Department of Transportation, Federal Aviation Administration, 6500 S MacArthur Boulevard, Registry Building 26, Room 118, Oklahoma City, OK 73169, *Phone:* 866 762–9434, *Email: bonnie.lefko@faa.gov*.

RIN: 2120–AK82

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Long-Term Actions

400. Regulation of Flight Operations Conducted by Alaska Guide Pilots [2120–AJ78]

Legal Authority: 49 U.S.C. 106(g) ; 49 U.S.C. 1153; 49 U.S.C. 1155; 49 U.S.C. 40101 to 40103; 49 U.S.C. 40113; 49 U.S.C. 40120; 49 U.S.C. 44101; 49 U.S.C. 44105 to 44016; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903 to 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 46103; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315 to 46316; 49 U.S.C. 46504; 49 U.S.C. 46506 to 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531; Articles 12 and 29 of 61 Statue 1180; P.L. 106–181, Sec. 732

Abstract: The rulemaking would establish regulations concerning Alaska guide pilot operations. The rulemaking would implement Congressional legislation and establish additional safety requirements for the conduct of these operations. The intended effect of this rulemaking is to enhance the level of safety for persons and property transported in Alaska guide pilot operations. In addition, the rulemaking would add a general provision applicable to pilots operating under the general operating and flight rules concerning falsification, reproduction, and alteration of applications, logbooks, reports, or records. This rulemaking is a statutory mandate under section 732 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, (Pub. L. 106–181).

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeff Smith, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20785, *Phone:* 202 365–3617, *Email: jeffrey.smith@faa.gov*.

RIN: 2120–AJ78

401. Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Commuter or On-Demand Operations (FAA Reauthorization) [2120–AK26]

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 1153; 49 U.S.C. 40101; 49 U.S.C. 40102; 49 U.S.C. 40103; 49 U.S.C. 40113; 49 U.S.C. 41706; 49 U.S.C. 44105; 49 U.S.C.

44106; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903; 49 U.S.C. 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46103

Abstract: This rulemaking would require a flightcrew member who is employed by an air carrier conducting operations under part 135, and who accepts an additional assignment for flying under part 91 from the air carrier or from any other air carrier conducting operations under part 121 or 135, to apply the period of the additional assignment toward any limitation applicable to the flightcrew member relating to duty periods or flight times under part 135.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chester Piolunek, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–3711, *Email: chester.piolunek@faa.gov*.

RIN: 2120–AK26

402. Aircraft Registration and Airmen Certification Fees [2120–AK37]

Legal Deadline: 31 U.S.C. 9701; 4 U.S.C. 1830; 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 106(l)(6); 49 U.S.C. 40104; 49 U.S.C. 40105; 49 U.S.C. 40109; 49 U.S.C. 40113; 49 U.S.C. 40114; 49 U.S.C. 44101 to 44108; 49 U.S.C. 44110 to 44113; 49 U.S.C. 44701 to 44704; 49 U.S.C. 44707; 49 U.S.C. 44709 to 44711; 49 U.S.C. 44713; 49 U.S.C. 45102; 49 U.S.C. 45103; 49 U.S.C. 45301; 49 U.S.C. 45302; 49 U.S.C. 45305; 49 U.S.C. 46104; 49 U.S.C. 46301; Pub. L. 108–297, 118 Stat.

Abstract: This rulemaking would establish fees for airman certificates, medical certificates, and provision of legal opinions pertaining to aircraft registration or recordation. This rulemaking also would revise existing fees for aircraft registration, recording of security interests in aircraft or aircraft parts, and replacement of an airman certificate. This rulemaking addresses provisions of the FAA Modernization and Reform Act of 2012. This rulemaking is intended to recover the estimated costs of the various services and activities for which fees would be established or revised.

Timetable:

Action	Date	FR Cite
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Isra Raza, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–8994, *Email: isra.raza@faa.gov*.

RIN: 2120–AK37

403. Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization) [2120–AK57]

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 41706; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709; 49 U.S.C. 44711 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44730; 49 U.S.C. 45101 to 45105

Abstract: This rulemaking would develop training requirements for crew resource management, flight risk evaluation, and operational control of the pilot in command, as well as to develop standards for the use of flight simulation training devices and line-oriented flight training. Additionally, it would establish requirements for the use of safety equipment for flight crewmembers and flight nurses. These changes will aide in the increase in aviation safety and increase survivability in the event of an accident. Without these changes, the Helicopter Air Ambulance industry may continue to see the unacceptable high rate of aircraft accidents. This rulemaking is a statutory mandate under section 306(e) of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95).

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chris Holliday, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–4552, *Email: chris.holliday@faa.gov*.

RIN: 2120–AK57

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Motor Carrier Safety Administration (FMCSA)

Proposed Rule Stage

404. Self-Insurance Program Cost Recovery (Section 610 Review) [2126–AC58]

Legal Authority: 31 U.S.C. 9701 and 49 U.S.C. 13906(d); 49 U.S.C. 13908(d)

Abstract: FMCSA will propose to amend fees collected for the processing of new self-insurance applications and add new fees for ongoing monitoring of carrier compliance with the self-insurance program requirements. Application fees will be directed to FMCSA's Licensing and Insurance (L&I) Account while monitoring fees must be sent to the Treasury. This rulemaking will amend 49 CFR 360.3T/360.3 to ensure that the limited number of primarily large motor carriers that benefit from the program bear a proportionate cost of participating in the program. FMCSA may also need to amend 49 CFR 360.5T/360.5 to reflect any specific updates to the user fee methodology that are required by this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Kenneth Riddle, Office Director, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, W65–308, Washington, DC 20590, *Phone:* 202 366–9616, *Email: kenneth.riddle@dot.gov*.

RIN: 2126–AC58

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Motor Carrier Safety Administration (FMCSA)

Long-Term Actions

405. Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States [2126–AA35]

Legal Authority: Pub. L. 107–87, sec. 350; 49 U.S.C. 113; 49 U.S.C. 31136; 49 U.S.C. 31144; 49 U.S.C. 31502; 49 U.S.C. 504; 49 U.S.C. 5113; 49 U.S.C. 521(b)(5)(A)

Abstract: This rule would implement a safety monitoring system and compliance initiative designed to

evaluate the continuing safety fitness of all Mexico-domiciled carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. It also would establish suspension and revocation procedures for provisional Certificates of Registration and operating authority, and incorporate criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM but which are necessary to comply with the FY–2002 DOT Appropriations Act. On January 16, 2003, the Ninth Circuit Court of Appeals remanded this rule, along with two other NAFTA-related rules, to the agency, requiring a full environmental impact statement and an analysis required by the Clean Air Act. On June 7, 2004, the Supreme Court reversed the Ninth Circuit and remanded the case, holding that FMCSA is not required to prepare the environmental documents. FMCSA originally planned to publish a final rule by November 28, 2003.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22415
NPRM Comment Period End.	07/02/01	
Interim Final Rule	03/19/02	67 FR 12758
Interim Final Rule Comment Period End.	04/18/02	
Interim Final Rule Effective.	05/03/02	
Notice of Intent to Prepare an EIS.	08/26/03	68 FR 51322
EIS Public Scoping Meetings.	10/08/03	68 FR 58162
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Crystal E. Williams, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–0596, *Email: crystal.williams@dot.gov*.

RIN: 2126–AA35

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Railroad Administration (FRA)

Proposed Rule Stage

406. • Positive Train Control Systems (Section 610 Review) [2130–AC95]

Legal Authority: 49 U.S.C. 20157; 49 U.S.C. 20103

Abstract: This rulemaking will amend FRA's PTC regulations—Title 49 Code of Federal Regulations (CFR) part 236, subpart I—to accomplish two objectives: (1) Improve FRA's oversight of the performance of PTC technology by clarifying and expanding certain reporting requirements, and (2) provide a clear framework under which railroads may safely operate without PTC technology, subject to operating restrictions and other requirements, in certain necessary situations.

FRA has found that its existing PTC regulations do not provide sufficient flexibility to railroads to continue operating following initialization failures or in cases where a PTC system needs to be temporarily disabled during repair, maintenance, infrastructure upgrades, or capital projects. Previously, FRA's regulations provided railroads with flexibility that expired on December 31, 2022, and this rulemaking will reintroduce a certain flexibility regarding initialization failures, establish additional parameters and operating restrictions under which railroads may continue to operate safely, and codify an existing process for FRA's approval of temporary PTC system outages related to repair, maintenance, infrastructure upgrades, and capital projects.

In addition, this rulemaking will create a new exception to permit non-revenue passenger trains to operate to yards or maintenance facilities, without being governed by PTC technology, under certain conditions.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Agency Contact: Amanda Maizel, Attorney-Adviser, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 493–8014, *Email: amanda.maizel@dot.gov*.

RIN: 2130–AC95

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Railroad Administration (FRA)

Final Rule Stage

407. Train Crew Staffing [2130–AC88]

Legal Authority: 49 CFR 1.89(a); 49 U.S.C. 20103

Abstract: This rulemaking would address the potential safety impact of one-person train operations, including appropriate measures to mitigate an accident's impact and severity, and the patchwork of State laws concerning minimum crew staffing requirements. This rulemaking would address the issue of minimum requirements for the size of train crews, depending on the type of operations. In an effort to encourage public participation, FRA extended the comment period from 60 to 146 days and held a public hearing on December 14, 2022.

Timetable:

Action	Date	FR Cite
NPRM	07/28/22	87 FR 45564
NPRM Comment Period End.	12/21/22	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amanda Maizel, Attorney-Adviser, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 493–8014, *Email: amanda.maizel@dot.gov*.

RIN: 2130–AC88

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION (DOT)

Saint Lawrence Seaway Development Corporation (SLSDC)

Prerule Stage

408. • Seaway Regulations and Rules: Periodic Update, Various Categories (Completion of a Section 610 Review) [2135–AA55]

Legal Authority: 33 U.S.C. 981 *et seq.*

Abstract: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the GLS is

amending the joint regulations by updating the Regulations and Rules in various categories.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Carrie Lynn Lavigne, Chief Counsel, Department of Transportation, Saint Lawrence Seaway Development Corporation, Great Lakes Street, Lawrence Seaway Development Corporation (GLS), 1200 New Jersey Avenue SW, Washington, DC 20590, *Phone:* 315 764–3231, *Email: carrie.lavigne@dot.gov*.

RIN: 2135–AA55

409. • Tariff of Tolls (Completion of a Section 610 Review) [2135–AA56]

Legal Authority: 33 U.S.C. 918 *et seq.*

Abstract: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/24	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Carrie Lynn Lavigne, Chief Counsel, Department of Transportation, Saint Lawrence Seaway Development Corporation, Great Lakes Street, Lawrence Seaway Development Corporation (GLS), 1200 New Jersey Avenue SW, Washington, DC 20590, *Phone:* 315 764–3231, *Email: carrie.lavigne@dot.gov*.

RIN: 2135–AA56

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION (DOT)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Proposed Rule Stage

410. Pipeline Safety: Gas Pipeline Leak Detection and Repair [2137–AF51]

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: This rulemaking would amend the pipeline safety regulations to enhance requirements for detecting and repairing leaks on new and existing natural gas distribution, gas transmission, and gas gathering pipelines. The proposed rule is necessary to respond to a mandate from section 113 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020. PHMSA hosted a public meeting covering gas pipeline leak detection and repair on May 5 and May 6, 2021, and has scheduled a Gas Pipeline Advisory Committee meeting to discuss the NPRM for November 27 through December 1, 2023.

Timetable:

Action	Date	FR Cite
NPRM	05/18/23	88 FR 31890
NPRM Comment Period End.	08/16/23	
Analyzing Comments.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sayler Palabrica, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–0559, *Email: sayler.palabrica@dot.gov*.

RIN: 2137–AF51

411. Pipeline Safety: Pipeline Operational Status [2137–AF52]

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: This rulemaking would amend the pipeline safety regulations to define an idled operational status for natural gas and hazardous liquid pipelines that are temporarily removed from service, set operations and maintenance requirements for idled pipelines, and establish inspection requirements for idled pipelines that are returned to service. The proposed rule is necessary to respond to a mandate from the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Anna Setzer, Transportation Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–4098, *Email: anna.setzer@dot.gov*.

RIN: 2137–AF52

412. Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives [2137–AF53]

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: This rulemaking would amend the pipeline safety regulations to enhance the safety requirements for gas distribution pipelines. The proposed rule is necessary to respond to several mandates from title II of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020).

Timetable:

Action	Date	FR Cite
NPRM	09/07/23	88 FR 61746
NPRM Comment Period End.	11/06/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ashlin Bollacker, Transportation Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–4203, *Email: ashlin.bollacker@dot.gov*.

RIN: 2137–AF53

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION (DOT)

Maritime Administration (MARAD)

Proposed Rule Stage

413. Cargo Preference—U.S. Flag Vessels Regulatory Update (Section 610 Review) [2133–AB97]

Legal Authority: FY23 NDAA, Pub. L. 117–263; 46 U.S.C. 55305; 49 CFR 1.93(a)

Abstract: The purpose of this rulemaking is to respond to a statutory directive in section 3502 of the National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA) requiring

MARAD to issue a final rule to implement and enforce the cargo preference requirements in 46 U.S.C. 55305(d).

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Agency Contact: Thomas Mitchell Hudson, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–9373, *Email: mitch.hudson@dot.gov*.

RIN: 2133–AB97

DEPARTMENT OF TRANSPORTATION (DOT)

Maritime Administration (MARAD)

Final Rule Stage

414. Amendment to the Federal Ship Financing Program Regulations; Financial Requirements (Section 610 Review) [2133–AB98]

Legal Authority: National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116–92; 46 U.S.C. ch. 537; 49 CFR 1.93(a)

Abstract: The proposed rule is intended to update the lending parameters in the current regulations, which no longer best achieve the intended purpose of minimizing the risk of Title XI Program defaults, and to better align the lending practices to reflect Federal credit and maritime lending best practices. MARAD expects that the proposed regulations will reduce the economic burden on applicants in complying with Title XI Program requirements that are inconsistent with other lending instruments. MARAD also expects that the updated lending parameters could encourage the construction of vessels in United States shipyards which otherwise would not meet the current constrained Title XI Program financial requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/25/23	88 FR 24962
NPRM Comment Period End.	06/26/23	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Mitch Hudson, Attorney, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–9373, *Email: mitch.hudson@dot.gov*.

RIN: 2133–AB98

415. Establishing Safe and Secure Merchant Marine Training (Section 610 Review) [2133–AB99]

Legal Authority: FY23 NDAA, Pub. L. 117–263; 46 U.S.C. ch. 513; 49 CFR 1.93(a)

Abstract: The purpose of this regulation is to improve the safety and efficiency of the United States merchant marine through the prevention of, and response to, sexual harassment, dating violence, domestic violence, and sexual assault onboard vessels on which merchant marine cadets are embarked for training purposes.

Timetable:

Action	Date	FR Cite
Final Action	01/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Agency Contact: Thomas Mitchell Hudson, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–9373, *Email: mitch.hudson@dot.gov*.

RIN: 2133–AB99

[FR Doc. 2024–00449 Filed 2–8–24; 8:45 am]

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Part XIV

Department of the Treasury

Semiannual Regulatory Agenda

DEPARTMENT OF THE TREASURY

31 CFR Subtitles A and B

Semiannual Agenda

AGENCY: Department of the Treasury.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order 12866 (''Regulatory Planning and Review''), which require the publication by the Department of a semiannual agenda of regulations.

FOR FURTHER INFORMATION CONTACT: The Agency contact identified in the item relating to that regulation.

SUPPLEMENTARY INFORMATION: The semiannual regulatory agenda includes regulations that the Department has issued or expects to issue and rules currently in effect that are under departmental or bureau review.

The complete Unified Agenda will be available online at *www.reginfo.gov* and *www.regulations.gov,* in a format that offers users an enhanced ability to obtain information from the Agenda database. Because publication in the **Federal Register** is mandated for the regulatory flexibility agenda required by the Regulatory Flexibility Act (5 U.S.C. 602), Treasury's printed agenda entries include only:

(1) Rules that are in the regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that have been identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda available on the internet.

The semiannual agenda of the Department of the Treasury conforms to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

Michael Briskin,

Deputy Assistant General Counsel for General Law and Regulation.

BUREAU OF THE FISCAL SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
416	Revision of the Federal Claims Collection Standards (31 CFR Parts 900–904) **(Section 610 Review)**	1530–AA29

FINANCIAL CRIMES ENFORCEMENT NETWORK—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
417	Section 6101. Establishment of National Exam and Supervision Priorities	1506–AB52
418	Residential Real Estate Transaction Reports and Records	1506–AB54
419	Revisions to Customer Due Diligence Requirements for Financial Institutions	1506–AB60
420	Commercial Real Estate Transaction Reports and Records	1506–AB61

FINANCIAL CRIMES ENFORCEMENT NETWORK—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
421	Beneficial Ownership Information Access and Safeguards	1506–AB59

FINANCIAL CRIMES ENFORCEMENT NETWORK—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
422	Amendments to the Definition of Broker or Dealer in Securities (Crowd Funding)	1506–AB36
423	Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status.	1506–AB41
424	Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets	1506–AB47
425	Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts.	1506–AB50
426	Section 6212. Pilot Program on Sharing of Information Related to Suspicious Activity Reports Within a Financial Group.	1506–AB51

CUSTOMS REVENUE FUNCTION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
427	Entry of Low-Value Shipments	1515–AE84

CUSTOMS REVENUE FUNCTION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
428	Enforcement of Copyrights and the Digital Millennium Copyright Act	1515–AE26

INTERNAL REVENUE SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
429	Guidance on the Elimination of Interbank Offered Rates	1545–BO91
430	Additional Guidance on Low-Income Communities Bonus Credit Program	1545–BQ81

DEPARTMENT OF THE TREASURY (TREAS)

Bureau of the Fiscal Service (FISCAL)

Proposed Rule Stage

416. Revision of the Federal Claims Collection Standards (31 CFR Parts 900–904) (Section 610 Review) [1530–AA29]

Legal Authority: 31 U.S.C. 3711

Abstract: The Department of Justice jointly with the Department of the Treasury will revise the Federal Claims Collection Standards to address statutory changes and to improve clarity of existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Michelle Cordeiro, Senior Counsel, Department of the Treasury, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC 20227, *Phone:* 202 874–6680, *Email: michelle.cordeiro@fiscal.treasury.gov.*

RIN: 1530–AA29

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Proposed Rule Stage

417. Section 6101. Establishment of National Exam and Supervision Priorities [1506–AB52]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a notice of proposed rulemaking as part of the establishment of national exam and supervision priorities. The proposed rule implements section 6101(b) of the Anti-Money Laundering Act of 2020 that requires the Secretary of the Treasury to issue and promulgate rules for financial institutions to carry out the government-wide anti-money laundering and countering the financing of terrorism priorities (AML/CFT Priorities). The proposed rule: (i) incorporates a risk assessment requirement for financial institutions; (ii) requires financial institutions to incorporate AML/CFT Priorities into risk-based programs; and (iii) provides for certain technical changes. Once finalized, this proposed rule will affect all financial institutions subject to regulations under the Bank Secrecy Act that have AML/CFT program obligations.

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	
NPRM Comment Period End.	05/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB52

418. Residential Real Estate Transaction Reports and Records [1506–AB54]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a notice of proposed rulemaking to address money laundering vulnerabilities in the U.S. residential real estate sector.

Timetable:

Action	Date	FR Cite
ANPRM	12/08/21	86 FR 69589
ANPRM Comment Period End.	02/07/22	
NPRM	02/00/24	
NPRM Comment Period End.	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB54

419. Revisions to Customer Due Diligence Requirements for Financial Institutions [1506–AB60]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a notice of proposed rulemaking entitled ''Revisions to Customer Due Diligence Requirements for Financial Institutions,'' relating to Section 6403(d) of the Corporate Transparency Act (CTA). Section 6403(d) of the CTA requires FinCEN to revise its customer due diligence requirements for financial institutions to account for the changes created by the beneficial ownership information reporting and access requirements set out in the CTA.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	
NPRM Comment Period End.	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB60

420. Commercial Real Estate Transaction Reports and Records [1506–AB61]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a notice of proposed rulemaking to address money laundering vulnerabilities in the U.S. commercial real estate sector.

Timetable:

Action	Date	FR Cite
NPRM	09/00/24	
NPRM Comment Period End.	11/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 2218, *Phone:* 800 767–2825, *Email: frc@fincen.gov*.

RIN: 1506–AB61

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Final Rule Stage

421. Beneficial Ownership Information Access and Safeguards [1506–AB59]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a final rule entitled ''Beneficial Ownership Information Access and Safeguards.'' The final rule will establish protocols to protect the security and confidentiality of the beneficial ownership information (BOI) that will be reported to FinCEN pursuant to the Bank Secrecy Act, as amended by Section 6403(a) of the Corporate Transparency Act, and will establish the framework for authorized recipients' access to the BOI reported.

Timetable:

Action	Date	FR Cite
NPRM	12/16/22	87 FR 77404
NPRM Comment Period End.	02/14/23	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB59

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Long-Term Actions

422. Amendments to the Definition of Broker or Dealer in Securities (Crowd Funding) [1506–AB36]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5332

Abstract: FinCEN is finalizing amendments to the regulatory definitions of ''broker or dealer in securities'' under the regulations implementing the Bank Secrecy Act. The changes are intended to expand the current scope of the definitions to include funding portals involved in the offering or selling of securities through crowdfunding pursuant to section 4(a)(6) of the Securities Act of 1933. In addition, these amendments would require funding portals to implement policies and procedures reasonably designed to achieve compliance with all of the Bank Secrecy Act requirements that are currently applicable to brokers or dealers in securities. The rule to require these organizations to comply with the Bank Secrecy Act regulations is intended to help prevent money laundering, terrorist financing, and other financial crimes.

Note: This is not a new requirement; it replaces RINs 1506–AB24 and 1506–AB29.

Timetable:

Action	Date	FR Cite
NPRM	04/04/16	81 FR 19086
NPRM Comment Period End.	06/03/16	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB36

423. Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status [1506–AB41]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: The Board of Governors of the Federal Reserve System and FinCEN (collectively, the ''Agencies'') intend to issue a revised proposal to clarify the meaning of ''money'' as used in the rules implementing the Bank Secrecy Act requiring financial institutions to collect, retain, and transmit information on certain funds transfers and transmittals of funds. The Agencies intend that the revised proposal will ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency, which is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further intend that the revised proposal will clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status.

Timetable:

Action	Date	FR Cite
NPRM	10/27/20	85 FR 68005
NPRM Comment Period End.	11/27/20	
Second NPRM	01/00/25	
Second NPRM Comment Period End.	03/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB41

424. Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets [1506–AB47]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN is amending the regulations implementing the Bank Secrecy Act (BSA) to require banks and money service businesses (MSBs) to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency (CVC) or digital assets with legal tender status (''legal tender digital assets'' or ''LTDA'') held in

unhosted wallets, or held in wallets hosted in a jurisdiction identified by FinCEN.

Timetable:

Action	Date	FR Cite
NPRM	12/23/20	85 FR 83840
NPRM Comment Period End.	01/04/21	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB47

425. Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts [1506–AB50]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a Notice of Proposed Rulemaking to implement Section 6110 of the Anti-Money Laundering Act of 2020 (the AML Act). This section amends the Bank Secrecy Act (31 U.S.C. 5312(a)(2)) to include as a financial institution a person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the solicitation or the sale of antiquities, subject to regulations prescribed by the Secretary of the Treasury. The section further requires the Secretary of the Treasury to issue proposed rules to implement the amendment within 360 days of enactment of the AML Act.

Timetable:

Action	Date	FR Cite
ANPRM	09/24/21	86 FR 53021
ANPRM Comment Period End.	10/25/21	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB50

426. Section 6212. Pilot Program on Sharing of Information Related to Suspicious Activity Reports Within a Financial Group [1506–AB51]

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a Final Rule in order to implement Section 6212 of the Anti-Money Laundering Act of 2020 (the AML Act). This section amends the Bank Secrecy Act (31 U.S.C. 5318(g)) to establish a pilot program that permits financial institutions to share suspicious activity report (SAR) information with their foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks. The section further requires the Secretary of the Treasury to issue rules to implement the amendment within one year of enactment of the AML Act.

Timetable:

Action	Date	FR Cite
NPRM	01/25/22	87 FR 3719
NPRM Comment Period End.	03/28/22	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB51

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY (TREAS)

Customs Revenue Function (CUSTOMS)

Proposed Rule Stage

427. • Entry of Low-Value Shipments [1515–AE84]

Legal Authority: 19 U.S.C. 1321

Abstract: This document proposes amendments to the U.S. Customs and Border Protection (CBP) regulations pertaining to the entry of certain low-value shipments not exceeding $800 that are eligible for an administrative exemption from duty and tax. Specifically, CBP proposes to create a new process for entering low-value shipments, allowing CBP to target high-risk shipments more effectively, including those containing synthetic opioids such as fentanyl. This document also proposes to revise the current process for entering low-value shipments to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry of low-value shipments and bona-fide gifts.

Timetable:

Action	Date	FR Cite
NPRM	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christopher Mabelitini, Director, Intellectual Property Rights & E-Commerce Division, Department of the Treasury, Customs Revenue Function, 1300 Pennsylvania Avenue NW, Washington, DC 20229, *Phone:* 202 325–6915.

RIN: 1515–AE84

DEPARTMENT OF THE TREASURY (TREAS)

Customs Revenue Function (CUSTOMS)

Final Rule Stage

428. Enforcement of copyrights and the Digital Millennium Copyright Act [1515–AE26]

Legal Authority: Title III of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125); 19 U.S.C. 1595a(c)(2)(G); 19 U.S.C. 1624

Abstract: This rule amends the U.S. Customs and Border Protection (CBP) regulations pertaining to importations of merchandise that violate or are suspected of violating the copyright laws in accordance with title III of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) and certain provisions of the Digital Millennium Copyright Act (DMCA).

Timetable:

Action	Date	FR Cite
NPRM	10/16/19	84 FR 55251
NPRM Comment Period End.	12/16/19	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alaina Van Horn, Chief, Intellectual Property Enforcement Branch, Department of the Treasury, Customs Revenue Function, 1331 Pennsylvania Avenue NW, Washington, DC 20229, *Phone:* 202 325–0083, *Email: alaina.vanhorn@cbp.dhs.gov.*

RIN: 1515–AE26

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY (TREAS)

Internal Revenue Service (IRS)

Completed Actions

429. Guidance on the Elimination of Interbank Offered Rates [1545–BO91]

Legal Authority: 26 U.S.C. 882c and 7805; 26 U.S.C. 7805

Abstract: The final regulations will provide guidance on the tax

consequences of the phased elimination of interbank offered rates (IBORs) that is underway in the United States and many foreign countries. Taxpayers have requested guidance that addresses the transition from IBOR to other reference rates and the determination of the interest expense deduction of a foreign corporation.

Completed:

Reason	Date	FR Cite
Final Action Completed By TD 9976.	06/30/23	88 FR 42231

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Caleb Trimm, *Phone:* 202 317–6002, *Fax:* 855 589–8672, *Email: caleb.w.trimm2@irscounsel.treas.gov.*

RIN: 1545–BO91

430. • Additional guidance on Low-Income Communities Bonus Credit Program [1545–BQ81]

Legal Authority: 26 U.S.C. 48(e); 26 U.S.C. 7805

Abstract: This document contains final regulations concerning the application of the low-income communities' bonus credit program for the energy investment credit established pursuant to the Inflation Reduction Act of 2022. Under this program, applicants investing in certain solar or wind-powered electricity generation facilities for which the applicants otherwise would be eligible for an energy investment credit may apply for an allocation of environmental justice solar and wind capacity limitation to increase the amount of the energy investment credit for the taxable year in which the facility is placed in service. This document provides definitions and requirements that are applicable for this program. These final regulations affect applicants seeking allocations of the environmental justice solar and wind capacity limitation to increase the amount of the energy investment credit for which such applicants would otherwise be eligible once the facility is placed in service.

Timetable:

Action	Date	FR Cite
NPRM	06/01/23	88 FR 35791
NPRM Comment Period End.	06/30/23	
Final Rule	08/15/23	88 FR 55506
Final Rule Effective.	10/16/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Whitney Brady, General Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5114, Washington, DC 20224, *Phone:* 202 317–6853, *Email: whitney.e.brady2@irscounsel.treas.gov.*

RIN: 1545–BQ81

[FR Doc. 2024–00445 Filed 2–8–24; 8:45 am]

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Part XV

Architectural and Transportation Barriers Compliance Board

Semiannual Regulatory Agenda

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Architectural and Transportation Barriers Compliance Board submits the following agenda of proposed regulatory activities which may be conducted by the agency during the next 12 months. This regulatory agenda may be revised by the agency during the coming months as a result of action taken by the Board.

ADDRESSES: Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: For information concerning Board regulations and proposed actions, contact Chris Kuczynski, General Counsel, (202) 272–0042 (voice) or (202) 272–0076 (TTY).

Christopher Kuczynski,

General Counsel.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
431	Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way	3014–AA26

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

Completed Actions

431. Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way [3014–AA26]

Legal Authority: 42 U.S.C. 12204, Americans With Disabilities Act; 29 U.S.C. 792, Rehabilitation Act

Abstract: This rulemaking would establish accessibility guidelines to ensure that sidewalks and pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. A Supplemental Notice of Proposed Rulemaking consolidated this rulemaking with RIN 3014–AA41; accessibility guidelines for shared use paths (which are multi-use paths designed primarily for use by bicyclists and pedestrians—including persons with disabilities—for transportation and recreation purposes). The U.S. Department of Justice, U.S. Department of Transportation, and other Federal agencies are expected to adopt the accessibility guidelines for pedestrian facilities in the public right-of-way and for shared use paths, as enforceable standards in separate rulemakings for the construction and alteration of facilities covered by the Americans With Disabilities Act, section 504 of the Rehabilitation Act, and the Architectural Barriers Act.

Timetable:

Action	Date	FR Cite
Notice of Intent to Form Advisory Committee.	08/12/99	64 FR 43980
Notice of Appointment of Advisory Committee Members.	10/20/99	64 FR 56482
Availability of Draft Guidelines.	06/17/02	67 FR 41206
Availability of Draft Guidelines.	11/23/05	70 FR 70734
NPRM	07/26/11	76 FR 44664
NPRM Comment Period End.	11/23/11	
NPRM Comment Period Reopened.	12/05/11	76 FR 75844
NPRM Comment Period Reopened End.	02/02/12	
Second NPRM	02/13/13	78 FR 10110
Second NPRM Comment Period End.	05/14/13	
Final Action	08/08/23	88 FR 53604

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christopher Kuczynski, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, Washington, DC 20004, *Phone:* 202 272–0042, *TDD Phone:* 202 272–0076, *Email: kuczynski@access-board.gov.*

RIN: 3014–AA26

[FR Doc. 2024–00457 Filed 2–8–24; 8:45 am]

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Part XVI

Environmental Protection Agency

Semiannual Regulatory Agenda

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. 1

[FRL 11539–01–OA; EPA–HQ–OAR–2011–0135]

Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions

AGENCY: Environmental Protection Agency.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Environmental Protection Agency (EPA) publishes the Semiannual Agenda of Regulatory and Deregulatory Actions online at *https://www.reginfo.gov* to periodically update the public. This document contains information about:

- Regulations in the Semiannual Agenda that are under development, completed, or canceled since the last agenda; and
- Reviews of regulations with small business impacts under Section 610 of the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: If you have questions or comments about a particular action, please get in touch with the agency contact listed in each agenda entry. If you have general questions about the Semiannual Agenda, please contact: Caryn Muellerleile (*muellerleile.caryn@epa.gov;* 202–564–2855).

Table of Contents

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is committed to a regulatory strategy that effectively achieves the Agency's mission of protecting human health and the environment. EPA publishes the Semiannual Agenda of Regulatory and Deregulatory Actions to update the public about regulatory activity undertaken in support of this mission. In the Semiannual Agenda, EPA provides notice of our plans to review, propose, and issue regulations. EPA is committed to environmental protection that benefits all communities and encourages public participation and meaningful engagement in our regulatory activities and processes.

Additionally, EPA's Semiannual Agenda includes information about rules that may have a significant economic impact on a substantial number of small entities, and review of those regulations under the Regulatory Flexibility Act as amended.

In this document, EPA explains in greater detail the types of actions and information available in the Semiannual Agenda and actions that are currently undergoing review specifically for impacts on small entities.

A. EPA's Regulatory Information

''E-Agenda,'' ''online regulatory agenda,'' and ''semiannual regulatory agenda'' all refer to the same comprehensive collection of information that, until 2007, was published in the **Federal Register**. Currently, this information is only available through an online database at *https://www.reginfo.gov/.*

''Regulatory Flexibility Agenda'' refers to a document that contains information about the subset of regulations that may have a significant impact on a substantial number of small entities. We continue to publish this document in the **Federal Register** pursuant to the Regulatory Flexibility Act of 1980. This document is available at *https://www.govinfo.gov/app/collection/fr.*

''Unified Regulatory Agenda'' refers to the collection of all agencies' agendas with an introduction prepared by the Regulatory Information Service Center facilitated by the U.S. General Services Administration.

''Regulatory Agenda Preamble'' refers to the document you are reading now. It appears as part of the Regulatory Flexibility Agenda and introduces both EPA's Regulatory Flexibility Agenda and the e-Agenda.

''Section 610 Review'' as required by the Regulatory Flexibility Act means a periodic review within ten years of promulgating a final rule that has or may have a significant economic impact on a substantial number of small entities. EPA maintains a list of these actions at *https://www.epa.gov/reg-flex/section-610-reviews.* EPA has one section 610 review ongoing with this semiannual agenda in fall 2023 for the 2014 rulemaking, ''Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards.''

B. What key statutes and Executive Orders guide EPA's rule and policymaking process?

Several environmental laws authorize EPA's actions, including but not limited to:

- American Innovation and Manufacturing Act (AIM)
- Clean Air Act (CAA),
- Clean Water Act (CWA),
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund),
- Emergency Planning and Community Right-to-Know Act (EPCRA),
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),
- Resource Conservation and Recovery Act (RCRA),
- Safe Drinking Water Act (SDWA), and
- Toxic Substances Control Act (TSCA).

EPA must comply not only with environmental and other statutes, but also with applicable administrative legal requirements that apply to the issuance of regulations, such as the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Unfunded Mandates Reform Act (UMRA), the Paperwork Reduction Act (PRA), the National Technology Transfer and Advancement Act (NTTAA), and the Congressional Review Act (CRA).

EPA also meets a number of requirements contained in numerous Executive Orders: 12866, ''Regulatory Planning and Review'' (58 FR 51735, Oct. 4, 1993), as supplemented by Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, Jan. 21, 2011) and amended by Executive Order 14094, ''Modernizing Regulatory Review'' (88 FR 21879, April 11, 2023); 12898, ''Environmental Justice'' (59 FR 7629, Feb. 16, 1994) and 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All'' (88 FR 25251, April 26, 2023); 13045, ''Children's Health Protection'' (62 FR 19885, Apr. 23, 1997); 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999); 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000); and 13211, ''Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

C. How can you be involved in EPA's rule and policymaking process?

You can make your voice heard by getting in touch with the contact person provided in each agenda entry. EPA encourages you to participate as early in the process as possible. You may also participate by commenting on proposed rules published in the **Federal Register** (FR).

Instructions on how to submit your comments through *https://www.regulations.gov* are provided in each Notice of Proposed Rulemaking (NPRM). To be most effective, comments should contain information and data that support your position, and you also should explain why EPA should incorporate your suggestion in the rule or other type of action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternative(s) to what has been proposed by EPA.

EPA believes its actions will be more cost effective and protective if the development process includes stakeholders working with us to help identify the most practical and effective solutions to environmental problems. EPA encourages you to become involved in its rule- and policymaking processes. For more information about EPA's efforts to increase transparency, participation, and collaboration in EPA activities, please visit *https://www.epa.gov/laws-regulations/get-involved-epa-regulations.*

II. Semiannual Agenda of Regulatory and Deregulatory Actions

A. What actions are included in the e-Agenda and the Regulatory Flexibility Agenda?

EPA includes regulations in the e-Agenda. However, there is no legal significance to the omission of an item from the agenda, and EPA generally does not include the following categories of actions:

- Administrative actions such as delegations of authority, changes of address, or phone numbers.
- Under the CAA: Revisions to state implementation plans; equivalent methods for ambient air quality monitoring; deletions from the new source performance standards source categories list; delegations of authority to states; area designations for air quality planning purposes.
- Under FIFRA: Registration-related decisions, actions affecting the status of currently registered pesticides, and data call-ins.
- Under the Federal Food, Drug, and Cosmetic Act: Actions regarding pesticide tolerances and food additive regulations.
- Under TSCA: Licensing actions and new chemical actions.
- Under RCRA: Authorization of State solid waste management plans and hazardous waste delisting petitions.
- Under the CWA: State Water Quality Standards, deletions from the section 307(a) list of toxic pollutants, suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES), and delegations of NPDES authority to States.
- Under SDWA: Actions on State underground injection control programs.

Meanwhile, the Regulatory Flexibility Agenda includes:

- Actions likely to have a significant economic impact on a substantial number of small entities.
- Rules the Agency has identified for periodic review under section 610 of the RFA.

EPA has one action with an ongoing review under section 610 of the RFA in this Agenda for the 2014 rulemaking ''Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards.''

B. How is the e-Agenda organized?

You can choose how to sort the agenda entries on-line by specifying the characteristics of the entries of interest in the desired individual data fields of the e-Agenda at *https://www.reginfo.gov.* You can sort based on the following characteristics: EPA subagency (such as Office of Water), stage of rulemaking as described in the following paragraphs, alphabetically by title, or the Regulation Identifier Number (RIN), which is assigned sequentially when an action is added to the agenda.

Each entry in the Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. Pre-rule Stage—EPA's pre-rule actions are generally intended to determine whether the agency should initiate rulemaking. Pre-rulemakings may include anything that influences or leads to rulemaking; this would include Advance Notices of Proposed Rulemaking (ANPRMs) or analyses of the possible need for regulatory action.

2. Proposed Rule Stage—Proposed rulemaking actions include EPA's Notice of Proposed Rulemakings (NPRMs); these proposals are scheduled to publish in the **Federal Register** within the next year.

3. Final Rule Stage—Final rulemaking actions are those actions that EPA is scheduled to finalize and publish in the **Federal Register** within the next year.

4. Long-Term Actions—This section includes rulemakings for which the next scheduled regulatory action (such as publication of a NPRM or final rule) is twelve or more months into the future. We encourage you to explore becoming involved even if an action is listed in the Long-Term category.

5. Completed Actions—EPA's completed actions are those that have been promulgated and published in the **Federal Register** since publication of the spring 2023 Agenda. This category also includes actions that EPA is no longer considering and has elected to ''withdraw'' and the results of any RFA section 610 reviews.

C. What information is in the Regulatory Flexibility Agenda and the e-Agenda?

The Regulatory Flexibility Agenda entries include only the nine categories of information that are required by the Regulatory Flexibility Act of 1980 and by **Federal Register** Agenda printing requirements: Sequence Number, RIN, Title, Description, Statutory Authority, Section 610 Review, if applicable, Regulatory Flexibility Analysis Required, Schedule and Contact Person. Note that the electronic version of the Agenda (E-Agenda) replicates each of these actions with more extensive information, described below.

E-Agenda entries include:

Title: A brief description of the subject of the regulation. The notation ''Section 610 Review'' follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the RFA (5 U.S.C. 610).

Priority: Each entry is placed into one of the following five categories:

a. Significant under 3(f)(1): Under Executive Order 12866, as amended, a rulemaking that may have an annual effect on the economy of $200 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.

b. Other Significant: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:

1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

2. Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs, or the rights and obligations of recipients; or

3. Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles in Executive Order 12866.

c. Substantive, Nonsignificant: A rulemaking that has substantive impacts but is not Significant, Routine and Frequent, or Informational/Administrative/Other.

d. Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations. If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, then we would classify the action as either ''Significant under 3(f)(1)'' or ''Other Significant.''

e. Informational/Administrative/Other: An action that is primarily informational or pertains to an action outside the scope of Executive Order 12866.

Major: A rule is ''major'' under 5 U.S.C. 801 (Pub. L. 104–121) if it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in the Congressional Review Act.

Unfunded Mandates: Whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, the agency prepare a written statement on federal mandates addressing costs, benefits, and intergovernmental consultation.

Legal Authority: The sections of the United States Code (U.S.C.), Public Law (Pub. L.), Executive Order (E.O.), or common name of the law that authorizes the regulatory action.

CFR Citation: The section(s) of the Code of Federal Regulations that would be affected by the action.

Legal Deadline: An indication of whether the rule is subject to a statutory and/or a judicial deadline, the date of that deadline, and whether the deadline pertains to a NPRM, a Final Action, or some other action.

Abstract: A brief description of the problem the action will address.

Timetable: The dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 09/00/2024 means the agency is predicting the month and year the action will take place but not the day it will occur. For some entries, the timetable indicates that the date of the next action is ''to be determined.''

Regulatory Flexibility Analysis Required: Indicates whether EPA has prepared or anticipates preparing a regulatory flexibility analysis under section 603 or 604 of the RFA. Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

Small Entities Affected: Indicates whether the rule is anticipated to have any effect on small businesses, small governments, or small nonprofit organizations.

Government Levels Affected: Indicates whether the rule may have any effect on levels of government and, if so, whether the affected governments are federal, tribal, state, or local.

Federalism Implications: Indicates whether the action is expected to 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.

Energy Impacts: Indicates whether the action is a significant energy action under Executive Order 13211.

Sectors Affected: Indicates the main economic sectors regulated by the action. The regulated parties are identified by their North American Industry Classification System (NAICS) codes. These codes were created by the Census Bureau for collecting, analyzing, and publishing statistical data on the U.S. economy. There are more than 1,000 NAICS codes for sectors in agriculture, mining, manufacturing, services, and public administration.

International Trade Impacts: Indicates whether the action is likely to have international trade or investment effects, or otherwise be of international interest.

Agency Contact: The name, address, phone number, and email address of a person who is knowledgeable about the regulation.

Additional Information: Other information about the action including docket information.

URLs: For some actions, the internet addresses are included for reading copies of rulemaking documents, submitting comments on proposals, and getting more information about the rulemaking and the program of which it is a part.

RIN: The Regulation Identifier Number is used by OMB and the public to identify and track rulemakings. The first four digits of the RIN correspond to the EPA office with lead responsibility for developing the action.

D. What tools are available for Mining Regulatory Agenda Data and for finding more about EPA rules and policies?

1. Federal Regulatory Dashboard

The *https://www.reginfo.gov* searchable database maintained by the Regulatory Information Service Center and OMB's Office of Information and Regulatory Affairs (OIRA), allows users to view the Regulatory Agenda database (*https://www.reginfo.gov/public/do/eAgendaMain*), with options for searching, displaying, and transmitting data.

2. Subject Matter EPA Websites

Some actions listed in the Agenda include a URL for an EPA-maintained website that provides additional information about the action.

3. Public Dockets

When EPA publishes either an Advance Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, the Agency typically establishes a docket to accumulate materials developed throughout the development process for that rulemaking. The docket serves as the repository for the collection of documents or information related to that Agency's action or activity, and is accessible both electronically or at EPA's Docket Center Reading Room (*https://www.epa.gov/dockets*). EPA uses dockets primarily for rulemaking actions, but dockets may also be used for section 610 reviews and for various non-rulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the PRA, and other non-rule activities. Docket information should be in that action's agenda entry. All of EPA's public dockets can be located at *https://www.regulations.gov.* EPA particularly welcomes feedback on rulemakings from communities likely to be affected by these actions.

III. Review of Regulations Under Section 610 of the Regulatory Flexibility Act

A. Reviews of Rules With Significant Impacts on a Substantial Number of Small Entities

Section 610 of the RFA requires that an agency review each rule that has or will have a significant economic impact on a substantial number of small entities

within 10 years of promulgation.	Currently, EPA has one ongoing section 610 review.

Review title	RIN	Docket ID #	Status
Section 610 Review of the Tier 3 Motor Vehicle Emission and Fuel Standards ...	2060–AV90	EPA–HQ–OAR–2011–0135	Ongoing.

B. What other special attention does EPA give to the impacts of rules on small businesses, small governments, and small nonprofit organizations?

For each of EPA's rulemakings, consideration is given to whether there will be any adverse impact on any small entity. EPA attempts to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation.

Under the RFA as amended by SBREFA, the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial number of small entities. For more detailed and current information about the Agency's policy and practice with respect to implementing the RFA/SBREFA, including ongoing Small Business Advocacy Review Panels, please visit EPA's RFA/SBREFA website at *https://www.epa.gov/reg-flex.*

IV. Thank You for Collaborating With Us

We would like to thank those of you who choose to join with us in making progress on the complex issues involved in protecting human health and the environment through engaging in our rulemaking process. Collaborative efforts such as EPA's open rulemaking processes are valuable tools for implementing our legal requirements in order to address environmental and public health challenges. Our regulatory agenda and your engagement play an important role in that process.

Victoria Arroyo,

Associate Administrator, Office of Policy.

10—Clean Air Act—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
432	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations **(Reg Plan Seq No. 203)**.	2060–AU37
433	New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review **(Reg Plan Seq No. 204)**.	2060–AV16
434	Revisions to the Air Emission Reporting Requirements (AERR) **(Reg Plan Seq No. 205)**	2060–AV41

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

10—Clean Air Act—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
435	Section 610 Review of the Tier 3 Motor Vehicle Emission and Fuel Standards **(Section 610 Review)**	2060–AV90

35—TSCA—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
436	1-Bromopropane (1–BP); Regulation Under the Toxic Substances Control Act (TSCA) **(Reg Plan Seq No. 195)**.	2070–AK73
437	Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA) **(Reg Plan Seq No. 196)** ..	2070–AK83
438	N-Methylpyrrolidone (NMP); Regulation Under the Toxic Substances Control Act (TSCA) **(Reg Plan Seq No. 197)**.	2070–AK85
439	C.I. Pigment Violet 29; Regulation Under the Toxic Substances Control Act (TSCA)	2070–AK87

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

35—TSCA—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
440	Methylene Chloride (MC); Regulation Under the Toxic Substances Control Act (TSCA) **(Reg Plan Seq No. 211)**.	2070–AK70
441	Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA) **(Reg Plan Seq No. 213)**.	2070–AK84

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

35—TSCA—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
442	Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances.	2070–AK67

72—SDWA—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
443	PFAS National Primary Drinking Water Regulation Rulemaking **(Reg Plan Seq No. 222)**	2040–AG18

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

10—Clean Air Act

Final Rule Stage

432. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations [2060–AU37]

Regulatory Plan: This entry is Seq. No. 203 in part II of this issue of the **Federal Register**.
RIN: 2060–AU37

433. New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review [2060–AV16]

Regulatory Plan: This entry is Seq. No. 204 in part II of this issue of the **Federal Register**.
RIN: 2060–AV16

434. Revisions to the Air Emission Reporting Requirements (AERR) [2060–AV41]

Regulatory Plan: This entry is Seq. No. 205 in part II of this issue of the **Federal Register**.
RIN: 2060–AV41

ENVIRONMENTAL PROTECTION AGENCY (EPA)

10—Clean Air Act

Long-Term Actions

435. Section 610 Review of the Tier 3 Motor Vehicle Emission and Fuel Standards (Section 610 Review) [2060–AV90]

Legal Authority: 5 U.S.C. 610
Abstract: The rulemaking ''Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards'' was finalized by EPA in April 2014 (79 FR 23414). The final rule established the Tier 3 Motor Vehicle Emission and Fuel Standards program. The Tier 3 program was part of a comprehensive approach to reducing the impacts of motor vehicles on air quality and public health. The program considered the vehicle and its fuel as an integrated system, setting new vehicle emissions standards and a new gasoline sulfur standard beginning in 2017. The vehicle emissions standards were expected to reduce both tailpipe and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. The gasoline sulfur standard was expected to enable more stringent vehicle emissions standards and will make emissions control systems more effective. This entry in the regulatory agenda describes EPA's review of this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine if the provisions that could affect small entities should be continued without change or should be rescinded or amended to minimize adverse economic impacts on small entities. As part of this review, EPA is considering comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. The results of EPA's review will be summarized in a report and placed in the docket at the conclusion of this review. The review's Docket ID number is EPA–HQ–OAR–2011–0135.

Timetable:

Action	Date	FR Cite
Final Action	04/28/14	79 FR 23414
Begin Review	07/27/23	88 FR 48598
End Review	To Be Determined	

Regulatory Flexibility Analysis Required: No.
Agency Contact: Jessica Mroz, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–1094, *Email: mroz.jessica@epa.gov*.
RIN: 2060–AV90

ENVIRONMENTAL PROTECTION AGENCY (EPA)

35—TSCA

Proposed Rule Stage

436. 1-Bromopropane (1-BP); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK73]

Regulatory Plan: This entry is Seq. No. 195 in part II of this issue of the **Federal Register**.
RIN: 2070–AK73

437. Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK83]

Regulatory Plan: This entry is Seq. No. 196 in part II of this issue of the **Federal Register**.
RIN: 2070–AK83

438. N-Methylpyrrolidone (NMP); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK85]

Regulatory Plan: This entry is Seq. No. 197 in part II of this issue of the **Federal Register**.
RIN: 2070–AK85

439. C.I. Pigment Violet 29; Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK87]

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act
Abstract: This proposed rulemaking will address unreasonable risks of injury to health identified in the final risk evaluation for C.I. Pigment Violet 29. Section 6 of the Toxic Substances Control Act (TSCA) requires EPA to

address unreasonable risks of injury to health or the environment that the Administrator has determined are presented by a chemical substance under the conditions of use. EPA's risk evaluation for C.I. Pigment Violet 29, describing the conditions of use and presenting EPA's determination of unreasonable risk, is in docket EPA–HQ–OPPT–2018–0604, with revised risk determination and additional information in docket EPA–HQ–OPPT–2016–0725.

Timetable:

Action	Date	FR Cite
NPRM	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carolyn Mottley, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue, Mail Code 7404M, Washington, DC 20460, *Phone:* 202 566–1955, *Email: mottley.carolyn@epa.gov*.

Ana Corado, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404M, Washington, DC 20460, *Phone:* 202 564–0140, *Email: corado.ana@epa.gov*.

RIN: 2070–AK87

ENVIRONMENTAL PROTECTION AGENCY (EPA)

35—TSCA

Final Rule Stage

440. Methylene Chloride (MC); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK70]

Regulatory Plan: This entry is Seq. No. 211 in part II of this issue of the **Federal Register**.

RIN: 2070–AK70

441. Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK84]

Regulatory Plan: This entry is Seq. No. 213 in part II of this issue of the **Federal Register**.

RIN: 2070–AK84

ENVIRONMENTAL PROTECTION AGENCY (EPA)

35—TSCA

Completed Actions

442. Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances [2070–AK67]

Legal Authority: 15 U.S.C. 2607(a)(7) Toxic Substances Control Act

Abstract: EPA published a proposed rule on June 28, 2021, addressing reporting and recordkeeping requirements for Per- and Polyfluoroalkyl Substances (PFAS) under section 8(a)(7) of the Toxic Substances Control Act (TSCA). In accordance with obligations under TSCA section 8(a), as amended by section 7351 of the National Defense Authorization Act for Fiscal Year 2020, persons that manufacture (including import) or have manufactured these chemical substances in any year since January 1, 2011, would be subject to the reporting and recordkeeping requirements. In addition to fulfilling statutory obligations under TSCA, EPA expects that the final rule will enable EPA to better characterize the sources and quantities of manufactured PFAS in the United States. EPA solicited additional public comments on an Initial Regulatory Flexibility Analysis (IRFA) following the completion of a Small Business Advocacy Review (SBAR) Panel addressing the proposed PFAS reporting and recordkeeping requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/28/21	86 FR 33926
Notice	11/25/22	87 FR 72439
Final Rule	10/11/23	88 FR 70516
Final Rule Effective.	11/13/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephanie Griffin, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7406M, Washington, DC 20460, *Phone:* 202 564–1463, *Email: griffin.stephanie@epa.gov*.

David Turk, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7406M, Washington, DC 20460, *Phone:* 202 566–1527, *Email: turk.david@epa.gov*.

RIN: 2070–AK67

ENVIRONMENTAL PROTECTION AGENCY (EPA)

72—SDWA

Final Rule Stage

443. PFAS National Primary Drinking Water Regulation Rulemaking [2040–AG18]

Regulatory Plan: This entry is Seq. No. 222 in part II of this issue of the **Federal Register**.

RIN: 2040–AG18

[FR Doc. 2024–00458 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part XVII

General Services Administration

Semiannual Regulatory Agenda

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 102, 300, 301, 302, 303, and 304

48 CFR Chapter 5

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: General Services Administration (GSA).

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the spring 2023 edition. This agenda was developed under the guidelines of Executive Orders 12866 ''Regulatory Planning and Review,'' and 13563 ''Improving Regulation and Regulatory Review,'' respectively. GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated. The public may provide comments on rules via *http://www.regulations.gov.*

The Unified Agenda, including previous versions, are available at *www.reginfo.gov.* Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), GSA's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including GSA's regulatory plan.

FOR FURTHER INFORMATION CONTACT: Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 7th Floor, Washington, DC 20405–0001, 202–501–2735 or by email at *lois.mandell@gsa.gov.*

Dated: August 15, 2023.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

GENERAL SERVICES ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
444	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment.	3090–AK20
445	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules.	3090–AK21
446	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G512, System for Award Management Representation for Leases.	3090–AK22
447	General Services Acquisition Regulation (GSAR); GSAR Case 2021–G505, Amending Prescriptions for Including FAR Provisions and Clauses in Lease Procurements.	3090–AK36
448	General Services Administration Acquisition Regulations (GSAR); GSAR 2021–G520, Economic Price Adjustment for Deregulated Electric Supplies.	3090–AK48
449	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G530, Labor Requirements for Lease Acquisitions.	3090–AK51
450	General Services Acquisition Regulation (GSAR): GSAR Case 2022–G517 Single-use Plastic Packaging Reduction.	3090–AK60
451	General Services Administration Acquisition Regulation (GSAR): GSAR Case 2023–G507, Additional Transactional Data Reporting Elements for Non-Federal Supply Schedule contracts.	3090–AK71
452	Federal Management Regulation (FMR), FMR Case 2023–102–1, Designation of Authority and Sustainable Siting.	3090–AK69

GENERAL SERVICES ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
453	General Service Acquisition Regulation (GSAR); GSAR Case 2022–G513, Updating Payments Clause	3090–AK55
454	General Service Acquisition Regulation (GSAR); GSAR Case 2022–G514, Standardizing Federal Supply Schedule Clause and Provision Prescriptions.	3090–AK58

GENERAL SERVICES ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
455	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions.	3090–AK29
456	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G522, Contract Requirements for High-Security Leased Space.	3090–AK39
457	General Services Administration Acquisition Regulation (GSAR); GSAR 2021–G527, Immediate and Highest-Level Owner for High-Security Leased Space.	3090–AK44

GENERAL SERVICES ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
458	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements.	3090–AK09

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Proposed Rule Stage

444. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment [3090–AK20]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration is proposing to amend the General Services Administration Acquisition Regulations (GSAR) to standardize and simplify the clauses for Multiple Award Schedules (Schedules) related to economic price adjustments. This rule removes government-unique limits in these clauses to better align with commercial standards and practices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	
NPRM Comment Period End.	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Senior Procurement Policy Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445–0390, *Email: thomas.olinn@gsa.gov.*

RIN: 3090–AK20

445. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules [3090–AK21]

Legal Authority: 40 U.S.C. 121(c); 40 U.S.C. 502

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline and clarify the requirements for use of Federal Supply Schedules by eligible non-Federal entities, such as state and local governments. The rule is intended to increase understanding of the existing guidance and expand access to GSA sources of supply by eligible non-Federal entities, as authorized by historic statutes including the Federal Supply Schedules Usage Act of 2010. This rule supports underserved communities, promoting equity in the Federal Government.

Timetable:

Action	Date	FR Cite
NPRM	09/18/23	88 FR 63892
NPRM Comment Period End.	11/17/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Senior Procurement Policy Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445–0390, *Email: thomas.olinn@gsa.gov.*

RIN: 3090–AK21

446. General Service Acquisition Regulation (GSAR); GSAR Case 2020–G512, System for Award Management Representation for Leases [3090–AK22]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to remove the requirement for lease offerors to have an active System for Award Management (SAM) registration when submitting offers and instead allow offers up until the time of award to obtain an active SAM registration. Entities seeking Federal leases differ from the typical entities seeking Federal contracts in that common practice is to form a new entity for every new lease offer. Requiring representations from these entities prior to offer submission restricts competition. In addition, the tools in SAM typically used in the Government's evaluation of offers do not add value when evaluating lease offers.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	
NPRM Comment Period End.	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amy Lara, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, GSA Acquisition Policy Division, 1800 F Street NW, Washington, AZ 20405, *Phone:* 816 926–7172, *Email: amy.lara@gsa.gov.*

RIN: 3090–AK22

447. General Services Acquisition Regulation (GSAR); GSAR Case 2021–G505, Amending Prescriptions for Including FAR Provisions and Clauses in Lease Procurements [3090–AK36]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise the prescriptions for FAR provisions and clauses that apply to lease solicitations and contracts. Additionally, GSA is proposing to make conforming changes to some provision and clause titles and numbers listed to align with the FAR, along with other editorial changes.

Timetable:

Action	Date	FR Cite
NPRM	05/00/24	
NPRM Comment Period End.	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amy Lara, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, GSA Acquisition Policy Division, 1800 F Street NW, Washington, AZ 20405, *Phone:* 816 926–7172, *Email: amy.lara@gsa.gov.*

RIN: 3090–AK36

448. General Services Administration Acquisition Regulations (GSAR); GSAR 2021–G520, Economic Price Adjustment for Deregulated Electric Supplies [3090–AK48]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise internal agency approval procedures to allow the use of an economic price adjustment clause for

deregulated electric supplies under fixed-price contracts. This rule will better account for regional variability in prices, portions of which are controlled by the Federal Energy Regulatory Commission under section 205 and 206 of the Federal Power Act and other regulatory bodies.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	
NPRM Comment Period End.	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 817 253–7858, *Email: stephen.carroll@gsa.gov.*

RIN: 3090–AK48

449. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G530, Labor Requirements for Lease Acquisitions [3090–AK51]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to extend the requirements of Executive Order 14026 (Increasing the Minimum Wage for Federal Contractors) and Department of Labor regulations (29 CFR part 23) to lease acquisitions where the Davis Bacon Act applies by requiring inclusion of related Federal Acquisition Regulation (FAR) requirements. Generally, the FAR does not apply to leasehold acquisitions of real property. However, several FAR requirements have been adopted through GSAR part 570. This rule promotes economic resilience, and improves the buying power of U.S. citizens.

Timetable:

Action	Date	FR Cite
NPRM	04/00/24	
NPRM Comment Period End.	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Johnnie McDowell, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 718–6112, *Email: johnnie.mcdowell@gsa.gov.*

RIN: 3090–AK51

450. General Services Acquisition Regulation (GSAR): GSAR Case 2022–G517 Single-Use Plastic Packaging Reduction [3090–AK60]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is exploring regulations that will reduce single-use plastic consumption by the agency. Single-use plastic poses an environmental risk that is documented as having the potential to impact biodiversity. To learn more, GSA published an Advanced Notice of Proposed Rulemaking (ANPRM) to ask industry about what a change to the single-use plastics industry would entail. The questions focus on packaging materials with the overall intent of addressing not only the items that the Government intentionally consumes, but those products that the Government unintentionally consumes (such as packaging) that then have to be disposed of once the item is delivered.

Timetable:

Action	Date	FR Cite
ANPRM	07/07/22	87 FR 40476
ANPRM Comment Period End.	09/06/22	
Comment Period Extended.	09/08/22	87 FR 54937
NPRM	02/00/24	
NPRM Comment Period End.	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Adina Torberntsson, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 303 236–2677, *Email: adina.torberntsson@gsa.gov.*

RIN: 3090–AK60

451. General Services Administration Acquisition Regulation (GSAR): GSAR Case 2023–G507, Additional Transactional Data Reporting Elements for Non-Federal Supply Schedule Contracts [3090–AK71]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to update and bring certain reporting elements into conformance with current business practices. The reporting elements would apply to solicitations and contracts for GSA-awarded indefinite-delivery indefinite-quantity (IDIQ), Governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs).

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
NPRM Comment Period End.	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Senior Procurement Policy Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445–0390, *Email: thomas.olinn@gsa.gov.*

RIN: 3090–AK71

Office of Governmentwide Policy

452. Federal Management Regulation (FMR), FMR Case 2023–102–1, Designation of Authority and Sustainable Siting [3090–AK69]

Legal Authority: 40 U.S.C. secs. 121(c); 40 U.S.C. secs. 581(c)(1), 584, 585, and 901 to 905; sec. 1 of Reorganization Plan No. 18 of 1950, 15 FR 3177, 64 Stat. 1270 (40 U.S.C. 301 note); 7 U.S.C. 2204b; 41 U.S.C. 3301 *et seq.;* 54 U.S.C. 300101 *et seq.;* E.O. 12072; E.O. 13006

Abstract: The General Services Administration, in furtherance of its authority to furnish space to federal agencies, proposes to amend the Federal Management Regulation to elaborate on the factors that are advantageous to the Government when planning for location decisions. In addition, the proposed revisions are necessary to bring the current regulation into compliance with updated terminology in statute and Office of Management and Budget bulletins. The objective of these changes is to direct agencies to better integrate strategic, holistic analysis into planning for agency location decisions and to provide consistency in application of these regulations across Federal agencies and regions.

Timetable:

Action	Date	FR Cite
NPRM	10/24/23	88 FR 72974
NPRM Comment Period End.	12/26/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chris Coneeney, Director, Real Property Policy Division, Office of Governmentwide Policy, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–2956, *Email: chris.coneeney@gsa.gov.*

RIN: 3090–AK69

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Final Rule Stage

453. General Service Acquisition Regulation (GSAR); GSAR Case 2022–G513, Updating Payments Clause [3090–AK55]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to remove the agency supplemental clause regarding payments for non-commercial fixed price contracts for supplies or services. This payments clause provides that, in certain transactions, the Government must pay a contractor without submission of an invoice or voucher. GSA has determined that this is no longer in the best interest of the Government. This final rule will additionally amend any corresponding references to the clause.

Timetable:

Action	Date	FR Cite
NPRM	02/28/23	88 FR 12641
NPRM Comment Period End.	05/01/23	
Final Rule	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Byron Boyer, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 817 850–5580, *Email: byron.boyer@gsa.gov*.

RIN: 3090–AK55

454. General Service Acquisition Regulation (GSAR); GSAR Case 2022–G514, Standardizing Federal Supply Schedule Clause and Provision Prescriptions [3090–AK58]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to standardize the identification of Federal Supply Schedule (FSS) clauses, provisions, and references. GSA will clarify the distinction between Federal Supply Schedule and the Multiple Award Schedule (MAS) Program. GSA will also clarify the applicability of FSS clauses and provisions for FSS contracts managed by GSA and the Department of Veterans Affairs.

Timetable:

Action	Date	FR Cite
NPRM	03/15/23	88 FR 15941
NPRM Comment Period End.	05/15/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Adina Torberntsson, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 303 236–2677, *Email: adina.torberntsson@gsa.gov*.

RIN: 3090–AK58

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Long-Term Actions

455. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions [3090–AK29]

Legal Authority: 40 U.S.C. 121(c); 5 U.S.C. 801; Pub. L. 115–232 sec. 889

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to prohibit procurement from certain covered entities using covered equipment and services in lease acquisitions pursuant to section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. The rule will implement the section 889 requirements in lease acquisitions by requiring inclusion of the related Federal Acquisition Regulation (FAR) provisions and clauses. This rule supports the national security priority.

Timetable:

Action	Date	FR Cite
NPRM	11/00/24	
NPRM Comment Period End.	01/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 817 253–7858, *Email: stephen.carroll@gsa.gov*.

RIN: 3090–AK29

456. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G522, Contract Requirements for High-Security Leased Space [3090–AK39]

Legal Authority: 40 U.S.C. 121(c); Pub. L. 116–276

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to incorporate contractor disclosure requirements and access limitations for high-security leased space pursuant to the Secure Federal Leases Act. Covered entities are required to identify whether the beneficial owner of a high-security leased space, including an entity involved in the financing thereof, is a foreign person or entity when first submitting a proposal and annually thereafter. This rule supports the national security priority.

Timetable:

Action	Date	FR Cite
NPRM	12/27/21	86 FR 73219
NPRM Comment Period End.	02/25/22	
Final Rule	11/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 817 253–7858, *Email: stephen.carroll@gsa.gov*.

RIN: 3090–AK39

457. General Services Administration Acquisition Regulation (GSAR); GSAR 2021–G527, Immediate and Highest-Level Owner for High-Security Leased Space [3090–AK44]

Legal Authority: 40 U.S.C. 121(c)

Abstract: GSA is amending the General Services Administration Acquisition Regulation (GSAR) to implement certain requirements outlined in the Secure Federal LEASEs Act (Pub. L. 116–276). The Act addresses the risks of foreign ownership of Government-leased real estate and requires the disclosure of ownership information for high-security space leased to accommodate a Federal agency. This rule supports the national security priority.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective.	06/30/21	
Interim Final Rule	07/01/21	86 FR 34966

Action	Date	FR Cite
Interim Final Rule Comment Period End.	08/30/21	
Final Rule	11/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 817 253–7858, *Email: stephen.carroll@gsa.gov*.

RIN: 3090–AK44

GENERAL SERVICES ADMINISTRATION (GSA)

Completed Actions

458. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements [3090–AK09]

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline requirements for GSA commercial contracts. This rule will update GSAR Clauses 552.212–71 and 552.212–72 to remove any requirements that are not necessary by law or Executive Order.

Completed:

Reason	Date	FR Cite
Final Rule	09/12/23	88 FR 62472
Final Rule Effective.	10/12/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Johnnie McDowell, *Phone:* 202 718–6112, *Email: johnnie.mcdowell@gsa.gov*.

RIN: 3090–AK09

[FR Doc. 2024–00459 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part XVIII

Small Business Administration

Semiannual Regulatory Agenda

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This semiannual Regulatory Agenda (Agenda) is a summary of current and projected rulemakings and completed actions of the Small Business Administration (SBA or Agency). This summary information enables the public to be more aware of, and effectively participate in, SBA's regulatory activities. Accordingly, SBA invites the public to submit comments on any aspect of this Agenda.

FOR FURTHER INFORMATION CONTACT:

General

Please direct general comments or inquiries to Lindsey K. McCready, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; (202) 401–2996; *lindsey.mccready@sba.gov;* or Kevin P. Ross, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; (202) 772–2065; *kevin.ross@sba.gov.*

Specific

Please direct specific comments and inquiries on individual regulatory activities identified in this Agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) requires SBA to publish in the **Federal Register** a semiannual regulatory flexibility agenda describing those Agency rules that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). The summary information published in the **Federal Register** is limited to those rules. Additional information regarding all of the rulemakings SBA expects to consider in the next 12 months is included in the Federal Government's Unified Regulatory Agenda, which will be available online at *www.reginfo.gov* in a format that offers users enhanced ability to obtain information about SBA's rules.

Isabella Casillas Guzman,

Administrator.

SMALL BUSINESS ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
459	Affiliation in Small Business Procurement Programs	3245–AH97
460	Regulatory Reform Initiative: Streamlining and Modernizing the Surety Bond Guarantee Program	3245–AI06
461	Export Working Capital Program	3245–AI07
462	Disaster Assistance Loan Program Changes to Unsecured Loan Amounts	3245–AI08

SMALL BUSINESS ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
463	Small Business Size Standards: Adjustment of Alternative Size Standard for SBA's 7(a) and CDC/504 Loan Programs for Inflation; and Surety Bond Limits: Adjustments for Inflation.	3245–AG16
464	Small Business Timber Set-Aside Program	3245–AG69

SMALL BUSINESS ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
465	Small Business Development Center Program Revisions	3245–AE05
466	National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments	3245–AH28
467	Small Business Size Standards: Adjustment of Monetary Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation.	3245–AH93

SMALL BUSINESS ADMINISTRATION (SBA)

Proposed Rule Stage

459. Affiliation in Small Business Procurement Programs [3245–AH97]

Legal Authority: 15 U.S.C. 632(a)

Abstract: Following revisions to the requirements in SBA's 8(a) Business Development and Service-Disabled Veteran-Owned Small Business programs, SBA is issuing conforming revisions to its affiliation rules that govern all of the small-business procurement programs. These revisions will ensure consistent requirements for ownership and control across SBA's procurement programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sam Le, Director of Policy, Planning, and Liaison, Small Business Administration, 409 3rd Street SW, Washington, DC 20416, *Phone:* 202 619–1789, *Email: sam.le@sba.gov.*

RIN: 3245–AH97

460. • Regulatory Reform Initiative: Streamlining and Modernizing the Surety Bond Guarantee Program [3245–AI06]

Legal Authority: 15 U.S.C. 694(b)

Abstract: The Office of Surety Guarantees (OSG) will publish a Notice of Proposed Rulemaking (NPRM) to receive comments from the public and surety industry regarding streamlining and modernizing the Surety Bond Guarantee Program. This proposed rule will reduce the file retainage and form submission burden of participating surety companies, correct conflicting provisions, as well as revise the obsolete preferred surety admissions

requirements and the Quarterly Contract Completion Report.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jermaine Perry, Director, Office of Surety Guarantees, Small Business Administration, 409 3rd Street SW, Washington, DC 20416, *Phone:* 202 401–8275, *Email: jermaine.perry@sba.gov.*

RIN: 3245–AI06

461. • Export Working Capital Program [3245–AI07]

Legal Authority: 15 U.S.C. 636(a)

Abstract: SBA will publish a notice of proposed rulemaking to enhance the Export Working Capital Program (EWCP). The revisions concern (1) increasing the maximum maturity on an EWCP loan from 3-years to 5-years; (2) changing the regulations to allow EWCP loan proceeds to be used to finance export transactions or support companies who engage in export transactions by providing working capital against their accounts receivable and inventory; (3) allowing use of proceeds for asset-based working capital secured by inventory and accounts receivable; (4) including a de minimis amount of domestic accounts receivable (not to exceed 30%) for EWCP loans used as an asset based line of credit; (5) allow Applicants to submit projections to support the need for facilities supporting pre-shipment working capital; (6) revise the unique requirements for the EWCP to align with industry standards for asset based lending.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Daniel Pische, National Director of Trade Finance, Office of International Trade, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 321–5666, *Email: daniel.pische@sba.gov.*

RIN: 3245–AI07

462. • Disaster Assistance Loan Program Changes to Unsecured Loan Amounts [3245–AI08]

Legal Authority: 15 U.S.C. 636(b)

Abstract: SBA will publish a notice of proposed rulemaking in order to receive comments from the public regarding the proposal to increase the unsecured loan amounts for disaster survivors.

Timetable:

Action	Date	FR Cite
NPRM	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dianna L. Seaborn, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–3645, *Email: dianna.seaborn@sba.gov.*

RIN: 3245–AI08

SMALL BUSINESS ADMINISTRATION (SBA)

Final Rule Stage

463. Small Business Size Standards: Adjustment of Alternative Size Standard for SBA's 7(a) and CDC/504 Loan Programs for Inflation; and Surety Bond Limits: Adjustments for Inflation [3245–AG16]

Legal Authority: Pub. L. 111–240, sec. 1116

Abstract: SBA proposes amending its size eligibility criteria for Business Loans, certified development company (CDC) loans under title V of the Small Business Investment Act (504) and economic injury disaster loans (EIDL). For the SBA 7(a) Business Loan Program and the 504 program, the amendments will provide an alternative size standard for loan applicants that do not meet the small business size standards for their industries. The Small Business Jobs Act of 2010 (Jobs Act) established alternative size standards that apply to both of these programs until SBA's Administrator establishes other alternative size standards. For the disaster loan program, the amendments will provide an alternative size standard for loan applicants that do not meet the Small Business Size Standard for their industries. SBA loan program alternative size standards do not affect other Federal Government programs, including Federal procurement.

Timetable:

Action	Date	FR Cite
ANPRM	03/22/18	83 FR 12506
ANPRM Comment Period End.	05/21/18	
NPRM	07/28/23	88 FR 48739
NPRM Comment Period End.	09/26/23	
Final Rule	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

RIN: 3245–AG16

464. Small Business Timber Set-Aside Program [3245–AG69]

Legal Authority: 15 U.S.C. 631; 15 U.S.C. 644(a)

Abstract: The U.S. Small Business Administration (SBA or Agency) is amending its Small Business Timber Set-Aside Program (the Program) regulations. The Small Business Timber Set-Aside Program is rooted in the Small Business Act, which tasked SBA with ensuring that small businesses receive a fair proportion of the total sales of government property. Accordingly, the Program requires Timber sales to be set aside for small business when small business participation falls below a certain amount. SBA considered comments received during the Advance Notice of Proposed Rulemaking and Notice of Proposed Rulemaking processes, including on issues such as, but not limited to, whether the saw timber volume purchased through stewardship timber contracts should be included in calculations, and whether the appraisal point used in set-aside sales should be the nearest small business mill. In addition, SBA is considering data from the timber industry to help evaluate the current program and economic impact of potential changes.

Timetable:

Action	Date	FR Cite
ANPRM	03/25/15	80 FR 15697
ANPRM Comment Period End.	05/26/15	
NPRM	09/27/16	81 FR 66199
NPRM Comment Period End.	11/28/16	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sam Le, Director of Policy, Planning, and Liaison, Small Business Administration, 409 3rd Street SW, Washington, DC 20416, *Phone:* 202 619–1789, *Email: sam.le@sba.gov.*

RIN: 3245–AG69

SMALL BUSINESS ADMINISTRATION (SBA)

Completed Actions

465. Small Business Development Center Program Revisions [3245–AE05]

Legal Authority: 15 U.S.C. 634(b)(6); 15 U.S.C. 648

Abstract: This rule proposes to update the Small Business Development Center (SBDC) program regulations by proposing to: (1) streamline and make the application process less onerous for recipient organizations; (2) codify current practices required under the NOFO and Cooperative Agreement; (3) clarify and define the role of the District Office regarding grant oversight; (4) add and clarify definitions; and (5) clarify SBDC client confidentiality.

Completed:

Reason	Date	FR Cite
Public Meeting	07/18/23	88 FR 41459
Final Rule	11/07/23	88 FR 76625
Final Rule Effective.	12/07/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rachel Newman-Karton, *Phone:* 202 619–1816, *Email: rachel.newman-karton@sba.gov.*

RIN: 3245–AE05

466. National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments [3245–AH28]

Legal Authority: Pub. L. 116–92

Abstract: Section 870 of the National Defense Authorization Act of 2020 (NDAA 2020) made a change that will require SBA to amend its regulations. Specifically, the language of NDAA 2020 requires SBA to alter the method and means of accounting for lower tier small business subcontracting. This proposed rule may also contain several smaller changes that might be necessary to implement this provision and other provisions in NDAA 2020.

Completed:

Reason	Date	FR Cite
Final Rule	10/11/23	88 FR 11303
Final Rule Effective.	11/13/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda J. Fernandez, *Phone:* 202 205–7337, *Email: brenda.fernandez@sba.gov.*

RIN: 3245–AH28

467. Small Business Size Standards: Adjustment of Monetary Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation [3245–AH93]

Legal Authority: 15 U.S.C. 632(a); 15 U.S.C. 637(a)(6)(A)

Abstract: SBA intends to issue this rulemaking to adjust its monetary small business size standards (*i.e.,* receipts, net income, net worth, and financial assets) for the effects of inflation that have occurred since the last inflation adjustment, which was effective on August 19, 2019. SBA is required by its regulations in 13 CFR 121.102(c) to review the effects of inflation on its monetary standards at least once every five years. As in previous adjustments, SBA will apply the Gross Domestic Product (GDP) price index as a measure of inflation. This action will restore small business eligibility to businesses that have lost that status due to inflation.

In addition, SBA intends to adjust other monetary thresholds in its regulations that are otherwise not adjusted for inflation under FAR 1.109. These thresholds primarily are those used in the 8(a) Business Development and the Economically Disadvantaged Women-Owned Small Business (EDWOSB) programs to determine economic disadvantage. Others are used to maintain eligibility for the 8(a) program. In some cases, these thresholds have not been adjusted for 25 years. This action will permit small businesses to retain eligibility as economically disadvantaged and eligible for the 8(a) program, despite an increase in inflation.

SBA will publicize the rule via the Small Business Procurement Advisory Council, the Integrated Acquisition Environment, *fbo.gov*, press releases, publication of this rule in the **Federal Register**, emails to interested parties, and the size standards website at *www.sba.gov/size.*

Completed:

Reason	Date	FR Cite
Final Rule	07/19/23	88 FR 46048

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Khem Raj Sharma,*Phone:* 202 205–7189,*Fax:* 202 205–6390,*Email: khem.sharma@sba.gov.*

RIN: 3245–AH93

[FR Doc. 2024–00460 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part XIX

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 ''Regulatory Planning and Review,'' as reaffirmed and amended in Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and Executive Order 14094, ''Modernizing Regulatory Review.''

This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process. Additionally, members of the public can track the progress of any open and pending FAR rule via the ''Open FAR Cases'' report, which is publicly available at *https://www.acq.osd.mil/dpap/dars/far_case_status.html.*

The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

Published proposed rules may be reviewed in their entirety at the Government's rulemaking website at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 7th Floor, Washington, DC 20405–0001, 202–501–4755 or by email at *lois.mandell@gsa.gov.*

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at *https://www.acquisition.gov/far.*

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

DOD/GSA/NASA (FAR)—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
468	Federal Acquisition Regulation (FAR); FAR Case 2023–008, Prohibition on Certain Semiconductor Products and Services.	9000–AO56

DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
469	Federal Acquisition Regulation (FAR); FAR Case 2017–016, Controlled Unclassified Information (CUI)	9000–AN56
470	Federal Acquisition Regulation (FAR); FAR Case 2019–015, Improving Consistency Between Procurement & Nonprocurement Procedures on Suspension and Debarment.	9000–AN98
471	Federal Acquisition Regulation (FAR); FAR Case 2019–018, Federal Acquisition Supply Chain Security Act of 2018.	9000–AO01
472	Federal Acquisition Regulation (FAR); FAR Case 2020–016, Rerepresentation of Size and Socioeconomic Status.	9000–AO18
473	Federal Acquisition Regulation (FAR); FAR Case 2021–001, Increased Efficiencies With Regard to Certified Mail, In-Person Business, Mail, Notarization, Original Documents, Seals, and Signatures.	9000–AO19
474	FAR Acquisition Regulation (FAR); FAR Case 2021–005; Disclosure of Beneficial Owner in Federal Contracting.	9000–AO23
475	Federal Acquisition Regulation (FAR); FAR Case 2021–009, Protests of Orders Set Aside for Small Business.	9000–AO26
476	Federal Acquisition Regulation (FAR); FAR Case 2021–011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors.	9000–AO28
477	Federal Acquisition Regulation (FAR); FAR Case 2021–016, Minimizing the Risk of Climate Change in Federal Acquisitions.	9000–AO33
478	Federal Acquisition Regulation (FAR); FAR Case 2021–017, Cyber Threat and Incident Reporting and Information Sharing.	9000–AO34
479	Federal Acquisition Regulation (FAR); FAR Case 2021–019, Standardizing Cybersecurity Requirements for Unclassified Information Systems.	9000–AO35
480	Federal Acquisition Regulations (FAR); FAR Case 2021–020, Limitations on Subcontracting	9000–AO36
481	Federal Acquisition Regulation (FAR); FAR Case 2022–004, Enhanced Price Preferences for Critical Items.	9000–AO41
482	Federal Acquisition Regulation (FAR); FAR Case 2022–009, Certification of Service-Disabled Veteran-Owned Small Businesses.	9000–AO46
483	Federal Acquisition Regulation (FAR); FAR Case 2023–002, Supply Chain Software Security	9000–AO49
484	Federal Acquisition Regulation (FAR); FAR Case 2023–001, Subcontracting to Puerto Rican and Covered Territory Small Businesses.	9000–AO50
485	Federal Acquisition Regulation (FAR); FAR CASE 2023–003, Prohibition on the Use of Reverse Auctions for Complex, Specialized, or Substantial Design and Construction Services.	9000–AO51

DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
486	Federal Acquisition Regulation (FAR); FAR Case 2023–006, Preventing Organizational Conflicts of Interest in Federal Acquisition.	9000–AO54
487	Federal Acquisition Regulation (FAR); FAR Case 2023–016, Subcontracting Plans and Limitations on Subcontracting.	9000–AO60
488	Federal Acquisition Regulation (FAR); FAR Case 2023–017, Consolidation and Bundling	9000–AO61
489	Federal Acquisition Regulation (FAR); FAR Case 2023–013, HUBZone Program	9000–AO63
490	Federal Acquisition Regulation (FAR); FAR Case 2023–015, Policy on Joint Ventures	9000–AO64
491	Federal Acquisition Regulation (FAR); FAR Case 2023–014, Small Business Protests	9000–AO65

DOD/GSA/NASA (FAR)—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
492	FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance	9000–AN31
493	Federal Acquisition Regulation (FAR); FAR Case 2018–017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN83
494	Federal Acquisition Regulation (FAR); FAR Case 2019–009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN92
495	Federal Acquisition Regulation (FAR); FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts.	9000–AO08
496	Federal Acquisition Regulation (FAR); FAR Case 2020–010, Small Business Innovation Research and Technology Transfer Programs.	9000–AO12
497	Federal Acquisition Regulation (FAR); FAR 2020–011, Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Exclusion Orders.	9000–AO13
498	Federal Acquisition Regulation (FAR); FAR Case 2021–014, Increasing the Minimum Wage for Contractors.	9000–AO31
499	Federal Acquisition Regulation (FAR); FAR Case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.	9000–AO32
500	Federal Acquisition Regulation (FAR); FAR Case 2022–003, Use of Project Labor Agreement for Federal Construction Projects.	9000–AO40
501	Federal Acquisition Regulation (FAR); FAR Case 2022–006, Sustainable Procurement	9000–AO43
502	Federal Acquisition Regulation (FAR): FAR Case 2022–011, Nondisplacement of Qualified Workers Under Service Contracts.	9000–AO48
503	FAR Case 2023–010, Prohibition on a ByteDance Covered Application	9000–AO58

DOD/GSA/NASA (FAR)—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
504	Federal Acquisition Regulation (FAR); FAR Case 2018–013, Exemption of Commercial and COTS Item Contracts From Certain Laws and Regulations.	9000–AN72
505	Federal Acquisitions Regulation (FAR); FAR Case 2021–013, Access to Past Performance Information	9000–AO30

DOD/GSA/NASA (FAR)—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
506	Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees.	9000–AN32
507	Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 to Encourage Vendor Feedback.	9000–AN43
508	Federal Acquisition Regulation (FAR); FAR Case 2018–024; Use of Interagency Fleet Management System Vehicles and Related Services.	9000–AN82
509	Federal Acquisition Regulation (FAR); FAR Case 2021–012, 8(a) Program	9000–AO29

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Prerule Stage

468. Federal Acquisition Regulation (FAR); FAR Case 2023–008, Prohibition on Certain Semiconductor Products and Services [9000–AO56]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will prohibit agencies from: (1) procuring or obtaining, or extending or renewing a contract to procure or obtain, any electronic parts, products, or services that include covered semiconductor products or services; or (2) entering into a contract, or extending or renewing a contract, with an entity to procure or obtain electronic parts or products that include covered semiconductor products or services. This rule is issued pursuant to section 5949(a) of the National Defense Authorization Act for Fiscal Year 2023.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/23	
ANPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 882–4687, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AO56

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Proposed Rule Stage

469. Federal Acquisition Regulation (FAR); FAR Case 2017–016, Controlled Unclassified Information (CUI) [9000–AN56]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will apply the controlled unclassified information (CUI) program requirements in Federal contracts in a uniform manner to protect CUI. This rule is one element of a larger strategy to improve the Government's efforts to identify, deter, protect against, detect, and respond to increasing sophisticated threat actions targeting Federal contractors. This rule is being issued in accordance with the National Archives and Records Administration (NARA) regulations implementing the CUI program per Executive Order 13556 issued November 4, 2010, as implemented in NARA's implementing regulations.

Timetable:

Action	Date	FR Cite
Proposed Rule	02/00/24	
NPRM Comment Period End.	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AN56

470. Federal Acquisition Regulation (FAR); FAR Case 2019–015, Improving Consistency Between Procurement & Nonprocurement Procedures on Suspension and Debarment [9000–AN98]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will bring the Federal Acquisition Regulation (FAR) and the Nonprocurement Common Rule (NCR) procedures on suspension and debarment into closer alignment, creating a more consistent experience for industry. The FAR covers procurement matters and the NCR covers other transactions, such as grants, cooperative agreements, contracts of assistance, loans and loan guarantees. The suspension and debarment procedures give Federal officials a discretionary means to exclude parties from participation in certain transactions, while affording those parties due process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	
NPRM Comment Period End.	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7207, *Email: zenaida.delgado@gsa.gov.*

RIN: 9000–AN98

471. Federal Acquisition Regulation (FAR); FAR Case 2019–018, Federal Acquisition Supply Chain Security Act of 2018 [9000–AO01]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will provide authorities to agencies for determining and mitigating supply chain risks in procurements involving controlled unclassified information, information technology, embedded information technology, and telecommunications. To mitigate supply chain risks, the law allows executive agencies to exclude sources or covered articles from any executive agency procurement action, including source selection and consent for a contractor to subcontract. This rule is being issued pursuant to 41 U.S.C. 4713 titled ''Authorities relating to mitigating supply chain risks in the procurement of covered articles.''

Timetable:

Action	Date	FR Cite
NPRM	08/00/24	
NPRM Comment Period End.	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marissa Ryba, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 314 586–1280, *Email: marissa.ryba@gsa.gov.*

RIN: 9000–AO01

472. Federal Acquisition Regulation (FAR); FAR Case 2020–016, Rerepresentation of Size and Socioeconomic Status [9000–AO18]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will require contractors to rerepresent its size and economic status for all set-aside orders issued under full and open multiple-award contracts. Additionally, rerepresentation is required for orders issued under a small business set-aside multiple-award contract where the orders are further set-aside exclusively for a particular socioeconomic category and the required socioeconomic status differs from the underlying multiple-award contract. Orders issued under any Federal Supply Schedule are exempt from the requirement to rerepresent size

and or socioeconomic status. This rule is being issued in accordance with the Small Business Administration final rule published October 16, 2020 titled ''Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments.''

Timetable:

Action	Date	FR Cite
NPRM	09/29/23	88 FR 67189
NPRM Comment Period End.	11/28/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO18

473. Federal Acquisition Regulation (FAR); FAR Case 2021–001, Increased Efficiencies With Regard to Certified Mail, In-Person Business, Mail, Notarization, Original Documents, Seals, and Signatures [9000–AO19]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will streamline certain essential contracting procedures by increasing flexibilities and efficiencies with regards to certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This rule makes permanent policy flexibilities introduced during the pandemic.

Timetable:

Action	Date	FR Cite
NPRM	06/00/24	
NPRM Comment Period End.	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7207, *Email: zenaida.delgado@gsa.gov.*

RIN: 9000–AO19

474. FAR Acquisition Regulation (FAR); FAR Case 2021–005; Disclosure of Beneficial Owner in Federal Contracting [9000–AO23]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will require certain offerors to disclose beneficial ownership information in their offers for contracts over the simplified acquisition threshold and for the Federal Awardee Performance and Integrity Information System to include identifying information on the beneficial owner of a Federal contractor that is a corporation. This rule is being issued in accordance with sections 885 and 6403 of the National Defense Authorization Act for Fiscal Year 2021.

Timetable:

Action	Date	FR Cite
NPRM	04/00/24	
NPRM Comment Period End.	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7207, *Email: zenaida.delgado@gsa.gov.*

RIN: 9000–AO23

475. Federal Acquisition Regulation (FAR); FAR Case 2021–009, Protests of Orders Set Aside for Small Business [9000–AO26]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will allow size protests on set-aside orders under multiple-award contracts that were not set-aside, and protests of socioeconomic status on set-aside orders where the required status differs from that of the underlying multiple-award contract. This rule also grants authority for SBA's Associate General Counsel for Procurement Law to initiate size protests. This rule is being issued in accordance with the Small Business Administration final rule published October 16, 2020.

Timetable:

Action	Date	FR Cite
NPRM	10/03/23	88 FR 68067
NPRM Comment Period End.	12/04/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO26

476. Federal Acquisition Regulation (FAR); FAR Case 2021–011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors [9000–AO28]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will permit small business offerors that served as first-tier subcontractors and joint venture members, in certain situations, to submit the past performance and experience gained under these arrangements with offers on Federal contracts. Contracting officers will be required to consider the capabilities and past performance provided by first-tier subcontractors and joint venture members in certain situations. This rule promotes equity in Federal procurement. This rule is being issued in accordance with section 868 of the National Defense Authorization Act for Fiscal Year 2021, as implemented in the Small Business Administration (SBA) final rule published on July 22, 2022 titled ''Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors;'' and section 15 of the Small Business Act, as implemented in the SBA final rule on October 16, 2020 titled ''Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments.''

Timetable:

Action	Date	FR Cite
NPRM Comment Period End.	05/00/24	
NPRM	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO28

477. Federal Acquisition Regulation (FAR); FAR Case 2021–016, Minimizing the Risk of Climate Change in Federal Acquisitions [9000–AO33]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will allow agencies to: (1) provide a preference for proposed solutions that have lower life-cycle greenhouse gas emissions; and (2) require a Federal contractor to identify and manage climate risks that may

impact contract performance. This rule is being issued in accordance with section 5(b)(ii) of the Executive Order 14030 titled ''Climate-Related Financial Risk.'' DoD, GSA, and NASA published an advance notice of proposed rulemaking in October of 2021 seeking feedback from the public on ways in which the Government could consider greenhouse gas emissions and climate risks in Federal procurement. The feedback is being considered in the development of the proposed rule.

Timetable:

Action	Date	FR Cite
ANPRM	10/15/21	86 FR 57404
Comment Period Extended.	12/07/21	86 FR 69218
ANPRM Comment Period End.	01/13/22	
NPRM	01/00/24	
NPRM Comment Period End.	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7386, *Email: jennifer.hawes@gsa.gov.*

RIN: 9000–AO33

478. Federal Acquisition Regulation (FAR); FAR Case 2021–017, Cyber Threat and Incident Reporting and Information Sharing [9000–AO34]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will authorize agencies to increase the sharing of information about cyber threats and incident information between Government and certain providers. In addition, this rule will require certain contractors to report cyber incidents to the Federal Government to facilitate effective cyber incident response and remediation. This rule is being issued pursuant to recommendations from the Office of Management and Budget and the Department of Homeland Security in accordance with sections 2(b), 2(c), 2(g)(i), and 8(b), of the Executive Order 14028 titled ''Improving the Nation's Cybersecurity.''

Timetable:

Action	Date	FR Cite
NPRM	10/03/23	88 FR 68055
NPRM Comment Period Extended.	11/01/23	88 FR 74970
NPRM Comment Period End.	12/04/23	
NPRM Comment Period End.	02/02/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marissa Ryba, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 314 586–1280, *Email: marissa.ryba@gsa.gov.*

RIN: 9000–AO34

479. Federal Acquisition Regulation (FAR); FAR Case 2021–019, Standardizing Cybersecurity Requirements for Unclassified Information Systems [9000–AO35]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will ensure Federal information systems are better positioned to protect from cybersecurity threats by standardizing common cybersecurity contractual requirements across agencies for unclassified Federal information systems. This rule is being issued to implement Department of Homeland Security recommendations in accordance with sections 2(i) and 8(b) of the Executive Order 14028 titled ''Improving the Nation's Cybersecurity.''

Timetable:

Action	Date	FR Cite
NPRM	10/03/23	88 FR 68402
NPRM Comment Period Extended.	11/01/23	88 FR 74970
NPRM Comment Period End.	12/04/23	
NPRM Comment Period Extension End.	02/02/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO35

480. Federal Acquisition Regulations (FAR); FAR Case 2021–020, Limitations on Subcontracting [9000–AO36]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will update the limitations on subcontracting for small business concerns by revising or clarifying: (1) the exclusion of indirect costs from the limitation on subcontracting for services, (2) the application of the limitations on subcontracting to similarly situated entities, (3) the application of the nonmanufacturer rule to kit assemblers, and (4) the application of the limitation on subcontracting to construction contracts that also contain supplies and/or services. This rule is being issued in accordance with section 1651 of the National Defense Authorization Act for Fiscal Year 2013; and the Small Business Administration final rules published on May 31, 2016, November 29, 2019, and October 16, 2020.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO36

481. Federal Acquisition Regulation (FAR); FAR Case 2022–004, Enhanced Price Preferences for Critical Items [9000–AO41]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C ch. 4; 10 U.S.C ch. 137 legacy provisions; 10 U.S.C 3016; 51 U.S.C. 20113

Abstract: This rule will add a list of critical items and their associated enhanced price preferences to the Federal Acquisition Regulation (FAR), which will apply to acquisitions subject to the Buy American statute. The rule will also provide further guidance to contracting officers on how to evaluate offers for critical items and provide for a post-award reporting requirement for contractors. This rule will complete the framework added to the FAR as part of the implementation of section 8 of the Executive Order titled ''Ensuring the Future Is Made in All of America by All of America's Workers.''

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
NPRM Comment Period End.	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington,

DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AO41

482. Federal Acquisition Regulation (FAR); FAR Case 2022–009, Certification of Service-Disabled Veteran-Owned Small Businesses [9000–AO46]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will clarify the certification requirements for Service Disabled Veteran Owned Small Business (SDVOSB) concerns to be eligible for the award of a sole source or set-aside SDVOSB contract. This rule is being issued in accordance with section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021, as implemented by the Small Business Administration (SBA) final rules published on November 22, 2022, and July 3, 2023; and section 863 of the NDAA for FY 2022, as implemented by the SBA final rule published on April 27, 2023.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO46

483. Federal Acquisition Regulation (FAR); FAR Case 2023–002, Supply Chain Software Security [9000–AO49]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will require suppliers of software available for purchase by Federal agencies to comply with, and attest to complying with, applicable secure software development practices. This rule is being issued in accordance with section 4(n) and 4(k) of the Executive Order 14028 titled ''Improving the Nation's Cybersecurity'' and Office of Management and Budget Memorandum 22–18 and 23–16.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	
NPRM Comment Period End.	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marissa Ryba, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 314 586–1280, *Email: marissa.ryba@gsa.gov.*

RIN: 9000–AO49

484. Federal Acquisition Regulation (FAR); FAR Case 2023–001, Subcontracting to Puerto Rican and Covered Territory Small Businesses [9000–AO50]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will (1) provide contracting incentives to mentors that subcontract to protege firms that are Puerto Rican or another covered territory business; (2) reaffirm that contractors may rely on the self-certification of their subcontractors; and (2) specify that an Alaska Native Corporation owned firm that does not individually qualify as small but counts as a small business for subcontracting goaling purposes, is not required to submit a subcontracting plan. This rule is being issued in accordance with section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, as implemented by the Small Business Administration (SBA) final rule published on October 16, 2020, and section 866 of the NDAA for FY 2021, as implemented by the SBA final rule published on August 9, 2022.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
NPRM Comment Period End.	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO50

485. Federal Acquisition Regulation (FAR); FAR Case 2023–003, Prohibition on the Use of Reverse Auctions for Complex, Specialized, or Substantial Design and Construction Services [9000–AO51]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will prohibit the use of a reverse auction for the award of a contract for complex, specialized, or substantial design and construction services. The prohibition is the result of the Construction Consensus Procurement Improvement Act of 2021, which amended the Consolidated Appropriations Act, 2020, to correct a provision on the prohibition on the use of a reverse auction.

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	
NPRM Comment Period End.	05/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AO51

486. Federal Acquisition Regulation (FAR); FAR Case 2023–006, Preventing Organizational Conflicts of Interest in Federal Acquisition [9000–AO54]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will provide and update definitions, guidance, and examples related to organizational conflicts of interest (OCI), including the creation of solicitation provisions and contract clauses to avoid or mitigate OCI, that require contractors to disclose information relevant to potential OCI and limit future contracting. The rule will also permit contracting officers to take into consideration professional standards and procedures to prevent OCI to which an offeror or contractor is subject. This rule is being issued in accordance with the Preventing Organizational Conflicts of Interest in Federal Acquisition Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/24	
NPRM Comment Period End.	05/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AO54

487. • Federal Acquisition Regulation (FAR); FAR Case 2023–016, Subcontracting Plans and Limitations on Subcontracting [9000–AO60]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will make changes to the limitations on subcontracting, the nonmanufacturer rule, and subcontracting plans. Changes will be made in areas such as: the time period used to determine compliance with applicable limitations on subcontracting for certain contracts; past performance evaluations for concerns exceeding the limitations on subcontracting; nonmanufacturer waivers for multi-item procurements and limitations on the effective period of an individual nonmanufacturer waiver; the time period in which an approved commercial subcontracting plan is effective; the indirect costs to be included in subcontracting goals; and the costs to be included or excluded in the contractor's calculation of the subcontracting base. This rule implements regulatory changes made in the Small Business Administration's final rule published in April 27, 2023.

Timetable:

Action	Date	FR Cite
NPRM	10/00/24	
NPRM Comment Period End.	12/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO60

488. • Federal Acquisition Regulation (FAR); FAR Case 2023–017, Consolidation and Bundling [9000–AO61]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will add blanket purchase agreements and orders placed against unrestricted multiple-award contracts to the list of contract vehicles covered by the definition of consolidation and bundling; clarify that the definition of consolidation and bundling applies when additional scope is added to a solicitation, contract, or agreement; and add to the analysis requirements of an acquisition strategy for a bundled contract. This rule implements statutory requirements as implemented by the Small Business Administration's final rule published April 27, 2023.

Timetable:

Action	Date	FR Cite
NPRM	07/00/24	
NPRM Comment Period End.	09/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO61

489. • Federal Acquisition Regulation (FAR); FAR Case 2023–013, Hubzone Program [9000–AO63]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will authorize the Small Business Administration (SBA) Office of Hearings and Appeals to decide all appeals from formal protest determinations in connection with the status of a Historically Underutilized Business Zone (HUBZone) small business concern. Additionally, this rule proposes to remove the representation for HUBZone small business concerns as these concerns are required to be certified by SBA. This rule implements statutory requirements as implemented by the SBA's final rule published April 10, 2023.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
NPRM Comment Period End.	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO63

490. • Federal Acquisition Regulation (FAR); FAR Case 2023–015, Policy on Joint Ventures [9000–AO64]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will make changes to the requirements for small business joint ventures. Changes will be made to the recertification requirements for joint ventures and mentor-protégé joint ventures, to specify that a joint venture partner cannot be a partner to multiple joint ventures that intend to submit offers in response to a solicitation; and the time period in which a joint venture is eligible for award. This rule implements the Small Business Administration's final rule published April 27,2023.

Timetable:

Action	Date	FR Cite
NPRM	08/00/24	
NPRM Comment Period End.	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email: carrie.moore@gsa.gov.*

RIN: 9000–AO64

491. • Federal Acquisition Regulation (FAR); FAR Case 2023–014, Small Business Protests [9000–AO65]

Legal Authority: 0 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will clarify the parties that may protest the size and/or socioeconomic status of a small business concern, specify the deadlines for submitting a protest, add the Small Business Administration (SBA) Associate General Counsel for Procurement Law to the list of parties than can request a formal size determination, and make other clarifying amendments regarding small business protest procedures. This rule will implement the SBA's final rule published April 2023 which implemented section 863 of the National Defense Authorization Act for fiscal year 2022.

Timetable:

Action	Date	FR Cite
NPRM	05/00/24	
NPRM Comment Period End.	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO65

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Final Rule Stage

492. FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance [9000–AN31]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will create standard governmentwide policies addressing the effective use of reverse auctions. Reverse auctions are a tool used by Federal agencies to obtain competitive prices for an acquisition. Reverse auctions differ from traditional auctions in that sellers compete against one another to provide the lowest price or highest-value offer to a buyer. This rule will incorporate guidance from the Office of Federal Procurement Policy memorandum, Effective Use of Reverse Auctions,'' which was issued in response to recommendations from the Government Accountability Office (GAO) report, Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings'' (GAO–14–108).

Timetable:

Action	Date	FR Cite
NPRM	12/07/20	85 FR 78815
NPRM Comment Period End.	02/05/21	
Final Rule	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AN31

493. Federal Acquisition Regulation (FAR); FAR Case 2018–017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment [9000–AN83]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will finalize an interim rule that prohibits the Government from procuring covered telecommunications equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company, or Dahua Technology Company, to include any subsidiaries or affiliates. The FAR provisions require that an offeror represent at an entity level in SAM, and if applicable on an offer-by-offer basis, if the offeror will or will not provide any covered telecommunications equipment or services to the Government. If an offeror responds in an offer that it will provide covered telecommunications, the offeror will need to provide additional disclosures. This FAR rule protects U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and services. This rule is being issued in accordance with section 889 (a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2019. Paragraph (a)(1)(B) of section 889 is being implemented separately through FAR Case 2019–009. DoD, GSA and NASA received public comments in response to the interim rules published in August and December of 2019, which are being considered in the development of the final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/13/19	84 FR 40216
Interim Final Rule Comment Period End.	10/15/19	
Interim Final Rule	12/13/19	84 FR 68314
Interim Final Rule Effective.	12/13/19	
Interim Final Rule Comment Period End.	02/11/20	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FAR Policy, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–4075, *Email: farpolicy@gsa.gov.*

RIN: 9000–AN83

494. Federal Acquisition Regulation (FAR); FAR Case 2019–009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment [9000–AN92]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will finalize an interim rule that prohibits the Government from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company, or Dahua Technology Company, to include any subsidiaries or affiliates. This FAR rule protects U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and services. This rule is being issued in accordance with paragraph (a)(1)(B) of section 889 of the National Defense Authorization Act for Fiscal Year 2019. Paragraph (a)(1)(A) of section 889 is being implemented separately through FAR Case 2018–017. DoD, GSA and NASA received public comments in response to the interim rules published in July and August of 2020, which are being considered in the development of the final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/14/20	85 FR 42665
Interim Final Rule Effective.	08/13/20	
Interim Final Rule	08/27/20	85 FR 53126
Interim Final Rule Comment Period End.	09/14/20	
Interim Final Rule Comment Period End.	10/26/20	
Interim Final Rule Effective.	10/26/20	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FAR Policy, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–4075, *Email: farpolicy@gsa.gov.*

RIN: 9000–AN92

495. Federal Acquisition Regulation (FAR); FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts [9000–AO08]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will provide unsuccessful offerors for certain task or delivery orders the opportunity to request in writing an explanation as to why the offeror was unsuccessful. Contracting officers are required to provide a brief explanation in response to a written request, which includes the rationale for award and an evaluation of the significant weak or deficient factors in the offeror's offer. This rule is being issued in accordance with section 874 of the National Defense Authorization Act for Fiscal Year 2020.

Timetable:

Action	Date	FR Cite
NPRM	08/09/23	88 FR 53855
NPRM Comment Period End.	10/10/23	
Final Rule	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AO08

496. Federal Acquisition Regulation (FAR); FAR Case 2020–010, Small Business Innovation Research and Technology Transfer Programs [9000–AO12]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will add references to the Small Business Administration's Small Business Technology Transfer (STTR) program, acknowledge the unique competition requirements for phase III contracts under the Small Business Innovation Research (SBIR) and STTR programs, and revise definitions, allocation of rights, protection period, rights notice, and data rights marking provisions related to the SBIR/STTR programs. This rule is being issued in accordance with the Small Business Administration SBIR and STTR Policy Directive issued May 2, 2019 and section 9 of the Small Business Act.

Timetable:

Action	Date	FR Cite
NPRM	04/07/23	88 FR 20822
NPRM Comment Period End.	06/06/23	
Final Rule	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AO12

497. Federal Acquisition Regulation (FAR); FAR 2020–011, Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Exclusion Orders [9000–AO13]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will protect national security by excluding or removing certain covered products, services, or sources from the Federal supply chain through the issuance of exclusion and removal orders. This rule is being issued pursuant to section 202 of the Strengthening and Enhancing Cyber-capabilities by Utilizing Risk Exposure (SECURE) Technology Act and the Federal Acquisition Security Council (FASC) rule published on August 26, 2021.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/05/23	88 FR 69503
Interim Final Rule Comment Period End.	12/04/23	
Interim Final Rule Effective.	12/04/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marissa Ryba, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 314 586–1280, *Email: marissa.ryba@gsa.gov.*

RIN: 9000–AO13

498. Federal Acquisition Regulation (FAR); FAR Case 2021–014, Increasing the Minimum Wage for Contractors [9000–AO31]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will finalize an interim rule that increased the minimum wage to be paid to employees of certain contractors of the Federal Government to $15.00. This rule is being issued in accordance with the Executive Order 14030 titled ''Increasing the Minimum Wage for Federal Contractors'', dated April 27, 2021, and Department of Labor's implementing regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/26/22	87 FR 4117
Interim Final Rule Comment Period End.	03/28/22	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AO31

499. Federal Acquisition Regulation (FAR); FAR Case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk [9000–AO32]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will require certain Federal contractors to publicly disclose their annual greenhouse gas emissions. Some Federal contractors will also be required to disclose their climate-related financial risk and to set science-based targets for reducing their greenhouse gas emissions. This rule is being issued in accordance with section 5(b)(i) of the Executive Order 14030 titled ''Climate-Related Financial Risk.'' DoD, GSA, and NASA received public comments in response to the proposed rule published in November of 2022, which are being considered in the development of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	11/14/22	87 FR 68312
Comment Period Extended.	12/23/22	87 FR 78910
NPRM Comment Period End.	01/13/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7386, *Email: jennifer.hawes@gsa.gov.*

RIN: 9000–AO32

500. Federal Acquisition Regulation (FAR); FAR Case 2022–003, Use of Project Labor Agreement for Federal Construction Projects [9000–AO40]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch.; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will require the use of project labor agreements for large-scale construction projects with a total estimated value of $35 million or more. The Federal Acquisition Regulation (FAR) will continue to provide discretionary use of a project labor agreement on construction projects that do not meet the definition of large-scale construction projects. This rule is being issued in accordance with the Executive Order 14063 titled ''Use of Project Labor Agreements for Federal Construction Projects'' issued February 4, 2022. DoD, GSA, and NASA received public comments in response to the proposed

rule published in August of 2022, which are being considered in the development of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	08/19/22	87 FR 51044
NPRM Comment Period End.	10/18/22	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO40

501. Federal Acquisition Regulation (FAR); FAR Case 2022–006, Sustainable Procurement [9000–AO43]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will require Federal contractors to provide sustainable products and services to the maximum extent practicable under Federal contracts. This rule will also reorganize and streamline FAR part 23 to focus on current environmental matters. This rule implements the Executive Order 14057 titled ''Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,'' and Office of Management and Budget Memorandum M–22–06. DoD, GSA, and NASA received public comments in response to the proposed rule published in August of 2023, which are being considered in the development of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	08/03/23	88 FR 51672
NPRM Comment Period End.	10/02/23	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7386, *Email: jennifer.hawes@gsa.gov.*

RIN: 9000–AO43

502. Federal Acquisition Regulation (FAR): FAR Case 2022–011, Nondisplacement of Qualified Workers Under Service Contracts [9000–AO48]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will require that service contracts which succeed contracts for the same or similar services, and solicitations for such contracts, include a non-displacement clause. The non-displacement clause will require the contractor and its subcontractors to offer qualified employees employed under the predecessor contract a right of first refusal of employment under the successor contract. This rule is being issued in accordance with the Executive Order 14055 titled ''Nondisplacement of Qualified Workers Under Service Contracts,'' dated November 18, 2021 and Department of Labor's implementing regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/23	
Interim Final Rule Comment Period End.	02/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AO48

503. FAR Case 2023–010, Prohibition on a Bytedance Covered Application [9000–AO58]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule prohibits executive agencies from having or using the social networking service TikTok, developed or provided by ByteDance Limited, on any information technology owned or managed by the Government. This policy is being implemented as a national security measure to protect Government information and information and communication technology systems pursuant to section 102 of Division R of the Consolidated Appropriations Act, 2023, the No TikTok on Government Devices Act, and its implementing guidance under Office of Management andBudget Memorandum M–23–13, ''No TikTok on Government Devices'' Implementation Guidance, dated February 27, 2023. DoD, GSA, and NASA received public comments in response to the interim rule published in June of 2023, which are being considered in the development of the final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/02/23	88 FR 36430
Interim Final Rule Comment Period End.	08/01/23	
Final Rule	05/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FAR Policy, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–4075, *Email: farpolicy@gsa.gov.*

RIN: 9000–AO58

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Long-Term Actions

504. Federal Acquisition Regulation (FAR); FAR Case 2018–013, Exemption of Commercial and COTS Item Contracts From Certain Laws and Regulations [9000–AN72]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will attempt to streamline commercial acquisitions by removing certain requirements that currently apply to contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf (COTS) items. DoD, GSA and NASA will review existing commercial acquisition requirements that are based in law, Executive Order, or other policies in accordance with section 839 of the National Defense Authorization Act for Fiscal Year 2019, and will identify the requirements to be removed through this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/00/24	
NPRM Comment Period End.	02/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AN72

505. Federal Acquisitions Regulation (FAR); FAR Case 2021–013, Access to Past Performance Information [9000–AO30]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will clarify language at FAR 42.1503(d) regarding restrictions on the release of past performance information in the Contractor Performance Assessment Reporting System to other than Government personnel to perform value added services to the Government. Artificial intelligence (*e.g.,* machine learning) may improve the workforce's ability to leverage the use of contractor performance information in informing future contract award decisions and other related efforts.

Timetable:

Action	Date	FR Cite
NPRM	11/00/24	
NPRM Comment Period End.	01/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO30

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Completed Actions

506. Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees [9000–AN32]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will make permanent contractor and subcontractor employee protections for disclosing certain information to the Government. The protections prohibit contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing to Government entities, such as agency Inspector Generals and Congress, information that the employee reasonably believes is (1) evidence of gross mismanagement of a Federal contract; (2) a gross waste of Federal funds; (3) an abuse of authority relating to a Federal contract; (4) a substantial and specific danger to public health or safety; or (5) a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract). This rule also ensures that the prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to both contractors and subcontractors. This rule makes permanent the pilot program in accordance with the ''Enhancement of Contractor Protection From Reprisal for Disclosure of Certain Information'' law. The pilot was enacted on January 2, 2013, by section 828 of the National Defense Authorization Act for Fiscal Year 2013.DoD, GSA, and NASA received public comments in response to the proposed rule published in December of 2018, which are being considered in the development of the final rule.

Completed:

Reason	Date	FR Cite
Final Rule	10/25/23	88 FR 69517
Final Rule Effective.	11/06/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, *Phone:* 571 882–4687, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AN32

507. Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 To Encourage Vendor Feedback [9000–AN43]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to address the solicitation of contractor feedback on both contract formation and contract administration activities. Agencies would consider this feedback, as appropriate, to improve the efficiency and effectiveness of their acquisition activities. The rule will create FAR policy to encourage regular feedback in accordance with agency practice (both for contract formation and administration activities) and a standard FAR solicitation provision to support a sustainable model for broadened use of the Acquisition 360 survey to elicit feedback on the pre-award and debriefing processes in a consistent and standardized manner. Agencies will be able to use the solicitation provision to notify interested sources that a procurement is part of the Acquisition 360 survey and encourage stakeholders to voluntarily provide feedback on their experiences of the pre-award process.

Completed:

Reason	Date	FR Cite
Final Rule	08/08/23	88 FR 53748
Final Rule Effective.	09/22/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, *Phone:* 202 969–7207, *Email: zenaida.delgado@gsa.gov.*

RIN: 9000–AN43

508. Federal Acquisition Regulation (FAR); FAR Case 2018–024; Use of Interagency Fleet Management System Vehicles and Related Services [9000–AN82]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are withdrawing this rule. A decision was made not to proceed with a proposed rule, since updates to the underlying interagency fleet management regulations are still under development. Accordingly, this proposed rule is withdrawn, and the FAR case is closed.

Completed:

Reason	Date	FR Cite
Withdrawn	09/14/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, *Phone:* 202 969–7386, *Email: jennifer.hawes@gsa.gov.*

RIN: 9000–AN82

509. Federal Acquisition Regulation (FAR); FAR Case 2021–012, 8(A) Program [9000–AO29]

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 4; 10 U.S.C. ch. 137 legacy provisions; 10 U.S.C. 3016; 51 U.S.C. 20113

Abstract: This rule will clarify 8(a) program requirements regarding certificates of competency, FAR part 13 blanket purchase agreements and associated orders, 8(a) participant eligibility, and Government appeal and notification requirements, to reduce ambiguities and burdens on 8(a) Participants and procuring activities. This rule promotes equity in Federal procurement. This rule is being issued in accordance with the Small Business Administration final rule published on October 16, 2020. DoD, GSA and NASA received public comments in response

to the proposed rule published in December of 2022, which are being considered in the development of the final rule.

Completed:

Reason	Date	FR Cite
Final Rule	10/05/23	88 FR 69523
Final Rule Effective.	11/06/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO29

[FR Doc. 2024–00461 Filed 2–8–24; 8:45 am]

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Part XX

Consumer Financial Protection Bureau

Semiannual Regulatory Agenda

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Ch. X

Semiannual Regulatory Agenda

AGENCY: Consumer Financial Protection Bureau.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is publishing this agenda as part of the Fall 2023 Unified Agenda of Federal Regulatory and Deregulatory Actions. The CFPB reasonably anticipates having the regulatory matters identified below under consideration during the period from November 2023 to October 2024. The next agenda will be published in Spring 2024 and will update this agenda through Spring 2025. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5U.S.C. 601 *et seq.*).

DATES: This information is current as of August 17, 2023.

ADDRESSES: Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: A staff contact is included for each regulatory item listed herein. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The CFPB is publishing its Fall 2023 Agenda as part of the Fall 2023 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget (OMB) under Executive Order 12866. The agenda lists the regulatory matters that the CFPB reasonably anticipates, as of August 17, 2023, that it will have under consideration during the period from November 1, 2023, to October 31, 2024, as described further below.[1] The complete Unified Agenda is available to the public at the following website: *https://www.reginfo.gov.*

Consistent with procedures established by OMB's Office of Information and Regulatory Affairs,[2] the CFPB's active agenda is divided into five sections: pre-rule stage; proposed rule stage; final rule stage; long-term actions, completed actions. Generally, the pre-rule through final rule stages sections list items the CFPB plans to issue within the next 12 months. The long-term actions are listed for informational purposes if a regulatory action is anticipated beyond that one-year time frame. Completed actions are those that have been published as final or are withdrawn.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

CONSUMER FINANCIAL PROTECTION BUREAU—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
510	Required Rulemaking on Personal Financial Data Rights	3170–AA78

CONSUMER FINANCIAL PROTECTION BUREAU—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
511	Amendments to FIRREA Concerning Automated Valuation Models	3170–AA57

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Proposed Rule Stage

510. Required Rulemaking on Personal Financial Data Rights [3170–AA78]

Legal Authority: 12 U.S.C. 5533

Abstract: Section 1033 of the Consumer Financial Protection Act (CFPA) provides that, subject to rules prescribed by the CFPB, a covered entity (for example, a bank) must make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from the covered entity. Section 1033 also states that the CFPB must prescribe by rule standards to promote the development and use of standardized formats for information made available to consumers. In November 2020, the CFPB published an Advance Notice of Proposed Rulemaking (ANPRM) concerning implementation of section 1033, accepting comments until February 2021. In October 2022, the CFPB released materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. The SBREFA panel was convened in February 2023 and received feedback from representatives of small entities on the impacts the rules the CFPB is considering to implement section 1033 would have on small entities likely to be directly affected by the rulemaking. The panel's report was completed in March 2023. The CFPB released a Notice of Proposed Rulemaking on October 19, 2023.

Timetable:

Action	Date	FR Cite
Request for Information.	11/22/16	81 FR 83806
Principles Statement.	10/18/17	
ANPRM	11/06/20	85 FR 71003
ANPRM Comment Period End.	02/04/21	
SBREFA Outline	10/27/22	
SBREFA Report	03/30/23	
NPRM	10/31/23	88 FR 74796
NPRM Comment Period End.	12/29/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Scherzer, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, *Phone:* 202 435–7700.

RIN: 3170–AA78

[1] The listing does not include certain routine, frequent, or administrative matters. The CFPB is reporting information for this Unified Agenda in a manner consistent with past practice.

[2] See *https://www.reginfo.gov/public/jsp/eAgenda/UA_About.myjsp.*

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Final Rule Stage

511. Amendments to FIRREA Concerning Automated Valuation Models [3170–AA57]

Legal Authority: 12 U.S.C. 3354

Abstract: The CFPB is participating in an interagency rulemaking process with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (collectively, the Agencies) to develop regulations to implement the amendments made by the Consumer Financial Protection Act (CFPA) to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning automated valuation models. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs). In February 2022, the CFPB initiated the process under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) for this rulemaking and released an outline of proposals and alternatives under consideration for the SBREFA panel, made up of representatives of small businesses that might be affected by the rulemaking. The CFPB released a final SBREFA report on May 13, 2022. The Agencies issued a proposed rule to implement the CFPA's AVM amendments to FIRREA in June 2023.

Timetable:

Action	Date	FR Cite
SBREFA Outline	02/23/22	
SBREFA Report ..	05/13/22	
NPRM	06/21/23	88 FR 40638
NPRM Comment Period End.	08/21/23	
Final Rule	06/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Pedro De Oliveira, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, *Phone:* 202 435–7700.

RIN: 3170–AA57

[FR Doc. 2024–00462 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part XXI

Consumer Product Safety Commission

Semiannual Regulatory Agenda

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Semiannual Regulatory Agenda

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: In this document, the Commission publishes its semiannual regulatory flexibility agenda. In addition, this document includes an agenda of regulations that the Commission expects to develop or review during the next 12 months. This document meets the requirements of the Regulatory Flexibility Act and Executive Order 12866.

DATES: The Commission welcomes comments on the agenda and on the individual agenda entries. Submit comments to the Office of the Secretary on or before March 11, 2024.

ADDRESSES: Caption comments on the regulatory agenda, ''Regulatory Flexibility Agenda.'' You can submit comments by email to: *cpsc-os@cpsc.gov.* You can also submit comments by mail or delivery to the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda, in general, contact Michael A. Rogers, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408, *MRogers@cpsc.gov.* For further information regarding a particular item on the agenda, contact the person listed in the column titled ''Contact'' for that item.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small businesses, small governmental organizations, and other small entities. Section 602 of the RFA requires each agency to publish, twice a year, a regulatory flexibility agenda containing ''a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 602. The agency must provide a summary of the nature of the rule, the objectives and legal basis for the rule, and an approximate schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking. *Id.* In addition, the regulatory flexibility agenda must contain the name and telephone number of an agency official who is knowledgeable about the listed items. *Id.* Agencies must attempt to provide notice of their agendas to small entities and solicit their comments either by directly notifying them, or by including the agenda in publications that small entities are likely to obtain. *Id.*

In addition, Executive Order 12866, *Regulatory Planning and Review* (Sep. 30, 1993), requires each agency to publish, twice a year, a regulatory agenda of regulations under development or review during the next year. 58 FR 51735 (Oct. 4, 1993). The Executive Order states that agencies may combine this agenda with the regulatory flexibility agenda required under the RFA. The agenda required by Executive Order 12866 must include all regulations the agency expects to develop or review during the next 12 months, regardless of whether they may have a significant economic impact on a substantial number of small entities. This fall 2023 agenda also includes regulatory activities that the Commission listed in the spring 2023 agenda and completed before publishing this agenda.

The agenda contains a brief description and summary of each regulatory activity, including the objectives and legal basis for each; an approximate schedule of target dates, subject to revision, for developing or completing each activity; and the name and telephone number of an agency official who is knowledgeable about items in the agenda.

The internet is the primary means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov,* in a format that allows users to obtain information from the agenda database.

Because agencies must publish in the **Federal Register** the regulatory flexibility agenda required by the RFA (5 U.S.C. 602), the Commission's printed agenda entries include only:

(1) rules that are in the agency's regulatory flexibility agenda, in accordance with the RFA, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) rules that the agency has identified for periodic review under section 610 of the RFA (5 U.S.C. 610).

The entries in the Commission's printed agenda are limited to fields that contain information that the RFA requires in an agenda. Additional information on these entries is available in the Unified Agenda published on the internet.

The agenda reflects the Commission's assessment of the likelihood that the specified event will occur during the next year; the precise dates for each rulemaking are uncertain. New information, changes of circumstances, or changes in the law, may alter anticipated timing. In addition, this agenda does not represent a final determination by the Commission or its staff regarding the need for, or the substance of, any rule or regulation.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

CONSUMER PRODUCT SAFETY COMMISSION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
512	Regulatory Options for Table Saws **(Reg Plan Seq No. 230)**	3041–AC31

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CONSUMER PRODUCT SAFETY COMMISSION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
513	Portable Generators **(Reg Plan Seq No. 232)**	3041–AC36

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CONSUMER PRODUCT SAFETY COMMISSION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
514	Recreational Off-Road Vehicles	3041–AC78

CONSUMER PRODUCT SAFETY COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
515	Petition Requesting a Ban or Standard on Adult Portable Bed Rails	3041–AD30

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Proposed Rule Stage

512. Regulatory Options for Table Saws [3041–AC31]

Regulatory Plan: This entry is Seq. No. 230 in part II of this issue of the **Federal Register**.

RIN: 3041–AC31

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Final Rule Stage

513. Portable Generators [3041–AC36]

Regulatory Plan: This entry is Seq. No. 232 in part II of this issue of the **Federal Register**.

RIN: 3041–AC36

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Long-Term Actions

514. Recreational Off-Road Vehicles [3041–AC78]

Legal Authority: 15 U.S.C. 2056; 15 U.S.C. 2058

Abstract: Staff conducted testing and evaluation programs to develop performance requirements addressing vehicle stability, vehicle handling, and occupant protection. In 2014, the Commission issued a notice of proposed rulemaking (NPRM) proposing standards addressing vehicle stability, vehicle handling, and occupant protection for recreational off-road vehicles (ROVs). Congress directed in fiscal year 2016, and reaffirmed in subsequent fiscal year appropriations, that none of the amounts made available by the Appropriations Bill may be used to finalize or implement the proposed Safety Standard for Recreational Off-Highway Vehicles until after the National Academy of Sciences completes a study to determine specific information, as set forth in the Appropriations Bill. Staff ceased work on a Final Rule briefing package and instead engaged the Recreational Off-Highway Vehicle Association (ROHVA) and Outdoor Power Equipment Institute (OPEI) in the development of voluntary standards for ROVs. Staff conducted dynamic and static tests on ROVs, shared test results with ROHVA and OPEI, and participated in the development of revised voluntary standards to address staff's concerns with vehicle stability, vehicle handling, and occupant protection. The voluntary standards for ROVs were revised and published in 2016 (ANSI/ROHVA 1–2016 and ANSI/OPEI B71.9–2016). Staff assessed the new voluntary standard requirements and prepared a termination of rulemaking briefing package that was submitted to the Commission on November 22, 2016. The Commission voted not to terminate the rulemaking associated with ROVs. In the Fiscal Year 2020 Operating Plan, the Commission directed staff to prepare a rulemaking termination briefing package. Staff submitted a briefing package to the Commission on September 16, 2020 that recommended termination of the rulemaking. On September 22, 2020, the Commission voted 2–2 on this matter. A majority was not reached and no action is being taken.

Timetable:

Action	Date	FR Cite
Staff Sends ANPRM Briefing Package to Commission.	10/07/09	
Commission Decision.	10/21/09	
ANPRM	10/28/09	74 FR 55495
ANPRM Comment Period Extended.	12/22/09	74 FR 67987
Extended Comment Period End.	03/15/10	
Staff Sends NPRM Briefing Package to Commission.	09/24/14	
Staff Sends Supplemental Information on ROVs to Commission.	10/17/14	
Commission Decision.	10/29/14	
NPRM Published in **Federal Register**.	11/19/14	79 FR 68964
NPRM Comment Period Extended.	01/23/15	80 FR 3535
Extended Comment Period End.	04/08/15	
Staff Sends Briefing Package Assessing Voluntary Standards to Commission.	11/22/16	
Commission Decision Not to Terminate.	01/25/17	
Staff Sends Briefing Package to Commission.	09/16/20	
Commission Decision: Majority Not Reached, No Action Will be Taken.	09/22/20	
Next Step Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2225, *Email: cpaul@cpsc.gov*.

RIN: 3041–AC78

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Completed Actions

515. Petition Requesting a Ban or Standard on Adult Portable Bed Rails [3041–AD30]

Legal Authority: 5 U.S.C. 553(e); 15 U.S.C. 2056; 15 U.S.C. 2058

Abstract: The Commission received two requests, one from consumer advocate Gloria Black, the Consumer Federation of America, and 60 other organizations, and the second from Public Citizen, asking that the Commission initiate proceedings under section 8 of the Consumer Product Safety Act (CPSA) to determine whether adult portable bed rails pose an unreasonable risk of injury and initiate related rulemaking under section 9 of the CPSA. The Commission is considering them as a single petition. After reviewing a briefing package from staff in 2014, the Commission voted to defer the petition. The Commission subsequently directed staff to assess the progress of the voluntary standard development and to make a recommendation on whether the Commission should grant the petition and initiate rulemaking. The new voluntary standard was published in August 2017. Staff evaluated the new voluntary standard and performed product testing to assess conformance, and provided the Commission with a briefing package in July 2020, with the recommendation to continue deferring the petition. On March 9, 2022, staff submitted to the Commission a briefing package, supplementing the 2020 briefing package, and recommending that the Commission grant the petition. On March 15, 2022, the Commission voted to grant the petition and directed staff to draft a notice of proposed rulemaking (NPRM) to adopt a safety standard under CPSA section 9. On September 21, 2022, staff submitted an NPRM briefing package to the Commission. The Commission published the proposed rule on November 9, 2022. The public comment period ended on January 9, 2023. The Commission published a final rule on July 21, 2023.

Timetable:

Action	Date	FR Cite
Petition Docketed	05/15/13	
Notice for Comment Published in **Federal Register**.	06/04/13	78 FR 33393
Comment Period End.	08/05/13	
Staff Sends Briefing Package to Commission.	04/23/14	
Commission Voted to Defer the Petition.	05/01/14	
Staff Provided Commission a 6-Month Update on the Voluntary Standards Process.	11/04/14	
Staff Provided Commission a 12-Month Update on Voluntary Standards.	04/22/15	
Staff Provided Commission a 9-Month Update on Voluntary Standards Process.	02/03/16	
Staff Provided Commission Update on Voluntary Standards Process.	09/27/16	
Staff Provided Commission Update on Voluntary Standards Process.	09/27/17	
Staff Sends Status Briefing Package to Commission.	07/15/20	
Staff Sends Briefing Package to Commission.	03/09/22	
Commission Decision on Petition.	03/15/22	
Staff Sends NPRM Briefing Package to Commission.	09/21/22	
Commission Decision.	10/13/22	
NPRM publishes	11/09/22	87 FR 67586
NPRM Comment Period End.	01/09/23	
Staff sends Final Rule briefing package to Commission.	06/28/23	
Final Rule	07/21/23	88 FR 46958

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Vineed Dayal, Project Manager, Directorate for Laboratory Sciences, Consumer Product Safety Commission, 5 Research Place, National Product Testing and Evaluation Center, Rockville, MD 20850,*Phone:* 301 987–2292, *Email: vdayal@cpsc.gov.*

RIN: 3041–AD30

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Part XXII

Federal Communications Commission

Semiannual Regulatory Agenda

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2023

AGENCY: Federal Communications Commission.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: In the Spring and Fall of each year, the Federal Communications Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant regulatory proceedings under development or review that pertain to the Regulatory Flexibility Act (5 U.S.C. 602). The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings. The complete Unified Agenda will be published on the internet in a searchable format at *www.reginfo.gov.*

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joy Ragsdale, Director, The Office of Communications Business Opportunities at *OCBOInfo@fcc.gov* or Andrea Brown, Program Specialist, Office of Communications Business Opportunities, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, (202) 418–1663.

SUPPLEMENTARY INFORMATION:

Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

Docket Number—the Commission will assign a Docket Number to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.,* Docket No. 15–1 or Docket No. 17–1). The abbreviation for the responsible bureau usually precedes the docket number, as in ''MB Docket No. 15–137,'' which indicates that the responsible bureau is the Media Bureau. A docket number consisting of only five digits (*e.g.,* Docket No. 29622) indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI)—the Commission will issue an NOI when it is seeking information on a broad subject or trying to generate ideas on a given topic. Interested parties may submit comments during the specified comment period.

Notice of Proposed Rulemaking (NPRM)—the Commission will issue an NPRM when it is proposing new rules or changes to existing rules and regulations. Before any changes are actually made, the Commission requests interested parties to submit written comments on the proposed rules or revisions.

Further Notice of Proposed Rulemaking (FNPRM)—the Commission will issue an FNPRM when it is seeking additional information from the public and requests the public to submit comments in the proceeding.

Memorandum Opinion and Order (MO&O)—the Commission will issue an MO&O in response to a petition for rulemaking, to conclude an inquiry, modify a decision, amend a Report and Order, or state that the Report and Order will not be changed.

Rulemaking (RM) Number—assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has acted on the petition.

Report and Order (R&O)—the Commission may issue an R&O that will either adopt new rules, change existing rules, or state that no rule or regulation changes will be made.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
516	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278).	3060–AI14
517	Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123).	3060–AI15
518	Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10–51)	3060–AJ42
519	Implementation of the Middle-Class Tax Relief and Job Creation Act of 2012/Establishment of a Public Safety Answering Point Do-Not-Call Registry (CG Docket No. 12–129).	3060–AJ84
520	Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10–213).	3060–AK00
521	Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13–24.	3060–AK01
522	Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17–59)	3060–AK62
523	Empowering Broadband Consumers Through Transparency (CG Docket No 22–2)	3060–AL33
524	Targeting and Eliminating Unlawful Text Messages, CG Docket 21–403, Notice of Proposed Rulemaking	3060–AL49
525	Misuse of Internet Protocol (IP) Relay Service; CG Docket No. 12–38	3060–AL58
526	Compensation for Internet Protocol Captioned Telephone Service, (CG Docket No. 22–408)	3060–AL59
527	Access to Video Conferencing, (CG Docket No. 23–161)	3060–AL66

ECONOMICS—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
528	Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans.	3060–AJ15
529	Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12–268).	3060–AJ82
530	Broadband Data Collection	3060–AL42

OFFICE OF ENGINEERING AND TECHNOLOGY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
531	Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186)	3060–AI52
532	Use of the 5.850–5.925 GHz Band; (ET Docket No. 19–138), FCC 19–129	3060–AK96
533	Unlicensed White Space Device Operations in the Television Bands, ET Docket No. 20–36	3060–AL22
534	Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization and Competitive Bidding Programs; ET Docket No. 21–232, EA Docket No. 21–233.	3060–AL23
535	Wireless Microphones in the TV Bands (ET Docket No. 21–115), 600 MHz Guard Band, 600 MHz Duplex Gap, and the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz.	3060–AL27
536	FCC Seeks to Enable State-of-the-Art Radar Sensors in 60 GHz Band (ET Docket No. 21–264)	3060–AL36
537	FCC Proposes to Update Equipment Authorization Rules to Incorporate New and Revised Industry Standards, (ET Docket No. 21–363).	3060–AL39
538	Allocation of Spectrum for Non-Federal Space Launch Operations (ET Docket No. 13–115)	3060–AL44

INTERNATIONAL BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
539	Update to Parts 2 and 25 Concerning NonGeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. I6–408.	3060–AK59
540	Amendment of Parts 2 and 25 of the FCC Rules to Facilitate the Use of Earth Stations in Motion Communicating With Geostationary Orbit Space Stations in FSS Bands: IB Docket No. 17–95.	3060–AK84
541	Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18–315.	3060–AK89
542	Space Innovation; Mitigation of Orbital Debris in the New Space Age: IB Docket Nos. 18–313, 22–271	3060–AK90
543	Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket No. 16–155.	3060–AL12
544	Parts 2 and 25 to Enable GSO FSS in the 17.3–17.8 GHz Band, Modernize Rules for 17/24 GHz BSS Space Stations, and Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS (IB Doc. No. 20–330).	3060–AL28
545	Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems: IB Docket No. 21–456.	3060–AL41
546	Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation (IB Docket Nos. 22–411 and 22–271).	3060–AL51

MEDIA BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
547	Revision of EEO Rules and Policies (MB Docket No. 98–204)	3060–AH95
548	Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185).	3060–AI38
549	Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard (GN Docket No. 16–142).	3060–AK56
550	2018 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules (MB Docket 18–349).	3060–AK77
551	Equal Employment Opportunity Enforcement (MB Docket 19–177)	3060–AK86
552	Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19–310)	3060–AL19
553	Sponsorship Identification Requirements for Foreign Government-Provided Programming (MB Docket No. 20–299).	3060–AL20
554	FM Broadcast Booster Stations (MB Docket 20–401)	3060–AL21
555	Amendment of Part 73 Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations (MB Docket No. 22–227).	3060–AL50
556	Implementation of the Low Power Protection Act, MB Docket No. 23–126	3060–AL63
557	Video Description, MB Docket No. 11–43	3060–AL64
558	2022 Quadrennial Review of Media Ownership Rules, MB Docket No. 22–459	3060–AL65

MEDIA BUREAU—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
559	Preserving Vacant Channels in the UHF Television Band for Unlicensed Use; (MB Docket No. 15–146)	3060–AK43
560	Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference (MB Docket 18–119).	3060–AK79
561	Use of Common Antenna Site (MB Docket No. 19–282)	3060–AK99
562	Updating Broadcast Radio Technical Rules (MB Docket 21–263)	3060–AL26

OFFICE OF MANAGING DIRECTOR—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
563	Assessment and Collection of Regulatory Fees	3060–AK64

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
564	Wireless E911 Location Accuracy Requirements: PS Docket No. 07–114	3060–AJ52
565	Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206.	3060–AK39
566	Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications: (PS Docket No. 15–80, 18–336, 23–5).	3060–AK40
567	New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35	3060–AK41
568	Wireless Emergency Alerts (WEA): PS Docket No. 15–91, 15–94, 22–329	3060–AK54
569	911 Fee Diversion Rulemaking: PS Docket Nos. 20–291, 09–14	3060–AL31
570	Resilient Networks, Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; PS Docket No 21–346.	3060–AL43
571	Location—Based Routing for Wireless 911 Calls (P.S. Docket 18–64)	3060–AL52
572	Next Generation 9–1–1, PS Docket No. 21–479, FCC 23–47	3060–AL67

WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
573	Amendment of Parts 1, 2, 22, 24, 27, 90, and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10–4).	3060–AJ87
574	Promoting Technological Solutions to Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13–111.	3060–AK06
575	Promoting Investment in the 3550–3700 MHz Band; GN Docket No. 17–258	3060–AK12
576	Updating Part 1 Competitive Bidding Rules (WT Docket No. 14–170)	3060–AK28
577	Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10–112	3060–AK44
578	Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18–122	3060–AK76
579	Amendment of the Commission's Rules to Promote Aviation Safety: WT Docket No. 19–140	3060–AK92
580	Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012 (WT Docket No.19–250).	3060–AL29
581	Expanding Flexible Use of the 12.2–12.7 GHz Band, et al., WT Docket No. 20–443, et al	3060–AL40
582	Facilitating Shared Use in the 3100–3550 MHz Band	3060–AL57
583	Shared Use of the 42–.42.5 GHz Band (WT Docket No. 23–158, GN Docket No. 14–177)	3060–AL68

WIRELINE COMPETITION BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
584	Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115), Data Breach Reporting Requirements (WC Docket No. 22–21).	3060–AG43
585	Local Telephone Networks That LECs Must Make Available to Competitors	3060–AH44
586	Jurisdictional Separations	3060–AJ06
587	Rates for Inmate Calling Services; WC Docket No. 12–375; Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, WC Docket No. 23–62.	3060–AK08
588	Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130)	3060–AK20
589	Restoring Internet Freedom (WC Docket No. 17–108); Protecting and Promoting the Open Internet (GN Docket No. 14–28).	3060–AK21
590	Technology Transitions; GN Docket No 13–5, WC Docket No. 05–25; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; WC Docket No. 17–84.	3060–AK32
591	Numbering Policies for Modern Communications, WC Docket No. 13–97	3060–AK36

WIRELINE COMPETITION BUREAU—LONG-TERM ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
592	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060–AK57
593	Toll Free Assignment Modernization and Toll-Free Service Access Codes: WC Docket No. 17–192, CC Docket No. 95–155.	3060–AK91
594	Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19–195 and 11–10	3060–AK93
595	Call Authentication Trust Anchor	3060–AL00
596	Implementation of the National Suicide Improvement Act of 2018, 988 Suicide Prevention Hotline (WC Docket 18–336, PS Docket No. 23.5, PS Docket No. 15–80).	3060–AL01
597	Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services	3060–AL02
598	Establishing a 5G Fund for Rural America; GN Docket No. 20–32	3060–AL15
599	Protecting Consumers From SIM Swap and Port-Out Fraud, WC Docket No. 21–341	3060–AL34
600	Supporting Survivors of Domestic and Sexual Violence (WC Docket No. 22–238,11–42, 21–450)	3060–AL48

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Consumer and Governmental Affairs Bureau

Long-Term Actions

516. Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278) [3060–AI14]

Legal Authority: 47 U.S.C. 227

Abstract: In this docket, the Commission considers rules and policies to implement the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA places requirements on robocalls (calls using an automatic telephone dialing system, an autodialer, a prerecorded or, an artificial voice), telemarketing calls, and unsolicited fax advertisements.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62667
FNPRM	04/03/03	68 FR 16250
Order	07/25/03	68 FR 44144
Order Effective	08/25/03	
Order on Reconsideration.	08/25/03	68 FR 50978
Order	10/14/03	68 FR 59130
FNPRM	03/31/04	69 FR 16873
Order	10/08/04	69 FR 60311
Order	10/28/04	69 FR 62816
Order on Reconsideration.	04/13/05	70 FR 19330
Order	06/30/05	70 FR 37705
NPRM	12/19/05	70 FR 75102
Public Notice	04/26/06	71 FR 24634
Order	05/03/06	71 FR 25967
NPRM	12/14/07	72 FR 71099
Declaratory Ruling	02/01/08	73 FR 6041
R&O	07/14/08	73 FR 40183
Order on Reconsideration.	10/30/08	73 FR 64556
NPRM	03/22/10	75 FR 13471
R&O	06/11/12	77 FR 34233
Public Notice	06/30/10	75 FR 34244
Public Notice (Reconsideration Petitions Filed).	10/03/12	77 FR 60343
Announcement of Effective Date.	10/16/12	77 FR 63240
Opposition End Date.	10/18/12	
Rule Corrections	11/08/12	77 FR 66935
Declaratory Ruling (release date).	11/29/12	
Declaratory Ruling (release date).	05/09/13	
Declaratory Ruling and Order.	10/09/15	80 FR 61129
NPRM	05/20/16	81 FR 31889
Declaratory Ruling	07/05/16	
R&O	11/16/16	81 FR 80594
Public Notice	06/28/18	83 FR 26284
Public Notice	10/03/18	
Declaratory Ruling	12/06/19	
Declaratory Ruling	12/09/19	
Order	03/17/20	
Declaratory Ruling	03/20/20	
Declaratory Ruling	06/25/20	
Declaratory Ruling and Order.	06/25/20	
Order on Reconsideration.	08/28/20	
Declaratory Ruling	09/04/20	
Declaratory Ruling	09/21/20	
NPRM	10/09/20	85 FR 64091
Public Notice	12/17/20	
Declaratory Ruling	12/18/20	
Declaratory Ruling	01/15/21	
Order on Recon	02/12/21	86 FR 9299
R&O	02/25/21	86 FR 11443
Public Notice (Reconsideration Petitions Filed).	04/12/21	86 FR 18934
Declaratory Ruling and Order.	12/14/22	87 FR 76425
Order on Reconsideration and Declaratory Ruling.	01/20/23	88 FR 3668
NPRM	06/29/23	88 FR 42034
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kristi Thornton, Deputy Division Chief, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2467, *Email: kristi.thornton@fcc.gov*.

RIN: 3060–AI14

517. Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123) [3060–AI15]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

Abstract: This proceeding continues the Commission's inquiry into improving the quality of telecommunications relay service (TRS) and furthering the goal of functional equivalency, consistent with Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

Timetable:

Action	Date	FR Cite
NPRM	08/25/03	68 FR 50993
R&O, Order on Reconsideration.	09/01/04	69 FR 53346
FNPRM	09/01/04	69 FR 53382
Public Notice	02/17/05	70 FR 8034
Declaratory Ruling/Interpretation.	02/25/05	70 FR 9239
Public Notice	03/07/05	70 FR 10930
Order	03/23/05	70 FR 14568
Public Notice/Announcement of Date.	04/06/05	70 FR 17334
Order	07/01/05	70 FR 38134
Order on Reconsideration.	08/31/05	70 FR 51643
R&O	08/31/05	70 FR 51649
Order	09/14/05	70 FR 54294
Order	09/14/05	70 FR 54298
Public Notice	10/12/05	70 FR 59346
R&O/Order on Reconsideration.	12/23/05	70 FR 76208
Order	12/28/05	70 FR 76712
Order	12/29/05	70 FR 77052
NPRM	02/01/06	71 FR 5221

Action	Date	FR Cite
Declaratory Ruling/Clarification.	05/31/06	71 FR 30818
FNPRM	05/31/06	71 FR 30848
FNPRM	06/01/06	71 FR 31131
Declaratory Ruling/Dismissal of Petition.	06/21/06	71 FR 35553
Clarification	06/28/06	71 FR 36690
Declaratory Ruling on Reconsideration.	07/06/06	71 FR 38268
Order on Reconsideration.	08/16/06	71 FR 47141
MO&O	08/16/06	71 FR 47145
Clarification	08/23/06	71 FR 49380
FNPRM	09/13/06	71 FR 54009
Final Rule; Clarification.	02/14/07	72 FR 6960
Order	03/14/07	72 FR 11789
R&O	08/06/07	72 FR 43546
Public Notice	08/16/07	72 FR 46060
Order	11/01/07	72 FR 61813
Public Notice	01/04/08	73 FR 863
R&O/Declaratory Ruling.	01/17/08	73 FR 3197
Order	02/19/08	73 FR 9031
Order	04/21/08	73 FR 21347
R&O	04/21/08	73 FR 21252
Order	04/23/08	73 FR 21843
Public Notice	04/30/08	73 FR 23361
Order	05/15/08	73 FR 28057
Declaratory Ruling	07/08/08	73 FR 38928
FNPRM	07/18/08	73 FR 41307
R&O	07/18/08	73 FR 41286
Public Notice	08/01/08	73 FR 45006
Public Notice	08/05/08	73 FR 45354
Public Notice	10/10/08	73 FR 60172
Order	10/23/08	73 FR 63078
2nd R&O and Order on Reconsideration.	12/30/08	73 FR 79683
Order	05/06/09	74 FR 20892
Public Notice	05/07/09	74 FR 21364
NPRM	05/21/09	74 FR 23815
Public Notice	05/21/09	74 FR 23859
Public Notice	06/12/09	74 FR 28046
Order	07/29/09	74 FR 37624
Public Notice	08/07/09	74 FR 39699
Order	09/18/09	74 FR 47894
Order	10/26/09	74 FR 54913
Public Notice	05/12/10	75 FR 26701
Order Denying Stay Motion (Release Date).	07/09/10	
Order	08/13/10	75 FR 49491
Order	09/03/10	75 FR 54040
NPRM	11/02/10	75 FR 67333
NPRM	05/02/11	76 FR 24442
Order	07/25/11	76 FR 44326
Final Rule (Order)	09/27/11	76 FR 59551
Final Rule; Announcement of Effective Date.	11/22/11	76 FR 72124
Proposed Rule (Public Notice).	02/28/12	77 FR 11997
Proposed Rule (FNPRM).	02/01/12	77 FR 4948
First R&O	07/25/12	77 FR 43538
Public Notice	10/29/12	77 FR 65526
Order on Reconsideration.	12/26/12	77 FR 75894
Order	02/05/13	78 FR 8030
Order (Interim Rule).	02/05/13	78 FR 8032
NPRM	02/05/13	78 FR 8090
Announcement of Effective Date.	03/07/13	78 FR 14701
NPRM Comment Period End.	03/13/13	
FNPRM	07/05/13	78 FR 40407
FNPRM Comment Period End.	09/18/13	
R&O	07/05/13	78 FR 40582
R&O	08/15/13	78 FR 49693
FNPRM	08/15/13	78 FR 49717
FNPRM Comment Period End.	09/30/13	
R&O	08/30/13	78 FR 53684
FNPRM	09/03/13	78 FR 54201
NPRM	10/23/13	78 FR 63152
FNPRM Comment Period End.	11/18/13	
Petiton for Reconsideration; Request for Comment.	12/16/13	78 FR 76096
Petition for Reconsideration; Request for Comment.	12/16/13	78 FR 76097
Request for Clarification; Request for Comment; Correction.	12/30/13	78 FR 79362
Petition for Reconsideration Comment Period End.	01/10/14	
NPRM Comment Period End.	01/21/14	
Announcement of Effective Date.	07/11/14	79 FR 40003
Announcement of Effective Date.	08/28/14	79 FR 51446
Correction—Announcement of Effective Date.	08/28/14	79 FR 51450
Technical Amendments.	09/09/14	79 FR 53303
Public Notice	09/15/14	79 FR 54979
R&O and Order	10/21/14	79 FR 62875
FNPRM	10/21/14	79 FR 62935
FNPRM Comment Period End.	12/22/14	
Final Action (Announcement of Effective Date).	10/30/14	79 FR 64515
Final Rule Effective.	10/30/14	
FNPRM	11/08/15	80 FR 72029
FNPRM Comment Period End.	01/01/16	
Public Notice	01/20/16	81 FR 3085
Public Notice Comment Period End.	02/16/16	
R&O	03/21/16	81 FR 14984
FNPRM	08/24/16	81 FR 57851
FNPRM Comment Period End.	09/14/16	
NOI and FNPRM	04/12/17	82 FR 17613
NOI and FNPRM Comment Period End.	05/30/17	
R&O	04/13/17	82 FR 17754
R&O	04/27/17	82 FR 19322
FNPRM	04/27/17	82 FR 19347
FNPRM Comment Period End.	07/11/17	
R&O	06/23/17	82 FR 28566
Public Notice	07/21/17	82 FR 33856
Public Notice—Correction.	07/25/17	82 FR 34471
Public Notice Comment Period End.	07/31/17	
Public Notice—Correction Comment Period End.	08/17/17	
R&O	08/22/17	82 FR 39673
Announcement of Effective Date.	10/17/17	82 FR 48203
Public Notice; Petition for Reconsideration.	10/25/17	82 FR 49303
Oppositions Due Date.	11/20/17	
R&O and Declaratory Ruling.	06/27/18	83 FR 30082
FNPRM	07/18/18	83 FR 33899
FNPRM Comment Period End.	11/15/18	
Public Notice	08/23/18	83 FR 42630
Public Notice Opposition Period End.	09/17/18	
Announcement of Effective Date.	02/04/19	84 FR 1409
R&O	03/08/19	84 FR 8457
FNPRM	03/14/19	84 FR 9276
FNPRM Comment Period End.	04/29/19	
R&O	06/06/19	84 FR 26364
FNPRM	06/06/19	84 FR 26379
Petition for Recon Request for Comment.	06/18/19	84 FR 28264
Petition for Recon Comment Period End.	07/15/19	
FNPRM Comment Period End.	08/05/19	
R&O	01/06/20	85 FR 462
R&O	01/09/20	85 FR 1125
NPRM	01/09/20	85 FR 1134
NPRM Comment Period End.	02/13/20	
Announcement of Effective Date.	02/19/20	85 FR 9392
Final Rule; removal of compliance notices.	05/06/20	85 FR 26857
Report & Order	05/08/20	85 FR 27309
Final Rule; correction.	08/26/20	85 FR 52489
R&O and Order on Recon.	10/14/20	85 FR 64971
Final Rule; announcement of effective and compliance dates.	10/23/20	85 FR 67447
FNPRM	02/01/21	86 FR 7681
FNPRM Comment Period End.	04/02/21	
Public Notice; Petition for Reconsideration.	02/22/21	86 FR 10458
Oppositions Due Date.	03/19/21	

Action	Date	FR Cite
R&O	02/23/21	86 FR 10844
NPRM	03/19/21	86 FR 14859
NPRM Comment Period End.	05/03/21	
NPRM	06/04/21	86 FR 29969
NPRM Correction	06/15/21	86 FR 31668
Order on Recon	07/07/21	86 FR 35632
Public Notice	07/15/21	86 FR 37328
NPRM Correction Comment Period End.	07/30/21	
Public Notice Comment Period End.	08/09/21	
Order on Recon; Correction.	10/05/21	86 FR 54871
NPRM	10/05/21	86 FR 64440
NPRM Comment Period End.	01/18/22	
Report & Order	07/18/22	87 FR 42656
Report & Order	09/21/22	87 FR 57645
Report & Order	11/25/22	87 FR 72409
NPRM	12/08/22	87 FR 75199
NPRM Comment Period End.	02/06/23	
Public Notice	01/31/23	88 FR 6220
Public Notice Opposition Period End.	02/27/23	
NPRM	02/02/23	88 FR 7049
NPRM Comment Period End.	04/03/23	
Order on Reconsideration.	02/22/22	
Final Rule; Announcement of Effective Date.	03/08/23	88 FR 14251
Report and Order	08/01/23	88 FR 50053
NPRM	08/07/23	88 FR 52088
NPRM Comment Period End.	09/06/23	
NPRM Reply Comment Period End.	10/06/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Eliot Greenwald, Deputy Chief, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2235, *Email: eliot.greenwald@fcc.gov*.

RIN: 3060–AI15

518. Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10–51) [3060–AJ42]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225; 47 U.S.C. 303(r)

Abstract: The Commission takes a fresh look at its VRS rules to ensure that it is available to and used by the full spectrum of eligible users, encourages innovation, and is provided efficiently to be less susceptible to the waste, fraud, and abuse that have plagued the program and threatened its long-term viability. The Commission also considers the most effective and efficient way to make VRS available and to determine what is the most fair, efficient, and transparent cost-recovery methodology. In addition, the Commission looks at various ways to measure the quality of VRS so as to ensure a better consumer experience.

Timetable:

Action	Date	FR Cite
Declaratory Ruling	05/07/10	75 FR 25255
Declaratory Ruling	07/13/10	75 FR 39945
Order	07/13/10	75 FR 39859
Notice of Inquiry	07/19/10	75 FR 41863
NPRM	08/23/10	75 FR 51735
Interim Final Rule	02/15/11	76 FR 8659
Public Notice	03/02/11	76 FR 11462
R&O	05/02/11	76 FR 24393
FNPRM	05/02/11	76 FR 24437
NPRM	05/02/11	76 FR 24442
R&O (Correction)	05/27/11	76 FR 30841
Order	07/25/11	76 FR 44326
2nd R&O	08/05/11	76 FR 47469
Order (Interim Final Rule).	08/05/11	76 FR 47476
Final Rule; Announcement of Effective Date.	09/26/11	76 FR 59269
Final Rule; Petition for Reconsideration; Public Notice.	09/27/11	76 FR 59557
Oppositions Due Date.	10/07/11	
Final Rule; Clarification (MO&O).	10/31/11	76 FR 67070
FNPRM	10/31/11	76 FR 67118
Interim Final Rule; Announcement of Effective Date.	11/03/11	76 FR 68116
Final Rule; Announcement of Effective Date.	11/04/11	76 FR 68328
Final Rule; Announcement of Effective Date.	11/07/11	76 FR 68642
FNPRM Comment Period End.	12/30/11	
FNPRM	02/01/12	77 FR 4948
FNPRM Comment Period End.	03/19/12	
Final Rule; Correction.	03/27/12	77 FR 18106
Correcting Amendments.	06/07/12	77 FR 33662
Order (Release Date).	07/25/12	
Correcting Amendments.	10/04/12	77 FR 60630
Public Notice	10/29/12	77 FR 65526
Comment Period End.	11/29/12	
FNPRM	07/05/13	78 FR 40407
R&O	07/05/13	78 FR 40582
FNPRM Comment Period End.	09/18/13	
Public Notice	09/11/13	78 FR 55696
Public Notice	09/15/14	79 FR 54979
Comment Period End.	10/10/14	
Final Action (Announcement of Effective Date).	10/30/14	79 FR 64515
Final Rule Effective.	10/30/14	
FNPRM	11/18/15	80 FR 72029
FNPRM Comment Period End.	02/01/16	
R&O	03/21/16	81 FR 14984
FNPRM	08/24/16	81 FR 57851
FNPRM Comment Period End.	09/14/16	
NOI and FNPRM	04/12/17	82 FR 17613
NOI and FNPRM Comment Period End.	05/30/17	
R&O	04/13/17	82 FR 17754
R&O	04/27/17	82 FR 19322
FNPRM	04/27/17	82 FR 19347
FNPRM Comment Period End.	07/01/17	
Order	06/23/17	82 FR 28566
Public Notice	07/21/17	82 FR 33856
Public Notice Comment Period End.	07/31/17	
Public Notice Correction.	07/25/17	82 FR 34471
Public Notice Correction Comment Period End.	08/17/17	
R&O and Order	08/22/17	82 FR 39673
Announcement of Effective Date.	10/17/17	82 FR 48203
Public Notice; Petition for Reconsideration.	10/25/17	82 FR 49303
Oppositions Due Date.	11/20/17	
R&O	06/06/19	84 FR 26364
FNPRM	06/06/19	84 FR 26379
FNPRM Comment Period End.	08/05/19	
Report & Order	05/08/20	85 FR 27309
R&O and Order on Recon.	10/14/20	85 FR 64971
Final rule; announcement of effective and compliance dates.	10/23/20	85 FR 67447
FNPRM	02/01/21	86 FR 7681
FNPRM Comment Period End.	04/02/21	
Public Notice; Petition for Reconsideration.	02/22/21	86 FR 10458
Oppositions Due Date.	03/19/21	
NPRM	03/19/21	86 FR 14859
NPRM Comment Period End.	05/03/21	
NPRM	06/04/21	86 FR 29969
NPRM Correction	06/15/21	86 FR 31668
NPRM Correction Comment Period End.	07/30/21	
Order on Recon	07/07/21	86 FR 35632
Order on Recon; Correction.	10/05/21	86 FR 54871
Report & Order	09/21/22	87 FR 57645
Report & Order	11/25/22	87 FR 72409
NPRM	12/08/22	87 FR 75199

Action	Date	FR Cite
NPRM Comment Period End.	02/06/23	
Public Notice	01/31/23	88 FR 6220
Public Notice Opposition Period End.	02/27/23	
Final Rule; Announcement of Effective Date.	03/08/23	88 FR 14251
Public Notice	04/25/23	88 FR 24986
Public Notice Comment Period End.	05/09/23	
Public Notice Reply Comment Period End.	05/19/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Eliot Greenwald, Deputy Chief, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2235, *Email: eliot.greenwald@fcc.gov*.

RIN: 3060–AJ42

519. Implementation of the Middle-Class Tax Relief and Job Creation Act of 2012/Establishment of a Public Safety Answering Point Do-Not-Call Registry (CG Docket No. 12–129) [3060–AJ84]

Legal Authority: Pub. L. 112–96, sec. 6507

Abstract: The Middle Class Tax Relief and Job Creation Act of 2012 required the Commission to create a Do-Not-Call Registry for public safety answering point (PSAP) telephone numbers and to prohibit the use of automated dialing equipment to place calls to PSAP numbers on the Registry. In this docket, the Commission adopted rules and policies implementing these statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/21/12	77 FR 37362
R&O	10/29/12	77 FR 71131
Correction Amendments.	02/13/13	78 FR 10099
Announcement of Effective Date.	03/26/13	78 FR 18246
FNPRM	11/01/21	86 FR 60189
FNPRM Comment Period End.	12/01/21	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Richard D. Smith, Special Counsel, Consumer Policy Division, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 717 338–2797, *Fax:* 717 338–2574, *Email: richard.smith@fcc.gov*.

RIN: 3060–AJ84

520. Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10–213) [3060–AK00]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 255; 47 U.S.C. 617 to 619

Abstract: These proceedings implement sections 716, 717, and 718 of the Communications Act, which were added by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), related to the accessibility of advanced communications services and equipment (section 716), recordkeeping and enforcement requirements for entities subject to sections 255, 716, and 718 (section 717), and accessibility of internet browsers built into mobile phones (section 718).

Timetable:

Action	Date	FR Cite
NPRM	03/14/11	76 FR 13800
NPRM Comment Period Extended.	04/12/11	76 FR 20297
NPRM Comment Period End.	05/13/11	
FNPRM	12/30/11	76 FR 82240
R&O	12/30/11	76 FR 82354
FNPRM Comment Period End.	03/14/12	
Announcement of Effective Date.	04/25/12	77 FR 24632
2nd R&O	05/22/13	78 FR 30226
R&O on Remand, Declaratory Ruling, and Order.	04/13/15	80 FR 19738
Public Notice	05/19/22	87 FR 30442
Public Notice Comment Period End.	07/18/22	
Report and Order	08/01/23	88 FR 50053
NPRM	08/07/23	88 FR 52088
NPRM Comment Period End.	09/06/23	
NPRM Reply Comment Period End.	10/06/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Darryl Cooper, Attorney, Disability Rights Office, CGB, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7131, *Email: darryl.cooper@fcc.gov*.

RIN: 3060–AK00

521. Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13–24 [3060–AK01]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

Abstract: The Federal Communications Commission (FCC) initiated this proceeding in its effort to ensure that internet-Protocol Captioned Telephone Service (IP CTS) is provided effectively and in the most efficient manner. In doing so, the FCC adopted rules to address certain practices related to the provision and marketing of IP CTS, as well as compensation of TRS providers. IP CTS is a form of relay service designed to allow people with hearing loss to speak directly to another party on a telephone call and to simultaneously listen to the other party and read captions of what that party is saying over an IP-enabled device. To ensure that IP CTS is provided efficiently to persons who need to use this service, the Commission adopted rules establishing several requirements and issued an FNPRM to address additional issues.

Timetable:

Action	Date	FR Cite
NPRM	02/05/13	78 FR 8090
Order (Interim Rule).	02/05/13	78 FR 8032
Order	02/05/13	78 FR 8030
Announcement of Effective Date.	03/07/13	78 FR 14701
NPRM Comment Period End.	03/12/13	
R&O	08/30/13	78 FR 53684
FNPRM	09/03/13	78 FR 54201
FNPRM Comment Period End.	11/18/13	
Petition for Reconsideration Request for Comment.	12/16/13	78 FR 76097
Petition for Reconsideration Comment Period End.	01/10/14	
Announcement of Effective Date.	07/11/14	79 FR 40003
Announcement of Effective Date.	08/28/14	79 FR 51446
Correction—Announcement of Effective Date.	08/28/14	79 FR 51450
Technical Amendments.	09/09/14	79 FR 53303
R&O and Declaratory Ruling.	06/27/18	83 FR 30082
FNPRM	07/18/18	83 FR 33899
Public Notice	08/23/18	83 FR 42630
Public Notice Opposition Period End.	09/17/18	

Action	Date	FR Cite
FNPRM Comment Period End.	11/15/18	
Announcement of Effective Date.	02/04/19	84 FR 1409
R&O	03/08/19	84 FR 8457
FNPRM	03/14/19	84 FR 9276
FNPRM Comment Period End.	04/29/19	
Petition for Recon Request for Comment.	06/18/19	84 FR 28264
Petition for Recon Comment Period End.	07/15/19	
R&O	01/06/20	85 FR 462
Announcement of Effective Date.	02/19/20	85 FR 9392
Final Rule; Removal of Compliance Notes.	05/06/20	85 FR 26857
Final Rule; correction.	08/26/20	85 FR 52489
R&O and Order on Recon.	10/14/20	85 FR 64971
FNPRM	02/01/21	86 FR 7681
Public Notice; Petition for Reconsideration.	02/22/21	86 FR 10458
NPRM	03/19/21	86 FR 14859
Oppositions Due Date.	03/19/21	
FNPRM Comment Period End.	04/02/21	
NPRM Comment Period End.	05/03/21	
Public Notice	07/15/21	86 FR 37328
Public Notice Comment Period End.	08/09/21	
Report & Order	09/21/22	87 FR 57645
NPRM	12/08/22	87 FR 75199
NPRM Comment Period End.	02/06/23	
Public Notice	01/31/23	88 FR 6220
Public Notice Opposition Period End.	02/27/23	
NPRM	02/02/23	88 FR 7049
NPRM Comment Period End.	04/03/23	
Order on Reconsideration.	02/22/23	88 FR 10853
Final Rule; Announcement of Effective Date.	03/08/23	88 FR 14251
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Eliot Greenwald, Deputy Chief, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2235, *Email: eliot.greenwald@fcc.gov*.

RIN: 3060–AK01

522. Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17–59) [3060–AK62]

Legal Authority: 47 U.S.C. 201 and 202; 47 U.S.C. 227; 47 U.S.C. 251(e)

Abstract: The Telephone Consumer Protection Act of 1991 restricts the use of robocalls autodialed or prerecorded calls in certain instances. In CG Docket No. 17–59, the Commission considers rules and policies aimed at eliminating unlawful robocalling. Among the issues it examines in this docket are whether to allow carriers to block calls that purport to be from unallocated or unassigned phone numbers through the use of spoofing, whether to allow carriers to block calls based on their own analyses of which calls are likely to be unlawful and whether to establish a database of reassigned phone numbers to help prevent robocalls to consumers, who did not consent to such calls.

Timetable:

Action	Date	FR Cite
NPRM/NOI	05/17/17	82 FR 22625
2nd NOI	07/13/17	
NPRM Comment Period End.	07/31/17	
FNPRM	01/08/18	83 FR 770
R&O	01/12/18	83 FR 1566
2nd FNPRM	04/23/18	83 FR 17631
2nd FNPRM Comment Period End.	06/07/18	
2nd FNPRM Reply Comment Period End.	07/09/18	
2nd R&O	03/26/19	84 FR 11226
3rd FNPRM	06/24/19	84 FR 29478
Declaratory Ruling	06/24/19	84 FR 29387
Public Notice Seeking Input on Report.	12/30/19	
Public Notice Seeking Comment on Reassigned Numbers.	01/24/20	
Public Notice Seeking Comment on RND Cost/Fee Structure.	02/26/20	
Public Notice Establishing Guidelines for RND.	04/16/20	
Report	06/25/20	
3rd NPRM Comment Date.	06/26/20	
Announcement of Compliance Dates.	06/26/20	85 FR 38334
3rd R&O, Order of Reconsideration, 4th FNPRM.	07/31/20	85 FR 46063
4th R&O (release date).	12/30/20	
Public Notice	02/08/21	86 FR 8558
Public Notice	04/13/21	
Public Notice	06/15/21	
Public Notice	10/01/21	86 FR 61077
5th FNPRM	10/26/21	86 FR 59084
Public Notice	12/29/21	
Order on Reconsideration, 6th FNPRM, Waiver Order.	12/30/21	86 FR 74399
Public Notice	02/08/22	87 FR 7044
Seventh Further Notice of Proposed Rulemaking.	05/19/22	87 FR 42670
Sixth Report and Order.	05/19/22	87 FR 42916
Public Notice	08/24/22	87 FR 51920
Public Notice	11/18/22	87 FR 69206
Seventh Report and Order (Proposed Rule).	05/19/23	88 FR 43489
Eighth Further Notice, and Third Notice of Inquiry (Final Rule).	05/19/23	88 FR 43446
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Karen Schroeder, Associate Division Chief, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0654, *Email: karen.schroeder@fcc.gov*.

Jerusha Burnett, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0526, *Email: jerusha.burnett@fcc.gov*.

RIN: 3060–AK62

523. Empowering Broadband Consumers Through Transparency (CG Docket No. 22–2) [3060–AL33]

Legal Authority: Infrastructure Investment and Jobs Act, Pub. L. 117–58, 135 Stat. 429, 60504(a) (2021)

Abstract: In this docket, the Commission adopted rules requiring broadband internet access service providers (ISPs) to display, at the point of sale, labels to disclose to consumers certain information about prices, introductory rates or promotions, data allowances, broadband speeds, and management practices, among other things.

Timetable:

Action	Date	FR Cite
NPRM	02/07/22	87 FR 6827
NPRM Comment Period End.	03/09/22	
NPRM Reply Comment Period End.	03/24/22	

Action	Date	FR Cite
Report & Order and FNPRM.	12/16/22	87 FR 77048
FNPRM Comment Period Extended.	01/04/23	
FNPRM Comment Period End.	03/16/23	
Petition for Reconsideration.	01/31/23	88 FR 6219
Petition for Reconsideration Comment Period End.	02/27/23	
Order	08/07/23	88 FR 52043
Order of Reconsideration.	09/18/23	88 FR 63853
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Erica McMahon, Attorney Advisor, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0346, *Email: erica.mcmahon@fcc.gov*.

RIN: 3060–AL33

524. Targeting and Eliminating Unlawful Text Messages, CG Docket 21–403, Notice of Proposed Rulemaking [3060–AL49]

Legal Authority: 47 U.S.C. 154(i), 227(e), 251(e), 303

Abstract: In this docket, the Commission considers rules and policies concerning the ability for mobile wireless service providers to block illegal text messages.

Timetable:

Action	Date	FR Cite
NPRM	09/27/22	87 FR 61271
Report & Order	03/17/23	88 FR 21497
FNPRM	03/17/23	88 FR 20800
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mika Savir, Attorney, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0384, *Email: mika.savir@fcc.gov*.

RIN: 3060–AL49

525. Misuse of Internet Protocol (IP) Relay Service; CG Docket No. 12–38 [3060–AL58]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152 and 154; 47 U.S.C. 225; 47 U.S.C. 616

Abstract: Title IV of the Americans with Disabilities Act requires the Federal Communications Commission to ensure the availability of telecommunications relay services. IP Relay is a form of TRS that permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet. In CG Docket No. 12–38, the Commission considers rules and policy for the provision of IP Relay, including the process for registering users for IP CTS and the methodology for determining TRS Fund support.The Commission takes these steps to ensure the provision of IP Relay in a functionally equivalent manner to persons who are deaf, hard of hearing, deaf blind or have speech disabilities. In doing so, the Commission balances several different factors including regulating the recovery of costs caused by the service, encouraging the use of existing technology and not discouraging or impairing the development of improved technology, and ensuring IP Relay is available, to the extent possible and in the most efficient manner.

Timetable:

Action	Date	FR Cite
Public Notice	02/08/12	77 FR 11997
Public Notice Comment Period End.	03/20/12	
Final Rule	07/25/12	77 FR 43538
Final Rule Effective.	07/25/12	
NPRM	03/19/21	86 FR 14859
NPRM Comment Period End.	05/03/21	
Final Rule	11/25/22	87 FR 72409
Final Rule Effective.	12/27/22	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Scott, Attorney Advisor, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1264, *Email: michael.scott@fcc.gov*.

RIN: 3060–AL58

526. Compensation for Internet Protocol Captioned Telephone Service, (CG Docket No. 22–408) [3060–AL59]

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 225

Abstract: Title IV of the Americans with Disabilities Act requires the Federal Communications Commission to ensure the availability of telecommunications relay. Internet Protocol Captioned Telephone Services (IP CTS) is a form of relay service designed to allow people with hearing loss to speak directly to another party on a telephone call and to simultaneously listen to the other party and read captions of what that party is saying over an IP-enabled device. In CG Docket No. 22–408, the Commission considers rules and policy for the adoption of a compensation methodology and compensation levels for Telecommunications Relay Services (TRS) Fund support of providers of IP CTS.The Commission takes these steps to ensure the provision of IP CTS in a functionally equivalent manner to persons who are deaf, hard of hearing, deaf, blind or have speech disabilities. In doing so, the Commission balances several different factors including regulating the recovery of costs caused by the service, encouraging the use of existing technology and not discouraging or impairing the development of improved technology, and ensuring IP CTS is available, to the extent possible and in the most efficient manner.

Timetable:

Action	Date	FR Cite
NPRM	02/02/23	88 FR 7049
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Scott, Attorney Advisor, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1264, *Email: michael.scott@fcc.gov*.

RIN: 3060–AL59

527. • Access to Video Conferencing, (CG Docket No. 23–161) [3060–AL66]

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 225; 47 U.S.C. 617

Abstract: Section 716 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) (47 U.S.C. 617) requires the Federal Communications Commission to ensure the accessibility and usability of advanced communications services (ACS), including interoperable video conferencing services (IVCS), for individual with disabilities, unless such requirements are not achievable. IVCS is defined by the CVAA as a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.'' In CG Docket No. 23–161, the Commission considers rules and policies for the adoption of usability and accessibility requirements for IVCS and the integration of IVCS

with telecommunications relay services (TRS). The Commission takes these steps to ensure that IVCS are accessible to and usable by persons with disabilities and that users of TRS are able to participate in video conferencing services in a functionally equivalent manner to persons without hearing and speech disabilities. In doing so, the Commission balances several different factors including regulating IVCS, encouraging the use of advanced technology, not discouraging or impairing the development of improved technology, and ensuring IVCS are accessible to and usable by persons with disabilities.

Timetable:

Action	Date	FR Cite
Report and Order	08/01/23	88 FR 50053
NPRM	08/07/23	88 FR 52088
NPRM Comment Period End.	09/06/23	
NPRM Reply Comment Period End.	10/06/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ike Ofobike, Attorney Advisor, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1028, *Email: ike.ofobike@fcc.gov*.

RIN: 3060–AL66

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Economics

Long-Term Actions

528. Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans [3060–AJ15]

Legal Authority: 15 U.S.C. 251; 47 U.S.C. 252; 47 U.S.C. 257; 47 U.S.C. 271; 47 U.S.C. 1302; 47 U.S.C. 160(b); 47 U.S.C. 161(a)(2)

Abstract: The 09/09/2022 Order ended the collection of broadband deployment data through Form 477. Broadband and voice subscribership data will continue to be submitted through Form 477. Beginning with data as of December 31, 2022, and beyond, Form 477 subscribership data is submitted in the Broadband Data Collection (BDC) filing system. The Form 477 filing system remains open for filers to submit and make corrections to filings through June 30, 2022.

Timetable:

Action	Date	FR Cite
NPRM	05/16/07	72 FR 27519
Order	07/02/08	73 FR 37861
Order	10/15/08	73 FR 60997
NPRM	02/08/11	76 FR 10827
Order	06/27/13	78 FR 49126
NPRM	08/24/17	82 FR 40118
NPRM Comment Period End.	09/25/17	
NPRM Reply Comment Period End.	10/10/17	
R&O and FNPRM	08/22/19	84 FR 43764
Order	12/16/22	87 FR 76949
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Suzanne Mendez, Supervisory Program Manager, OEA, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0941, *Email: suzanne.mendez@fcc.gov*.

RIN: 3060–AJ15

529. Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12–268) [3060–AJ82]

Legal Authority: 47 U.S.C. 309(j)(8)(G); 47 U.S.C. 1452

Abstract: In February 2012, the Middle-Class Tax Relief and Job Creation Act was enacted (Pub. L. 112–96, 126 Stat. 156 (2012)). Title VI of that statute, commonly known as the Spectrum Act, provides the Commission with the authority to conduct incentive auctions to meet the growing demand for wireless broadband. Pursuant to the Spectrum Act, the Commission may conduct incentive auctions that will offer new initial spectrum licenses subject to flexible-use service rules on spectrum made available by licensees that voluntarily relinquish some or all of their spectrum usage rights in exchange for a portion, based on the value of the relinquished rights as determined by an auction, of the proceeds of bidding for the new licenses. In addition to granting the Commission general authority to conduct incentive auctions, the Spectrum Act requires the Commission to conduct an incentive auction of broadcast TV spectrum and sets forth special requirements for such an auction.

The Spectrum Act requires that the BIA consist of a reverse auction ''to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its spectrum usage rights'' and a forward auction of licenses in the reallocated spectrum for flexible-use services, including mobile broadband. Broadcast television licensees who elected to voluntarily participate in the auction had three bidding options: go off-the-air, share spectrum with another broadcast television licensee, or move channels to the upper or lower VHS band in exchange for receiving part of the proceeds from auctioning that spectrum to wireless providers. The Spectrum Act also authorized the Commission to reorganize the 600 MHz band following the BIA including, as necessary, reassigning full power and Class A television stations to new channels in order to clear the spectrum sold in the BIA. That post-auction reorganization (known as the repack) is currently underway and all of the stations who were assigned new channels are scheduled to have vacated their pre-auction channels by July 3, 2020, pursuant to a 10-phase transition schedule adopted by the Commission.

In May 2014, the Commission adopted a Report and Order that laid out the general framework for the BIA. The auction started on March 29, 2016, with the submission of initial commitments by eligible broadcast licensees. The BIA ended on April 13, 2017, with the release of the Auction Closing and Channel Reassignment Public Notice that also marked the start of the 39-month transition period during which 987 of the full power and Class A television stations remaining on-the-air will transition their stations to their post-auction channel assignments in the reorganized television band. Pursuant to the Spectrum Act, the Commission will reimburse 957 of those full power and Class A stations for the reasonable costs associated with relocating to their post-auction channel assignments and will reimburse multichannel video programming distributors for their costs associated with continuing to carry the signals of those stations.

In March 2018, the Consolidated Appropriations Act (Pub. L. 115–141, at Div. E, Title V, 511, 132 Stat. 348 (2018), codified at 47 U.S.C. 1452(j)-(n)) (the Reimbursement Expansion Act or REA), extended the deadline for reimbursement of eligible entities from April 2020 to no later than July 3, 2023, and also expanded the universe of entities eligible for reimbursement to include low-power television stations and TV translator stations displaced by the BIA for their reasonably incurred costs to relocate to a new channel, and FM broadcast stations for their reasonably incurred costs for facilities

necessary to reasonably minimize disruption of service as a result of the post-auction reorganization of the television band. On March 15, 2019, the Commission adopted a Report and Order setting rules for the reimbursement of eligible costs to those newly eligible entities.

Timetable:

Action	Date	FR Cite
NPRM	11/21/12	77 FR 69933
R&O	08/15/14	79 FR 48441
Final Rule	10/11/17	82 FR 47155
NPRM	08/27/18	83 FR 43613
R&O	03/26/19	84 FR 11233
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jean L. Kiddoo, Chair, Incentive Auction Task Force, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7757, *Email: jean.kiddoo@fcc.gov*.

RIN: 3060–AJ82

530. Broadband Data Collection [3060–AL42]

Legal Authority: 47 U.S.C. 151 to 154; 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 641 to 646

Abstract: The Commission has long recognized that precise, granular data on the availability of fixed and mobile broadband are vital to bringing digital opportunity to all Americans, no matter where they live, work, or travel.

On March 23, 2020, the Broadband Deployment Accuracy and Technological Availability Act (Broadband DATA Act) was signed into law requiring the Commission to create a new set of broadband availability maps. Among other things, the Broadband DATA Act requires the Commission to collect standardized, granular data on the availability and quality of both fixed and mobile broadband internet access services, to create a common dataset of all locations where fixed broadband internet access service can be installed (the Broadband Serviceable Location Fabric or Fabric), and to create publicly available coverage maps. The Act further requires the Commission to establish processes for members of the public and other entities to (1) provide verified data for use in the coverage maps; (2) challenge the coverage maps, the broadband availability data submitted by broadband internet access service providers (providers), and the Fabric; and (3) submit specific crowdsource information about the development and availability of broadband service.

In July 2020, implementing the Broadband DATA Act and building off of an August 2019 Report and Order and Notice of Proposed Rulemaking, the Commission adopted a Second Report and Order and Third Further Notice of Proposed Rulemaking that adopted rules for the collection and verification of improved, more precise data on both fixed broadband availability. In January 2021, the Commission released a Third Report and Order that established new requirements for the BDC and took additional steps to implement the Broadband DATA Act. The rules to specify which fixed and mobile providers are required to report broadband availability data and expanded the reporting and certification requirements for filing data in the BDC. It also adopted standards for collecting verified broadband data from state, local, and Tribal governmental entities and certain third parties, and for identifying locations that would be included in the Fabric. Importantly, in the Third Report and Order, the Commission also established processes for verifying the accuracy of provider-submitted data and the Fabric, including challenge processes which invite input from the public and other stakeholders in order to improve the accuracy of the maps.

Implementing the Broadband DATA Act and these new rules, the Commission created a new data platform and system to collect and map availability data collected from over 2,500 providers and for consumers and other stakeholders to submit challenges to that data; established the Fabric dataset of locations upon which to overlay provider availability data; and established a dedicated help center to provide technical assistance to providers, consumers, and other stakeholders.

In July 2021, the Wireless Telecommunications Bureau (WTB), Office of Economics and Analytics (OEA), and Office of Engineering and Technology (OET) released a Public Notice seeking comment on the technical requirements for the mobile challenge, verification, and crowdsourcing processes required under the Broadband DATA Act for the new Broadband Data Collection (BDC). In March 2022, the Broadband Data Task Force (Task Force), WTB, OEA, and OET released a detailed order, technical appendix, rules, and technical data specifications setting forth technical requirements and specifications for the mobile challenge, verification, and crowdsource processes required by the Act.

To help facilitate the mobile challenge process, in April 2022, the Task Force and OET issued a Public Notice announcing the technical requirements and procedures for approving third-party mobile speed test procedures for use in collecting and submitting mobile network performance data as part of the BDC. To assist entities that choose to file mobile challenges in bulk, in September 2022 the Task Force and WTB established a process for entities to use their own software and hardware to collect on-the-ground mobile speed test data for use in the BDC mobile challenge process.

Also in April 2022, the Task Force, WCB, WTB, OEA, and OET released a Public Notice providing details on the procedures for state, local, and Tribal governmental entities to submit verified availability data through the BDC system.

To clarify the Commission's rules for filing data in the BDC, in July 2022, WCB, WTB, OEA, and the Taskforce issued a Declaratory Ruling on certain aspects of a rule regarding the engineering certification in BDC filings and issued a limited waiver of the requirement that providers have an engineer certification their biannual BDC filings for the first three filing cycles of the BDC.

On June 15, 2022, the FCC Enforcement Bureau issued an Enforcement Advisory reminding all facilities-based providers of their duty to timely file complete and accurate data in the BDC by September 1, 2022.

In February 2022, the Commission announced that the initial filing window of the BDC would open on June 30, 2022, and that availability data as of June 30 were due no later than September 1, 2022. In September 2022, the Commission announced that as of September 12, 2022, state, local, and Tribal governments, service providers, and other entities may begin to file bulk challenges to location data in the Fabric.

In November 2022, the Commission released a pre-production draft of its new National Broadband Map displaying version 1 of the Fabric overlayed with provider reported availability data as of June 30, 2022. The new map was the most comprehensive, granular, and standardized data the Commission had ever published on broadband availability.

With the launch of the pre-production draft map, the Commission began accepting challenges to provider reported availability data, as well as individual consumer challenges to the location data in the Fabric. To date, the

mapping team has reviewed and processed more than 4 million availability challenges. Most of those challenges have already been resolved and the majority have led to updates in the data on the map showing where broadband is available.

The Commission adopted an Order in December 2022, to sunset the Form 477 broadband deployment data collection and eliminate a largely duplicative requirement on providers. As a result, providers will no longer be required to submit Form 477 broadband deployment data, but must still submit broadband and voice subscription data using the FCC Form 477. To further streamline the FCC's data collection efforts the BDC system allows filers to submit both their BDC data and 477 subscription data as a combined filing using a single interface.

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deployment data, but must still submit broadband and voice subscription data using the FCC Form 477. To further streamline the FCC's data collection efforts the BDC system allows filers to submit both their BDC data and 477 subscription data as a combined filing using a single interface.

The second version of the Fabric was made available to providers and other stakeholders in December 2022. This updated Fabric contained a net increase of more than one million new serviceable locations, as compared to the initial version. It also reflected the outcome of over 1 million location challenges. The second filing window of the BDC opened on January 3, 2023, and required all fixed and mobile providers to submit broadband availability data as of December 31, 2022, no later than March 1, 2023. On May 30, 2023,the National Broadband Map was updated to reflect availability data as of December 31, 2022, and version 2 of the Fabric.

On July 3, 2023, the Commission announced the opening of the third filing window for broadband availability data as of June 30, 2023. The BDC will continue to collect updated availability data from providers every 6 months. Updates to the National Broadband Map will be iterative and ongoing. The challenge processes will also continue on an ongoing basis in order to allow the public to provide input and help improve the accuracy of the National Broadband Map.

Timetable:

Action	Date	FR Cite
NPRM	08/03/17	82 FR 40118
NPRM Comment Period End.	09/25/17	
Report & Order	08/01/19	84 FR 43705
Second Further Notice of Proposed Rulemaking.	08/01/19	84 FR 43764
Second Further NPRM Comment Period End.	10/07/19	
2nd R&O	07/16/20	85 FR 50886
3rd FNPRM	07/16/20	85 FR 50911
3rd R&O	01/13/21	86 FR 18124
Public Notice	07/16/21	86 FR 40398
Public Notice Comment Period End.	09/27/21	
Order	03/09/22	87 FR 21476
Order	12/16/22	87 FR 76949
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kimia Nikseresht, Legal Advisor, Broadband Data Task Force, OEA, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1636, *Email: kimia.nikseresht@fcc.gov.*

RIN: 3060–AL42

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Office of Engineering and Technology

Long-Term Actions

531. Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186) [3060–AI52]

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 302; 47 U.S.C. 303(e) and 303(f); 47 U.S.C. 303(r); 47 U.S.C. 307

Abstract: The Commission adopted rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services. (This unused TV spectrum is often termed ''white spaces.'') This action will make a significant amount of spectrum available for new and innovative products and services, including broadband data and other services for businesses and consumers. The actions taken are a conservative first step that includes many safeguards to prevent harmful interference to incumbent communications services. Moreover, the Commission will closely oversee the development and introduction of these devices to the market and will take whatever actions may be necessary to avoid and, if necessary, correct any interference that may occur. The Second Memorandum Opinion and Order finalizes rules to make the unused spectrum in the TV bands available for unlicensed broadband wireless devices. This particular spectrum has excellent propagation characteristics that allow signals to reach farther and penetrate walls and other structures. Access to this spectrum could enable more powerful public internet connections—super Wi-Fi hot spots—with extended range, fewer dead spots, and improved individual speeds as a result of reduced congestion on existing networks. This type of ''opportunistic use'' of spectrum has great potential for enabling access to other spectrum bands and improving spectrum efficiency. The Commission's actions here are expected to spur investment and innovation in applications and devices that will be used not only in the TV band, but eventually in other frequency bands as well. This Order addressed five petitions for reconsideration of the Commission's decisions in the Second Memorandum Opinion and Order (''Second MO&O'') in these proceeding and modified rules in certain respects. In particular, the Commission: (1) increased the maximum height above average terrain (HAAT) for sites where fixed devices may operate; (2) modified the adjacent channel emission limits to specify fixed rather than relative levels; and (3) slightly increased the maximum permissible power spectral density (PSD) for each category of TV bands device. These changes will result in decreased operating costs for fixed TVBDs and allow them to provide greater coverage, thus increasing the availability of wireless broadband services in rural and underserved areas without increasing the risk of interference to incumbent services. The Commission also revised and amended several of its rules to better effectuate the Commission's earlier decisions in this docket and to remove ambiguities.

Timetable:

Action	Date	FR Cite
NPRM	06/18/04	69 FR 34103
First R&O	11/17/06	71 FR 66876
FNPRM	11/17/06	71 FR 66897
R&O and MO&O	02/17/09	74 FR 7314
Petitions for Reconsideration.	04/13/09	74 FR 16870
Second MO&O	12/06/10	75 FR 75814
Petitions for Reconsideration.	02/09/11	76 FR 7208
2 Order on Reconsideration, FNPRM, and Order.	05/17/12	77 FR 29236
FNPRM—Proposed Rule.	06/01/22	87 FR 33109
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7506, *Fax:* 202 418–1944, *Email: hugh.vantuyl@fcc.gov.*

RIN: 3060–AI52

532. Use of the 5.850–5.925 GHz Band; (ET Docket No. 19–138), FCC 19–129 [3060–AK96]

Legal Authority: 47 U.S.C. 1; 47 U.S.C. 4(i); 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 316; 47 U.S.C. 332; 47 CFR 1.411

Abstract: In this proceeding, we repurpose 45 megahertz of the 5.850–5.925 GHz band (the 5.9 GHz band) to allow for the expansion of unlicensed mid-band spectrum operations, while continuing to dedicate 30 megahertz of spectrum for vital intelligent

transportation system (ITS) operations. In addition, to promote the most efficient and effective use of this ITS spectrum, we are requiring the ITS service to use cellular vehicle-to-everything (C–V2X) based technology at the end of a transition period. By splitting the 5.9 GHz band between unlicensed and ITS uses, today's decision puts the 5.9 GHz band in the best position to serve the needs of the American public.

In the Further Notice, the Commission addresses issues remaining to finalize the restructuring of the 5.9 GHz band. Specifically, the Commission addresses: The transition of ITS operations in the 5.895–5.925 GHz band from Dedicated Short Range Communications (DSRC) based technology to Cellular Vehicle-to-Everything (C–V2X) based technology; the codification of C–V2X technical parameters in the Commission's rules; other transition considerations; and the transmitter power and emissions limits, and other issues, related to full-power outdoor unlicensed operations across the entire 5.850–5.895 GHz portion of the 5.9 GHz band. The Commission modified the Further Notice released on November 20, 2020, with an Erratum released on December 11, 2020. The Commission released a Second Erratum on February 9, 2021. The corrections from these errata are included in this document.

Timetable:

Action	Date	FR Cite
NPRM	02/06/20	85 FR 6841
NPRM Comment Period End.	03/09/20	
FNPRM	05/03/21	86 FR 23323
R&O & Order of Proposed Modification.	05/03/21	86 FR 23281
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Howard Griboff, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0657, *Fax:* 202 418–2824, *Email: howard.griboff@fcc.gov.*

RIN: 3060–AK96

533. Unlicensed White Space Device Operations in the Television Bands, ET Docket No. 20–36 [3060–AL22]

Legal Authority: 7 U.S.C.154(i); 47 U.S.C. 201; 47 U.S.C. 302a; 47 U.S.C. 303; 47 U.S.C. 1.407 and 1.411

Abstract: In this proceeding, the Commission revises its rules to provide additional opportunities for unlicensed white space devices operating in the broadcast television bands (TV bands) to deliver wireless broadband services in rural areas and applications associated with the Internet of Things (IoT). This region of the spectrum has excellent propagation characteristics that make it particularly attractive for delivering communications services over long distances, coping with variations in terrain, as well as providing coverage into and within buildings. We offer several proposals to spur continued growth of the white space device ecosystem, especially for providing affordable broadband service to rural and underserved communities that can help close the digital divide.

Timetable:

Action	Date	FR Cite
NPRM	04/03/20	85 FR 18901
NPRM Comment Period End.	04/03/20	
Report & Order	01/12/21	86 FR 2278
R&O—Final Rule	01/12/21	86 FR 2278
FNPRM—Proposed Rule.	02/25/21	86 FR 11490
2nd Order on Recon, FNPRM, and Order.	06/01/22	87 FR 33109
Order of Reconsideration, R&O, MO&O—Final Rule.	05/22/23	88 FR 32682
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7506, *Fax:* 202 418–1944, *Email: hugh.vantuyl@fcc.gov.*

RIN: 3060–AL22

534. Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization and Competitive Bidding Programs; ET Docket No. 21–232, EA Docket No. 21–233 [3060–AL23]

Legal Authority: secs. 4(i), 301, 302, 303, 309(j), 312, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. secs. 154(i), 301, 302a, 303, 309(j), 312, 316, and sec. 1.411

Abstract: In this proceeding, the Commission proposes prohibiting the authorization of any communications equipment on the list of equipment and services (Covered List) that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019. Such equipment has been found to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. We also seek comment on whether and under what circumstances we should revoke any existing authorizations of such covered communications equipment. We invite comment on whether we should require additional certifications relating to national security from applicants who wish to participate in Commission auctions. In the Notice of Inquiry, we seek comment on other actions the Commission should consider taking to create incentives in its equipment authorization processes for improved trust through the adoption of cybersecurity best practices in consumer devices.

Timetable:

Action	Date	FR Cite
NPRM and NOI	08/19/21	86 FR 46644
NPRM Comment Period End.	09/20/21	
Report & Order and FNPRM.	11/25/22	
FNPRM—Proposed Rule.	03/08/23	88 FR 14312
Report & Order—Final Rule.	02/06/23	88 FR 7592
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jamie Coleman, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2705, *Email: jaime.coleman@fcc.gov.*

RIN: 3060–AL23

535. Wireless Microphones in the TV Bands (ET Docket No. 21–115), 600 MHz Guard Band, 600 MHz Duplex Gap, and the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz [3060–AL27]

Legal Authority: 47 U.S.C. secs. 154(i), 201, 302a, 303, and secs. 1.407 and 1.411

Abstract: In this proceeding, the Commission seeks to enhance the spectral efficiency of wireless microphones by permitting a recently developed type of wireless microphone system, termed herein as a Wireless Multi-Channel Audio System (WMAS), to operate in certain frequency bands. This emerging technology would enable more wireless microphones to operate in the spectrum available for wireless microphone operations, and thus

advances an important Commission goal of promoting efficient spectrum use. The Commission proposes to revise the applicable technical rules for operation of low-power auxiliary station (LPAS) devices to permit WMAS to operate in the broadcast television (TV) bands and other LPAS frequency bands on a licensed basis. The Commission also proposes to update the existing LPAS and wireless microphone rules to reflect the end of the post-Incentive auction transition period and update references to international wireless microphone standards.

Timetable:

Action	Date	FR Cite
NPRM	07/01/21	86 FR 35046
NPRM Comment Period End.	08/02/21	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7506, *Fax:* 202 418–1944, *Email: hugh.vantuyl@fcc.gov.*

RIN: 3060–AL27

536. FCC Seeks To Enable State-of-the-Art Radar Sensors in 60 GHz Band (ET Docket No. 21–264) [3060–AL36]

Legal Authority: 47 U.S.C. 154(i), 201, 302a, 303, and secs. 1.407 and 1.411

Abstract: In this preceding, the Commission proposes to revise the Commission's rules to provide expanded operational flexibility to unlicensed field disturbance sensor (FDS) devices (*e.g.,* radars) that operate in the 57–64 GHz band (60 GHz band). The Commission's proposal recognizes the increasing practicality of using mobile radar devices in the 60 GHz band to perform innovative and life-saving functions, including gesture control, detection of unattended children in vehicles, and monitoring of vulnerable medical patients, and it is designed to stimulate the development of new products and services in a wide variety of areas to include, for example, personal safety, autonomous vehicles, home automation, environmental control, and healthcare monitoring, while also ensuring coexistence among unlicensed FDS devices and current and future unlicensed communications devices in the 60 GHz band.

Timetable:

Action	Date	FR Cite
NPRM	08/19/21	86 FR 46661
NPRM Comment Period End.	10/18/21	
Report and Order—Final Rule.	07/24/23	88 FR 47384
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AL36

537. FCC Proposes To Update Equipment Authorization Rules To Incorporate New and Revised Industry Standards, (ET Docket No. 21–363) [3060–AL39]

Legal Authority: 47 U.S.C. 154(i), 301, 302a, 303, and secs. 1.407 and 1.411

Abstract: We propose targeted updates to our rules to incorporate four new and updated standards that are integral to the testing of equipment and accreditation of laboratories that test RF devices.

Timetable:

Action	Date	FR Cite
NPRM	03/17/22	87 FR 15180
NPRM Comment Period End.	04/16/22	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Butler, Engineer, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2702, *Email: brian.butler@fcc.gov.*

RIN: 3060–AL39

538. Allocation of Spectrum for Non-Federal Space Launch Operations (ET Docket No. 13–115) [3060–AL44]

Legal Authority: 47 U.S.C. 151. 152, 154(i), 155(c), 301, 303(c), 303(f), and 303(r)

Abstract: In this proceeding, the Federal Communications Commission (Commission) takes steps towards establishing a spectrum allocation and licensing framework that will provide regulatory certainty and improved efficiency and that will promote innovation and investment in the United States commercial space launch industry. In the Further Notice of Proposed Rulemaking, the Commission seeks comment on the definition of space launch operations, the potential allocation of spectrum for the commercial space launch industry, including the 420–430 MHz, 2025–2110 MHz, and 5650–5925 MHz bands. In addition, the Commission seeks comment on establishing service rules, including licensing and technical rules and coordination procedures, for the use of spectrum for commercial space launch operations. Finally, the Commission seeks to refresh the record on potential ways to facilitate Federal use of commercial satellite services in what are currently non-Federal satellite bands and enable more robust federal use of the 399.9–400.05 MHz band.

Timetable:

Action	Date	FR Cite
NPRM and NOI ...	07/01/13	78 FR 39200
FNPRM—Proposed Rule.	06/10/21	86 FR 30860
Report & Order—Final Rule.	06/28/21	86 FR 33902
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AL44

FEDERAL COMMUNICATIONS COMMISSION (FCC)

International Bureau

Long-Term Actions

539. Update to Parts 2 and 25 Concerning Nongeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. I6–408 [3060–AK59]

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 316

Abstract: On January 11, 2017, the Commission began a rulemaking to update its rules and policies concerning non-geostationary-satellite orbit (NGSO), fixed-satellite service (FSS) systems and related matters. The Commission proposed among other things, to provide for more flexible use

of the 17.8–20.2 GHz bands for FSS, promote shared use of spectrum among NGSO FSS satellite systems, and remove unnecessary design restrictions on NGSO FSS systems. The Commission subsequently adopted a Report and Order establishing new sharing criteria among NGSO FSS systems and providing additional flexibility for FSS spectrum use. The Commission also released a Further Notice of Proposed Rulemaking proposing to remove the domestic coverage requirement for NGSO FSS systems and later adopted a Second Report and Order removing this requirement.

Timetable:

Action	Date	FR Cite
NPRM	01/11/17	82 FR 3258
NPRM Comment Period End.	04/10/17	
FNPRM	11/15/17	82 FR 52869
R&O	12/18/17	82 FR 59972
FNPRM Comment Period End.	01/02/18	
2nd R&O	02/21/21	86 FR 11642
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0803, *Email: clay.decell@fcc.gov.*

RIN: 3060–AK59

540. Amendment of Parts 2 and 25 of the FCC Rules To Facilitate the Use of Earth Stations in Motion Communicating With Geostationary Orbit Space Stations in FSS Bands: IB Docket No. 17–95 [3060–AK84]

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

Abstract: In June 2017, the Commission began a rulemaking to streamline, consolidate, and harmonize rules governing earth stations in motion (ESIMs) used to provide satellite-based services on ships, airplanes and vehicles communicating with geostationary-satellite orbit (GSO), fixed-satellite service (FSS) satellite systems. In September 2018, the Commission adopted rules governing communications of ESIMs with GSO satellites. These rules addressed communications in the conventional C-, Ku-, and Ka-bands, as well as portions of the extended Ku-band. At the same time, the Commission also released a Further Notice of Proposed Rulemaking that sought comment on allowing ESIMs to operate in all of the frequency bands in which earth stations at fixed locations operating in GSO FSS satellite networks can be blanket-licensed. Specifically, comment was sought on expanding the frequencies available for communications of ESIMs with GSO FSS satellites to include the following frequency bands: 10.7–10.95 GHz, 11.2–11.45 GHz, 17.8–18.3 GHz, 18.8–19.3 GHz, 19.3–19.4 GHz, 19.6–19.7 GHz (space-to-Earth); and 28.6–29.1 GHz (Earth-to-space).

Timetable:

Action	Date	FR Cite
NPRM	06/16/17	82 FR 27652
NPRM Comment Period End.	08/30/17	
OMB-approval for Information Collection of R&O Comment Period End.	08/28/18	
FNPRM	07/24/20	85 FR 44818
R&O	07/24/20	85 FR 44772
FNPRM Comment Period End.	09/22/20	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cindy Spiers, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1593, *Email: cindy.spiers@fcc.gov.*

RIN: 3060–AK84

541. Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18–315 [3060–AK89]

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

Abstract: In November 2018, the Commission adopted a notice of proposed rulemaking that proposed to expand the scope of the Commission's rules governing ESIMs operations to cover communications with NGSO FSS satellites. Comment was sought on establishing a regulatory framework for communications of ESIMs with NGSO FSS satellites that would be analogous to that which exists for ESIMs communicating with GSO FSS satellites. In this context, comment was sought on: (1) allowing ESIMs to communicate in many of the same conventional Ku-band, extended Ku-band, and Ka-band frequencies that were allowed for communications of ESIMs with GSO FSS satellites (with the exception of the 18.6–18.8 GHz and 29.25–29.5 GHz frequency bands); (2) extending blanket licensing to ESIMs communicating with NGSO satellites; and (3) revisions to specific provisions in the Commission's rules to implement these changes. The specific frequency bands for communications of ESIMs with NGOS FSS satellites on which comment was sought are as follows: 10.7–11.7 GHz; 11.7–12.2 GHz; 14.0–14.5 GHz; 17.8–18.3 GHz; 18.3–18.6 GHz; 18.8–19.3 GHz; 19.3–19.4 GHz; 19.6–19.7 GHz; 19.7–20.2 GHz; 28.35–28.6 GHz; 28.6–29.1 GHz; and 29.5–30.0 GHz.

Timetable:

Action	Date	FR Cite
NPRM	12/28/18	83 FR 67180
NPRM Comment Period End.	03/13/19	
R&O	07/24/20	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cindy Spiers, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1593, *Email: cindy.spiers@fcc.gov.*

RIN: 3060–AK89

542. Space Innovation; Mitigation of Orbital Debris in the New Space Age: IB Docket Nos. 18–313, 22–271 [3060–AK90]

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 605; 47 U.S.C. 721

Abstract: The Commission's current orbital debris rules were first adopted in 2004. Since then, significant changes have occurred in satellite technologies and market conditions, particularly in Low Earth Orbit, *i.e.,* below 2000 kilometers altitude. These changes include the increasing use of lower cost small satellites and proposals to deploy large constellations of non-geostationary satellite orbit (NGSO) systems, some involving thousands of satellites.

The NPRM proposes changes to improve disclosure of debris mitigation plans. The NPRM also makes proposals and seeks comment related to satellite disposal reliability and methodology, appropriate deployment altitudes in low-Earth-orbit, and on-orbit lifetime, with a particular focus on large NGSO satellite constellations. Other aspects of the NPRM include new rule proposals for geostationary orbit satellite (GSO) license term extension requests, and consideration of disclosure

requirements related to several emerging technologies and new types of commercial operations, including rendezvous and proximity operations.

The Report and Order in this proceeding adopted a number of these proposals. In addition a Further Notice of Proposed Rulemaking sought comment on topics such as collision risk and casualty risk for multi-satellite systems, de-orbit timelines, maneuverability requirements, and indemnification and post mission disposal bond issues. The Commission issued a Second Report and Order adopting a 5-year de-orbit timeframe for satellites ending their missions in or passing through the low-Earth Orbit region.

Timetable:

Action	Date	FR Cite
NPRM	02/19/19	84 FR 4742
NPRM Comment Period End.	05/06/19	
R&O	08/25/20	85 FR 52422
FNPRM	08/25/20	85 FR 52455
FNPRM Comment Period End.	10/09/20	
Second R&O	09/29/22	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexandra Horn, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1376, *Email: alexandra.horn@fcc.gov*.

RIN: 3060–AK90

543. Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket No. 16–155 [3060–AL12]

Legal Authority: 47 U.S.C. 154(l); 47 U.S.C. 154(j); 47 U.S.C. 214; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 413; 47 U.S.C. 34–39; E.O. 10530; 3 U.S.C. 301

Abstract: In this proceeding, the Commission considers rules and procedures that streamline and improve the timeliness and transparency of the process by which the Commission refers certain applications and petitions for declaratory ruling to the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy or trade policy issues related to foreign investment in the applicants and petitioners. The Commission, in this proceeding, also adopted Standard Questions that certain applicants with reportable foreign ownership will be required to answer as part of the Executive Branch review process of their applications.

Timetable:

Action	Date	FR Cite
NPRM	06/24/16	81 FR 46870
NPRM Comment Period End.	09/02/16	
Public Notice	04/27/20	85 FR 29914
Public Notice Comment Period End.	09/02/20	
Report & Order	10/01/20	85 FR 76360
Public Notice	12/30/20	85 FR 12312
Public Notice Comment Period End.	04/19/21	
Secord Report and Order Adopted.	09/30/21	86 FR 68428
Second R&O Released.	10/01/21	86 FR 68428
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Arthur T. Lechtman, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1465, *Fax:* 202 418–0175, *Email: arthur.lechtman@fcc.gov*.

RIN: 3060–AL12

544. Parts 2 and 25 to Enable GSO FSS in the 17.3–17.8 GHz Band, Modernize Rules for 17/24 GHz BSS Space Stations, and Establish Off-Axis Uplink Power Limits for Extended KA-Band FSS (IB Doc. No. 20–330) [3060–AL28]

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 309(j)

Abstract: This item addresses the addition of an allocation in the 17.3–17.7 GHz and 17.7–17.8 GHz bands to the fixed-satellite service in the space-to-Earth direction. The Notice of Proposed Rulemaking proposes to add these allocations to the U.S. Table of Frequency Allocations (non-Federal), and proposes modification of existing technical rules to prevent harmful interference between services in these bands.

Timetable:

Action	Date	FR Cite
NPRM	02/01/21	86 FR 7660
NPRM Comment Period End.	03/03/21	
NPRM Reply Comment Period End.	03/18/21	
R&O	09/03/22	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AL28

545. Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems: IB Docket No. 21–456 [3060–AL41]

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

Abstract: In 2021, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment on revisions to the spectrum sharing requirements among non-geostationary satellite orbit (NGSO), fixed-satellite service (FSS) systems. The NPRM proposed that the Commission's existing spectrum sharing mechanism for NGSO FSS systems will be limited to those systems approved in the same processing round. The NPRM also proposed to adopt a rule providing that later-round NGSO FSS systems will have to protect earlier-round systems, and invited comment on how to define such protection. In addition, the NPRM sought comment on whether to sunset, after a period of time, the interference protection afforded to an NGSO FSS system because of its processing round status.

In 2023, the Commission released a Report and Order (R&O) in this proceeding. The R&O adopted rules clarifying protection obligations between NGSO FSS systems authorized through different processing rounds by using a degraded throughput methodology, and subjected those protections to a sunset period. After the sunset period, new entrants authorized in later processing rounds would share spectrum on an equal basis with earlier-round incumbents. The R&O also clarified that all NGSO FSS operators licensed or granted market access in the United States must coordinate with each other in good faith, regardless of their processing round status, and explained the Commission's expectations for

information sharing during this good-faith coordination. In an accompanying Further Notice of Proposed Rulemaking (FNPRM), the Commission sought comment on which specific metrics should be used to define the protection afforded to an earlier-round NGSO FSS system from a later-round system, and sought specific comment on implementation of the degraded throughput methodology.

Timetable:

Action	Date	FR Cite
NPRM	01/24/22	87 FR 3481
NPRM Comment Period End.	03/25/22	
Report and Order	06/20/23	88 FR 39783
FNPRM	06/21/23	88 FR 40142
FNPRM Comment Period End.	09/05/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0803, *Email: clay.decell@fcc.gov*.

RIN: 3060–AL41

546. Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation (IB Docket Nos. 22–411 and 22–271) [3060–AL51]

Legal Authority: 47 U.S.C. 154(i) and 157(a); 47 U.S.C. 303 and 308(b)

Abstract: In December 2022, the Commission adopted a Notice of Proposed Rulemaking to seek comment on changes to its rules, policies, or practices to facilitate the acceptance for filing of satellite and earth station applications under 47 CFR part 25. The Commission proposed to revise a procedural rule to formally allow consideration of satellite for applications and petitions that request waiver of the Table of Frequency Allocations to operate in a frequency band without an international allocation. The Commission also sought comment on typical processing timeframes for satellite applications.

Timetable:

Action	Date	FR Cite
NPRM	01/17/23	88 FR 2590
NPRM Comment Period End.	04/03/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Julia Malette, Attorney Advisor, Space Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2453, *Email: julia.malette@fcc.gov*.

Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0803, *Email: clay.decell@fcc.gov*.

RIN: 3060–AL51

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Media Bureau

Long-Term Actions

547. Revision of EEO Rules and Policies (MB Docket No. 98–204) [3060–AH95]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 257; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307 to 309; 47 U.S.C. 334; 47 U.S.C. 403; 47 U.S.C. 554

Abstract: FCC authority to govern Equal Employment Opportunity (EEO) responsibilities of cable television operators was codified in the Cable Communications Policy Act of 1984. This authority was extended to television broadcast licensees and other multi-channel video programming distributors (MVPDs) in the Cable and Television Consumer Protection Act of 1992. In the Second Report and Order, the FCC adopted new EEO rules and policies. This action was in response to a decision of the U.S. Court of Appeals for the District of Columbia Circuit that found prior EEO rules unconstitutional. The Third Notice of Proposed Rulemaking (NPRM) requested comment as to the applicability of the EEO rules to part-time employees. The Third Report and Order adopted revised forms for broadcast station and MVPD Annual Employment Reports. The 2021 NPRM sought to update the existing record.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1704
Second R&O and Third NPRM.	01/07/03	68 FR 670
Correction	01/13/03	68 FR 1657
Fourth NPRM	06/23/04	69 FR 34986
Third R&O	06/23/04	69 FR 34950
FNPRM	08/31/21	86 FR 48610
FNPRM Comment Period End.	09/30/21	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Radhika Karmarkar, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1523, *Email: radhika.karmarkar@fcc.gov*.

RIN: 3060–AH95

548. Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185) [3060–AI38]

Legal Authority: 47 U.S.C. 309; 47 U.S.C. 336

Abstract: This proceeding initiated the digital television conversion for low-power television (LPTV) and television translator stations. The rules and policies adopted as a result of this proceeding provide the framework for these stations' conversion from analog to digital broadcasting. The revised rules reflect an effort to simplify, streamline, and modernize existing rules and procedures that will enable stations to comply with licensing requirements more easily through familiar and low-cost measures.

Timetable:

Action	Date	FR Cite
NPRM	09/26/03	68 FR 55566
NPRM Comment Period End.	11/25/03	
R&O	11/29/04	69 FR 69325
FNPRM and MO&O.	10/18/10	75 FR 63766
2nd R&O	07/07/11	76 FR 44821
3rd NPRM	11/28/14	79 FR 70824
NPRM Comment Period End.	12/29/14	
NPRM Reply Comment Period End.	01/12/15	
3rd R&O	02/01/16	81 FR 5041
4th NPRM	02/01/16	81 FR 5086
Comment Period End.	02/22/16	
NPRM	12/23/19	84 FR 70489
5th NPRM	06/17/22	87 FR 36440
Report and Order	05/12/23	88 FR 30654
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Shaun Maher, Attorney, Video Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2324, *Fax:* 202 418–2827, *Email: shaun.maher@fcc.gov*.

RIN: 3060–AI38

549. Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard (GN Docket No. 16–142) [3060–AK56]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307 to 309; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 325(b); 47 U.S.C. 336; 47 U.S.C. 399(b); 47 U.S.C. 403; 47 U.S.C. 534; 47 U.S.C. 535

Abstract: In this proceeding, the Commission seeks to authorize television broadcasters to use the ''Next Generation'' ATSC 3.0 broadcast television transmission standard on a voluntary, market-driven basis, while they continue to deliver current-generation digital television broadcast service to their viewers. In the Report and Order, the Commission adopted rules to afford broadcasters flexibility to deploy ATSC 3.0-based transmissions, while minimizing the impact on, and costs to, consumers and other industry stakeholders.

Timetable:

Action	Date	FR Cite
NPRM	03/10/17	82 FR 13285
NPRM Comment Period End.	05/09/17	
FNPRM	12/20/17	82 FR 60350
R&O	02/02/18	83 FR 4998
FNPRM Comment Period End.	02/20/18	
FNPRM Reply Comment Period End.	03/20/18	
NPRM	05/13/20	85 FR 28586
2nd R&O Order on Recon.	07/17/20	85 FR 43478
Report & Order	04/22/21	86 FR 21217
FNPRM	12/13/21	86 FR 70793
FNPRM Comment Period End.	02/11/22	
3rd FNPRM	07/07/22	87 FR 40464
3rd R&O	07/17/23	88 FR 45347
4th FNPRM	07/17/23	88 FR 45378
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ty Bream, Attorney Advisor, Industry Analysis Div., Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0644, *Email: ty.bream@fcc.gov*.

RIN: 3060–AK56

550. 2018 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules (MB Docket 18–349) [3060–AK77]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(i); 47 U.S.C. 257; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 309 and 310; 47 U.S.C. 403; sec. 202(h) of the Telecommunications Act

Abstract: Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its broadcast ownership rules every 4 years and to determine whether any such rules are necessary in the public interest as the result of competition. The rules subject to review in the 2018 quadrennial review are the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule. The Commission also sought comment on potential pro-diversity proposals including extending cable procurement requirements to broadcasters, adopting formulas aimed at creating media ownership limits that promote diversity, and developing a model for market-based, tradeable diversity credits to serve as an alternative method for setting ownership limits.

Timetable:

Action	Date	FR Cite
NPRM	02/28/19	84 FR 6741
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Radhika Karmarkar, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1523, *Email: radhika.karmarkar@fcc.gov*.

RIN: 3060–AK77

551. Equal Employment Opportunity Enforcement (MB Docket 19–177) [3060–AK86]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 334; 47 U.S.C. 554

Abstract: In this proceeding, the Commission seeks comment on ways in which it can make improvements to equal employment opportunity (EEO) compliance and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	07/22/19	84 FR 35063
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Radhika Karmarkar, Chief, IAD, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1523, *Email: radhika.karmarkar@fcc.gov*.

RIN: 3060–AK86

552. Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19–310) [3060–AL19]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j) and 303(r); 47 U.S.C. 303(r)

Abstract: In this proceeding, the Commission eliminated the radio duplication rule. The rule bars same-service (AM or FM) commercial radio stations from duplicating more than 25% of their total hours of programming in an average broadcast week if the stations have 50% or more contours overlap and are commonly owned or subject to a time brokerage agreement. Petitions for reconsideration are pending.

Timetable:

Action	Date	FR Cite
NPRM	12/23/19	84 FR 70485
Report & Order	10/22/20	85 FR 67303
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Radhika Karmarkar, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1523, *Email: radhika.karmarkar@fcc.gov*.

RIN: 3060–AL19

553. Sponsorship Identification Requirements for Foreign Government-Provided Programming (MB Docket No. 20–299) [3060–AL20]

Legal Authority: 47 U.S.C. 151 and 154 ; 47 U.S.C. 155; 47 U.S.C. 301 and 303; 47 U.S.C. 307 and 309 ; 47 U.S.C. 310; 47 U.S.C. 334; 47 U.S.C. 336 and 339

Abstract: In this proceeding, the Commission modifies its rules to require specific disclosure requirements for broadcast programming that is paid for, or provided by a foreign government or its representative.

Timetable:

Action	Date	FR Cite
NPRM	11/24/20	85 FR 74955
R&O	06/17/21	86 FR 32221
Second NPRM	11/17/22	87 FR 68960
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Radhika Karmarkar, Chief, IAD, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1523, *Email: radhika.karmarkar@fcc.gov*.

RIN: 3060–AL20

554. FM Broadcast Booster Stations (MB Docket 20–401) [3060–AL21]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154 and 157; 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 309; 47 U.S.C. 316 and 319; 47 U.S.C. 324

Abstract: In this proceeding, the Commission seeks comment on a proposal to amend its rules to enable FM broadcasters to use FM booster stations to air geo-targeted content (*e.g.,* news, weather, and advertisements) independent of the signals of its primary station within different portions of the primary station's protected service contour for a limited period of time during the broadcast hour.

Timetable:

Action	Date	FR Cite
NPRM	01/11/21	86 FR 1909
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Al Shuldiner, Chief, Audio Div., Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2700, *Email: albert.shuldiner@fcc.gov*.

RIN: 3060–AL21

555. Amendment of Part 73 Rules To Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to all Broadcast Stations (MB Docket No. 22–227) [3060–AL50]

Legal Authority: 47 U.S.C. 151 and 154; 47 U.S.C. 301 and 303; 47 U.S.C. 307 to 308; 47 U.S.C. 309 to 310; 47 U.S.C. 316 and 319; 47 U.S.C. 336

Abstract: In this proceeding, the Commission proposes to adopt revisions to rules in part 0, part 27, subparts E, H, I, J, and L of part 73, and certain parts of parts 74 and 90 in light of the fact that all television services have ceased analog operations. The Commission proposes to eliminate entire rules and portions of rules that provide for analog-to-analog and analog-to-digital interference protection requirements and other analog operating requirements. The Commission proposes to amend section headings and language in rules to remove references to DTV, digital, and analog television service, as these distinctions are no longer necessary. The Commission also propose to delete outdated rules that are no longer valid given changes in Commission-adopted policy. The Commission also proposes other non-substantive, technical revisions. The Commission also proposes to update rules to reference the current designation for form numbers (*e.g.,* FCC Form 2100) and by requiring electronic filing in the Commission's Licensing and Management System. The Commission also propose to make corrections or updates, inter alia, to section headings, spelling, contact information, and rule cross-references, or to language inadvertently omitted from a rule.

Timetable:

Action	Date	FR Cite
NPRM	02/09/23	88 FR 8636
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joyce Bernstein, Attorney Advisor, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1647, *Email: joyce.bernstein@fcc.gov.*

RIN: 3060–AL50

556. • Implementation of the Low Power Protection Act, MB Docket No. 23–126 [3060–AL63]

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 303; 47 U.S.C. 307 and 309; 47 U.S.C. 311 and 336(f)

Abstract: In this proceeding, the Commission seeks to implement the Low Power Protection Act (LPPA) consistent with Congressional direction. The LPPA provides certain low power television stations with an opportunity to apply for primary spectrum use status as Class A television stations.

Timetable:

Action	Date	FR Cite
NPRM	04/14/23	88 FR 2980
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Matthews, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2154, *Fax:* 202 418–2053, *Email: kim.matthews@fcc.gov.*

RIN: 3060–AL63

557. • Video Description, MB Docket No. 11–43 [3060–AL64]

Legal Authority: 47 U.S.C. 613

Abstract: In this proceeding, the Commission proposes to expand audio description requirements to additional market areas. The proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

Timetable:

Action	Date	FR Cite
NPRM	03/29/23	88 FR 18505
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Diana Sokolow, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2120, *Email: diana.sokolow@fcc.gov*.

RIN: 3060–AL64

558. • 2022 Quadrennial Review of Media Ownership Rules, MB Docket No. 22–459 [3060–AL65]

Legal Authority: 202(h) of the Telecommunications Act of 1996

Abstract: Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its media ownership rules every four years to determine whether they remain necessary in the public interest as the result of competition. This proceeding will examine the media ownership rules in light of the media landscape of 2022 and beyond.

Timetable:

Action	Date	FR Cite
Public Notice	01/17/23	88 FR 2595
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ty Bream, Attorney Advisor, Industry Analysis Div., Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0644, *Email: ty.bream@fcc.gov*.

RIN: 3060–AL65

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Media Bureau

Completed Actions

559. Preserving Vacant Channels in the UHF Television Band for Unlicensed Use; (MB Docket No. 15–146) [3060–AK43]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 403

Abstract: In this proceeding, the Commission considers proposals to preserve vacant television channels in the UHF television band for shared use by white space devices and wireless microphones following the repacking of the band after the conclusion of the Incentive Auction. In the 2015 NPRM, the Commission proposed preserving in each area of the country at least one vacant television channel. In the 2021 Report and Order, the Commission declined to adopt rules proposed in the 2015 NPRM.

Timetable:

Action	Date	FR Cite
NPRM	07/02/15	80 FR 38158
NPRM Comment Period End.	08/03/15	
NPRM Reply Comment Period End.	08/31/15	
Public Notice	09/01/15	80 FR 52715
R&O	02/12/21	86 FR 9297
Order on Recon	06/24/22	87 FR 37754
Withdrawn	08/17/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Shaun Maher, Attorney, Video Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2324, *Fax:* 202 418–2827, *Email: shaun.maher@fcc.gov.*

RIN: 3060–AK43

560. Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference (MB Docket 18–119) [3060–AK79]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307 to 309; 47 U.S.C. 316; 47 U.S.C. 319

Abstract: In this proceeding, the Commission proposes to streamline the rules relating to interference caused by FM translators and expedite the translator complaint resolution process. The rule changes are intended to limit or avoid protracted and contentious interference resolution disputes, provide translator licensees both additional flexibility to remediate interference and additional investment certainty, and allow earlier and expedited resolution of interference complaints by affected stations.

Timetable:

Action	Date	FR Cite
NPRM	06/06/18	83 FR 26229
NPRM Comment Period End.	07/06/18	
R&O	06/14/19	84 FR 27734
Withdrawn	08/17/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christine Goepp, Attorney, Audio Div., Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7834, *Email: christine.geopp@fcc.gov.*

RIN: 3060–AK79

561. Use of Common Antenna Site (MB Docket No. 19–282) [3060–AK99]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 303(r); 47 U.S.C. 307; 47 U.S.C. 309

Abstract: In this proceeding, the Commission eliminates the common antenna siting rules for FM and TV broadcaster applicants and licensees are necessary given the current broadcasting marketplace.

Timetable:

Action	Date	FR Cite
R&O	08/16/19	84 FR 41947
FNPRM	11/06/19	84 FR 59756
FNPRM Comment Period End.	12/06/19	
NPRM	08/05/20	85 FR
R&O (release date).	08/05/20	
Withdrawn	08/17/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Matthews, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2154, *Fax:* 202 418–2053, *Email: kim.matthews@fcc.gov.*

RIN: 3060–AK99

562. Updating Broadcast Radio Technical Rules (MB Docket 21–263) [3060–AL26]

Legal Authority: 47 U.S.C. secs. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319

Abstract: This proceeding was initiated to update the Commission's rules for the broadcast radio services by eliminating or amending outmoded or unnecessary regulations. This update ensures that the Commission's rules are accurate, reducing any potential confusion and alleviating unnecessary burdens.

Timetable:

Action	Date	FR Cite
NPRM	07/12/21	86 FR 43145
NPRM Comment Period End.	09/07/21	
R&O	03/18/22	87 FR 15339
Withdrawn	08/17/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christine Goepp, Attorney Advisor, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7834, *Email: christine.goepp@fcc.gov.*

RIN: 3060–AL26

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Office of Managing Director

Long-Term Actions

563. Assessment and Collection of Regulatory Fees [3060–AK64]

Legal Authority: 47 U.S.C. 159

Abstract: Section 9 of the Communications Act of 1934, as amended (47 U.S.C. 159), requires the Federal Communications Commission to recover the cost of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

Timetable:

Action	Date	FR Cite
NPRM	06/06/17	82 FR 26019
R&O	09/22/17	82 FR 44322
NPRM	06/14/18	83 FR 27846
NPRM Comment Period End.	06/21/18	
R&O	09/18/18	83 FR 47079
NPRM	06/05/19	84 FR 26234
NPRM Comment Period End.	06/07/19	
R&O	09/26/19	84 FR 50890
NPRM	05/08/20	85 FR 32256
R&O	06/22/20	85 FR 37364
NPRM	05/13/21	86 FR 26262
R&O	05/17/21	86 FR 26677
NPRM	09/21/21	86 FR 52429
R&O	09/22/21	86 FR 52742
NPRM Comment Period End.	10/21/21	
NPRM	06/28/22	87 FR 38588
Report & Order	09/14/22	87 FR 56494
NPRM	06/01/23	88 FR 36154
NPRM Comment Period End.	06/29/23	

Action	Date	FR Cite
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roland Helvajian, Office of the Managing Director, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–0444 *Email: roland.helvajian@fcc.gov.*

RIN: 3060–AK64

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Public Safety and Homeland Security Bureau

Long-Term Actions

564. Wireless E911 Location Accuracy Requirements: PS Docket No. 07–114 [3060–AJ52]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 332

Abstract: This rulemaking is related to the proceedings in which the FCC previously acted to improve the quality of all emergency services. Wireless carriers must provide specific automatic location information in connection with 911 emergency calls to Public Safety Answering Points (PSAPs). Wireless licensees must satisfy enhanced 911 location accuracy standards at either a county-based or a PSAP-based geographic level.

Timetable:

Action	Date	FR Cite
NPRM	06/20/07	72 FR 33948
R&O	02/14/08	73 FR 8617
Public Notice	09/25/08	73 FR 55473
FNPRM; NOI	11/02/10	75 FR 67321
Public Notice	11/18/09	74 FR 59539
2nd R&O	11/18/10	75 FR 70604
Second NPRM	08/04/11	76 FR 47114
Second NPRM Comment Period End.	11/02/11	
Final Rule	04/28/11	76 FR 23713
NPRM, 3rd R&O, and 2nd FNPRM.	09/28/11	76 FR 59916
3rd FNPRM	03/28/14	79 FR 17820
Order Extending Comment Period.	06/10/14	79 FR 33163
3rd FNPRM Comment Period End.	07/14/14	
Public Notice (Release Date).	11/20/14	
Public Notice Comment Period End.	12/17/14	
4th R&O	03/04/15	80 FR 11806
Final Rule	08/03/15	80 FR 45897
Order Granting Waiver.	07/10/17	
NPRM	09/26/18	83 FR 54180
4th NPRM	03/18/19	84 FR 13211
5th R&O	01/16/20	85 FR 2660
5th NPRM	01/16/20	85 FR 2683
5th NPRM Comment Period End.	03/16/20	
6th R&O and Order on Recon.	08/28/20	85 FR 53234
Order of Reconsideration.	01/01/21	86 FR 8714
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda Boykin, Deputy Chief, Policy & Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2062, *Email: brenda.boykin@fcc.gov.*

RIN: 3060–AJ52

565. Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206 [3060–AK39]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 34 to 39; 47 U.S.C. 301

Abstract: This proceeding takes steps toward assuring the reliability and resiliency of submarine cables, a critical piece of the Nation's communications infrastructure, by proposing to require submarine cable licensees to report to the Commission when outages occur and communications are disrupted. The Commission's intent is to enhance national security and emergency preparedness by these actions. In December 2019, the Commission adopted an Order on Reconsideration that modifies the requirement for submarine cable licensees to report outages to the Commission.

Timetable:

Action	Date	FR Cite
NPRM (Release Date).	09/18/15	
R&O	06/24/16	81 FR 52354
Petitions for Recon.	09/08/16	
Petitions for Recon—Public Comment.	10/17/16	81 FR 75368
Order on Recon.	12/20/19	84 FR 15733
PRA Approval for new collection.	03/25/21	
Public Notice re effective date.	04/28/21	
Compliance Date for New Rules.	10/28/21	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Scott Cinnamon, Attorney-Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2319, *Email: scott.cinnamon@fcc.gov.*

RIN: 3060–AK39

566. Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications: (PS Docket No. 15–80, 18–336, 23–5) [3060–AK40]

Legal Authority: sec. 1, 4(i), 4(j), 4(o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j); 316, 332, 403, 615a–1, and 615c of Pub. L. 73–416, 4 Stat. 1064, as amended; and sec. 706 of Pub. L. 104–104, 110 Stat. 56; 47 U.S.C. 151, 154(i)–(j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307; 309(a), 309(j), 316, 332, 403, 615a–1, 615c, and 1302, unless otherwise noted

Abstract: The 2004 Report and Order (R&O) extended the Commission's communication disruptions reporting rules to non-wireline carriers and streamlined reporting through a new electronic template (see docket ET Docket 04–35). In 2015, this proceeding, PS Docket 15–80, was opened to amend the original communications disruption reporting rules from 2004 in order to reflect technology transitions observed throughout the telecommunications sector. The Commission seeks to further study the possibility to share the reporting database information and access with State and other Federal entities. In May 2016, the Commission released a Report and Order, FNPRM, and Order on Reconsideration (see also Dockets 11–82 and 04–35). The R&O adopted rules to update the part 4 requirements to reflect technology transitions. The FNPRM sought comment on sharing information in the reporting database. Comments and replies were received by the Commission in August and September 2016.

In March 2020, the Commission adopted a Second Further Notice of Proposed Rulemaking in PS Docket No. 15–80 that proposed a framework to provide state and federal agencies with access to outage information to improve their situational awareness while preserving the confidentiality of this

data, including proposals to: provide direct, read-only access to NORS and DIRS filings to qualified agencies of the 50 states, the District of Columbia, Tribal nations, territories, and federal government; allow these agencies to share NORS and DIRS information with other public safety officials that reasonably require NORS and DIRS information to prepare for and respond to disasters; allow participating agencies to publicly disclose NORS or DIRS filing information that is aggregated and anonymized across at least four service providers; condition a participating agency's direct access to NORS and DIRS filings on their agreement to treat the filings as confidential and not disclose them absent a finding by the Commission that allows them to do so; and establish an application process that would grant agencies access to NORS and DIRS after those agencies certify to certain requirements related to maintaining confidentiality of the data and the security of the databases. In March 2021, the Commission adopted the proposed information sharing framework with some modifications in a Second Report and Order. In April 2021, in a Notice of Proposed Rulemaking, the Commission proposed to codify a rule adopted in 2016 that exempts satellite and terrestrial wireless providers from reporting outages that potentially affect special offices and facilities, as defined in Commission rules. This proceeding addresses the Commission's efforts to improve the utility of its efforts to track network outages and disruptions and does not promote the administration's specified priorities.

In May 2021, the California Public Utilities Commission (CPUC) filed a Petition for Reconsideration (PFR) requesting that the Commission reconsider its decision in the Second Report and Order to maintain the presumption of confidentiality applied to NORS and DIRS filings. The Commission sought comment on the PFR's requests.

Timetable:

Action	Date	FR Cite
NPRM, 2nd R&O, Order on Recon.	06/16/15	80 FR 34321
NPRM Comment Period End.	07/31/15	
R&O	07/12/16	81 FR 45055
FNPRM, 1 Part 4 R&O, Order on Recon.	08/11/16	81 FR 45059
Order Denying Reply Comment Deadline Extension Request.	09/08/16	
FNPRM Comment Period End.	09/12/16	
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Second Further NPRM.	02/28/20	85 FR 17818
Second Further NPRM Comment Period End.	06/01/20	
2nd R&O	04/29/21	86 FR 22796
3rd NPRM	06/30/21	86 FR 34679
CPUC PFR Comment Period End.	08/23/21	86 FR 40801
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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Saswat Misra, Attorney-Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0944, *Email: saswat.misra@fcc.gov.*

RIN: 3060–AK40

567. New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35 [3060–AK41]

Legal Authority: 47 U.S.C. 154 and 155; 47 U.S.C. 201; 47 U.S.C. 251; 47 U.S.C. 307; 47 U.S.C. 316

Abstract: The proceeding creates a new part 4 in title 47 and amends part 63.100. The proceeding updates the Commission's communication disruptions reporting rules for wireline providers formerly in 47 CFR 63.100 and extends these rules to other non-wireline providers. Through this proceeding, the Commission streamlines the reporting process through an electronic template. The Report and Order received several petitions for reconsideration, of which two were eventually withdrawn. In 2015, seven were addressed in an Order on Reconsideration and in 2016 another petition was addressed in an Order on Reconsideration. One petition (CPUC Petition) remains pending regarding NORS database sharing with States, which is addressed in a separate proceeding, PS Docket 15–80. To the extent the communication disruption rules cover VoIP, the Commission studies and addresses these questions in a separate docket, PS Docket 11–82.

In May 2016, the Commission released a Report and Order, FNPRM, and Order on Reconsideration (see Dockets 11–82 and 15–80). The Order on Reconsideration addressed outage reporting for events at airports, and the FNPRM sought comment on database sharing. The Commission received comments and replies in August and September 2016.

Timetable:

Action	Date	FR Cite
NPRM	03/26/04	69 FR 15761
R&O	11/26/04	69 FR 68859
Denial for Petition for Partial Stay.	12/02/04	
Seek Comment on Petition for Recon.	02/02/10	
Reply Period End	03/19/10	
Seek Comment on Broadband and Interconnected VOIP Service Providers.	07/02/10	
Reply Period End	08/16/12	
2nd R&O, and Order on Recon, NPRM.	06/16/15	80 FR 34321
R&O	07/12/16	81 FR 45055
FNPRM, 1 Part 4 R&O, Order on Recon.	08/11/16	81 FR 45095, 81 FR 45055
Order Denying Extension of Time to File Reply Comments.	09/08/16	
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK41

568. Wireless Emergency Alerts (WEA): PS Docket No. 15–91, 15–94, 22–329 [3060–AK54]

Legal Authority: Pub. L. 109–347, title VI; 47 U.S.C. 151; 47 U.S.C. 154(i)

Abstract: This proceeding was initiated to improve Wireless Emergency Alerts (WEA) messaging, ensure that WEA alerts reach only those individuals to whom they are relevant, and establish an end-to-end testing program based on advancements in technology.

In April 2023, the Commission released an FNPRM seeking comment on proposals to make WEA alerts understandable to people with disabilities and people with native languages other than English and Spanish, communities that would otherwise be underserved by WEA.

Timetable:

Action	Date	FR Cite
NPRM	11/19/15	80 FR 77289
NPRM Comment Period End.	01/13/16	
NPRM Reply Comment Period End.	02/12/16	
Order	12/08/16	81 FR 75710
FNPRM	09/29/16	81 FR 78539
Comment Period End.	12/08/16	
Petition for Recon	12/19/16	81 FR 91899
Order on Recon	02/04/17	82 FR 57158
2nd R&O and 2nd Order on Recon.	02/28/18	83 FR 8619
Public Notice	04/26/18	83 FR 18257
Public Notice Comment Period End.	05/29/18	
Public Notice Reply Comment Period End.	06/11/18	
Report and Order and FNPRM.	06/17/21	86 FR 46783
FNPRM	04/21/22	87 FR 30857
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Wiley, Deputy Division Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1678, *Email: james.wiley@fcc.gov.*

RIN: 3060–AK54

569. 911 Fee Diversion Rulemaking: PS Docket Nos. 20–291, 09–14 [3060–AL31]

Legal Authority: Consolidated Appropriations Act, 2021, Pub. L. 116–260, Division FF, title 1X, sec. 902, Don't Break Up the T-Band Act of 2020 (sec. 902)

Abstract: In 2020, Congress adopted the ''Don't Break Up the T-Band Act'' (section 902) to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. Among other requirements, Congress mandated that the Commission should issue final rules designating the uses of 911 fees by states and taxing jurisdictions that constitute 911 fee diversion for purposes of 47 U.S.C. 615a–1, as amended by section 902. The Commission initiated this proceeding and issued new rules at 47 CFR 9.21–9.26 that: (1) clarify the purposes and functions for which expenditures of 911 fees are acceptable and which would be considered unacceptable and constitute diversion, with illustrative, non-exhaustive examples of each; (2) establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on fee diversion issues; and (3) codify the specific obligations and restrictions that section 902 imposes on states and taxing jurisdictions, including those that engage in diversion as defined by the Commission's rules.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	10/02/20	
NOI Comment Period End.	11/02/20	
NOI Reply Comment Period End.	12/02/20	
NPRM	02/17/21	86 FR 12399
NPRM Comment Period End.	03/23/21	
NPRM Reply Comment Period End.	04/02/21	86 FR 12399
Report & Order	06/25/21	86 FR 45892
R&O Erratum	08/12/21	86 FR 45892
Petition for Recon	12/22/21	86 FR 72546
Oppositions to Petition for Recon.	01/06/22	
Replies to Oppositions to Petition for Recon.	01/18/22	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda Boykin, Deputy Chief, Policy & Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2062, *Email: brenda.boykin@fcc.gov.*

RIN: 3060–AL31

570. Resilient Networks, Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; PS Docket No 21–346 [3060–AL43]

Legal Authority: 47 U.S.C. 1; 47 U.S.C. 4(i) and 4(o); 47 U.S.C. 201(b) and 214(d); 47 U.S.C. 218 and 251(e)(3); 47 U.S.C. 301; 47 U.S.C. 303(b) and 303(g); 47 U.S.C. 303(j) and 303(r); 47 U.S.C. 307; 47 U.S.C. 309(a) and 309(j); 47 U.S.C. 316 and 332; 47 U.S.C. 403; 47 U.S.C. 615a–1 ; 47 U.S.C. 615c of the Communications Act of 1934, as amended; 47 U.S.C. 154(i)–(j) and (o); 47 U.S.C. 151; 47 U.S.C 4(j); . . .

Abstract: In October 2021, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to investigate ways to improve the reliability and resiliency of communications networks during emergencies and ways to ensure that communications services remain operational when disasters strike. The NPRM sought comment on: (i) potential improvements to the voluntary Wireless Resiliency Cooperative Framework (Framework), including evaluating what triggers its activation, its scope of participants, whether existing Framework elements can be strengthened, any gaps that need to be addressed, and whether the public would benefit from codifying some or all of the Framework, (ii) ways to enhance the information available to the Commission through Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS) during disasters and network outages to improve situational awareness, and (iii) communications resiliency strategies for power outages, including improved coordination between communications service providers and power companies and deploying onsite backup power or other alternative measures to reduce the frequency, duration, or severity of power-related disruptions to communications services.

In June 2022, the Commission adopted a Report & Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM) following up on and further addressing matters related to the Framework. The R&O introduced the Mandatory Disaster Response Initiative (MDRI), which largely codified the Framework's five substantive provisions as mandatory, extended the reach of these provisions to all facilities-based mobile wireless providers, expanded the real-world criteria that trigger activation of the MDRI (as compared to the Framework) and introduced new provisions requiring providers to test

their roaming capabilities and report on the performance of their implementation of the MDRI to the Commission after disaster events. The FNPRM examined whether and how the new reporting requirement can be standardized to ensure that the Commission obtains vital and actionable information on the performance of providers' implementation of the MDRI in the aftermath of exigency, while also minimizing associated burdens. This proceeding addresses network reliability in the context of public safety and does not promote the administration's specified priorities.

In October 2022, CTIA and the Competitive Carriers Association (CCA) filed a Petition for Clarification and Partial Reconsideration in response to the 2022 Resilient Networks R&O. Particularly, Petitioners asked that the Commission: (1) provide a list of potential providers to which the MDRI may apply; (2) provide sufficient time for wireless providers to achieve compliance (by requesting 12 months for non-small providers and 18 months for small providers); (3) align the definitions of non-small'' and small'' with the Commission's existing definitions of nationwide'' and non-nationwide'' as used in the 911 context; (4) establish the process in which the Public Safety and Homeland Security Bureau (Bureau) will inform providers that the MDRI is active; and (5) affirm that Office of Management and Budget (OMB) review is required for all information collection obligations and that the Commission will treat all roaming arrangements as presumptively confidential under Section 4.17(d). A draft Order on Reconsideration was circulated for Commission consideration on July 28, 2023

Timetable:

Action	Date	FR Cite
NPRM	10/01/21	86 FR 61103
NPRM Comment Period End.	01/14/22	
FNPRM	06/27/22	87 FR 59379
R&O	06/27/22	87 FR 59329
FNPRM Comment Period End.	10/31/22	
FNPRM Reply Comment Period End.	11/29/22	
Petition for Reconsideration.	10/31/22	
Public Notice Comment.	12/02/22	87 FR 7102
Extends Deadline to File Replies.	12/19/22	87 FR 79263
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Logan Bennett, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7790, *Email: logan.bennett@fcc.gov.*

RIN: 3060–AL43

571. Location-Based Routing for Wireless 911 Calls (P.S. Docket 18–64) [3060–AL52]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(i); 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 214; 47 U.S.C. 222; 47 U.S.C. 251(e); 47 U.S.C. 301 to 303; 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 316 and 332; 47 U.S.C. 615; 47 U.S.C. 615a; 47 U.S.C. 615b; 47 U.S.C. 615c

Abstract: In this proceeding, the Federal Communications Commission proposes rules to more precisely route wireless 911 calls and texts to Public Safety Answering Points (PSAPs), which can result in faster response times during emergencies. Wireless 911 calls have historically been routed to PSAPs based on the location of the cell tower that handles the call. Sometimes, however, the 911 call is routed to the wrong PSAP because the cell tower is not in the same jurisdiction as the 911 caller. This can happen, for instance, when an emergency call is placed near a county border. These misrouted 911 calls must be transferred from one PSAP to another, which consumes time and resources and can cause confusion and delay in emergency response. The Notice of Proposed Rulemaking (*NPRM*) proposes to require wireless and covered text providers to deploy technology that supports location-based routing, a method that relies on precise information about the location of the wireless caller's device, on some networks and to use location-based routing to route 911 voice calls and texts originating on those networks when caller location is accurate and timely. In addition, the *NPRM* proposes to require CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in internet Protocol (IP) format upon request of certain 911 authorities.

Timetable:

Action	Date	FR Cite
NPRM	01/17/23	88 FR 2565
NPRM Comment Period End.	02/16/23	
Reply Comments Due.	03/20/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda Boykin, Deputy Chief, Policy and Licensing Div., PSHSB, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2062, *Email: brenda.boykin@fcc.gov.*

RIN: 3060–AL52

572. • Next Generation 9-1-1, PS Docket No. 21–479, FCC 23–47 [3060–AL67]

Legal Authority: Not Yet Determined

Abstract: The Federal Communications Commission (the FCC or Commission) proposes rules that will advance the nationwide transition to Next Generation 911 (NG911). The Notice of Proposed Rulemaking (*NPRM*) proposes requiring certain service providers to complete all translation and routing to deliver 911 calls in the requested internet Protocol (IP)-based format to an Emergency Services IP network (ESInet) or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have certified the capability to accept IP-based 911 communications. In addition, the *NPRM* proposes to require service providers to transmit all 911 calls to destination point(s) in those networks designated by a 911 authority upon request of 911 authorities who have certified the capability to accept IP-based 911 communications. Finally, the *NPRM* proposes that in the absence of agreements by states or localities on alternative cost recovery mechanisms, service providers must cover the costs of transmitting 911 calls to the point(s) designated by a 911 authority. In addition, the NPRM seeks comment on promoting diversity and inclusion.

Timetable:

Action	Date	FR Cite
NPRM	07/10/23	88 FR 43514
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda Boykin, Deputy Chief, Policy & Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2062, *Email: brenda.boykin@fcc.gov.*

RIN: 3060–AL67

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireless Telecommunications Bureau

Long-Term Actions

573. Amendment of Parts 1, 2, 22, 24, 27, 90, and 95 of the Commission's Rules To Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10–4) [3060–AJ87]

Legal Authority: 15 U.S.C. 79; 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 155; 47 U.S.C. 157; 47 U.S.C. 225; 47 U.S.C. 227; 47 U.S.C. 303(r)

Abstract: This action adopts new technical, operational, and registration requirements for signal boosters. It creates two classes of signal boosters—consumer and industrial—with distinct regulatory requirements for each, thereby establishing a two-step transition process for equipment certification for both consumer and industrial signal boosters sold and marketed in the United States.

Timetable:

Action	Date	FR Cite
NPRM	05/10/11	76 FR 26983
R&O	04/11/13	78 FR 21555
Petition for Reconsideration.	06/06/13	78 FR 34015
Order on Reconsideration.	11/08/14	79 FR 70790
FNPRM	11/28/14	79 FR 70837
2nd R&O and 2nd FNPRM.	03/23/18	83 FR 17131
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ87

574. Promoting Technological Solutions To Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13–111 [3060–AK06]

Legal Authority: 47 U.S.C. 151 to 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 301; 47 U.S.C. 303(a); 47 U.S.C. 303(b); 47 U.S.C. 307 to 310; 47 U.S.C. 332; 47 U.S.C. 302(a)

Abstract: In the 2017 Report and Order, 82 FR 22742, the Commission addressed the problem of illegal use of contraband wireless devices by inmates in correctional facilities by streamlining the process of deploying contraband wireless device interdiction systems (CIS)—systems that use radio communications signals requiring Commission authorization—in correctional facilities. In particular, the Commission eliminated certain filing requirements and provides for immediate approval of the lease applications needed to operate these systems. In the 2017 Further Notice, 82 FR 22780, the Commission sought comment on a process for wireless providers to disable contraband wireless devices once they have been identified. The Commission also sought comment on additional methods and technologies that might prove successful in combating contraband device use in correctional facilities, and on various other proposals related to the authorization process for CISs and their deployment.

In the Second Report and Order, the Commission takes further steps to facilitate the deployment and viability of technological solutions used to combat contraband wireless devices in correctional facilities. The Second Report and Order adopts a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria, and the Commission addresses issues involving oversight, wireless provider liability, and treatment of 911 calls. The Second Report and Order further adopts rules requiring advance notice of certain wireless provider network changes to promote and maintain contraband interdiction system effectiveness. In the Second Further Notice of Proposed Rulemaking, the Commission takes further steps to facilitate the deployment and viability of technological solutions used to combat contraband wireless devices in correctional facilities. The Second Further Notice of Proposed Rulemaking seeks further comment on the relative effectiveness, viability, and cost of additional technological solutions to combat contraband phone use in correctional facilities previously identified in the record.

Timetable:

Action	Date	FR Cite
NPRM	06/18/13	78 FR 36469
NPRM Comment Period End.	08/08/13	
FNPRM	05/18/17	82 FR 22780
R&O	05/18/17	82 FR 22742
Final Rule Effective (Except for Rules Requiring OMB Approval).	06/19/17	
FNPRM Comment Period End.	07/17/17	
Final Rule Effective for 47 CFR 1.9020(n), 1.9030(m), 1.9035 (o), and 20.23(a).	10/20/17	82 FR 48773
Final Rule Effective for 47 CFR 1.902(d)(8), 1.9035(d)(4), 20.18(a), and 20.18(r).	02/12/18	
2nd FNPRM	08/13/21	86 FR 44681
2nd R&O	08/13/21	86 FR 44635
2nd FNPRM Comment Period End.	09/13/21	
Final Rules Effective (except for those requiring OMB approval).	09/13/21	
Reply Comment Period End.	10/12/21	
Final Rule Effective.	05/03/22	87 FR 26139
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Melissa Conway, Attorney Advisor, Mobility Div., Wireless Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–2887, *Email: melissa.conway@fcc.gov*.

RIN: 3060–AK06

575. Promoting Investment in the 3550–3700 MHz Band; GN Docket No. 17–258 [3060–AK12]

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j) ; 47 U.S.C. 302(a); 47 U.S.C. 303 and 304; 47 U.S.C. 307(e); 47 U.S.C. 316

Abstract: The Report and Order and Second Further Notice of Proposed Rulemaking (NPRM) adopted by the Commission established a new Citizens Broadband Radio Service for shared wireless broadband use of the 3550 to 3700 MHz band. The Citizens Broadband Radio Service is governed by a three-tiered spectrum authorization framework to accommodate a variety of commercial uses on a shared basis with incumbent Federal and non-Federal users of the band. Access and operations will be managed by a dynamic spectrum access system. The three tiers are: Incumbent Access, Priority Access, and General Authorized Access. Rules

governing the Citizens Broadband Radio Service are found in part 96 of the Commission's rules.

The Order on Reconsideration and Second Report and Order addressed several Petitions for Reconsideration submitted in response to the Report and Order and resolved the outstanding issues raised in the Second Further Notice of Proposed Rulemaking.

The 2017 NPRM sought comment on limited changes to the rules governing Priority Access Licenses in the band, adjacent channel emissions limits, and public release of base station registration information.

The 2018 Report and Order addressed the issues raised in the 2017 NPRM and implemented changes rules governing Priority Access Licenses in the band and public release of base station registration information.

On July 2020, the Commission commenced an auction of Priority Access Licenses in the band. ''Winning bidders were announced on September 2, 2020''.

Timetable:

Action	Date	FR Cite
NPRM	01/08/13	78 FR 1188
NPRM Comment Period End.	03/19/13	
FNPRM	06/02/14	79 FR 31247
FNPRM Comment Period End.	08/15/14	
R&O and 2nd FNPRM.	06/15/15	80 FR 34119
2nd FNPRM Comment Period End.	08/14/15	
Order on Recon and 2nd R&O.	07/26/16	81 FR 49023
NPRM	11/28/17	82 FR 56193
NPRM Comment Period End.	01/29/18	
R&O	12/07/18	83 FR 6306
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Paul Powell, Assistant Chief, Mobility Division, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1613, *Email: paul.powell@fcc.gov*.

RIN: 3060–AK12

576. Updating Part 1 Competitive Bidding Rules (WT Docket No. 14–170) [3060–AK28]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 309(j); 47 U.S.C. 316

Abstract: This proceeding was initiated to revise some of the Commission's general part 1 rules governing competitive bidding for spectrum licenses to reflect changes in the marketplace, including the challenges faced by new entrants, as well as to advance the statutory directive to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. In July 2015, the Commission revised its competitive bidding rules, specifically adopting revised requirements for eligibility for bidding credits, a new rural service provider bidding credit, a prohibition on joint bidding agreements and other changes.

Timetable:

Action	Date	FR Cite
NPRM	11/14/14	79 FR 68172
Public Notice	03/16/15	80 FR 15715
Public Notice	04/23/15	80 FR 22690
R&O	09/18/15	80 FR 56764
Public Notice on Petitions for Reconsideration.	11/10/15	80 FR 69630
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Quinn, Assistant Chief, Auctions and Spectrum Access Division, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–0660, *Email: kelly.quinn@fcc.gov.*

RIN: 3060–AK28

577. Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10–112 [3060–AK44]

Legal Authority: 47 U.S.C. 151 to 154; 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 225; 47 U.S.C. 227; 47 U.S.C. 301 and 302; 47 U.S.C. 302(a); 47 U.S.C. 303 and 304; 47 U.S.C. 307; 47 U.S.C. 309 and 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 1302

Abstract: In this proceeding, the Commission adopted service rules for licensing of mobile and other uses for millimeter wave (mmW) bands. These high frequencies previously have been best suited for satellite or fixed microwave applications; however, recent technological breakthroughs have newly enabled advanced mobile services in these bands, notably including very high speed and low latency services. This action will help facilitate Fifth Generation mobile services and other mobile services. In developing service rules for mmW bands, the Commission will facilitate access to spectrum, develop a flexible spectrum policy, and encourage wireless innovation.

Timetable:

Action	Date	FR Cite
NPRM	01/13/16	81 FR 1802
NPRM Comment Period End.	02/26/16	
FNPRM	08/24/16	81 FR 58269
Comment Period End.	09/30/16	
FNPRM Reply Comment Period End.	10/31/16	
R&O	11/14/16	81 FR 79894
R&O	01/02/18	83 FR 37
FNPRM	01/02/18	83 FR 85
FNPRM Comment Period End.	01/23/18	
R&O	07/20/18	83 FR 34478
FNPRM	07/20/18	83 FR 34520
FNPRM Comment Period End.	09/28/18	
R&O	02/05/19	84 FR 1618
R&O	05/01/19	84 FR 18405
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Schauble, Deputy Chief, Broadband Division, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0797, *Email: john.schauble@fcc.gov*.

RIN: 3060–AK44

578. Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18–122 [3060–AK76]

Legal Authority: 47 U.S.C.151 to 153; 47 U.S.C.154(i); 47 U.S.C 157; 47 U.S.C. 201; 47 U.S.C. 301 to 304; 47 U.S.C. 307 to 310; 47 U.S.C. 1302; . . .

Abstract: In the 2020 Report and Order, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20-megahertz guard band) throughout the contiguous United States. Pursuant to the Report and Order, existing fixed satellite service (FSS) and fixed services (FS) must relocate operations out of the lower portion of the 3.7–4.0 GHz band. The Commission will issue flexible use licenses in the 3.7–3.98 GHz portion of the band in the contiguous United States via a system of competitive bidding. The Commission established rules to govern the transition including optional payments for satellite operators that choose to relocate on an accelerated schedule and provide reimbursement to FSS operators and their associated earth

stations for reasonable expenses incurred to facilitate the transition. The Report and Order also established service and technical rules for the new flexible use licenses that will be issued in the 3.7–3.98 GHz portion of the band. ''On December 8, 2020, the Commission began an auction of licenses in the 3.7–3.98 GHz portion of the band. the winning bidders were announced on February 24, 2021''.

Timetable:

Action	Date	FR Cite
NPRM	08/29/18	83 FR 44128
NPRM Comment Period End.	11/27/18	
Public Notice	05/20/19	84 FR 22733
Certifications and Data Filing Deadline.	05/28/19	
Public Notice	06/03/19	84 FR 22514
Public Notice Comment Period End.	07/03/19	
Public Notice Reply Comment Period End.	07/18/19	
R&O	04/23/20	85 FR 22804
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Paul Powell, Assistant Chief, Mobility Division, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1613, *Email: paul.powell@fcc.gov*.

RIN: 3060–AK76

579. Amendment of the Commission's Rules To Promote Aviation Safety: WT Docket No. 19–140 [3060–AK92]

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 303; 307(e)

Abstract: The Federal Communications Commission regulates the Aviation Radio Service, a family of services using dedicated spectrum to enhance the safety of aircraft in flight, facilitate the efficient movement of aircraft both in the air and on the ground, and otherwise ensure the reliability and effectiveness of aviation communications. Recent technological advances have prompted the Commission to open this new rulemaking proceeding to ensure the timely deployment and use of today's state-of-the-art safety-enhancing technologies. With this Notice of Proposed Rulemaking, the Commission proposes changes to its part 87 Aviation Radio Service rules to support the deployment of more advanced avionics technology, increase the efficient use of limited spectrum resources, and generally improve aviation safety.

Timetable:

Action	Date	FR Cite
NPRM	07/02/19	84 FR 31542
NPRM Comment Period End.	09/03/19	
NPRM Reply Comment Period End.	09/30/19	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1617, *Email: jeff.tobias@fcc.gov*.

RIN: 3060–AK92

580. Implementation of State and Local Governments' Obligation To Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012 (WT Docket No. 19–250) [3060–AL29]

Legal Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted

Abstract: In this proceeding, the Commission seeks to reduce regulatory barriers to wireless infrastructure deployment by further streamlining the state and local government review process for modifications to existing wireless infrastructure under section 6409(a) of the Spectrum Act of 2012.

Timetable:

Action	Date	FR Cite
NPRM	07/02/20	85 FR 39859
Declaratory Ruling	07/27/20	85 FR 45126
NPRM Comment Period End.	08/03/20	
R&O	12/03/20	85 FR 78005
Petition for Recon	03/03/21	86 FR 12898
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Allison Jones, Division Chief, CIPD, Wireless Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1571, *Email: allison.jones@fcc.gov*.

Garnet Hanly, Division Chief, Wireless Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0995, *Email: garnet.hanly@fcc.gov*.

RIN: 3060–AL29

581. Expanding Flexible Use of the 12.2–12.7 GHz Band, et al., WT Docket No. 20–443, et al. [3060–AL40]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 153; 47 U.S.C. 154; 47 U.S.C. 155; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 304; 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 316

Abstract: The Federal Communications Commission (Commission or FCC) finds that it is not in the public interest to add a mobile allocation to permit a two-way terrestrial 5G service in the 12.2 GHz band based on the current record and seeks further comment on how it could facilitate more robust terrestrial operations in the 12.212.7 GHz band. The item specifically seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Timetable:

Action	Date	FR Cite
NPRM	03/08/21	86 FR 13266
NPRM Comment Period End.	04/07/21	
NPRM Reply Comment Period End.	05/07/21	
NPRM	04/16/21	86 FR 20111
NPRM Extension Comment Period End.	05/07/21	
NPRM Extension Reply Comment Period End.	06/07/21	
NPRM Denial of Further Extension of Deadlines for Filing Comments and Reply Comments.	05/27/21	86 FR 28520
NPRM	06/22/21	86 FR 32669
NPRM Extension Reply Comment Period.	07/07/21	
Report and Order	07/10/23	88 FR 43462
FNPRM	07/10/23	88 FR 43502
FNPRM Comment Period End.	08/09/23	
FNPRM Reply Comment Period End.	09/08/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Madelaine Maior, Assistant Division Chief, Broadband Div., WTB, Federal Communications

Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1466, *Email: madelaine.maior@fcc.gov.*

RIN: 3060–AL40

582. Facilitating Shared Use in the 3100–3550 MHz Band [3060–AL57]

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 155(c) and 157; 47 U.S.C. 301 and 303; 47 U.S.C. 307 and 308; 47 U.S.C. 309 ; 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D); 47 U.S.C. 310 and 316; 47 U.S.C. 923(g) and 928; 47 U.S.C. 1502; Pub. L. 115–141, sec. 603; Pub. L. 116–260, sec. 905

Abstract: In the 3.45 GHz Band Second R&O, the Commission adopted rules to make 100 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States. To facilitate this goal, the Commission previously had determined that secondary, nonfederal radiolocation licensees in the band would be relocated to the 2.9–3.0 GHz band. In the 3.45 GHz Band Second R&O, the Commission further determined that secondary, non-federal radiolocation authorizations would sunset 180 days after new 3.45 GHz Service licenses are granted in the band. On January 4, 2022, the auction for these new licenses concluded and licenses were granted on May 4, 2022. The non-federal radiolocation authorizations sunset on October 31, 2022.

Timetable:

Action	Date	FR Cite
NPRM	01/22/20	85 FR 3579
NPRM Comment Period End.	03/23/20	
Final Rule	10/09/20	85 FR 64062
Report & Order and FNPRM.	10/21/20	85 FR 66888
FNPRM Comment Period End.	11/20/20	
Correction to Final Rule.	11/03/20	85 FR 69515
Report & Order, Order on Reconsideration and Order of Proposed Modification.	04/07/21	86 FR 17920
Final Rule and Order.	12/22/22	87 FR 78579
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AL57

583. • Shared Use of the 42–.42.5 GHz Band (WT Docket No. 23–158, GN Docket No. 14–177) [3060–AL68]

Legal Authority: 47 U.S.C. 151 thru 152; 47 U.S.C. 154; 47 U.S.C. 301 and 302a; 47 U.S.C. 303 and 304; 47 U.S.C. 307 and 309

Abstract: The Federal Communications Commission seeks comment on how innovative, non-exclusive spectrum access models might be deployed in the 42 GHz band (42–42.5 GHz) to provide increased access to high-band spectrum, particularly by smaller wireless service providers, and to support efficient, intensive use of the band. The Commission also seeks comment on how potential sharing and licensing regimes might lower barriers to entry for smaller or emerging wireless service providers, encourage competition, and prevent spectrum warehousing.

Timetable:

Action	Date	FR Cite
NPRM	07/31/23	88 FR 49423
NPRM Comment Period End.	08/30/23	
NPRM Reply Comment Period End.	09/29/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AL68

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireline Competition Bureau

Long-Term Actions

584. Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115), Data Breach Reporting Requirements (WC Docket No. 22–21) [3060–AG43]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 222; 47 U.S.C. 272; 47 U.S.C. 303(r)

Abstract: The Commission adopted rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary network information (CPNI) created by section 222 of the Communications Act of 1934, as amended. CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.

Timetable:

Action	Date	FR Cite
NPRM	05/28/96	61 FR 26483
Public Notice	02/25/97	62 FR 8414
Second R&O and FNPRM.	04/24/98	63 FR 20364
Order on Recon	10/01/99	64 FR 53242
Final Rule, Announcement of Effective Date.	01/26/01	66 FR 7865
Clarification Order and Second NPRM.	09/07/01	66 FR 50140
Third R&O and Third FNPRM.	09/20/02	67 FR 59205
NPRM	03/15/06	71 FR 13317
NPRM	06/08/07	72 FR 31782
Final Rule, Announcement of Effective Date.	06/08/07	72 FR 31948
Public Notice	07/13/12	77 FR 35336
Final Rule	09/21/17	82 FR 44188
NPRM	01/23/23	88 FR 3953
NPRM Comment Period End.	02/23/23	
NPRM Reply Comment Period End.	03/24/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Melissa Kirkel, Deputy Division Chief, Wireline Competition Bureau, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7958, *Fax:* 202 418–1413, *Email: melissa.kirkel@fcc.gov.*

RIN: 3060–AG43

585. Local Telephone Networks That LECS Must Make Available to Competitors [3060–AH44]

Legal Authority: 47 U.S.C. 251

Abstract: The Commission adopted rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs' networks on an unbundled basis. Unbundling allows competitors to lease portions of the incumbent LECs' network to provide telecommunications services. These rules, adopted in dockets CC 96–98, WC 01–338, and WC 04–313, are intended to accelerate the development of local exchange competition.

Timetable:

Action	Date	FR Cite
Second FNPRM ..	04/26/99	64 FR 20238
Fourth FNPRM	01/14/00	65 FR 2367
Errata Third R&O and Fourth FNPRM.	01/18/00	65 FR 2542
Second Errata Third R&O and Fourth FNPRM.	01/18/00	65 FR 2542
Supplemental Order.	01/18/00	65 FR 2542
Third R&O	01/18/00	65 FR 2542
Correction	04/11/00	65 FR 19334
Supplemental Order Clarification.	06/20/00	65 FR 38214
Public Notice	02/01/01	66 FR 8555
Public Notice	03/05/01	66 FR 18279
Public Notice	04/10/01	
Public Notice	04/23/01	
Public Notice	05/14/01	
NPRM	01/15/02	67 FR 1947
Public Notice	05/29/02	
Public Notice	08/01/02	
Public Notice	08/13/02	
NPRM	08/21/03	68 FR 52276
R&O and Order on Remand.	08/21/03	68 FR 52276
Errata	09/17/03	
Report	10/09/03	68 FR 60391
Order	10/28/03	
Order	01/09/04	
Public Notice	01/09/04	
Public Notice	02/18/04	
Order	07/08/04	
Second R&O	07/08/04	69 FR 43762
Order on Recon ..	08/09/04	69 FR 54589
Interim Order	08/20/04	69 FR 55111
NPRM	08/20/04	69 FR 55128
Public Notice	09/10/04	
Public Notice	09/13/04	
Public Notice	10/20/04	
Order on Recon ..	12/29/04	69 FR 77950
Order on Remand	02/04/04	
Public Notice	04/25/05	70 FR 29313
Public Notice	05/25/05	70 FR 34765
Declaratory Ruling	05/26/11	
NPRM	01/06/20	85 FR 472
NPRM Comment Period End.	03/06/20	
Report & Order ...	01/08/21	86 FR 1636
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AH44

586. Jurisdictional Separations [3060–AJ06]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 205; 47 U.S.C. 221(c); 47 U.S.C. 254; 47 U.S.C. 403; 47 U.S.C. 410

Abstract: Jurisdictional separations is the process, pursuant to part 36 of the Commission's rules, by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and marketplace changes warrant comprehensive reform of the separations process. In 2001, the Commission adopted the Federal-State Joint Board on Jurisdictional Separations' Joint Board's recommendation to impose an interim freeze on the part 36 category relationships and jurisdictional cost allocation factors for a period of 5 years, pending comprehensive reform of the part 36 separations rules. In 2006, the Commission issued an Order and Further Notice of Proposed Rulemaking that extended the separations freeze for a period of 3 years and sought comment on comprehensive reform. In 2009, the Commission issued a Report and Order extending the separations freeze an additional year to June 2010. In 2010, the Commission issued a Report and Order extending the separations freeze for an additional year to June 2011. In 2011, the Commission adopted a Report and Order extending the separations freeze for an additional year to June 2012. In 2012, the Commission issued a Report and Order extending the separations freeze for an additional 2 years to June 2014. In 2014, the Commission issued a Report and Order extending the separations freeze for an additional 3 years to June 2017.

In 2016, the Commission issued a Report and Order extending the separations freeze for an additional 18 months until January 1, 2018. In 2017, the Joint Board issued a Recommended Decision recommending changes to the part 36 rules designed to harmonize them with the Commission's previous amendments to its part 32 accounting rules. In February 2018, the Commission issued a Notice of Proposed Rulemaking proposing amendments to part 36 consistent with the Joint Board's recommendations. In October 2018, the Commission issued a Report and Order adopting each of the Joint Board's recommendations and amending the Part 36 consistent with those recommendations. In July 2018, the Commission issued a Notice of Proposed Rulemaking proposing to extend the separations freeze for an additional 15 years and to provide rate-of-return carriers that had elected to freeze their category relationships a time limited opportunity to opt out of that freeze. In December 2018, the Commission issued a Report and Order extending the freeze for up to 6 years until December 31, 2024, and granting rate-of-return carriers that had elected to freeze their category relationships a one-time opportunity to opt out of that freeze.

On March 31, 2020, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's December 2018 Report and Order.

Timetable:

Action	Date	FR Cite
NPRM	11/05/97	62 FR 59842
NPRM Comment Period End.	12/10/97	
Order	06/21/01	66 FR 33202
Order and FNPRM.	05/26/06	71 FR 29882
Order and FNPRM Comment Period End.	08/22/06	
R&O	05/15/09	74 FR 23955
R&O	05/25/10	75 FR 30301
R&O	05/27/11	76 FR 30840
R&O	05/23/12	77 FR 30410
R&O	06/13/14	79 FR 36232
R&O	06/02/17	82 FR 25535
Recommended Decision.	10/27/17	
NPRM	03/13/18	83 FR 10817
NPRM Comment Period End.	04/27/18	
NPRM	07/27/18	83 FR 35589
NPRM Comment Period End.	09/10/18	
R&O	12/11/18	83 FR 63581
R&O	02/15/19	84 FR 4351
Announcement of OMB Approval.	03/01/19	84 FR 6977
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ06

587. Rates for Inmate Calling Services; WC Docket No. 12–375; Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, WC Docket No. 23–62 [3060–AK08]

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and (j); 47 U.S.C. 201(b); 47 U.S.C. 218; 47 U.S.C. 220; 47 U.S.C. 276; 47 U.S.C. 403; 47 CFR 64; Martha Wright-Reed Just and Reasonable Communications Act of

2022; Pub. L. 117–338, 136 Stat. 6156 ; 47 U.S.C. 152(b) and 153(1)(E); 47 U.S.C. 276(b)(1)(A) and (d)

Abstract: In the Second Report and Order, the Federal Communications Commission (the Commission) adopted rule changes to ensure that rates for both interstate and intrastate inmate calling services (ICS) are fair, just, and reasonable limits on ancillary service charges imposed by ICS providers. In the Second Report and Order, the Commission set caps on all interstate and intrastate calling rates for ICS, established a tiered rate structure based on the size and type of facility being served, limited the types of ancillary services that ICS providers may charge for and capped the charges for permitted fees, banned flat-rate calling, facilitated access to ICS by people with disabilities by requiring providers to offer free or steeply discounted rates for calls using TTY, and imposed reporting and certification requirements to facilitate continued oversight of the ICS market. In the Third Further Notice portion of the item, the Commission sought comment on ways to promote competition for ICS, video visitation, and rates for international calls, and considered an array of solutions to further address areas of concern in the ICS industry. In an Order on Reconsideration, the Commission amended its rate caps and the definition of ''mandatory tax or mandatory fee''.

On June 13, 2017, the D.C. Circuit vacated the rate caps adopted in the Second Report and Order, as well as reporting requirements related to video visitation. The court held that the Commission lacked jurisdiction over intrastate ICS calls and that the rate caps the Commission adopted for interstate calls were arbitrary and capricious. The court also remanded the Commission's caps on ancillary fees. On September 26, 2017, the court denied a petition for rehearing en banc. On December 21, 2017, the court issued two separate orders: one vacating the 2016 Order on Reconsideration insofar as it purported to set rate caps on inmate calling services, and one dismissing as moot challenges to the Commission's First Report and Order on ICS.

On February 4, 2020, the Commission's Wireline Competition Bureau (WCB) released a Public Notice seeking to refresh the record on ancillary service charges imposed in connection with ICS.

On August 6, 2020, the Commission adopted a Report and Order on Remand and a Fourth Further Notice of Proposed Rulemaking responding to remands by the D.C. Circuit and proposing to comprehensively reform rates and charges for the ICS within the Commission's jurisdiction. The Report and Order on Remand found that the Commission's five permitted ancillary service charges: (1) automated payment fees; (2) fees for single-call and related services; (3) live agent fees; (4) paper bill/statement fees; and (5) third-party financial transaction fees generally, cannot be practically segregated between interstate and intrastate inmate telephone calls, except in a limited number of cases. Accordingly, the Commission prohibited ICS providers from imposing ancillary service fees higher than the Commission's caps, or imposing fees for additional ancillary services unless imposed in connection with purely intrastate inmate telephone service calls.

The Order also reinstated a rule prohibiting providers from marking up third-party fees for single-call services; reinstated rule language that prohibits providers from marking up mandatory taxes or fees that they pass on to inmate telephone service consumers; and amended certain of the ICS rules consistent with the D.C. Circuit's mandates to reflect that the Commission's rate and fee caps on ICS apply only to interstate and international inmate calling.

The Fourth Further Notice of Proposed Rulemaking proposed to substantially reduce the interstate rate cap for inmate telephone calls from the current interim rate caps of $0.21 per minute for debit or prepaid calls and $0.25 per minute for collect calls for all types of correctional facilities, to permanent rate caps of $0.14 per minute for all interstate calls from prisons and $0.16 for all interstate calls from jails. The Fourth Further Notice of Proposed Rulemaking also proposed to adopt rate caps for international ICS calls for the first time based on the proposed interstate rate caps, plus the amount that the provider must pay its underlying international service provider for an international call. It also proposed a waiver process for providers that believe the Commission's rate caps would not allow them to recover their costs of serving a particular facility or contract. Finally, it sought comment on a further mandatory data collection to continue efforts to reform these rates and fees.

On November 23, 2020, Global Tel*Link Corporation (GTL) filed a petition for reconsideration of the August 6, 2020 Order on Remand. On December 3, 2020, the Commission established the opposition and reply comment dates for the petition.

On May 24, 2021, the Commission released the Third Report and Order, Order on Reconsideration and Fifth Further Notice of Proposed Rulemaking. In the Third Report and Order, the Commission: (1) substantially reduced the interim rate caps for interstate ICS from prisons and larger jails (those with 1,000 or more incarcerated people) from $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls to new uniform interim interstate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails; (2) maintained the interim interstate rate cap of $0.21 for jails with less than 1,000 incarcerated people because of insufficient record evidence to determine providers' costs of serving those facilities at the time; (3) eliminated separate treatment of collect calls, resulting in a uniform interim interstate rate cap for all types of calls at each facility; (4) reformed the treatment of site commission payments by specifying that providers may pass through to consumers (without any markup) site commission payments that are mandated by federal, state, or local law and that providers may pass through to consumers no more than $ 0.02 per minute site commission payments resulting from contractual obligations negotiated between providers and correctional officials; (5) capped, for the first time, international calling rates at all facilities at the applicable facility's total interstate rate cap, plus the amount the inmate calling services provider pays to its underlying wholesale carriers for completing international calls; (6) reformed the ancillary service charge caps for third-party financial transaction fees, including those related to calls that are billed on a per-call basis; and (7) adopted a new mandatory data collection to obtain more uniform cost data based on consistent, prescribed allocation methodologies to determine just and reasonable, permanent, interstate and international cost-based rates for facilities of all sizes.

In the Order on Reconsideration, the Commission denied GTL's petition for reconsideration of a single sentence from the 2020 Remand Order, in which the Commission reminded providers that the jurisdictional nature of a call, that is whether it is interstate or intrastate, depends on the physical location of the endpoints of the call and not on whether the area code or NXX prefix of the telephone number associated with the account are associated with a particular state. The Commission determined that the end-to-end analysis has been, and remains, the generally applicable test for all telecommunications carriers in

determining the jurisdiction of their calls and the Commission continues to use the traditional end-to-end jurisdictional analysis in setting rates for calls placed by ICS consumers.

In the Fifth Further Notice, the Commission proposed to amend its rules to require calling service providers to provide access to all forms of Telecommunications Relay Services, including internet-based services, to facilitate greater accessibility for incarcerated people with hearing and speech disabilities. The Commission also sought comment on: (1) the methodology the Commission should use to set permanent per-minute rate caps for interstate and international inmate calling services; (2) site commission costs for facilities of all sizes and site commission reform generally; (3) the costs of providing services to jails with average daily populations of fewer than 1,000 incarcerated people; (4) whether and how the Commission should reform the ancillary service charge caps and how the Commission can curtail potentially abusive practices related to these charges; (5) whether to institute a recurring periodic data collection; and (6) whether some providers have market power in the bidding process, thereby impacting the competitiveness of the bidding process.

On September 22, 2021, WCB and the Office of Economics and Analytics (OEA), (collectively, WCB/OEA) issued a Public Notice seeking comment on the contours and specific requirements of the Third Mandatory Data Collection, including proposed instructions and a proposed template for that collection. In issuing this Public Notice, WCB/OEA were acting pursuant to the Commission's directive, made in the *2021 ICS Order,* that the new data collection obtain data on providers' operations, costs, demand, and revenues, among other information. As the Commission explained in that Order, the collected information would allow the Commission to set permanent interstate and international inmate calling services rate caps and to evaluate and, if warranted, revise the ancillary service charge caps.

On December 15, 2021, WCB/OEA issued a Public Notice seeking comment on revised requirements for ICS Annual Reports, including proposed instructions, templates, and a provider certification. Specifically, the Public Notice proposed changes in the reporting requirements to align them with ICS rule changes adopted in the *2021 ICS Order.*

On January 18, 2022, WCB adopted an Order implementing the Third Mandatory Data Collection and adopted accompanying instructions, reporting templates, and a certification form. The collected information would allow the Commission to set permanent interstate and international inmate calling services rate caps and to evaluate and, if warranted, revise the current ancillary service charge caps.

On February 9, 2022, WCB released a public notice announcing that the providers' mandatory data collection responses will be due no later than June 30, 2022.

On June 24, 2022, WCB adopted an Order implementing revisions to its annual reporting requirements, including accompanying instructions, reporting templates, and a certification form. The revisions were consistent with changes made in the Third Report and Order.

On September 30, 2022, the Commission released the Fourth Report and Order, and Sixth Further Notice of Proposed Rulemaking. The Report and Order required ICS providers to provide access to all relay services eligible for Telecommunications Relay Services fund support in any correctional facility that is located where broadband is available and is part of a correctional system with 50 or more incarcerated people. This included the ability to place point-to-point video calls using American Sign Language. The rules also restricted provider charges for relay services and point-to-point video calls. More generally, the rules reduced certain charges and curtailed abusive practices related to ICS to ease the financial burdens on all incarcerated people and their families. To ensure that the rates, terms, and practices related to interstate and international ICS are just and reasonable, the Order prohibited providers from taking control of funds in inactive calling accounts until at least 180 calendar days of continuous inactivity had passed, after which providers are required to refund the balance or dispose of the funds in accordance with applicable state law. The Order also lowered the current ancillary fee caps on charges for single call services, and lowered the cap on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, the Commission revised the definitions of ''Prison'' and ''Jail'' in its rules to conform with the Commission's intent in adopting them in 2015.

In the Sixth Further Notice, the Commission sought additional comment on whether to allow enterprise registration for internet Protocol Captioned Telephone Service in carceral settings and how to address the special circumstances faced by some ICS providers in jurisdictions with average daily populations of fewer than 50 incarcerated persons. This Notice sought comment on refining the rules adopted in the Fifth Report and Order concerning the treatment of balances in inactive accounts. It also sought comment on expanding the breadth and scope of the Commission's consumer disclosure requirements. The Commission asked for comment on how it should use the data filed in response to the Third Mandatory Data Collection to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the Telecommunications Act of 1934 (the Act). The Commission invited further comment on allowing ICS providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures.

On March 17, 2023, the Commission opened a new docket, WC Docket No. 23–62, and released a Notice of Proposed Rulemaking and Order to begin implementation of the Martha Wright-Reed Just and Reasonable Communications Act of 2022, which was signed into law on January 5, 2023. The Martha Wright-Reed Act expands the Commission's authority over rates charged for incarcerated people's communications services, including intrastate services, and directs the Commission to adopt just and reasonable rates and charges for incarcerated people's audio and video communications services not earlier than 18 months and not later than 24 months after the date of its enactment. The Notice seeks comment on (1) the expansion of the Commission's authority over incarcerated people's communications services to include advanced communications services (including audio and video services) and intrastate services; (2) the meaning of ''just and reasonable'' in the context of the Act's other provisions; (3) the rate-making methodology the Commission should use to fulfill its mandate to ensure that rates and charges for incarcerated people's communications services are just and reasonable; (4) the safety and security costs necessary for the provision of incarcerated people's communications services; and (5) the actions the Commission should take to ensure that incarcerated people's communications services are accessible to, and usable by, people with communication disabilities. The accompanying Order reaffirmed the Commission's prior delegation of data

collection authority to WCB/OEA and directed staff to initiate a collection of provider data to inform the Commission's responsibilities to implement the requirements of the Martha Wright-Reed Act.

[Note: The Commission has historically used the term inmate calling services'' or ICS'' when referencing payphone service in the incarceration context. With the passage of the Martha Wright-Reed Act, the Commission now uses the term incarcerated people's communications services'' or IPCS'' instead of inmate calling services'' or ICS'' to refer to the broader range of communications services and providers subject to the Commission's jurisdiction as a result of the Act.]

On April 28, 2023, the Wireline Competition Bureau and the Office of Economics and Analytics released a Public Notice seeking comment on a proposal to update the Commission's Third Mandatory Data Collection to encompass and collect data on all incarcerated people's communications services (IPCS) from all providers of those services subject to the Commission's expanded authority under the Martha Wright-Reed Just and Reasonable Communications Act. The proposed modifications included collecting information concerning any audio or video communications service used by incarcerated people for the purpose of communicating with non-incarcerated individuals, regardless of technology used. The Public Notice also sought comment on proposed modifications to the instructions, reporting template, and certification form to implement the modified mandatory data collection.

On July 26, 2023, the Wireline Competition Bureau and the Office of Economics and Analytics released an Order adopting the modifications to the Third Mandatory Data Collection proposed in the April 28, 2023, Public Notice. The modifications included collecting information concerning any audio or video communications service used by incarcerated people for the purpose of communicating with non-incarcerated individuals, regardless of technology used. The Order adopted the proposed instructions, reporting template, and certification form.

On August 3, 2023, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau released a Public Notice seeking comment on proposed revisions to the Annual Reports and Annual Certifications that the Commission requires certain providers of IPCS to submit. The Public Notice proposed changes to the Annual Reports to (1) reflect expanded reporting requirements regarding access to IPCS by persons with communication disabilities and (2) seek data about video IPCS necessary to implement the Martha Wright-Reed Just and Reasonable Communications Act. The Public Notice also sought comment on proposed modifications to the instructions, reporting templates, and certification form for the Annual Reports data collection.

Timetable:

Action	Date	FR Cite
NPRM	01/22/13	78 FR 4369
FNPRM	11/13/13	78 FR 68005
R&O	11/13/13	78 FR 67956
FNPRM Comment Period End.	12/20/13	
2nd FNPRM	11/21/14	79 FR 69682
2nd FNPRM Comment Period End.	01/15/15	
2nd FNPRM Reply Comment Period End.	01/20/15	
3rd FNPRM	12/18/15	80 FR 79020
2nd R&O	12/18/15	80 FR 79136
3rd FNPRM Comment Period End.	01/19/16	
3rd FNPRM Reply Comment Period End.	02/08/16	
Order on Reconsideration.	09/12/16	81 FR 62818
Announcement of OMB Approval.	03/01/17	82 FR 12182
Correction to Announcement of OMB Approval.	03/08/17	82 FR 12922
Announcement of OMB Approval.	02/06/20	85 FR 6947
Public Notice	02/19/20	85 FR 9444
Public Notice Comment Period End.	03/20/20	
Public Notice Reply Comment Period End.	04/06/20	
Letter	07/15/20	
R&O on Remand & 4th FNPRM.	08/06/20	85 FR 67450; 85 FR 67480; 85 FR 73233
Order	09/01/20	
Public Notice	09/24/20	85 FR 66512
Public Notice	10/23/20	
Letter	11/13/20	
Public Notice	12/03/20	85 FR 83000
Order Extending Reply Comment Deadline.	12/17/20	
Public Notice	01/08/21	
Comment Period End on 12/3/2020, Public Notice End.	01/11/21	
Comment Period End on 12/3/2020, Public Notice End.	01/21/21	
Public Notice	03/03/21	
5th FNPRM	07/28/21	86 FR 40416
3rd R&O	07/28/21	86 FR 40682
3rd R&O	07/28/21	86 FR 40340
Order	08/10/21	86 FR 48952
Public Notice (MDC).	09/22/21	86 FR 54897
5th NPRM Comment Period End.	09/27/21	
Order Extending Reply Comment Deadline.	10/15/21	86 FR 60438
5th NPRM Reply Comment Period End.	10/27/21	
Comment Period End on 09/22/2021, Public Notice End.	11/04/21	
Reply Comment Period on 09/22/2021, Public Notice End.	11/19/21	
5th NPRM Reply Comment Period End.	12/17/21	
Public Notice on Annual Reports.	01/04/22	87 FR 212
Comment Period End on 01/04/2022, Public Notice End.	01/12/22	
Reply Period on 01/04/2022, Public Notice End.	01/27/22	
Order Adopting MDC.	03/22/22	87 FR 16560
Order Adopting Annual Reports Revisions.	08/02/22	87 FR 47103
4th R&O	09/30/22	
6th FNPRM	09/30/22	
NPRM—Proposing Implementation of Martha Wright-Reed Act.	04/07/23	88 FR 20804
Public Notice—Proposing 2023 MDC.	05/03/23	88 FR 27850
Order—Adopting 2023 Mandatory Data Collection.	08/03/23	88 FR 51240
Public Notice—Proposing Annual Report Revisions.	08/09/23	88 FR 53850
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK08

588. Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130) [3060–AK20]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 219 and 220

Abstract: The Commission initiates a rulemaking proceeding to review the Uniform System of Accounts (USOA) to consider ways to minimize the compliance burdens on incumbent local exchange carriers while ensuring that the Agency retains access to the information it needs to fulfill its regulatory duties. In light of the Commission's actions in areas of price cap regulation, universal service reform, and intercarrier compensation reform, the Commission stated that it is likely appropriate to streamline the existing rules even though those reforms may not have eliminated the need for accounting data for some purposes. The Commission's analysis and proposals are divided into three parts. First, the Commission proposes to streamline the USOA accounting rules while preserving their existing structure. Second, the Commission seeks more focused comment on the accounting requirements needed for price cap carriers to address our statutory and regulatory obligations. Third, the Commission seeks comment on several related issues, including state requirements, rate effects, implementation, continuing property records, and legal authority.

On February 23, 2017, the Commission adopted a Report and Order that revised the part 32 USOA to substantially reduce accounting burdens for both price cap and rate-of-return carriers. First, the Order streamlines the USOA for all carriers. In addition, the USOA will be aligned more closely with generally accepted accounting principles, or GAAP. Second, the Order allows price cap carriers to use GAAP for all regulatory accounting purposes as long as they comply with targeted accounting rules, which are designed to mitigate any impact on pole attachment rates. Alternatively, price cap carriers can elect to use GAAP accounting for all purposes other than those associated with pole attachment rates and continue to use the part 32 accounts for pole attachment rates for up to 12 years. Third, the Order addresses several miscellaneous issues, including referral to the Federal-State Joint Board on Separations the issue of examining jurisdictional separations rules in light of the reforms adopted to part 32.

On June 5, 2017, NCTA-The internet & Television Association filed a petition for reconsideration of the Report and Order requesting that the Commission: (a) clarify that parties making pole attachments will have access to all accounting information needed to verify the reasonableness of pole attachment rates; and (b) establish additional substantive protections to ensure that pole attachment rates based on GAAP are consistent with the requirements of Section 224 of the Communication Act and the assurances contained in the Part 32 Order. Oppositions to that petition were due on July 21, 2017, and replies were due on July 31, 2017.

Timetable:

Action	Date	FR Cite
NPRM	09/15/14	79 FR 54942
NPRM Comment Period End.	11/14/14	
NPRM Reply Comment Period End.	12/15/14	
R&O	04/04/17	82 FR 20833
Petition for Reconsideration.	06/05/17	82 FR 31282
Comment Period on Petition for Reconsideration End.	07/21/17	
Reply Comment Period on Petition for Reconsideration End.	07/31/17	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK20

589. Restoring Internet Freedom (WC Docket No. 17–108); Protecting And Promoting the Open Internet (GN Docket No. 14–28) [3060–AK21]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) and (j); 47 U.S.C. 201(b)

Abstract: In December 2017, the Commission adopted the Restoring internet Freedom Declaratory Ruling, Report and Order, and Order (Restoring internet Freedom Order), which reclassified broadband internet access service as an information service; reinstates the determination that mobile broadband internet access service is not a commercial mobile service and as a private mobile service; finds that transparency, internet Service Providers (ISPs) economic incentives, and antitrust and consumer protection laws will protect the openness of the internet, and that title II regulation is unnecessary to do so; and adopts a transparency rule similar to that in the 2010 Open internet Order, requiring disclosure of network management practices, performance characteristics, and commercial terms of service. Additionally, the transparency rule requires ISPs to disclose any blocking, throttling, paid prioritization, or affiliate prioritization, and eliminates the internet conduct standard and the bright-line conduct rules set forth in the 2015 Open internet Order.

Timetable:

Action	Date	FR Cite
NPRM	07/01/14	79 FR 37448
NPRM Comment Period End.	07/18/14	
NPRM Reply Comment Period End.	09/15/14	
R&O on Remand, Declaratory Ruling, and Order.	04/13/15	80 FR 19737
NPRM	06/02/17	82 FR 25568
NPRM Comment Period End.	07/03/17	
Declaratory Ruling, R&O, and Order.	02/22/18	83 FR 7852
Order on Remand	01/07/21	86 FR 994
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK21

590. Technology Transitions; GN Docket No. 13–5, WC Docket No. 05–25; Accelerating Wireline Broadband Deployment By Removing Barriers to Infrastructure Investment; WC Docket No. 17–84 [3060–AK32]

Legal Authority: 47 U.S.C. 214; 47 U.S.C. 251

Abstract: On April 20, 2017, the Commission adopted a Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (Wireline Infrastructure NPRM, NOI, and RFC) seeking input on a number of actions designed to accelerate: (1) the

deployment of next-generation networks and services by removing barriers to infrastructure investment at the Federal, State, and local level; (2) the transition from legacy copper networks and services to next-generation fiber-based networks and services; and (3) the reduction of Commission regulations that raise costs and slow, rather than facilitate, broadband deployment.

On November 16, 2017, the Commission adopted a Report and Order (R&O), Declaratory Ruling, and Further Notice of Proposed Rulemaking (Wireline Infrastructure Order) that takes a number of actions and seeks comment on further actions designed to accelerate the deployment of next-generation networks and services through removing barriers to infrastructure investment.

The Wireline Infrastructure Order took a number of actions. First, the Report and Order revised the pole attachment rules to reduce costs for attachers, reforms the pole access complaint procedures to settle access disputes more swiftly, and increases access to infrastructure for certain types of broadband providers. Second, the Report and Order revised the section 214(a) discontinuance rules and the network change notification rules, including those applicable to copper retirements, to expedite the process for carriers seeking to replace legacy network infrastructure and legacy services with advanced broadband networks and innovative new services. Third, the Report and Order reversed a 2015 ruling that discontinuance authority is required for solely wholesale services to carrier-customers. Fourth, the Declaratory Ruling abandoned the 2014 ''functional test'' interpretation of when section 214 discontinuance applications are required, bringing added clarity to the section 214(a) discontinuance process for carriers and consumers alike. Finally, the Further Notice of Proposed Rulemaking sought comment on additional potential pole attachment reforms, reforms to the network change disclosure and section 214(a) discontinuance processes, and ways to facilitate rebuilding networks impacted by natural disasters. Various parties filed a Petition for Review of the Wireline Infrastructure Order in the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit denied the Petition on January 23, 2020 on the grounds that the parties lacked standing.

On June 7, 2018, the Commission adopted a Second Report and Order (Wireline Infrastructure Second Report and Order) taking further actions designed to expedite the transition from legacy networks and services to next generation networks and advanced services that benefit the American public and to promote broadband deployment by further streamlining the section 214(a) discontinuance rules, network change disclosure processes, and part 68 customer notification process.

The Wireline Infrastructure NPRM, NOI, and RFC sought comment on additional issues not addressed in the November Wireline Infrastructure Order or the June Wireline Infrastructure Second Report and Order. It sought comment on changes to the Commission's pole attachment rules to: (1) streamline the timeframe for gaining access to utility poles; (2) reduce charges paid by attachers for work done to make a pole ready for new attachments; and (3) establish a formula for computing the maximum pole attachment rate that may be imposed on an incumbent LEC.

The Wireline Infrastructure NPRM, NOI, and RFC also sought comment on whether the Commission should enact rules, consistent with its authority under section 253 of the Act, to promote the deployment of broadband infrastructure by preempting State and local laws that inhibit broadband deployment. It also sought comment on whether there are State laws governing the maintenance or retirement of copper facilities that serve as a barrier to deploying next-generation technologies and services that the Commission might seek to preempt.

Previously, in November 2014, the Commission adopted a Notice of Proposed Rulemaking and Declaratory Ruling that: (1) proposed new backup power rules; (2) proposed new or revised rules for copper retirements and service discontinuances; and (3) adopted a functional test in determining what constitutes a service for purposes of section 214(a) discontinuance review. In August 2015, the Commission adopted a Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking that: (i) lengthened and revised the copper retirement process; (ii) determined that a carrier must obtain Commission approval before discontinuing a service used as a wholesale input if the carrier's actions will discontinue service to a carrier-customer's retail end users; (iii) adopted an interim rule requiring incumbent LECs that seek to discontinue certain TDM-based wholesale services to commit to certain rates, terms, and conditions; (iv) proposed further revisions to the copper retirement discontinuance process; and (v) upheld the November 2014 Declaratory Ruling. In July 2016, the Commission adopted a Second Report and Order, Declaratory Ruling, and Order on Reconsideration that: (i) adopted a new test for obtaining streamlined treatment when carriers seek Commission authorization to discontinue legacy services in favor of services based on newer technologies; (ii) set forth consumer education requirements for carriers seeking to discontinue legacy services in favor of services based on newer technologies; (iii) allowed notice to customers of discontinuance applications by email; (iv) required carriers to provide notice of discontinuance applications to Tribal entities; (v) made a technical rule change to create a new title for copper retirement notices and certifications; and (vi) harmonized the timeline for competitive LEC discontinuances caused by incumbent LEC network changes.

On August 2, 2018, the Commission adopted a Third Report and Order and Declaratory Ruling (Wireline Infrastructure Third Report and Order) establishing a new framework for the vast majority of pole attachments governed by Federal law by instituting a one-touch make-ready regime, in which a new attacher may elect to perform all simple work to prepare a pole for new wireline attachments in the communications space. This new framework includes safeguards to promote coordination among parties and ensures that new attachers perform work safely and reliably. The Commission retained its multi-party pole attachment process for attachments that are complex or above the communications space of a pole, but made significant modifications to speed deployment, promote accurate billing, expand the use of self-help for new attachers when attachment deadlines are missed, and reduce the likelihood of coordination failures that lead to unwarranted delays. The Commission also improved its pole attachment rules by codifying and redefining Commission precedent that requires utilities to allow attachers to overlash existing wires, thus maximizing the usable space on the pole; eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers; and clarifying that the Commission will preempt, on an expedited case-by-case basis, State and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster. The Commission also adopted a Declaratory Ruling that

interpreted section 253(a) of the Communications Act to prohibit State and local express and *de facto* moratoria on the deployment of telecommunications services or facilities and directed the Wireline Competition and Wireless Telecommunications Bureaus to act promptly on petitions challenging specific alleged moratoria. Numerous parties filed appeals of the Wireline Infrastructure Third Report and Order, and the appeals were consolidated in the U.S. Court of Appeals of the Ninth Circuit. On August 12, 2020, the Ninth Circuit issued an opinion upholding the Wireline Infrastructure Third Report and Order in all respects.

On August 8, 2018, Public Knowledge filed a Petition for Reconsideration of the Second Report and Order and Motion to Hold in Abeyance. On October 20, 2020, the Wireline Competition Bureau (Bureau) adopted a Declaratory Ruling, Order on Reconsideration, and Order. In the Declaratory Ruling, the Bureau clarified that any carrier seeking to discontinue legacy voice service to a community or part of a community that is the last retail provider of such legacy TDM service to that community or part of the community is subject to the Commission's technology transition discontinuance rules, including the requirements to receive streamlined treatment of its discontinuance application. In the Order on Reconsideration, the Bureau denied the Public Knowledge Petition for Reconsideration because all of Public Knowledge's arguments were fully considered, and rejected, by the Commission in the underlying proceeding. It also dismissed as moot the accompanying motion to have the Commission hold that *Order* in abeyance pending the outcome of the appeal that the Ninth Circuit ultimately denied.

In September 2019, CTIA filed a Petition for Declaratory Ruling seeking clarification of certain issues raised in the 2018 Third Report and Order. On July 29, 2020, the Wireline Competition Bureau issued a Declaratory Ruling clarifying that (1) the imposition of a blanket ban'' by a utility on attachments to any portion of a utility pole is inconsistent with the federal requirement that a denial of access . . . be specific'' to a particular request; and (2) while utilities and attachers have the flexibility to negotiate terms in their pole attachment agreements that differ from the requirements in the Commission's rules, a utility cannot use its significant negotiating leverage to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.

On July 20, 2020, the Wireline Competition Bureau issued a Public Notice seeking comment on a Petition for Declaratory Ruling filed on July 16, 2020, by NCTA The internet & Television Association. NCTA asked the Commission to declare that: (1) pole owners must share in the cost of pole replacements in unserved areas pursuant to section 224 of the Communications Act, section 1.1408(b) of the Commission's rules, and Commission precedent; (2) pole attachment complaints arising in unserved areas should be prioritized through placement on the Accelerated Docket under section 1.736 of the Commission's rules; and (3) section 1.1407(b) of the Commission's rules authorizes the Commission to order any pole owner to complete a pole replacement within a specified period of time or designate an authorized contractor to do so. Comments on the NCTA Petition were due by September 2, 2020, and reply comments by September 17, 2020.

On January 19, 2021, WCB released a Declaratory Ruling on the subject of pole replacements. WCB declined to rule on the NCTA Petition, finding that the questions raised were better suited to a rulemaking. However, in response to the Petition's record, WCB issued a narrow clarification: a utility may not impose the entire cost of a pole replacement on a requesting attacher when the attacher is not the sole cause of the pole replacement (for instance, where the pole has been red-tagged''*i.e.,* placed on a utility's pole replacement schedule due to non-compliance with safety standards).

On July 23, 2021, the Wireline Competition Bureau issued a Public Notice seeking comment on a Petition for Declaratory Ruling filed by the Edison Electric Institute asking the Commission to declare that: (1) when the Commission determines that a pole attachment rate, term, or condition is unjust and unreasonable and orders a refund pursuant to section 1.1407(a)(3) of the Commission's rules, the applicable statute of limitations'' is the same as the two-year period prescribed by section 415(b) of the Act; and (2) refunds in pole attachment complaint proceedings are not appropriate'' for any period preceding good-faith notice of a dispute. Deadlines for filing comments and reply comments were set for August 23, 2021, and September 10, 2021, respectively.

In March 2022, the Commission began the rulemaking contemplated by the January 2021 Declaratory Ruling, by adopting a Second Further Notice of Proposed Rulemaking seeking comment on several issues relating to pole replacements, including (1) whether and to what extent utilities directly benefit from various types of pole replacements in situations where a pole replacement is not necessitated solely'' by a new attachment request; (2) whether requiring utilities to pay a portion of the costs of a pole replacement would positively or negatively affect negotiations of pole attachment agreements and broadband deployment; (3) what measures the Commission could adopt to expedite the resolution of pole replacement disputes; and (4) what scope of refunds the Commission should order when it determines that a pole attachment rate, term, or condition is unjust and unreasonable. Comments on the Second FNPRM were due on June 27, 2022, while reply comments were due on August 26, 2022.

Timetable:

Action	Date	FR Cite
NPRM	01/06/15	80 FR 450
NPRM Comment Period End.	02/05/15	
NPRM Reply Comment Period End.	03/09/15	
FNPRM	09/25/15	80 FR 57768
R&O	09/25/15	80 FR 57768
FNPRM Comment Period End.	10/26/15	
FNPRM Reply Comment Period End.	11/24/15	
2nd R&O	09/12/16	81 FR 62632
NPRM	05/16/17	82 FR 224533
NPRM Comment Period End.	06/15/17	
NPRM Reply Comment Period End.	07/17/17	
R&O	12/28/17	82 FR 61520
FNPRM Comment Period End.	01/17/18	
FNPRM Reply Comment Period End.	02/16/18	
2nd R&O	07/09/18	83 FR 31659
3rd R&O	09/14/18	83 FR 46812
NCTA Public Notice.	07/20/20	
CTIA Declaratory Ruling.	07/29/20	
Declaratory Ruling	01/19/21	
Order on Reconsideration.	02/02/21	86 FR 8872
EEI Public Notice	07/23/21	
EEI Public Notice Comment Period End.	08/23/21	
EEI Public Notice Reply Comment Period End.	09/10/21	
Second FNPRM	03/18/22	87 FR 25181

Action	Date	FR Cite
Second Further NPRM Comment Period End.	06/27/22	
Second Further NPRM Reply Comment Period End.	08/26/22	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK32

591. Numbering Policies for Modern Communications, WC Docket No. 13–97 [3060–AK36]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 153 to 154; 47 U.S.C. 201 to 205; 47 U.S.C. 251; 47 U.S.C. 303(r)

Abstract: This Order establishes a process to authorize interconnected VoIP providers to obtain North American Numbering Plan (NANP) telephone numbers directly from the numbering administrators, rather than through intermediaries. Section 52.15(g)(2)(i) of the Commission's rules limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which the numbers are being requested. The Commission has interpreted this rule as requiring evidence of either a State certificate of public convenience and necessity (CPCN) or a Commission license. Neither authorization is typically available in practice to interconnected VoIP providers. Thus, as a practical matter, generally only telecommunications carriers are able to provide the proof of authorization required under our rules, and thus able to obtain numbers directly from the numbering administrators. This Order establishes an authorization process to enable interconnected VoIP providers that choose direct access to request numbers directly from the numbering administrators. Next, the Order sets forth several conditions designed to minimize number exhaust and preserve the integrity of the numbering system.

The Order requires interconnected VoIP providers obtaining numbers to comply with the same requirements applicable to carriers seeking to obtain numbers. These requirements include any State requirements pursuant to numbering authority delegated to the States by the Commission, as well as industry guidelines and practices, among others. The Order also requires interconnected VoIP providers to comply with facilities readiness requirements adapted to this context, and with numbering utilization and optimization requirements. As conditions to requesting and obtaining numbers directly from the numbering administrators, interconnected VoIP providers are also required to: (1) provide the relevant State commissions with regulatory and numbering contacts when requesting numbers in those states; (2) request numbers from the numbering administrators under their own unique OCN; (3) file any requests for numbers with the relevant State commissions at least 30 days prior to requesting numbers from the numbering administrators; and (4) provide customers with the opportunity to access all abbreviated dialing codes (N11 numbers) in use in a geographic area.

The Order also modifies Commission's rules in order to permit VoIP Positioning Center (VPC) providers to obtain pseudo-Automatic Number Identification (p-ANI) codes directly from the numbering administrators for purposes of providing E911 services.

Based on experiences and review of the direct access authorization process established by the 2015 Order, the Commission adopted a FNPRM which proposes clarifications and revisions to the Commission's rules to better ensure that interconnected VoIP providers that obtain direct access authorization to not facilitate illegal robocalls, spoofing, or fraud, pose national security risks, or evade or abuse intercarrier compensation requirements. The FNPRM proposes to require additional certifications as part of the direct access authorization applications process, that would include certification of compliance with anti-robocalling obligations. The FNPRM also proposes to clarify that applicants disclose foreign ownership information on their direct access application. It would also propose to generally refer those applications with 10% or greater foreign ownership to the Executive Branch agencies for their review, consistent with the Commission's referral of other types of applications. The FNPRM also propose to clarify that holders of a direct access authorization must update the Commission and applicable states within 30 days of changes to ownership information submitted to the Commission. The FNPRM further proposes to clarify that Commission staff retain the authority to determine when to accept filings as complete and proposes to direct Commission staff to reject an application if an applicant has engaged in behavior contrary to the public interest or has been found to originate or transmit illegal robocalls. Finally, the FNPRM seeks comment on whether to expand the direct access authorization to one-way VoIP providers or other entities that use numbering resources.

Timetable:

Action	Date	FR Cite
NPRM	06/19/13	78 FR 36725
NPRM Comment Period End.	07/19/13	
R&O	10/29/15	80 FR 66454
FNPRM (Release Date).	08/06/21	86 FR 51081
FNPRM (Comment Period End).	10/14/21	86 FR 51081
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK36

592. Implementation of the Universal Service Portions of the 1996 Telecommunications Act [3060–AK57]

Legal Authority: 47 U.S.C. 151 *et seq.*

Abstract: The Telecommunications Act of 1996 expanded the traditional goal of universal service to include increased access to both telecommunications and advanced services such as high-speed internet for all consumers at just, reasonable, and affordable rates. The Act established principles for universal service that specifically focused on increasing access to evolving services for consumers living in rural and insular areas, and for consumers with low-incomes. Additional principles called for increased access to high-speed internet in the nation's schools, libraries, and rural healthcare facilities. The FCC established four programs within the Universal Service Fund to implement the statute: Connect America Fund (formally known as High-Cost Support) for rural areas; Lifeline (for low-income consumers), including initiatives to expand phone service for Native Americans; Schools and Libraries (E-rate); and Rural Healthcare.

The Universal Service Fund is paid for by contributions from

telecommunications carriers, including wireline and wireless companies, and interconnected Voice over internet Protocol (VoIP) providers, including cable companies that provide voice service, based on an assessment on their interstate and international end-user revenues. The Universal Service Administrative Company, or USAC, administers the four programs and collects monies for the Universal Service Fund under the direction of the FCC.

On February 17, 2023, the Commission proposed simplifying rules for accessing program offering high-speed internet for Schools and Libraries.

On March 27, 2023, the Commission sought comment on continued filing of Alaska Plan FCC Form 477 Mobile Deployment Data and waived interim PR–USVI Mobile Milestone Filing and provides information for Final Milestone Filing.

On April 19, 2023, the Commission adopted an Order to ensure support for providers in Puerto Rico and the U.S. Virgin Islands to continue strengthening their existing networks.

On May 12, 2023, the Commission granted, in part, the Request for Waiver filed by SHLB and CoSN, by waiving and extending the service delivery deadline for certain applicants who received Emergency Connectivity Fund support.

Timetable:

Action	Date	FR Cite
R&O and FNPRM	01/13/17	82 FR 4275
NPRM Comment Period End.	02/13/17	
NPRM Reply Comment Period End.	02/27/17	
R&O and Order on Recon.	03/21/17	82 FR 14466
Order on Recon ..	05/19/17	82 FR 22901
Order on Recon ..	06/08/17	82 FR 26653
Memorandum, Opinion & Order.	06/21/17	82 FR 228224
NPRM	07/30/19	84 FR 36865
NPRM	08/21/19	84 FR 43543
R&O and Order on Recon.	11/07/19	84 FR 59937
Order on Recon ..	12/09/19	84 FR 67220
R&O	12/20/19	84 FR 70026
R&O	12/27/19	84 FR 71308
R&O	01/17/20	85 FR 3044
Report & Order ...	03/10/20	85 FR 13773
Report & Order ...	05/11/20	85 FR 19892
Declaratory Ruling/2nd FNPRM.	08/04/20	85 FR 48134
Public Notice	03/22/21	86 FR 15172
Report & Order on Recon.	04/09/21	86 FR 18459
R&O	05/28/21	86 FR 29136
2nd R&O	07/14/21	86 FR 37061
Public Notice	08/02/21	86 FR 41408
NPRM	10/14/21	86 FR 57097
Order	12/14/21	86 FR 70983
NPRM	01/27/22	87 FR 4182
FNPRM	03/15/22	87 FR 14422
NPRM	06/16/22	87 FR 36283
NPRM	06/23/22	87 FR 37459
2nd R&O	09/06/22	87 FR 54311
3rd R&O	09/06/22	87 FR 54401
Further Notice of Proposed Rulemaking.	11/19/22	87 FR 67660
Public Notice	01/06/23	88 FR 1035
NPRM	03/13/23	88 FR 14529
Public Notice	04/11/23	88 FR 21580
Report and Order on Review.	05/05/23	88 FR 28993
Order	06/05/23	88 FR 36510
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK57

593. Toll Free Assignment Modernization and Toll-Free Service Access Codes: WC Docket No. 17–192, CC Docket No. 95–155 [3060–AK91]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 251(e)(1)

Abstract: In this Report and Order (Order), the Federal Communications Commission (FCC) initiates an auction to distribute certain toll-free numbers. The numbers to be auctioned will be in the new 833 toll free code for which there have been multiple, competing requests.

By using an auction, the FCC will ensure that sought-after numbers are awarded to the parties that value them most. In addition, the FCC will reserve certain 833 numbers for distribution to government and non-profit entities that request them for public health and safety purposes. The FCC will study the results of the auction to determine how to best use the mechanism to distribute toll-free numbers equitably and efficiently in the future as well. Revenues from the auction will be used to defray the cost of toll-free numbering administration, reducing the cost of numbering for all users. The Order establishing the toll-free number auction will also authorize and accommodate the use of a secondary market for numbers awarded at auction to further distribute these numbers to the entities that value them most. The Order also adopted several definitional and technical updates to improve clarity and flexibility in toll-free number assignment.

The Commission sought comment and then adopted auctions procedures and deadlines on August 2, 2019. Bidding for the auction occurred on December 17, 2019, and Somos issued an announcement of the winning bidders on December 20, 2019. On December 16, 2019, to facilitate the preparation of its study of the auction, the Bureau charged the North American Numbering Council, via its Toll Free Access Modernization Working Group, to issue a report evaluating various aspects of the 833 Auction, and recommending improvements for any future toll free number auctions.

On January 16, 2020, Somos released all of the 833 Auction data for public review. On March 13, 2020, the Bureau invited public comment on the 833 Auction in preparation for issuing a report on the lessons learned from the Auction. Comments were due on April 13, 2020. On July 14, 2020, the North American Numbering Council approved the Toll-Free Assignment Modernization Working Group's report, Perspectives on the December 2019 Auction of Numbers in the 833 Numbering Plan Area.

On January 15, 2021, the Bureau released a report that examined various aspects of this toll-free number assignment experiment, including lessons learned, examination of auction outcomes, and recommendations for future toll free number assignment. The Bureau concluded that the 833 Auction was a successful experiment that provided invaluable experience and data that can facilitate further Commission efforts to continue to modernize tol-free number allocation in the future.

Timetable:

Action	Date	FR Cite
NPRM	10/13/17	82 FR 47669
NPRM Comment Period End.	11/13/17	
Final Rule	10/23/18	83 FR 53377
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK91

594. Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19–195 and 11–10 [3060–AK93]

Legal Authority: 47 U.S.C. 35 to 39; 47 U.S.C. 154; 47 U.S.C. 211; 47 U.S.C. 219; 47 U.S.C. 220; 47 U.S.C. 402(b)2(B); Pub. L. 104–104; 47 U.S.C. 151–154; 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 641 to 646; Pub. L 116–130; . . .

Abstract: The Commission has long recognized that precise, granular data on the availability of fixed and mobile broadband are vital to bringing digital opportunity to all Americans, no matter where they live, work, or travel.

On March 23, 2020, the Broadband Deployment Accuracy and Technological Availability Act (Broadband DATA Act) was signed into law requiring the Commission to create a new set of broadband availability maps. Among other things, the Broadband DATA Act requires the Commission to collect standardized, granular data on the availability and quality of both fixed and mobile broadband internet access services, to create a common dataset of all locations where fixed broadband internet access service can be installed (the Broadband Serviceable Location Fabric or Fabric), and to create publicly available coverage maps. The Act further requires the Commission to establish processes for members of the public and other entities to (1) provide verified data for use in the coverage maps; (2) challenge the coverage maps, the broadband availability data submitted by broadband internet access service providers (providers), and the Fabric; and (3) submit specific crowdsource information about the development and availability of broadband service.

In July 2020, implementing the Broadband DATA Act and building off of an August 2019 Report and Order and Notice of Proposed Rulemaking, the Commission adopted a Second Report and Order and Third Further Notice of Proposed Rulemaking that adopted rules for the collection and verification of improved, more precise data on both fixed and mobile broadband availability. In January 2021, the Commission released a Third Report and Order that established new requirements for the BDC and took additional steps to implement the Broadband DATA Act. The Commission adopted rules to specify which fixed and mobile providers are required to report broadband availability data and expanded the reporting and certification requirements for filing data in the BDC. It also adopted standards for collecting verified broadband data from State, local, and Tribal entities and certain third parties, and for identifying locations that would be included in the Fabric. Importantly, in the Third Report and Order, the Commission also established processes for verifying the accuracy of provider-submitted data and the Fabric, including a third-party challenge process.

Implementing the Broadband DATA Act and these new rules, the Commission created a complex data platform and system to collect and map availability data collected from over 2500 providers and for consumers and other stakeholders to submit challenges to that data; established the Fabric dataset of locations upon which to overlay provider availability data; and established a dedicated help center to provide technical assistance to providers, consumers and other stakeholders.

In July 2021, the Wireless Telecommunications Bureau (WTB), Office of Economics and Analytics (OEA), and Office of Engineering and Technology (OET) released a Public Notice seeking comment on the technical requirements for the mobile challenge, verification, and crowdsourcing processes required under the Broadband DATA Act for the new Broadband Data Collection (BDC). In March 2022, the Broadband Data Task Force (Task Force), WTB, OEA, and OET released a detailed order, technical appendix, rules, and technical data specifications setting forth technical requirements and specifications for the mobile challenge, verification, and crowdsource processes required by the Act.

To help facilitate the mobile challenge process, in April 2022, the Task Force and OET issued a Public Notice announcing the technical requirements and procedures for approving third-party mobile speed test procedures for use in collecting and submitting mobile network performance data as part of the BDC. To assist entities that choose to file mobile challenges in bulk, in September 2022 the Task Force and WTB established a process for entities to use their own software and hardware to collect on-the-ground mobile speed test data for use in the BDC mobile challenge process.

Also in April 2022, the Task Force, WCB, WTB, OEA, and OET released a Public Notice providing details on the procedures for state, local, and Tribal governmental entities to submit verified availability data through the BDC system.

Seeking to clarify the Commission's rules for filing data in the BDC, in July 2022 WCB, WTB, OEA, and the Task Force issued a Declaratory Ruling on certain aspects of a rule regarding the engineering certification in BDC filings and issued a limited waiver of the requirement that providers have an engineer certification their biannual BDC filings for the first three filing cycles of the BDC.

On June 15, 2022, the FCC Enforcement Bureau issued an Enforcement Advisory reminding all facilities-based providers of their duty to timely file complete and accurate data in the BDC by September 1, 2022.

In February 2022, the Commission announced the opening of the initial filing window of the BDC would open on June 30, 2022, and was due no later than September 1, 2022. In December 2022, the Commission announced that the second filing window of the BDC would open on January 3, 2023, and required all fixed and mobile providers to submit broadband availability data as of December 31, 2022, and was due no later than March 1, 2023.

In November 2022, the Commission released a pre-production draft of its new National Broadband Map based on version 1 of the Fabric and the availability data submitted by providers as of June 30, 2022. The new map is the most comprehensive, granular, and standardized data the Commission has ever published on broadband availability.

With the launch of the pre-production draft map, the Commission began accepting challenges to provider reported availability data, as well as individual consumer challenges to the location data in the Fabric. To date, the mapping team has reviewed and processed more than 4 million availability challenges. Most of those challenges have already been resolved and the majority have led to updates in the data on the map showing where broadband is available.

The Commission adopted an Order in December 2022, to sunset the Form 477 broadband deployment dateliminate a largely duplicative requirement on providers. As a result, providers will no longer be required to submit Form 477 broadband deployment data, but must still submit broadband and voice subscription data using the FCC Form 477; those filers will submit their data through the BDC system.

Timetable:

Action	Date	FR Cite
NPRM	08/03/17	82 FR 40118
NPRM Comment Period End.	09/25/17	
Report & Order	08/01/19	84 FR 43705
Second Further Notice of Proposed Rulemaking.	08/01/19	84 FR 43764
Second Further NPRM Comment Period End.	10/07/19	
2nd R&O	07/16/20	85 FR 50886
3rd FNPRM	07/16/20	85 FR 50911
3rd FNPRM Comment Period End.	09/08/20	
3rd R&O	01/13/21	86 FR 18124
Public Notice	07/16/21	86 FR 40398
Public Notice Comment Period End.	09/27/21	
Order	03/09/22	87 FR 21476
Order	12/16/22	87 FR 76949
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK93

595. Call Authentication Trust Anchor [3060–AL00]

Legal Authority: 47 U.S.C. 201; 47 U.S.C. 251; 47 U.S.C. 227; 47 U.S.C. 227b; 47 U.S.C. 503

Abstract: On June 6, 2019, the Commission adopted a Declaratory Ruling and Third Further Notice of Proposed Rulemaking (CG Docket No. 17–59, WC Docket No. 17–97) that proposed and sought comment on mandating implementation of STIR/SHAKEN in the event that major voice service providers did not voluntarily implement the framework by the end of 2019.

On December 30, 2019, Congress enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. Along with numerous other provisions directed at addressing robocalls, the TRACED Act directs the Commission to require all voice service providers to implement STIR/SHAKEN in the Internet Protocol (IP) portions of their networks, and to implement an effective caller ID authentication framework in the non-IP portions of their networks. The TRACED Act further creates processes by which voice service providers may be exempt from this mandate if the Commission determines they have achieved certain implementation benchmarks, and by which voice service providers may be granted a delay in compliance based on a finding of undue hardship because of burdens or barriers to implementation or based on a delay in development of a caller ID authentication protocol for calls delivered over non-IP networks.

On March 31, 2020, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (WC Docket Nos. 17–97, 20–67). The Report and Order mandated that all originating and terminating voice service providers implement the STIR/SHAKEN caller ID authentication framework in the IP portions of their networks by June 30, 2021. In the Further Notice the Commission sought comment on proposals to further promote caller ID authentication and implement the TRACED Act.

On September 29, 2020, the Commission adopted a Second Report and Order (WC Docket No. 17–97). The Second Report and Order implemented rules (1) granting extensions for compliance with the STIR/SHAKEN implementation mandate for small voice service providers, voice service providers that cannot obtain a SPC token from the Governance Authority, services scheduled for section 214 discontinuance, for those portions of a voice service provider's network that rely on non-IP technology, and establishing a process for individual voice service providers to seek provider specific extensions; (2) requiring voice service providers using non-IP technology either to upgrade their networks to IP to enable STIR/SHAKEN implementation, or work to develop non-IP caller ID authentication technology and implement a robocall mitigation program in the interim; (3) establishing a process where by a voice service provider may be exempt from the STIR/SHAKEN implementation mandate if the provider has achieved certain implementation benchmarks; (4) prohibiting voice service providers from imposing line item charges on consumer and small business subscribers for caller ID authentication; and (5) requiring intermediate providers to implement STIR/SHAKEN. On May 20, 2021, the Commissioned released a Third Further Notice of Proposed Rulemaking proposing to shorten the small provider extension from two years to one for a subset of small voice service providers that are at a heightened risk of originating an especially large amount of robocall traffic.

On January 13, 2021, the Commission adopted a Second Further Notice of Proposed Rulemaking proposing and seeking comment on a limited role for the Commission to oversee certificate revocation decisions by the private STIR/SHAKEN Governance Authority that would have the effect of placing providers in noncompliance with the Commission's rules. On August 5, 2021, the Commission adopted a Third Report and Order which adopted rules creating this oversight role.

On September 30, 2021, the Commission adopted a Fourth Further Notice of Proposed Rulemaking proposing to require gateway providers to apply STIR/SHAKEN caller ID authentication to, and perform robocall mitigation on, foreign-originated calls with U.S. numbers, seeking comment on revisions to the information that filers must submit to the Robocall Mitigation Database, and clarifying the obligations of voice service providers and intermediate providers with respect to calls to and from Public Safety Answer Points and other emergency services providers.

On December 9, 2021, the Commission adopted a Fourth Report and Order adopting rules requiring non-facilities based small voice providers implement SITR/SHAKEN by June 30, 2022, and requiring small voice providers of any kind suspected of originating illegal robocalls to implement STIR/SHAKEN on an accelerated timeline.

On May 19, 2022, the Commission adopted a Fifth Report and Order, Order on Reconsideration, Order, and Fifth Further Notice of Proposed Rulemaking. The Fifth Report and Order and Order required gateway providers to submit a certification to the Robocall Mitigation Database, implement STIR/SHAKEN caller ID authentication as well as several other requirements, including an obligation to mitigate illegal robocall traffic and submit a mitigation plan to the Robocall Mitigation Database regardless of their STIR/SHAKEN implementation status. The Order on Reconsideration expanded the obligation of domestic providers to block calls carrying US NANP numbers from foreign providers not listed in the Robocall Mitigation Database. The Fifth Further Notice of Proposed Rulemaking sought comment on further steps to combat illegal robocalls, including extending requirements for authentication and filing in the Robocall Mitigation Database, requiring additional measures for robocall mitigation, enhancing enforcement mechanisms and other related issues

aimed at closing existing potential loopholes.

On March 16, 2023, the Commission adopted a Sixth Report and Order and Further Notice of Proposed Rulemaking. The Sixth Report and Order required intermediate providers to implement STIR/SHAKEN caller ID authentication for certain calls, expanded robocall mitigation requirements for all providers, and adopted more robust enforcement tools. The Sixth Further Notice of Proposed Rulemaking seeks comment on additional measures to combat illegal robocalls, including whether any changes should be made to the Commission's rules to permit, prohibit, or limit the use of third-party caller ID authentication solutions and whether to eliminate the STIR/SHAKEN implementation extension for providers that cannot obtain Service Provider Code tokens, which are necessary to participate in the STIR/SHAKEN caller ID authentication framework''.

On May 18, 2023, the Commission adopted a Seventh Repot and Order. The Seventh Report and Order required voice service providers and non-gateway intermediate providers to commit in their Robocall Mitigation Database certification to respond to traceback requests from the Commission, law enforcement, and the industry traceback consortium within 24 hours.

Timetable:

Action	Date	FR Cite
NOI	07/14/17	
DR and 3rd FNPRM.	06/06/19	84 FR 29478
NPRM	06/24/19	84 FR 29478
NPRM Comment Period End.	08/23/19	
3rd FNPRM Comment Period End.	08/23/19	
R&O and FNPRM	03/31/20	85 FR 22029
FNPRM Comment Period End.	05/29/20	
2nd R&O	09/29/20	85 FR 73360
2nd FNPRM	01/13/21	86 FR 9894
2nd FNPRM Comment Period.	03/19/21	
3rd FNPRM	05/20/21	86 FR 30571
3rd R&O	08/05/21	86 FR 48511
3rd FNPRM Comment Period End.	08/19/21	
4th FNPRM	10/01/21	86 FR 59084
4th FNPRM Comment Period End.	11/26/21	
4th R&O	12/09/21	
5th R&O, Order on Reconsideration.	05/19/22	87 FR 42916
5th FNPRM	05/19/22	87 FR 42670
5th FNPRM Comment Period End.	09/16/22	
6th Report and Order.	03/16/23	88 FR 40096
6th FNPRM	03/16/23	88 FR 29035
6th FNPRM Comment Period End.	07/05/23	
7th Report and Order.	05/18/23	88 FR 43446
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AL00

596. Implementation of the National Suicide Improvement Act of 2018, 988 Suicide Prevention Hotline (WC Docket 18–336, PS Docket No. 23.5, PS Docket No. 15–80) [3060–AL01]

Legal Authority: 47 U.S.C. 201; 47 U.S.C. 251

Abstract: On August 14, 2018, Congress passed the National Suicide Hotline Improvement Act (Act). Public Law 115–233, 132 Stat. 2424 (2018). The purpose of the Act was to study and report on the feasibility of designating a 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system by considering each of the current N11 designations. The Act directed the Commission to: (1) conduct a study that examines the feasibility of designating a simple, easy-to-remember, 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system; and (2) analyze how well the current National Suicide Prevention Lifeline is working to address the needs of veterans. The Act also directed the Commission to coordinate with the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), the Secretary of Veterans Affairs, and the North American Numbering Council (NANC) in conducting the study, and to produce a report on the study by August 14, 2019.

On August 14, 2019, the Wireline Competition Bureau and Office of Economics and Analytics submitted its report to Congress recommending that: (1) a 3-digit dialing code be used for a national suicide prevention and mental health crisis hotline system; and (2) the Commission should initiate a rulemaking proceeding to consider designating 988 as the 3-digit code.

On December 12, 2019, the Commission released a notice of proposed rulemaking (NPRM) proposing to designate 988 as a new, nationwide, 3-digit dialing code for a suicide prevention and mental health crisis hotline. WC Docket No. 18–336. The NPRM proposes that calls made to 988 be directed to the existing National Suicide Prevention Lifeline, which is made up of an expansive network of over 170 crisis centers located across the United States, and to the Veterans Crisis Line. The NPRM also proposes to require all telecommunications carriers and interconnected VoIP service providers to make, within 18 months, any changes necessary to ensure that users can dial 988 to reach the National Suicide Prevention Lifeline and Veterans Crisis Line.

On July 16, 2020, the Commission adopted an Order designating 988 as the 3-digit number to reach the Lifeline and Veterans Crisis Line (800–273–TALK or 800–273–8255) and requiring all telecommunications carriers, interconnected voice over internet Protocol (VoIP) providers, and one-way VoIP providers to make any network changes necessary to ensure that users can dial 988 to reach the Lifeline by July 16, 2022.

On October 16, 2020, the Communications Equality Advocates filed a petition for partial reconsideration of the FCC's July 16, 2020 Report and Order. In their petition, Communications Equality Advocates requested that the FCC revise the Order to mandate text-to-988 and direct video calling (DVC) requirements and to have such requirements be implemented on the same timeline as voice calls to 988, by July 16, 2022.

On October 17, 2020, Congress enacted the National Suicide Hotline Designation Act of 2020 (2020 Act). Public Law 116–172, 134 Stat. 832 (2020). The 2020 Act, among other things, designates 988 as the universal telephone number within the United States for the purpose of the national suicide prevention and mental health crisis hotline system operating through the National Suicide Prevention Lifeline,'' with designation occurring one year after enactment.

On November 9, 2020, pursuant to 2020 Act's requirements that the Commission submit a report on the feasibility and cost of attaching an automatic dispatchable location with 988 calls, the Commission issued a

Public Notice that sought comment on these issues.

On April 22, 2021, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) that proposes to require text service providers support text messages to 988 by routing texts to the toll free number.

On November 19, 2020, pursuant to 2020 Act's requirements that the Commission submit a report on the feasibility and cost of attaching an automatic dispatchable location with 988 calls, the Commission issued a Public Notice that sought comment on these issues. A Report to Congress regarding geolocation was released on April 15, 2021.

On April 22, 2021, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) that proposes to require text service providers support text messages to 988 by routing texts to the toll free number. On November 19, 2021, the Commission adopted an Order requiring the industry to enable texting to 988 by the same deadline as for voice calls, July 16, 2022.

On May 24, 2022, the Commission, following up on its report to Congress, hosted a forum in coordination with the U.S. Department of Health and Human Services and the U.S. Department of Veterans Affairs that convened various stakeholders to discuss issues surrounding geolocation. Participants included state and local entities; suicide prevention and mental health experts and advocates; communications industry leaders; and technical experts. The Commission opened the event to the public via live feed on the Commission's website, and audience members submitted questions to panelists by email.

On October 14, 2022, in accordance with the National Suicide Hotline Designation Act of 2020, the Wireline Competition Bureau submitted its first 988 Fee Accountability Report to Congress reporting on the collection and distribution of 988 fees and charges by the states, the District of Columbia, U.S. territories, and Tribal authorities for the period of January 1, 2021 to December 31, 2021.

On January 26, 2023, the Commission adopted a Notice of Proposed Rulemaking to help ensure that the public has access to the 988 Suicide & Crisis Lifeline if a service outage occurs. Those rules were adopted on July 20, 2023.

Timetable:

Action	Date	FR Cite
NPRM	01/15/20	85 FR 2359
NPRM Comment Period End.	03/16/20	
Report & Order	07/16/20	
PFR	10/16/20	
Oppositions Due	12/02/20	
Public Notice	12/08/20	85 FR 79014
Replies Due	12/14/20	
Public Notice Comment Period End.	01/11/21	
FNPRM	06/11/21	86 FR 31404
FNPRM Comment Period End.	08/10/21	
Report & Order	11/19/21	
NPRM	01/27/23	88 FR 20790
NPRM Comment Period End.	05/08/23	
NPRM Reply Comment Period End.	06/06/23	
Report and Order	07/21/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michelle Sclater, Attorney, Wireline Competition Bureau, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0388, *Email: michelle.sclater@fcc.gov.*

RIN: 3060–AL01

597. Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services [3060–AL02]

Legal Authority: 47 U.S.C. 10; 47 U.S.C. 251

Abstract: On November 22, 2019, the Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on proposals to update the unbundling and avoided-cost resale obligations stemming from the 1996 Act and applicable only to incumbent LECs. Many of these obligations appear to no longer be necessary in many geographic areas due to vigorous competition for mass market broadband services in urban areas and numerous intermodal voice capabilities and services. But recognizing that rural areas pose special challenges for broadband deployment, the NPRM did not propose any change to unbundling requirements for broadband-capable loops in rural areas. The NPRM sought to promote the Commission's efforts to reduce unnecessary and outdated regulatory burdens that appear to discourage the deployment of next-generation networks, delay the IP transition, unnecessarily burden incumbent LECs with no similar obligations placed on their competitors, and no longer benefit consumers or serve the purpose for which they were intended.

On October 27, 2020, the Commission adopted a Report and Order (1) eliminating unbundling requirements, subject to a reasonable transition period, for enterprise-grade DS1 and DS3 loops where there is evidence of actual and potential competition, for broadband-capable DS0 loops and associated subloops in the most densely populated areas, and for voice-grade narrowband loops nationwide, but preserving unbundling requirements for DS0 loops in less densely populated areas and DS1 and DS3 loops in areas without sufficient evidence of competition; (2) eliminating unbundling requirements for network interface devices and multiunit premises subloops; (3) eliminating unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks, but providing an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by competitive LECs that may harm consumers; (4) eliminating unbundling requirements for operations support systems, except where carriers are continuing to manage UNEs and for purposes of local interconnection and local number portability; and (5) eliminating remaining avoided-cost resale requirements. The Report and Order ended unbundling and resale requirements where they stifle technology transitions and broadband deployment, but preserved unbundling requirements where they are still necessary to realize the 1996 Act's goal of robust intermodal competition benefiting all Americans.

Timetable:

Action	Date	FR Cite
NPRM	01/06/20	85 FR 472
NPRM Comment Period End.	03/06/20	
Report & Order	01/08/21	86 FR 1636
Petition for Reconsideration filed by Sonic Telecom.	09/29/22	
Replies to Oppositions to Petition for Reconsideration.	10/04/22	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michele Berlove, Assistant Division Chief, Competition Policy Div., WCB, Federal Communications Commission, Wireline

Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1477, *Email: michele.berlove@fcc.gov.*

RIN: 3060–AL02

598. Establishing a 5G Fund for Rural America; GN Docket No. 20–32 [3060–AL15]

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 214; 47 U.S.C. 254; 47 U.S.C. 303(r); 47 U.S.C. 403

Abstract: The 5G Fund for Rural America will distribute up to $9 billion in universal service support through competitive bidding in two phases to bring mobile voice and 5G broadband service to rural areas of the country. 5G public interest obligations and performance requirements imposed on carriers continuing to receive legacy mobile high-cost support will help ensure that the areas they serve enjoy the benefits that 5G promises.

Timetable:

Action	Date	FR Cite
NPRM	05/26/20	85 FR 31616
Final Action	11/25/20	85 FR 75770
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kirk Burgee, Chief of Staff, Wireline Competition Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1599, *Email: kirk.burgee@fcc.gov.*

RIN: 3060–AL15

599. Protecting Consumers From SIM Swap and Port-Out Fraud, WC Docket No. 21–341 [3060–AL34]

Legal Authority: 47 U.S.C. 151, 154, 201, 222, 251, 303(r), 332

Abstract: The FCC proposed to amend its Customer Proprietary Network Information (CPNI) and Local Number Portability (LNP) rules to require providers to adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device or carrier. The FCC also proposed to require providers to immediately notify customers whenever a SIM change or port request is made on customers' accounts, and sought comment on other ways to protect consumers from SIM swapping and port-out fraud.

Timetable:

Action	Date	FR Cite
NPRM	10/15/21	86 FR 57390
NPRM Comment Period End.	12/15/21	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jordan Marie Reth, Attorney-Advisor (PU), Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1418, *Email: jordan.reth@fcc.gov.*

RIN: 3060–AL34

600. Supporting Survivors of Domestic and Sexual Violence (WC Docket No. 22–238,11–42, 21–450) [3060–AL48]

Legal Authority: 47 U.S.C. 151.201(b); 47 U.S.C. 301 and 303; 47 U.S.C. 307 and 309; 47 U.S.C. 316 and 345; 47 U.S.C. 403 and sec. 5(b); Pub. L. 117–223 and 136 Stat. 2280

Abstract: On July 14, 2022, the Commission initiated an inquiry into steps that the Commission could take to assist survivors of domestic violence. In the Notice of Inquiry, the Commission sought information on the scope of connectivity-based difficulties survivors face, as well as potential means by which current Commission programs could be better adapted and new programs could be developed to address survivors' needs. In particular, the Commission sought comment relating to potentially developing a centralized database of telephone numbers relating to domestic abuse support that could be used by service providers to prevent survivors' communications with support organizations from appearing on logs of calls and text messages that may be available to abusers.

In the NPRM, the Commission begins the process of implementing the Safe Connections Act of 2022 (Safe Connections Act), enacted on December 7, 2022. The legislation amends the Communications Act of 1934 (Communications Act) to require mobile service providers to separate the line of a survivor of domestic violence (and other related crimes and abuse), and any individuals in the care of the survivor, from a mobile service contract shared with an abuser within two business days after receiving a request from the survivor. The Safe Connections Act also directs the Commission to issue rules, within 18 months of the statute's enactment, implementing the line separation requirement. Further, the legislation also requires the Commission to open a rulemaking within 180 days of enactment to consider whether to, and how the Commission should, establish a central database of domestic abuse hotlines to be used by service providers and require such providers to omit, subject to certain conditions, any records of calls or text messages to the hotlines from consumer-facing call and text message logs. The NPRM proposes rules as directed by these statutory requirements.

Timetable:

Action	Date	FR Cite
NOI	08/18/22	
Comment Period End.	08/18/22	
Reply Comment Period End.	09/19/22	
NPRM	02/17/23	88 FR 15558
NPRM Comment Period End.	04/10/23	
Reply Comment Period End.	05/10/23	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Kracher, Deputy Division Chief, Wireline Competition Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1525.

RIN: 3060–AL48

[FR Doc. 2024–00466 Filed 2–8–24; 8:45 am]

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FEDERAL REGISTER

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Part XXIII

Federal Reserve System

Semiannual Regulatory Agenda

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period November 2023 through April 2024. The next agenda will be published in spring 2024.

DATES: Comments about the form or content of the agenda may be submitted any time during the next 6 months.

ADDRESSES: Comments should be addressed to Ann E. Misback, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its fall 2023 agenda as part of the Fall 2023 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following website: *www.reginfo.gov.* Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into three sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. And a third section, Long-Term Actions, reports on matters where the next action is undetermined, 00/00/0000, or will occur more than 12 months after publication of the Agenda. A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda.

Ann E. Misback,

Secretary of the Board.

FEDERAL RESERVE SYSTEM—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
601	Source of Strength **(Section 610 Review)**	7100–AE73
602	Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R–1429).	7100–AD80

FEDERAL RESERVE SYSTEM (FRS)

Long-Term Actions

601. Source of Strength (Section 610 Review) [7100–AE73]

Legal Authority: 12 U.S.C. 1831(o)

Abstract: The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) plan to issue a proposed rule to implement section 616(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 616(d) requires that bank holding companies, savings and loan holding companies, and other companies that directly or indirectly control an insured depository institution serve as a source of strength for the insured depository institution.

Timetable:

Action	Date	FR Cite
Board Expects Further Action.	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined.

Agency Contact: Melissa Clark, Lead Financial Institution Policy Analyst, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 452–2277.

Vivian Joel, Lead Financial Institution Policy Analyst, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 912–4313.

Jay Schwarz, Assistant General Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2970.

Claudia Von Pervieux, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2552.

RIN: 7100–AE73

602. Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R–1429) [7100–AD80]

Legal Authority: 5 U.S.C. 552; 5 U.S.C. 559; 5 U.S.C. 1813; 5 U.S.C. 1817; 5 U.S.C. 1828

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) transferred responsibility for supervision of Savings and Loan Holding Companies (SLHCs) and their non-depository subsidiaries from the Office of Thrift Supervision (OTS) to the Board of Governors of the Federal Reserve System (the Board), on July 21, 2011. The Act also transferred supervisory functions related to Federal savings associations and State savings associations to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), respectively. The Board on August 12, 2011, approved an interim final rule for SLHCs, including a request for public comment. The interim final rule transferred from the OTS to the Board the regulations necessary for the Board to supervise SLHCs, with certain technical and substantive modifications. The interim final rule has three components: (1) New Regulation LL (part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (part 239), which sets forth regulations governing SLHCs in mutual form; and (3) technical amendments to existing Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board. The structure of interim final Regulation LL closely follows that of the Board's Regulation Y, which governs bank holding companies, in order to provide an overall structure to rules that were previously found in disparate locations. In many instances, interim final Regulation LL incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation LL

also reflects statutory changes made by the Dodd-Frank Act with respect to SLHCs, and incorporates Board precedent and practices with respect to applications processing procedures and control issues, among other matters. Interim final Regulation MM organized existing OTS regulations governing SLHCs in mutual form (MHCs) and their subsidiary holding companies into a single part of the Board's regulations. In many instances, interim final Regulation MM incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation MM also reflects statutory changes made by the Dodd-Frank Act with respect to MHCs. The interim final rule also made technical amendments to Board rules to facilitate supervision of SLHCs, including to rules implementing Community Reinvestment Act requirements and to Board procedural and administrative rules. In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Act, which transfers to the Board all rulemaking authority under section 11 of the Home Owner's Loan Act relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders. These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

Timetable:

Action	Date	FR Cite
Board Requested Comment.	09/13/11	76 FR 56508
Board Expects Further Action.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Scott Tkacz, Senior Special Counsel, Federal Reserve System, Legal Division, Washington, DC 20551,*Phone:* 202 452–2744.

Victoria Szybillo, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551,*Phone:* 202 475–6325.

RIN: 7100–AD80

[FR Doc. 2024–00481 Filed 2–8–24; 8:45 am]

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Part XXIV

National Labor Relations Board

Semiannual Regulatory Agenda

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 101 to 103

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Labor Relations Board.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The following agenda of the National Labor Relations Board is published in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act.

The complete Unified Agenda is available online at *www.reginfo.gov.* Publication in the **Federal Register** is mandated only for regulatory flexibility agendas required under the RFA. Because the RFA does not require regulatory flexibility agendas for the regulations proposed and issued by the Board, the Board's agenda appears only on the internet at *www.reginfo.gov.*

The Board's agenda refers to *www.regulations.gov,* the Government website at which members of the public can find, review, and comment on Federal rulemakings that are published in the **Federal Register** and open for comment.

FOR FURTHER INFORMATION CONTACT: For further information concerning the regulatory actions listed in the agenda, contact Farah Z. Qureshi, Deputy Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570; telephone 202–273–1949, TTY/TDD 1–800–315–6572; email *Farah.Qureshi@nlrb.gov.*

Farah Z. Qureshi,

Deputy Executive Secretary.

NATIONAL LABOR RELATIONS BOARD—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
603	Joint Employer	3142–AA21

NATIONAL LABOR RELATIONS BOARD (NLRB)

Completed Actions

603. Joint Employer [3142–AA21]

Legal Authority: 29 U.S.C. 156

Abstract: The National Labor Relations Board will engage in rulemaking on the standard for determining whether two employers, as defined in section 2(2) of the National Labor Relations Act (Act), are a joint employer under the Act.

Completed:

Reason	Date	FR Cite
Final Rule	10/27/23	88 FR 73946
Final Rule Effective.	12/26/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Farah Qureshi,*Phone:* 202 273–1949,*Email: farah.qureshi@nlrb.gov.*

Roxanne Rothschild,*Phone:* 202 273–2917,*Email: roxanne.rothschild@nlrb.gov.*

RIN: 3142–AA21

[FR Doc. 2024–00467 Filed 2–8–24; 8:45 am]

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Part XXV

Nuclear Regulatory Commission

Semiannual Regulatory Agenda

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2023–0133]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: We are publishing our semiannual regulatory agenda (the Agenda) in accordance with Public Law 96–354, ''The Regulatory Flexibility Act,'' and Executive Order 12866, ''Regulatory Planning and Review.'' The NRC's Agenda is a compilation of all rulemaking activities on which we have recently completed action or have proposed or are considering action. We have completed *7* rulemaking activities and classified *2* rulemaking activities as inactive since our last Agenda was issued online at the Office of Management and Budget's website at *https://www.reginfo.gov* on June 13, 2023. This issuance of our Agenda contains *29* active and *22* long-term rulemaking activities: *3* are Economically Significant in accordance with Section 3(f)(1) of E.O. 12866; *18* represent Other Significant agency priorities; *31* are Substantive, Nonsignificant rulemaking activities; *2* are Routine and Frequent rulemaking activities; and *4* are Administrative rulemaking activities. In addition, *7* rulemaking activities impact small entities.

FOR FURTHER INFORMATION CONTACT: Cindy K. Bladey, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3280; email: *Cindy.Bladey@nrc.gov.* Persons outside the Washington, DC, metropolitan area may call toll-free: 1–800–368–5642. For further information on the substantive content of any rulemaking activity listed in the Agenda, contact the individual listed under the heading ''Agency Contact'' for that rulemaking activity.

SUPPLEMENTARY INFORMATION:

Obtaining Information

Please refer to Docket ID NRC–2023–0133 when contacting the NRC about the availability of information for this document. You may obtain publicly available information related to this document by any of the following methods:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0133.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.
- *Reginfo.gov:*
  - For completed rulemaking activities, go to *https://www.reginfo.gov/public/do/eAgendaHistory?showStage=completed,* select ''Fall 2023 The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions'' from drop down menu, and select ''Nuclear Regulatory Commission'' from drop down menu.
  - For active rulemaking activities go to *https://www.reginfo.gov/public/do/eAgendaMain* and select ''Nuclear Regulatory Commission'' from drop down menu.
  - For long-term rulemaking activities go to *https://www.reginfo.gov/public/do/eAgendaMain,* select link for ''Current Long Term Actions,'' *a*nd select ''Nuclear Regulatory Commission'' from drop down menu.
  - For inactive rulemaking activities go to *https://www.reginfo.gov/public/do/eAgendaInactive,* select the corresponding Unified Agenda cycle from drop down menu, and select ''Nuclear Regulatory Commission'' from drop down menu.

Introduction

The Agenda is a compilation of all rulemaking activities on which an agency has recently completed action or has proposed or is considering action. The Agenda reports rulemaking activities in three major categories: completed, active, and long-term. Completed rulemaking activities are those that were completed since publication of an agency's last Agenda; active rulemaking activities are those for which an agency currently plans to have an Advance Notice of Proposed Rulemaking, a Proposed Rule, or a Final Rule issued within the next 12 months; and long-term rulemaking activities are rulemaking activities under development but for which an agency does not expect to have a regulatory action within the 12 months after publication of the current edition of the Unified Agenda.

The NRC assigns a ''Regulation Identifier Number'' (RIN) to a rulemaking activity when the Commission initiates a rulemaking and approves a rulemaking plan, or when the NRC staff begins work on a Commission-delegated rulemaking that does not require a rulemaking plan. The Office of Management and Budget uses this number to track all relevant documents throughout the entire ''lifecycle'' of a particular rulemaking activity. The NRC reports all rulemaking activities in the Agenda that have been assigned a RIN and meet the definition for a completed, an active, or a long-term rulemaking activity.

The information contained in this Agenda is updated to reflect agency priorities, planning and coordination of public engagement efforts, and regulatory actions that have occurred on a rulemaking activity since publication of our last Agenda on July 27, 2023. Specifically, the information in this Agenda has been updated through *August 17, 2023.* The NRC provides additional information on planned rulemaking and petition for rulemaking activities, including priority and schedule, in the NRC's Rulemaking Tracking System on our website at *https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruleindex.html.*

The date for the next scheduled action under the heading ''Timetable'' is the date the next regulatory action for the rulemaking activity is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The Agenda is intended to provide the public early notice and opportunity to participate in our rulemaking process. However, we may consider or act on any rulemaking activity even though it is not included in the Agenda.

Section 610 Periodic Reviews Under The Regulatory Flexibility Act

Section 610 of the Regulatory Flexibility Act (RFA) requires agencies to conduct a review within 10 years of issuance of those regulations that have or will have a *significant* economic impact on a *substantial* number of small entities. We undertake these reviews to decide whether the rules should be unchanged, amended, or withdrawn. We have initiated one review that has a *significant* economic impact on a *substantial* number of small entities. Please see docket NRC–2023–0062 at *https://www.regulations.gov* to comment on NRC's newly initiated review, ''Section 610 Review of Physical Protection of Byproduct Material''. A complete listing of our regulations that impact small entities and related Small Entity Compliance Guides are available from the NRC's website at *https://www.nrc.gov/about-nrc/regulatory/*

rulemaking/flexibility-act/small-entities.html.

Public Comments Received on the NRC Unified Agenda

The comment period on the NRC's last Agenda (published on July 27, 2023 (88 FR 48688) closed on August 28, 2023. The NRC did not receive any comments on its Spring 2023 Agenda. The NRC will request public comment on its Spring 2024 Agenda.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

NUCLEAR REGULATORY COMMISSION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
604	Physical Protection of Byproduct Material [NRC–2023–0062] **(Section 610 Review)**	3150–AK94

NUCLEAR REGULATORY COMMISSION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
605	Revision to the NRC's Acquisition Regulation (NRCAR) [NRC–2014–0033]	3150–AJ36
606	Revision of Fee Schedules: Fee Recovery for Fiscal Year 2024 [NRC–2022–0046]	3150–AK74

NUCLEAR REGULATORY COMMISSION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
607	Items Containing Byproduct Material Incidental to Production [NRC–2015–0017]	3150–AJ54
608	Revision of Fee Schedules: Fee Recovery for FY 2025 [NRC–2023–0069]	3150–AK95

NUCLEAR REGULATORY COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
609	Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024]	3150–AK58

NUCLEAR REGULATORY COMMISSION (NRC)

Prerule Stage

604. Physical Protection of Byproduct Material [NRC–2023–0062] (Section 610 Review) [3150–AK94]

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

Abstract: On March 19, 2013, the U.S. Nuclear Regulatory Commission (NRC) promulgated Physical Protection of Byproduct Material (78 FR 16922). The rule amended NRC's regulations to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material. Subsequently, on September 30, 2014, the NRC promulgated Safeguards Information—Modified Handling Categorization; Change for Materials Facilities (79 FR 58664), to protect security-related information for large irradiators, manufacturers and distributors, and for the transport of category 1 quantities of radioactive material using the information protection requirements in Part 37. This new entry in the regulatory agenda announces that NRC plans to conduct a review of this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine if the provisions that could affect small entities should be continued without change or should be rescinded or amended to minimize adverse economic impacts on small entities. As part of this review, NRC will consider the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. As part of this review, the NRC will solicit public comments

Timetable:

Action	Date	FR Cite
Begin Review	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jill Shepherd, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–1230, *Email: jill.shepherd@nrc.gov.*

RIN: 3150–AK94

NUCLEAR REGULATORY COMMISSION (NRC)

Proposed Rule Stage

605. Revision to the NRC's Acquisition Regulation (NRCAR) [NRC–2014–0033] [3150–AJ36]

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

Abstract: This rulemaking would amend the NRC's acquisition regulation that governs the procurement of goods and services for the agency. The purpose of this rulemaking is to update the NRC's acquisitions regulations (NRCAR) to conform with external regulations, incorporate NRC organizational changes, and remove outdated or obsolete information. The revisions would affect both internal and

external stakeholders (contractors) and are needed to support current NRC contracting policies and ensure openness, transparency, and effectiveness in agency acquisitions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jill Daly, Nuclear Regulatory Commission, Office of Administration, Washington, DC 20055–0001, *Phone:* 301 415–8079, *Email: jill.daly@nrc.gov.*

RIN: 3150–AJ36

606. Revision of Fee Schedules: Fee Recovery for Fiscal Year 2024 [NRC–2022–0046] [3150–AK74]

Legal Authority: 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

Abstract: This rulemaking would amend the NRC's regulations for fee schedules. The NRC conducts this rulemaking annually to recover, to the maximum extent practicable, approximately 100 percent of the NRC's budget authority, less the budget authority for excluded activities to implement the Nuclear Energy Innovation and Modernization Act. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC's applicants and licensees.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	
Final Rule	05/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Anthony Rossi, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001, *Phone:* 301 415–7341, *Email: anthony.rossi@nrc.gov.*

RIN: 3150–AK74

NUCLEAR REGULATORY COMMISSION (NRC)

Long-Term Actions

607. Items Containing Byproduct Material Incidental to Production [NRC–2015–0017] [3150–AJ54]

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

Abstract: This rulemaking would amend the NRC's regulations regarding requirements for track-etched membranes that have been irradiated with mixed fission products during the production process. The rule also would accommodate the licensing and distribution of other irradiated products (*e.g.,* gemstones) without the need for a specific exemption for each distributor. This rulemaking would affect the licensees and applicants for items containing byproduct material incidental to production. The rulemaking addresses a petition for rulemaking (PRM–30–65).

Timetable:

Action	Date	FR Cite
Regulatory Basis	02/02/21	86 FR 7819
Regulatory Basis Comment Period End.	04/05/21	
NPRM	06/27/22	87 FR 38012
NPRM Comment Period End.	09/12/22	
Final Rule	12/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Caylee Kenny, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–7150, *Email: caylee.kenny@nrc.gov.*

RIN: 3150–AJ54

608. Revision of Fee Schedules: Fee Recovery for FY 2025 [NRC–2023–0069] [3150–AK95]

Legal Authority: 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

Abstract: This rulemaking would amend the NRC's regulations for fee schedules. The NRC conducts this rulemaking annually to recover, to the maximum extent practicable, approximately 100 percent of the NRC's budget authority, less the budget authority for excluded activities to implement the Nuclear Energy Innovation and Modernization Act. NEIMA requires that the FY 2025 fees be collected by September 30, 2025. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC's applicants and licensees.

Timetable:

Action	Date	FR Cite
NPRM	01/00/25	
Final Rule	05/00/25	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jo Jacobs, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001, *Phone:* 301 415–8388, *Email: jo.jacobs@nrc.gov.*

RIN: 3150–AK95

NUCLEAR REGULATORY COMMISSION (NRC)

Completed Actions

609. Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024] [3150–AK58]

Legal Authority: 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

Abstract: This rulemaking would amend the NRC's regulations for fee schedules. The NRC conducts this rulemaking annually to recover approximately 100 percent of the NRC's annual budget authority, less excluded activities to implement NEIMA. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC's applicants and licensees.

Timetable:

Action	Date	FR Cite
NPRM	03/03/23	88 FR 13357
NPRM Comment Period End.	04/03/23	
Final Rule	06/15/23	88 FR 39120
Final Rule Effective.	08/14/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Anthony Rossi, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001, *Phone:* 301 415–7341, *Email: anthony.rossi@nrc.gov.*

RIN: 3150–AK58

[FR Doc. 2024–00468 Filed 2–8–24; 8:45 am]

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Part XXVI

Securities and Exchange Commission

Semiannual Regulatory Agenda

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33–11225; 34–98226; IA–6388; IC–34993; File No. S7–14–23]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Securities and Exchange Commission is publishing the Chair's agenda of rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164) (Sept. 19, 1980). The items listed in the Regulatory Flexibility Agenda for Fall 2023 reflect only the priorities of the Chair of the U.S. Securities and Exchange Commission, and do not necessarily reflect the views and priorities of any individual Commissioner.

Information in the agenda was accurate on August 22, 2023, the date on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of an RFA analysis is required.

The Commission's complete RFA agenda will be available online at *www.reginfo.gov.*

DATES: Comments should be received on or before March 11, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–14–23 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. S7–14–23. 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 website (*https://www.sec.gov/rules/other.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. Do not include personal identifying information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

FOR FURTHER INFORMATION CONTACT: Sarit Klein, Office of the General Counsel, 202–551–5037.

SUPPLEMENTARY INFORMATION: The RFA requires each Federal agency, twice each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The Commission may consider or act on any matter earlier or later than the estimated date provided on the agenda. While the agenda reflects the current intent to complete a number of rulemakings in the next year, the precise dates for each rulemaking at this point are uncertain. Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

''Securities Act''—Securities Act of 1933

''Exchange Act''—Securities Exchange Act of 1934

''Investment Company Act''—Investment Company Act of 1940

''Investment Advisers Act''—Investment Advisers Act of 1940

''Dodd Frank Act''—Dodd-Frank Wall Street Reform and Consumer Protection Act

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

Dated: August 25, 2023.

Vanessa A. Countryman,

Secretary.

3 OOD—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
610	EDGAR Filer Access and Account Management	3235–AM58

DIVISION OF CORPORATION FINANCE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
611	Rule 144 Holding Period	3235–AM78

DIVISION OF CORPORATION FINANCE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
612	Prohibition Against Conflicts of Interest in Certain Securitizations	3235–AL04
613	Rule 14a–8 Amendments	3235–AM91

DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
614	Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure	3235–AM89

DIVISION OF INVESTMENT MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
615	Safeguarding Advisory Client Assets	3235–AM32
616	Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices.	3235–AM96
617	Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N–PORT Reporting	3235–AM98
618	Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies.	3235–AN08
619	Outsourcing by Investment Advisers	3235–AN18
620	Regulation S P: Privacy of Consumer Financial Information and Safeguarding Customer Information	3235–AN26

DIVISION OF INVESTMENT MANAGEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
621	Investment Company Names	3235–AM72
622	Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews	3235–AN07

DIVISION OF TRADING AND MARKETS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
623	Amendments to Exchange Act Rule 3b–16 re Definition of ''Exchange''; Regulation ATS and Regulation SCI for ATSs That Trade U.S. Government Securities, NMS Stocks and Other Securities.	3235–AM45
624	Cybersecurity Risk Management Rules for Broker-Dealers, Clearing Agencies, MSBSPs, the MSRB, National Securities Associations, National Securities Exchanges, SBSDRs, SBS Dealers, and Transfer Agents.	3235–AN15
625	Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders	3235–AN23
626	Regulation Best Execution	3235–AN24

DIVISION OF TRADING AND MARKETS—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
627	Exemption for Certain Exchange Members	3235–AN17

SECURITIES AND EXCHANGE COMMISSION (SEC)

3 OOD

Proposed Rule Stage

610. EDGAR Filer Access and Account Management [3235–AM58]

Legal Authority: 15 U.S.C. 77c; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 78l; 15 U.S.C. 78m; . . .

Abstract: The Commission proposed rule and form amendments concerning access to and management of accounts on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') that are related to potential technical changes to EDGAR (collectively referred to as ''EDGAR Next''). The Commission proposed to require that electronic filers (''filers'') authorize and maintain designated individuals as account administrators and that filers, through their account administrators, take certain actions to manage their accounts on a dashboard on EDGAR. Further, the Commission proposed that filers may only authorize individuals as account administrators or in the other roles described herein if those individuals first obtain individual account credentials in the manner to be specified in the EDGAR Filer Manual.

As part of the EDGAR Next changes, the Commission would offer filers optional Application Programming Interfaces (''APIs'') for machine-to-machine communication with EDGAR, including submission of filings and retrieval of related information. If the proposed rule and form amendments are adopted, the Commission would make corresponding changes to the EDGAR Filer Manual and implement the potential technical changes.

Timetable:

Action	Date	FR Cite
NPRM	09/22/23	88 FR 65524
NPRM Comment Period End.	11/21/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rosemary Filou, Chief Counsel, EDGAR Business Office, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–4813, *Email: filour@sec.gov.*

RIN: 3235–AM58

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Proposed Rule Stage

611. Rule 144 Holding Period [3235–AM78]

Legal Authority: 15 U.S.C. 77b; 15 U.S.C. 77b note; 15 U.S.C. 77c; 15 U.S.C. 77d; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77r; 15 U.S.C. 77s; 15 U.S.C. 77z–3; 15 U.S.C. 77sss; 15 U.S.C. 78c; 15 U.S.C. 78d; 15 U.S.C. 78j; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78o–7 note; 15 U.S.C. 78t; 15 U.S.C. 78w; 15 U.S.C. 78ll(d); 15 U.S.C. 78mm; 15 U.S.C. 80a–8; 15 U.S.C. 80a–24; 15 U.S.C. 80a–26; 15 U.S.C. 80a–28; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37; Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012); Sec. 401 Pub. L. 112–106, 126 Stat. 313 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 312; 12 U.S.C. 5461 *et seq.* ; 15 U.S.C. 77s(a); 15 U.S.C. 77z–2; 15 U.S.C. 77sss(a); 15 U.S.C. 78a *et seq.;* 15 U.S.C. 78c(b); 15 U.S.C. 78o(d); 15 U.S.C. 78u–5; 15 U.S.C. 78w(a); 15 U.S.C. 78ll; 15 U.S.C. 80a–2(a); 15 U.S.C. 80a–3; 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–9; 15 U.S.C. 80a–10; 15 U.S.C. 80a–13; 15 U.S.C. 7201 *et seq.* ; 18 U.S.C. 1350; Sec. 107, Pub. L. 112–106, 126 Stat. 312; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012); Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015); . . .

Abstract: The Division is considering recommending that the Commission repropose amendments to Rule 144, a non-exclusive safe harbor that permits the public resale of restricted or control securities if the conditions of the rule are met.

Timetable:

Action	Date	FR Cite
NPRM	01/19/21	86 FR 5063
NPRM Comment Period End.	03/22/21	
Second NPRM	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Felicia H. Kung, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430, *Email: kungf@sec.gov.*

RIN: 3235–AM78

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Final Rule Stage

612. Prohibition Against Conflicts of Interest in Certain Securitizations [3235–AL04]

Legal Authority: 15 U.S.C. 77b; 15 U.S.C. 77b note; 15 U.S.C. 77c; 15 U.S.C. 77d; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77r; 15 U.S.C. 77s; 15 U.S.C. 77z–3; 15 U.S.C. 77sss; 15 U.S.C. 78c; 15 U.S.C. 78d; 15 U.S.C. 78j; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78o–7 note; 15 U.S.C. 78t; 15 U.S.C. 78w; 15 U.S.C. 78ll(d); 15 U.S.C. 78mm; 15 U.S.C. 80a–8; 15 U.S.C. 80a–24; 15 U.S.C. 80a–28; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37; Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313(2012), unless otherwise noted; . . .

Abstract: The Division is considering recommending that the Commission adopt a rule under the Securities Act to implement the prohibition under section 621 of the Dodd-Frank Act on material conflicts of interest in connection with certain securitizations. The proposed rules would prohibit, for a specified period, a securitization participant from engaging in any transaction that would result in a material conflict of interest between a securitization participant and an investor in the relevant asset-backed security. As specified in section 621, the proposed rule would provide exceptions for risk-mitigating hedging activities, bona fide market-making activities, and liquidity commitments.

Timetable:

Action	Date	FR Cite
NPRM	09/28/11	76 FR 60320
NPRM Comment Period End.	12/19/11	
NPRM Comment Period Extended.	12/16/11	76 FR 78181
NPRM Comment Period Extended End.	01/13/12	
NPRM Comment Period Extended.	01/03/12	77 FR 24
NPRM Comment Period Extended End.	02/13/12	
Second NPRM	02/14/23	88 FR 9678
Second NPRM Comment Period End.	03/27/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rolaine Bancroft, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430.

RIN: 3235–AL04

613. Rule 14A–8 Amendments [3235–AM91]

Legal Authority: 5 U.S.C. 78c(b); 15 U.S.C. 78n; 15 U.S.C. 78w(a); 15 U.S.C. 80a–20(a); 15 U.S.C. 80a–29; 15 U.S.C. 80a–37; . . .

Abstract: The Division is considering recommending that the Commission adopt rule amendments regarding shareholder proposals under Rule 14a–8. The Commission proposed to, among other things, update certain substantive bases for exclusion of shareholder proposals under the Commission's shareholder proposal rule. The proposed amendments would amend the substantial implementation exclusion, the duplication exclusion, and the resubmission exclusion.

Timetable:

Action	Date	FR Cite
NPRM	07/27/22	87 FR 45052
NPRM Comment Period End.	09/12/22	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hughes Bates, Special Counsel, Division of Corporation Finance, Securities and

Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3500, *Email: batesh@sec.gov.*

RIN: 3235–AM91

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Completed Actions

614. Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure [3235–AM89]

Legal Authority: 15 U.S.C. 77g; 15 U.S.C. 77s(a); 15 U.S.C. 78c(b); 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78w(a); . . .

Abstract: The Commission adopted new rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and incidents by public companies that are subject to the reporting requirements of the Securities Exchange Act of 1934. Specifically, the Commission adopted amendments to require current disclosure about material cybersecurity incidents. The Commission also adopted rules requiring periodic disclosures about a registrant's processes to assess, identify, and manage material cybersecurity risks, management's role in assessing and managing material cybersecurity risks, and the board of directors' oversight of cybersecurity risks. Lastly, the final rules require the cybersecurity disclosures to be presented in Inline eXtensible Business Reporting Language (''Inline XBRL'').

Timetable:

Action	Date	FR Cite
NPRM	03/23/22	87 FR 16590
NPRM Comment Period End.	05/09/22	
NPRM Comment Period Re-opened.	10/18/22	87 FR 63016
NPRM Comment Period End.	11/01/22	
Final Action	08/04/23	88 FR 51896
Final Action Effective.	09/05/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nabeel Cheema, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430, *Email: cheeman@sec.gov.*

RIN: 3235–AM89

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Final Rule Stage

615. Safeguarding Advisory Client Assets [3235–AM32]

Legal Authority: 15 U.S.C. 80b–4; 15 U.S.C. 80b–6(4); 15 U.S.C. 80b–11(a); 15 U.S.C. 80b–3(c)(1); 15 U.S.C. 80b–18b; 15 U.S.C. 80b–11; 15 U.S.C. 80b–23

Abstract: The Division is considering recommending that the Commission adopt amendments to existing rules and/or adopt new rules under the Investment Advisers Act of 1940 to improve and modernize the regulations around the custody of funds or investments of clients by Investment Advisers.

Timetable:

Action	Date	FR Cite
NPRM	03/09/23	88 FR 14672
NPRM Comment Period End.	05/08/23	
NPRM Comment Period Re-opened.	08/30/23	88 FR 59818
NPRM Comment Period Re-opened End.	10/30/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Melissa Harke, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6722, *Email: harkem@sec.gov.*

RIN: 3235–AM32

616. Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices [3235–AM96]

Legal Authority: 15 U.S.C. 77e; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s; 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78w; 15 U.S.C. 78ll; 15 U.S.C. 80a–8; 15 U.S.C. 80a–24; 15 U.S.C. 80a–29; 15 U.S.C. 80a–37; 15 U.S.C. 80b–3; 15 U.S.C. 80b–4; 15 U.S.C. 80b–11; 44 U.S.C. 3506 and 3507; . . .

Abstract: The Division is considering recommending that the Commission adopt requirements for investment companies and investment advisers related to environmental, social and governance (ESG) factors, including ESG claims and related disclosures. Among other things, the Commission proposed to amend rules and forms under both the Investment Advisers Act of 1940 and the Investment Company Act of 1940 to require registered investment advisers, certain advisers that are exempt from registration, registered investment companies, and business development companies, to provide additional information regarding their ESG investment practices. The proposed amendments to these forms and associated rules seek to facilitate enhanced disclosure of ESG issues to clients and shareholders. The proposed rules and form amendments are designed to create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors while facilitating further innovation in this evolving area of the asset management industry.

Timetable:

Action	Date	FR Cite
NPRM	06/17/22	87 FR 36654
NPRM Comment Period End.	08/16/22	
NPRM Comment Period Re-opened.	10/18/22	87 FR 63016
NPRM Comment Period End.	11/01/22	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nathan Schurr, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6394, *Email: schuurna@sec.gov.*

RIN: 3235–AM96

617. Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N–PORT Reporting [3235–AM98]

Legal Authority: 15 U.S.C. 80a–22(c); 15 U.S.C. 80a–37(a); 15 U.S.C. 80a–31(a); 15 U.S.C. 80a–35b; 15 U.S.C. 80a–6; 15 U.S.C. 80a–8; 15 U.S.C. 80a–22; 15 U.S.C. 80a–24; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–33; 15 U.S.C. 80a–37; 15 U.S.C. 80a–44; 15 U.S.C. 80b–6; 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78w; 15 U.S.C. 78ll; 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77q; 15 U.S.C. 77s; 15 U.S.C. 77sss; 44 U.S.C. 3506; 44 U.S.C. 3507

Abstract: The Division is considering recommending that the Commission adopt changes to regulatory requirements relating to open-end fund's liquidity and dilution management. The Commission proposed amendments to its current rules for open-end management investment companies (''open-end funds'') regarding liquidity risk

management programs and swing pricing. The proposed amendments are designed to improve liquidity risk management programs to better prepare funds for stressed conditions and improve transparency in liquidity classifications. The amendments are also designed to mitigate dilution of shareholders' interests in a fund by requiring any open-end fund, other than a money market fund or exchange-traded fund, to use swing pricing to adjust a fund's net asset value (''NAV'') per share to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity. In addition, to help operationalize the proposed swing pricing requirement, and to improve order processing more generally, the Commission proposed a ''hard close'' requirement for these funds. Finally, the Commission proposed amendments to reporting and disclosure requirements on Forms N–PORT, N–1A, and N–CEN that apply to certain registered investment companies, including registered open-end funds (other than money market funds), registered closed-end funds, and unit investment trusts. The proposed amendments would require more frequent reporting of monthly portfolio holdings and related information to the Commission and the public, amend certain reported identifiers, and make other amendments to require additional information about funds' liquidity risk management and use of swing pricing.

Timetable:

Action	Date	FR Cite
NPRM	12/16/22	87 FR 77172
NPRM Comment Period End.	02/14/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mykaila DeLesDernier, Senior Counsel, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–5129, *Email: delesdernierm@sec.gov.*

RIN: 3235–AM98

618. Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies [3235–AN08]

Legal Authority: 5 U.S.C. 80a–30(a); 15 U.S.C. 80a–37(a); 15 U.S.C. 80b–4; 15 U.S.C. 80b–11; 15 U.S.C. 80b–3(d); 15 U.S.C. 80b–6(4); 15 U.S.C. 80b–11(a); 15 U.S.C. 80b–11(h); 15 U.S.C. 80a–8; 15 U.S.C. 80a–29; 15 U.S.C. 80a–37; 15 U.S.C. 80b–3(c)(1)

Abstract: The Division is considering recommending that the Commission adopt rules to enhance fund and investment adviser disclosures and governance relating to cybersecurity risks. The Commission proposed new rules to require registered investment advisers (''advisers'') and investment companies (''funds'') to adopt and implement written cybersecurity policies and procedures reasonably designed to address cybersecurity risks. The Commission also proposed a new rule and form under the Advisers Act to require advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission. With respect to disclosure, the Commission proposed amendments to various forms regarding the disclosure related to significant cybersecurity risks and cybersecurity incidents that affect advisers and funds and their clients and shareholders. Finally, the Commission proposed new recordkeeping requirements under the Advisers Act and Investment Company Act.

Timetable:

Action	Date	FR Cite
NPRM	03/09/22	87 FR 13524
NPRM Comment Period End.	04/11/22	
NPRM Comment Period Re-opened.	03/21/23	88 FR 16921
NPRM Comment Period End.	05/22/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christopher Staley, Branch Chief, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–8475, *Email: staleyc@sec.gov.*

RIN: 3235–AN08

619. Outsourcing by Investment Advisers [3235–AN18]

Legal Authority: 15 U.S.C. 10b–3; 15 U.S.C. 10b–4; 15 U.S.C. 10b–11; 15 U.S.C. 77s(a); 15 U.S.C. 78w(a); 15 U.S.C. 78bb(e)(2); 15 U.S.C. 7sss(a); 15 U.S.C. 80a–37(a)

Abstract: The Division is considering recommending that the Commission adopt rules related to the oversight of third-party service providers. The Commission proposed a new rule under the Investment Advisers Act of 1940 to prohibit registered investment advisers (''advisers'') from outsourcing certain services or functions without first meeting minimum requirements. The proposed rule would require advisers to conduct due diligence prior to engaging a service provider to perform certain services or functions. It would further require advisers to periodically monitor the performance and reassess the retention of the service provider in accordance with due diligence requirements to reasonably determine that it is appropriate to continue to outsource those services or functions to that service provider. The Commission also proposed corresponding amendments to the investment adviser registration form to collect census-type information about the service providers defined in the proposed rule. In addition, the Commission proposed related amendments to the Advisers Act books and records rule, including a new provision requiring advisers that rely on a third party to make and/or keep books and records to conduct due diligence and monitoring of that third party and obtain certain reasonable assurances that the third party will meet certain standards.

Timetable:

Action	Date	FR Cite
NPRM	11/16/22	87 FR 68816
NPRM Comment Period End.	12/27/22	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mark Stewart, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–4410, *Email: stewartm@sec.gov.*

RIN: 3235–AN18

620. Regulation S P: Privacy of Consumer Financial Information and Safeguarding Customer Information [3235–AN26]

Legal Authority: 15 U.S.C. 78q; 15 U.S.C. 78q–1; 15 U.S.C. 78mm; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37; 15 U.S.C. 80b–4; 15 U.S.C. 80b–4a; 15 U.S.C. 80b–11; 15 U.S.C. 1681w(a); 15 U.S.C. 6801; 15 U.S.C. 6804; 15 U.S.C. 6805; 15 U.S.C. 6825; 15 U.S.C. 78w

Abstract: The Division of Investment Management and Division of Trading and Markets are considering recommending that the Commission adopt amendments to Regulation S–P. The Commission proposed rule amendments that would require brokers and dealers, investment companies and investment advisers registered with the Commission to adopt written policies and procedures for incident response programs to address unauthorized access to or use of customer information, including procedures for providing timely notification to

individuals affected by an incident involving sensitive customer information with details about the incident and information designed to help affected individuals respond appropriately. The Commission also proposed to broaden the scope of information covered by amending requirements for safeguarding customer records and information, and for properly disposing of consumer report information. In addition, the proposed amendments would extend the application of the safeguards provisions to transfer agents. The proposed amendments would also include requirements to maintain written records documenting compliance with the proposed amended rules. Finally, the proposed amendments would conform annual privacy notice delivery provisions to the terms of an exception provided by a statutory amendment to the Gramm-Leach-Bliley Act.

Timetable:

Action	Date	FR Cite
NPRM	04/06/23	88 FR 20616
NPRM Comment Period End.	06/05/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zeena Abdul-Rahman, Senior Counsel, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–4099, *Email: abdulrahmanz@sec.gov.*

RIN: 3235–AN26

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Completed Actions

621. Investment Company Names [3235–AM72]

Legal Authority: 15 U.S.C. 80a–8; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–33; 15 U.S.C. 80a–34; 15 U.S.C. 80a–37; 15 U.S.C. 80a–58; 15 U.S.C. 80a–63; 15 U.S.C. 80a–18; 15 U.S.C. 77e; 15 U.S.C. 77f; 15 U.S.C. 77g(a); 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78w; 15 U.S.C. 78ll; . . .

Abstract: The Commission amended the rule under the Investment Company Act of 1940 that addresses certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The amendments to this rule are designed to increase investor protection by improving, and broadening the scope of, the requirement for certain funds to adopt a policy to invest at least 80 percent of the value of their assets in accordance with the investment focus that the fund's name suggests, updating the rule's notice requirements, and establishing recordkeeping requirements. The Commission also adopted enhanced prospectus disclosure requirements for terminology used in fund names, and additional requirements for funds to report information on Form N–PORT regarding compliance with the names-related regulatory requirements.

Timetable:

Action	Date	FR Cite
ANPRM	03/06/20	85 FR 13221
ANPRM Comment Period End.	05/05/20	
NPRM	06/17/22	87 FR 36594
NPRM Comment Period End.	08/16/22	
NPRM Comment Period Re-opened.	10/18/22	87 FR 63016
NPRM Comment Period End.	11/01/22	
Final Action	10/11/23	88 FR 70436
Final Action Effective.	12/11/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Kosoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6754, *Email: kosoffm@sec.gov.*

RIN: 3235–AM72

622. Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews [3235–AN07]

Legal Authority: 15 U.S.C. 80b–3(d); 15 U.S.C. 80b–6(4); 15 U.S.C. 80b–11(a); 15 U.S.C. 80b–11(h); 15 U.S.C. 80b–4; 15 U.S.C. 80b–11

Abstract: The Commission adopted new rules under the Investment Advisers Act of 1940. The rules are designed to protect investors who directly or indirectly invest in private funds by increasing visibility into certain practices involving compensation schemes, sales practices, and conflicts of interest through disclosure; establishing requirements to address such practices that have the potential to lead to investor harm; and restricting practices that are contrary to the public interest and the protection of investors. These rules are likewise designed to prevent fraud, deception, or manipulation by the investment advisers to those funds. The Commission adopted corresponding amendments to the Advisers Act books and records rule to facilitate compliance with these new rules and assist its examination staff. Finally, the Commission adopted amendments to the Advisers Act compliance rule, which affect all registered investment advisers, to better enable its staff to conduct examinations.

Timetable:

Action	Date	FR Cite
NPRM	03/24/22	87 FR 16886
NPRM Comment Period End.	04/25/22	
NPRM Comment Period Re-opened.	05/12/22	87 FR 29059
NPRM Comment Period End.	06/13/22	
Final Action	09/14/23	88 FR 63206
Final Action Effective.	11/13/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Melissa Harke, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6722, *Email: harkem@sec.gov.*

RIN: 3235–AN07

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Trading and Markets

Final Rule Stage

623. Amendments to Exchange Act Rule 3b–16 Re Definition of ''Exchange''; Regulation ATS and Regulation SCI for ATSS That Trade U.S. Government Securities, NMS Stocks and Other Securities [3235–AM45]

Legal Authority: 15 U.S.C. 77g; 15 U.S.C. 78mm; 15. U.S.C. 78w(a); 15 U.S.C. 78q(h); 15 U.S.C. 77q(a); 15 U.S.C. 78n; 15 U.S.C. 78dd–1; 15 U.S.C. 78b; 15 U.S.C. 78o(c); 15 U.S.C. 80(a)–23; 15 U.S.C. 78c; 15 U.S.C. 78o(g); 15 U.S.C. 80a–29; 15 U.S.C. 78j; 15 U.S.C. 78o–4; 15 U.S.C. 80a–37; 15 U.S.C. 78k–1(c); 15 U.S.C. 78o–5; 15 U.S.C. 77s(a); 15 U.S.C. 781; 15 U.S.C. 78q(a); 15 U.S.C. 78i(a); 15 U.S.C. 78m; 15 U.S.C. 78q(b); 15 U.S.C. 78o(b)

Abstract: The Division is considering recommending that the Commission adopt proposed amendments to Exchange Act Rule 3b–16 to include systems that offer the use of non-firm trading interest and communication

protocols to bring together buyers and sellers of securities.

The Division is considering recommending that the Commission adopt proposed amendments to Regulation ATS and Regulation SCI for ATSs that trade U.S. Government Securities, NMS stock, and other types of securities and to require the electronic filing of a modernized version of Form ATS and Form ATS–R.

Timetable:

Action	Date	FR Cite
NPRM	12/31/20	85 FR 87106
NPRM Comment Period End.	03/01/21	
Second NPRM	03/18/22	87 FR 15496
Second NPRM Comment Period End.	04/18/22	
NPRM Comment Period Reopened.	05/12/22	87 FR 29059
NPRM Comment Period Reopened End.	06/13/22	
NPRM Comment Period Reopened.	05/05/23	88 FR 29448
NPRM Comment Period Reopened End.	06/13/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tyler Raimo, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6227, *Email: raimot@sec.gov.*

RIN: 3235–AM45

624. Cybersecurity Risk Management Rules for Broker-Dealers, Clearing Agencies, MSBSPS, the MSRB, National Securities Associations, National Securities Exchanges, SBSDRS, SBS Dealers, and Transfer Agents [3235–AN15]

Legal Authority: 15 U.S.C. 77c; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 77z–3; 15 U.S.C. 77sss(a); 15 U.S.C. 78c(b); 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o(d); 15 U.S.C. 78o–10; 15 U.S.C. 78w(a); 15 U.S.C. 78ll; 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–8; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37; 15 U.S.C. 80b–4; 15 U.S.C. 80b–10; 15 U.S.C. 80b–11; 15 U.S.C. 7201 *et seq.;* 18 U.S.C. 1350; . . .

Abstract: The Division is considering recommending that the Commission adopt amendments to require that market entities address cybersecurity risks, to improve the Commission's ability to obtain information about significant cybersecurity incidents impacting market entities, and to improve transparency about cybersecurity risk in the U.S. securities markets. The Commission proposed a new rule and form and amendments to existing recordkeeping rules to require broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents to address cybersecurity risks through policies and procedures, immediate notification to the Commission of the occurrence of a significant cybersecurity incident and, as applicable, reporting detailed information to the Commission about a significant cybersecurity incident, and public disclosures that would improve transparency with respect to cybersecurity risks and significant cybersecurity incidents. In addition, the Commission proposed amendments to existing clearing agency exemption orders to require the retention of records that would need to be made under the proposed cybersecurity requirements. Finally, the Commission proposed amendments to address the potential availability to security-based swap dealers and major security-based swap participants of substituted compliance in connection with those requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/05/23	88 FR 20212
NPRM Comment Period End.	06/05/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nina Kostyukovskyn, Attorney, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–8833, *Email: kostyukovskyn@sec.gov.*

RIN: 3235–AN15

625. Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders [3235–AN23]

Legal Authority: 15 U.S.C. 78b; 15 U.S.C. 78c; 15 U.S.C. 78e; 15 U.S.C. 78f; 15 U.S.C. 78k; 15 U.S.C. 78k–1; 15 U.S.C. 78o; 15 U.S.C. 78o–3; 15 U.S.C. 78q; 15 U.S.C. 78s; 15 U.S.C. 78w(a); 15 U.S.C. 78mm

Abstract: The Division is considering recommending that the Commission amend certain rules of Regulation National Market System (Regulation NMS) under the Securities Exchange Act of 1934, as amended, to adopt variable minimum pricing increments for the quoting and trading of NMS stocks, reduce the access fee caps, and enhance the transparency of better priced orders.

Timetable:

Action	Date	FR Cite
NPRM	12/29/22	87 FR 80266
NPRM Comment Period End.	03/31/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Riley, Senior Special Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6772, *Email: reileyke@sec.gov.*

RIN: 3235–AN23

626. Regulation Best Execution [3235–AN24]

Legal Authority: 15 U.S.C. 77g; 15 U.S.C. 77q(a); 15 U.S.C. 77s(a); 15 U.S.C. 78b; 15 U.S.C. 78c(b); 15 U.S.C. 78e; 15 U.S.C. 78g(c)(2); 15 U.S.C. 78i(a); 15 U.S.C. 78j; 15 U.S.C. 78k–1; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o(b); 15 U.S.C. 78o(c); 15 U.S.C. 78o(g); 15 U.S.C. 78o–1; 15 U.S.C. 78q; 15 U.S.C. 78w(a); 15 U.S.C. 78x; 15 U.S.C. 78dd–1; 15 U.S.C. 78mm; 15 U.S.C. 80a–23; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; . . .

Abstract: The Division is considering recommending that the Commission adopt new rules under the Securities Exchange Act of 1934 relating to a broker-dealer's duty of best execution. Proposed Regulation Best Execution would enhance the existing regulatory framework concerning the duty of best execution by requiring detailed policies and procedures for all broker-dealers and more robust policies and procedures for broker-dealers engaging in certain conflicted transactions with retail customers, as well as related review and documentation requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/27/23	88 FR 5440
NPRM Comment Period End.	03/31/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: David R. Dimitrious, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549,

Phone: 202 551–5131, *Email: dimitriousd@sec.gov.*

RIN: 3235–AN24

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Trading and Markets

Completed Actions

627. Exemption for Certain Exchange Members [3235–AN17]

Legal Authority: 15 U.S.C. 78c; 15 U.S.C. 78o; 15 U.S.C. 78o–1; 15 U.S.C. 78q; 15 U.S.C. 78s; 15 U.S.C. 78w; 15 U.S.C. 78mm; . . .

Abstract: The Commission adopted amendments to a rule under the Securities Exchange Act of 1934 that exempts certain Commission-registered brokers or dealers from membership in a registered national securities association (''Association''). The amendments replace rule provisions that provide an exemption for proprietary trading with narrower exemptions from Association membership for any registered broker or dealer that is a member of a national securities exchange, carries no customer accounts, and effects transactions in securities otherwise than on a national securities exchange of which it is a member. The amendments create exemptions for such a registered broker or dealer that effects securities transactions otherwise than on an exchange of which it is a member that result solely from orders that are routed by a national securities exchange of which it is a member to comply with order protection regulatory requirements, or are solely for the purpose of executing the stock leg of a stock-option order.

Timetable:

Action	Date	FR Cite
NPRM	08/12/22	87 FR 49930
NPRM Comment Period End.	09/27/22	
Final Action	09/07/23	88 FR 61850
Final Action Effective.	11/06/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Bradley, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–5594, *Email: bradleym@sec.gov.*

RIN: 3235–AN17

[FR Doc. 2024–00469 Filed 2–8–24; 8:45 am]

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Part XXVII

Surface Transportation Board

Semiannual Regulatory Agenda

SURFACE TRANSPORTATION BOARD

Surface Transportation Board

49 CFR Ch. X

[STB Ex Parte No. 536 (Sub-No. 55)]

Semiannual Regulatory Agenda

AGENCY: Surface Transportation Board.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Chairman of the Surface Transportation Board is publishing the Regulatory Flexibility Agenda for fall 2023.

FOR FURTHER INFORMATION CONTACT: A contact person is identified for each of the rules listed below.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* sets forth several requirements for agency rulemaking. Among other things, the RFA requires that, semiannually, each agency shall publish in the **Federal Register** a Regulatory Flexibility Agenda, which shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities.

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1).

Accordingly, a list of proceedings appears below containing information about subject areas in which the Board is currently conducting rulemaking proceedings or may institute such proceedings soon. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda represents the Chairman's best estimate of rules that may be considered over the next 12 months but does not necessarily reflect the views of any other individual Board Member. However, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: ''Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a Regulatory Flexibility Agenda or requires an agency to consider or act on any matter listed in such agenda.''

The Chairman is publishing the agency's Regulatory Flexibility Agenda for fall 2023 as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Unified Agenda is coordinated by the Office of Management and Budget (OMB), pursuant to Executive Orders 12866 and 13563. The Board is participating voluntarily in the program to assist OMB and has included rulemaking proceedings in the Unified Agenda beyond those required by the RFA.

Dated: August 16, 2023.

By the Board, Martin J. Oberman.

Jeffrey Herzig,

Clearance Clerk.

SURFACE TRANSPORTATION BOARD—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
628	Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704 (Sub-No. 1)	2140–AB29

SURFACE TRANSPORTATION BOARD (STB)

Long-Term Actions

628. Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704 (Sub-No. 1) [2140–AB29]

Legal Authority: 49 U.S.C. 10502; 49 U.S.C. 13301

Abstract: The Board proposed to revoke the class exemptions for the rail transportation of: (1) crushed or broken stone or riprap; (2) hydraulic cement; and (3) coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes, or tailings. On March 19, 2019, the Board issued a decision waiving the prohibition on ex parte communications in this proceeding and providing a 90-day period for meetings with Board members. By decision served September 30, 2020 (published October 5, 2020), the Board invited public comment on a new approach its Office of Economics has developed for possible use in considering class exemption and revocation issues. Board staff held technical conferences on the proposed approach on December 18, 2020, and January 15, 2021.

Timetable:

Action	Date	FR Cite
NPRM	03/28/16	81 FR 17125
NPRM Comment Period End.	07/26/16	
NPRM Reply Comment Period End.	08/26/16	
Request for Further Comment in Rulemaking Proceeding.	10/05/20	85 FR 62689
Comment Period End.	01/29/21	
Reply Comment Period End.	03/01/21	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amy Ziehm, Branch Chief, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, *Phone:* 202 245–0391, *Email: amy.ziehm@stb.gov.*

Francis O'Connor, Acting Director, Office of Economics, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, *Phone:* 202 245–0331, *Email: francis.o'connor@stb.gov.*

RIN: 2140–AB29

[FR Doc. 2024–00470 Filed 2–8–24; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

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