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Presidential Documents

Title 3—

The President

Executive Order 14062 of January 26, 2022

2022 Amendments to the Manual for Courts-Martial, United States

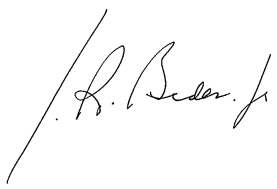
By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946a), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Parts II and IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached to and made a part of this order.

Sec. 2. These amendments shall take effect as of the date of this order, subject to the following:

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.



THE WHITE HOUSE,
January 26, 2022.

Billing code 3395–F2–P

ANNEX

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 916(e)(3) is amended to read as follows:

"(3) *Other assaults*. It is a defense to any assault punishable under Article 89, 91, 128, or 128b and not listed in paragraphs (e)(1) or (2) of this rule that the accused:

(A) Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and

(B) Believed that the force that the accused used was necessary for protection against bodily harm, provided that the force used by the accused was less than force reasonably likely to produce death or grievous bodily harm."

(b) R.C.M. 916(e)(5) is amended to read as follows:

"(5) *Defense of another.* The principles of self-defense under paragraphs (e)(1) through (4) of this rule apply to defense of another. It is a defense to homicide, attempted homicide, assault with intent to kill, or any assault under Article 89, 91, 128, or 128b that the accused acted in defense of another, provided that the accused may not use more force than the person defended was lawfully entitled to use under the circumstances."

Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) A new paragraph 55a is inserted immediately after paragraph 55 to read as follows:

"**55a. Article 117a (10 U.S.C. 917a)—Wrongful broadcast or distribution of intimate visual images**

a. *Text of statute*.

(a) PROHIBITION.—Any person subject to this chapter—

(1) who knowingly and wrongfully broadcasts or distributes an intimate visual

image of another person or a visual image of sexually explicit conduct involving a person who—

(A) is at least 18 years of age at the time the intimate visual image or visual image of sexually explicit conduct was created;

(B) is identifiable from the intimate visual image or visual image of sexually explicit conduct itself, or from information displayed in connection with the intimate visual image or visual image of sexually explicit conduct; and

(C) does not explicitly consent to the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(2) who knows or reasonably should have known that the intimate visual image or visual image of sexually explicit conduct was made under circumstances in which the person depicted in the intimate visual image or visual image of sexually explicit conduct retained a reasonable expectation of privacy regarding any broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(3) who knows or reasonably should have known that the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct is likely—

(A) to cause harm, harassment, intimidation, emotional distress, or financial loss for the person depicted in the intimate visual image or visual image of sexually explicit conduct; or

(B) to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; and

(4) whose conduct, under the circumstances, had a reasonably direct and palpable

connection to a military mission or military environment,

is guilty of wrongful distribution of intimate visual images or visual images of sexually explicit conduct and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) BROADCAST.—The term "broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(2) DISTRIBUTE.—The term "distribute" means to deliver to the actual or constructive possession of another person, including transmission by mail or electronic means.

(3) INTIMATE VISUAL IMAGE.—The term "intimate visual image" means a visual image that depicts a private area of a person.

(4) PRIVATE AREA.—The term "private area" means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

(5) REASONABLE EXPECTATION OF PRIVACY.—The term "reasonable expectation of privacy" means circumstances in which a reasonable person would believe that a private area of the person, or sexually explicit conduct involving the person, would not be visible to the public.

(6) SEXUALLY EXPLICIT CONDUCT.—The term "sexually explicit conduct" means actual or simulated genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, bestiality, masturbation, or sadistic or masochistic abuse.

(7) VISUAL IMAGE.—The term "visual image" means the following:

(A) Any developed or undeveloped photograph, picture, film, or video.

(B) Any digital or computer image, picture, film, or video made by any means, including those transmitted by any means, including streaming media, even if not stored in a permanent format.

(C) Any digital or electronic data capable of conversion into a visual image.

b. *Elements*.

(1) That the accused knowingly and wrongfully broadcasted or distributed a visual image;

(2) That the visual image is an intimate visual image of another person or a visual image of sexually explicit conduct involving another person;

(3) That the person depicted in the intimate visual image or visual image of sexually explicit conduct—

(a) is at least 18 years of age at the time the intimate visual image or visual image of sexually explicit conduct was created;

(b) is identifiable from the intimate visual image or visual image of sexually explicit conduct itself or from information displayed in connection with the intimate visual image or visual image of sexually explicit conduct; and

(c) does not explicitly consent to the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(4) That the accused knew or reasonably should have known that the intimate visual image or visual image of sexually explicit conduct was made under circumstances in which the person depicted retained a reasonable expectation of privacy regarding any broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(5) That the accused knew or reasonably should have known that the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct was likely

to—

(a) cause harm, harassment, intimidation, emotional distress, or financial loss for the person depicted in the intimate visual image or visual image of sexually explicit conduct; or

(b) harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; and

(6) That the conduct of the accused, under the circumstances, had a reasonably direct and palpable connection to a military mission or military environment.

c. *Explanation.* See Paragraph 55a.a.(b) for definitions.

(1) *Wrongful.* Wrongful means without legal justification or excuse. This paragraph shall not apply in the case of a visual image the disclosure of which is in the bona fide public interest. For example, this paragraph does not prohibit any lawful law enforcement, correctional, or intelligence activity; shall not apply to the reporting of unlawful activity; and shall not apply to a subpoena or court order for use in a legal proceeding.

(2) *Reasonable Expectation of Privacy*. A reasonable expectation of privacy is determined based on the totality of the circumstances.

(3) *A reasonably direct and palpable connection to a military mission or military environment*. The connection between the conduct and a military mission or military environment is contextually oriented and cannot be evidenced by conduct that is connected only in a remote or indirect sense. To constitute an offense under the UCMJ, the conduct must have a measurably divisive effect on unit or organization discipline, morale, or cohesion, or must be clearly detrimental to the authority or stature of or respect toward a Servicemember.

d. *Maximum punishment*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

e. *Sample specification.*

In that _____ (personal jurisdiction data), did (at/on board—location), on or about _____ 20 __, knowingly and wrongfully [(distribute) (broadcast)] [(an intimate visual image of _____) (a visual image of sexually explicit conduct involving _____)], a person who was at least 18 years of age when the image was created, is identifiable from (the image itself) (information conveyed in connection with the image), and did not explicitly consent to the (broadcast) (distribution) of the image, when the accused (knew) (reasonably should have known) the image was made under circumstances in which _____ retained a reasonable expectation of privacy regarding any (broadcast) (distribution) of the image, and where the accused (knew) (reasonably should have known) that the (broadcast) (distribution) of the image was likely to [cause (harm) (harassment) (intimidation) (emotional distress) (financial loss), to wit: _____] [harm substantially the (health) (safety) (business) (calling) (career) (financial condition) (reputation) (personal relationships), to wit: _____] and that, under the circumstances, such conduct had a reasonably direct and palpable connection to a (military mission) (military environment)."

(b) Paragraph 77, subparagraph a. is amended to read as follows:

"a. *Text of statute.*

(a) ASSAULT.—Any person subject to this chapter who, unlawfully and with force or violence—

(1) attempts to do bodily harm to another person;

(2) offers to do bodily harm to another person; or

(3) does bodily harm to another person;

is guilty of assault and shall be punished as a court-martial may direct.

(b) AGGRAVATED ASSAULT.—Any person subject to this chapter—

(1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon;

(2) who, in committing an assault, inflicts substantial bodily harm or grievous bodily harm on another person; or

(3) who commits an assault by strangulation or suffocation;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(c) ASSAULT WITH INTENT TO COMMIT SPECIFIED OFFENSES.—

(1) IN GENERAL.—Any person subject to this chapter who commits assault with intent to commit an offense specified in paragraph (2) shall be punished as a court-martial may direct.

(2) OFFENSES SPECIFIED.—The offenses referred to in paragraph (1) are murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, and kidnapping."

(c) Paragraph 77, subparagraph b.(3)(c) is amended to read as follows:

"(c) *Assault consummated by a battery upon a child under 16 years.*

(i) That the accused did bodily harm to a certain person;

(ii) That the bodily harm was done unlawfully;

(iii) That the bodily harm was done with force or violence; and

(iv) That the person was then a child under the age of 16 years."

(d) Paragraph 77, subparagraph b.(4)(a) is amended to read as follows:

"(a) *Assault with a dangerous weapon.*

(i) That the accused offered to do bodily harm to a certain person;

(ii) The offer was made with the intent to do bodily harm; and

(iii) That the accused did so with a dangerous weapon.

[Note: Add any of the following elements as applicable:]

(iv) That the dangerous weapon was a loaded firearm.

(v) That the person was a child under the age of 16 years."

(e) Paragraph 77, subparagraph b.(4)(b) is amended to read as follows:

"(b) *Assault in which substantial bodily harm is inflicted.*

(i) That the accused assaulted a certain person; and

(ii) That substantial bodily harm was thereby inflicted upon such person.

[Note: Add any of the following elements as applicable:]

(iii) That the injury was inflicted with a loaded firearm.

(iv) That the person was a child under the age of 16 years."

(f) Paragraph 77, subparagraph b.(4)(c) is amended to read as follows:

"(c) *Assault in which grievous bodily harm is inflicted.*

(i) That the accused assaulted a certain person; and

(ii) That grievous bodily harm was thereby inflicted upon such person.

[Note: Add any of the following elements as applicable:]

(iii) That the injury was inflicted with a loaded firearm.

(iv) That the person was a child under the age of 16 years."

(g) Paragraph 77, subparagraph b.(4) is amended by inserting a new subparagraph (d) immediately after subparagraph (c) to read as follows:

"(d) *Aggravated Assault by strangulation or suffocation.*

(i) That the accused assaulted a certain person;

(ii) That the accused did so by strangulation or suffocation;

(iii) That the strangulation or suffocation was done with unlawful force or violence;

[Note: Add the following as applicable]

(iv) That the person was a child under the age of 16 years."

(h) Paragraph 77, subparagraph c.(4)(d) is deleted.

(i) Paragraph 77, subparagraph c.(5)(a)(vi) is deleted.

(j) Paragraph 77, subparagraph c.(5)(b)(iii) is deleted.

(k) Paragraph 77, subparagraph c.(5) is amended by inserting a new subparagraph (c) immediately after subparagraph (b) to read as follows:

"(c) *Aggravated Assault by strangulation or suffocation.*

(i) In general. Assault by strangulation or suffocation is an assault committed intentionally, knowingly, or recklessly, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(ii) *Assault.* See paragraph 77.c.(2)(a).

(iii) *Strangulation.* Intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(iv) *Suffocation.* Intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(v) *When committed upon a child under 16 years of age.* The maximum punishment is increased when aggravated assault by strangulation or suffocation is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense."

(l) Paragraph 77.d. is amended to read as follows:

"d. *Maximum punishment.*

(1) *Simple assault.*

(a) *Generally*. Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(b) *When committed with an unloaded firearm*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) *Battery.*

(a) *Assault consummated by a battery.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *Assault consummated by a battery upon a child under 16 years. See* paragraph 77.d.(3)(e).

(3) *Assaults permitting increased punishments based upon status of victim.*

(a) *Assault upon a commissioned officer of the armed forces of the United States or of a friendly foreign power, not in the execution of office*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(b) *Assault upon a warrant officer, not in the execution of office*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(c) *Assault upon a noncommissioned or petty officer, not in the execution of office.* Bad-

conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(d) *Assault upon a sentinel or lookout in the execution of duty, or upon any person who, in the execution of office, is performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(e) *Assault consummated by a battery upon a child under 16 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(4) *Aggravated assault.*

(a) *Aggravated assault with a dangerous weapon.*

(i) *When committed with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *When committed upon a child under the age of 16 years*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(b) *Aggravated assault in which substantial bodily harm is inflicted.*

(i) *When the injury is inflicted with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *When the injury is inflicted upon a child under the age of 16 years*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 6 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(c) *Aggravated assault in which grievous bodily harm is inflicted.*

(i) *When the injury is inflicted with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(ii) *When the injury is inflicted upon a child under the age of 16 years*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(d) *Aggravated Assault by strangulation or suffocation.*

(i) *Aggravated assault by strangulation or suffocation when committed upon a child under the age of 16 years*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(5) *Assault with intent to commit specified offenses.*

(a) *Assault with intent to commit murder, rape, or rape of a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Assault with intent to commit voluntary manslaughter, robbery, arson, burglary, and kidnapping*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years."

(m) Paragraph 77, subparagraphs e.(7)-(11) are amended to read as follows:

"(7) *Assault consummated by a battery upon a child under 16 years.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20 __, unlawfully (strike) (_____) _____ (a child under the age of 16 years) (in) (on) the _____ with _____.

(8) *Assault, aggravated—with a dangerous weapon.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to inflict bodily harm, commit an assault upon _____ (a child under the age of 16 years) by (shooting) (pointing) (striking) (cutting) (_____) (at (him) (her)) with a dangerous weapon, to wit: a (loaded firearm) (pickax) (bayonet) (club) (_____).

(9) *Assault, aggravated—inflicting substantial bodily harm.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit an assault upon _____ (a child under the age of 16 years) by (shooting) (striking) (cutting) (___) (him) (her) (on) the _____ with a (loaded firearm) (club) (rock) (brick) (_____) and did thereby inflict substantial bodily harm upon (him) (her), to wit: (severe bruising of the face) (head concussion) (temporary blindness) (_____).

(10) *Assault, aggravated—inflicting grievous bodily harm.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit an assault upon _____ (a child under the age of 16 years) by (shooting) (striking) (cutting) (___) (him) (her) (on) the _____ with a (loaded firearm) (club) (rock) (brick) (_____) and did thereby inflict grievous bodily harm upon (him) (her), to wit: a (broken leg) (deep cut) (fractured skull) (_____).

(11) *Assault, aggravated—by strangulation or suffocation.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit an assault upon _____ (a child under the age of 16 years) by unlawfully (strangling) (suffocating) (him) (her) (with/by

_____).

(n) Paragraph 77 is amended by inserting a new subparagraph e.(12) immediately after subparagraph e.(11) to read as follows:

"(12) *Assault with intent to commit specified offenses.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with intent to commit (murder) (voluntary manslaughter) (rape) (rape of a child) (sexual assault) (sexual assault of a child) (robbery) (arson) (burglary) (kidnapping), assault_____ by (striking at (him) (her) with a _____) (_____)."

(o) A new paragraph 78a is inserted immediately after paragraph 78 to read as follows:

"**78a. Article 128b (10 U.S.C. 928b) – Domestic Violence**

a. *Text of statute.*

Any person who—

(1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;

(2) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person—

(A) commits an offense under this chapter against any person; or

(B) commits an offense under this chapter against any property, including an animal;

(3) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;

(4) with intent to commit a violent offense against a spouse, an intimate partner, or

an immediate family member of that person, violates a protection order; or

(5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating;

shall be punished as a court-martial may direct.

b. *Elements.*

(1) *Commission of a violent offense against a spouse, intimate partner, or immediate family member of that person.*

(a) That the accused committed a violent offense; and

(b) That the violent offense was committed against a spouse, intimate partner, or immediate family member of the accused.

[Note: Add the following as applicable]

(c) That the immediate family member was a child under the age of 16 years.

(2) *Commission of a violation of the UCMJ against any person with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.*

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any person; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of the accused.

(3) *Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, intimate partner, or an immediate family member of that person.*

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any property, including an animal; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of the accused.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.*

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of the accused.

(5) *Violation of a protection order with the intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person.*

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of the accused.

(6) *Assaulting a spouse, an intimate partner, or an immediate family member of that person by strangulation or suffocation.*

(a) That the accused assaulted a spouse, an intimate partner, or an immediate family member of the accused;

(b) That the accused did so by strangulation or suffocation; and

(c) That the strangulation or suffocation was done with unlawful force or violence;

[Note: Add the following as applicable]

(d) That the person was a child under the age of 16 years."

c. *Explanation.*

(1) *Violent Offense.* The term "violent offense" means a violation of the following:

(a) 10 U.S.C. § 918 (article 118)

(b) 10 U.S.C. § 919(a) (article 119(a))

(c) 10 U.S.C. § 919a (article 119a)

(d) 10 U.S.C. § 920 (article 120)

(e) 10 U.S.C. § 920b (article 120b)

(f) 10 U.S.C. § 922 (article 122)

(g) 10 U.S.C. § 925 (article 125)

(h) 10 U.S.C. § 926 (article 126)

(i) 10 U.S.C. § 928 (article 128)

(j) 10 U.S.C. § 928a (article 128a)

(k) 10 U.S.C. § 930 (article 130)

(l) Any other offense that has an element that includes the use, attempted use, or threatened use of physical force against the person or property of another.

(2) *Spouse*. The term "spouse" means one's husband or wife by lawful marriage.

(3) *Intimate partner.* The term "intimate partner" means—

(a) one's former spouse, a person with whom one shares a child in common, or a person with whom one cohabits or with whom one has cohabited as a spouse; or

(b) a person with whom one has been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(4) *Immediate family.* The term "immediate family" means—

(a) one's spouse, parent, brother or sister, child, or other person to whom he or she stands

in loco parentis; or

(b) any other person living in one's household to whom he or she is related by blood or marriage.

(5) *Strangulation.* The term "strangulation" has the same meaning ascribed to that term in subparagraph 77.c.(5)(c)(iii).

(6) *Suffocation.* The term "suffocation" has the same meaning ascribed to that term in subparagraph 77.c.(5)(c)(iv).

(7) *Protection order.* The term "protection order" means—

(a) a military protective order enforceable under 10 U.S.C. § 892 (article 92); or

(b) a protection order, as defined in 18 U.S.C. § 2266 and, if issued by a State, tribal, or territorial court, is in accordance with the standards specified in 18 U.S.C. § 2265.

(8) *Mandatory Minimum Punishments.* In accordance with 10 U.S.C. § 856 (article 56), for a conviction of an offense under this paragraph, mandatory minimum punishment provisions shall not apply.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement as follows:

(1) Commission of a violent offense against a spouse, an intimate partner, or an immediate family member of that person. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing a violent offense against a spouse, an intimate partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years of confinement except for those violent offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(2) *Commission of a violation of the UCMJ against any person with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.* Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(3) *Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, intimate partner, or an immediate family member of that person.* Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.* Confinement for 3 years.

(5) *Violation of a protection order with the intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person.* Confinement for 5 years.

(6) *Assaulting a spouse, an intimate partner, or an immediate family member of that*

person by strangulation or suffocation.

(a) *Aggravated assault by strangulation or suffocation when committed upon a child under the age of 16 years.* Confinement for 11 years.

(b) *Other cases.* Confinement for 8 years.

e. *Sample Specifications*.

(1) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit a violent offense against _____, the (spouse) (intimate partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(2) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against (any person) (a child under the age of 16 years), to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(3) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against any property, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(4) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (immediate family member) of the accused, wrongfully violate a protection order by _____.

(5) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, violate a protection order, to wit: _____, with the intent to commit a violent offense, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element), against the (spouse) (intimate partner) (immediate family member) of the accused.

(6) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit an assault upon _____, the (spouse) (intimate partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, by unlawfully (strangling) (suffocating) him/her (with/by _____)."

(p) A new paragraph 107a is inserted immediately after paragraph 107 to read as follows:

"107a. Article 134—(Sexual Harassment)

a. *Text of statute*. See paragraph 91.

b. *Elements*.

(1) That the accused knowingly made sexual advances, demands or requests for sexual favors, or knowingly engaged in other conduct of a sexual nature;

(2) That such conduct was unwelcome;

(3) That, under the circumstances, such conduct:

(a) Would cause a reasonable person to believe, and a certain person did believe, that

submission to such conduct would be made, either explicitly or implicitly, a term or condition of a person's job, pay, career, benefits, or entitlements;

(b) Would cause a reasonable person to believe, and a certain person did believe, that submission to, or rejection of, such conduct would be used as a basis for decisions affecting that person's job, pay, career, benefits, or entitlements; or

(c) Was so severe, repetitive, or pervasive that a reasonable person would perceive, and a certain person did perceive, an intimidating, hostile, or offensive working environment; and

(4) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) Whether "other conduct" is "of a sexual nature" is dependent upon the circumstances of the act or acts alleged and may include conduct that, without context, would not appear to be sexual in nature.

(2) *Nature of victim.* "A certain person" extends to any person, regardless of gender or seniority, and regardless of whether subject to the UCMJ, who by some duty or military-related reason may work or associate with the accused.

(3) *Timing and location of act.* The act constituting sexual harassment can occur at any location, regardless of whether the victim or accused is on or off duty at the time of the alleged act or acts. Physical proximity is not required, and the acts may be committed through online or other electronic means.

(4) *Mens Rea.* The accused must have actual knowledge that he or she is making a sexual

advance or a demand or request for sexual favors, or engaging in other conduct of a sexual nature. Actual knowledge is not required for the other elements of the offense.

(5) *A certain person's belief or perception*. For purposes of the portions of the elements dealing with a certain person's belief or perception, that belief or perception may be satisfied by such a belief or perception being formed at any time; the belief or perception need not be formed contemporaneously with the actions that gave rise to that belief or perception.

d. *Maximum punishment*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

e. *Sample specification*.

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20__, knowingly (make sexual advances) (demand or request sexual favors) (engage in conduct of a sexual nature), to wit (by saying to (him) (her), "_____," or words to that effect) (by _____); that such conduct was unwelcome; and under the circumstances (would cause a reasonable person to believe, and _____ did believe, that submission to such conduct would be made, either explicitly or implicitly, a term or condition of a person's job, pay, career, benefits or entitlements) (would cause a reasonable person to believe, and _____ did believe, that submission to, or rejection of, such conduct would be used as a basis for career or employment decisions affecting _____) (was so severe, repetitive, or pervasive that a reasonable person would perceive, and _____ did perceive, an intimidating, hostile, or offensive working environment); and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces)."

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0017; Project Identifier AD–2022–00058–T; Amendment 39–21937; AD 2022–03–20]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes. This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that, during takeoffs and landings, as a result of this interference, certain airplane systems may not properly function, resulting in longer than normal landing or rejected takeoff distances due to the effect on thrust reverser deployment, spoilers, speedbrake deployment, and increased idle thrust, regardless of the approach type or weather. This AD requires revising the limitations and operating procedures sections of the existing airplane flight manual (AFM) to incorporate limitations prohibiting the use of certain minimum equipment list (MEL) items, and to incorporate operating procedures for calculating takeoff and landing distances, when in the presence of 5G C-Band interference as identified by Notices to Air Missions (NOTAMs). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 31, 2022.

The FAA must receive comments on this AD by March 17, 2022.

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

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

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0017; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dean Thompson, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3165; email: *dean.r.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In March 2020, the United States Federal Communications Commission (FCC) adopted final rules authorizing flexible use of the 3.7–3.98 GHz band for next generation services, including 5G and other advanced spectrum-based services.[1] Pursuant to these rules, C-Band wireless broadband deployment was permitted to occur in phases with the opportunity for operations in the lower 0.1 GHz of the band (3.7–3.8 GHz) in certain markets beginning on January 19, 2022. This AD refers to ''5G C-Band'' interference, but wireless broadband technologies, other than 5G, may use the same frequency band.[2] These other uses of the same frequency band are within the scope of this AD since they would introduce the same risk of radio altimeter interference as 5G C-Band.

The radio altimeter is an important aircraft instrument, and its intended function is to provide direct height-above-terrain/water information to a variety of aircraft systems. Commercial aviation radio altimeters operate in the 4.2–4.4 GHz band, which is separated by 0.22 GHz from the C-Band telecommunication systems in the 3.7–3.98 GHz band. The radio altimeter is more precise than a barometric altimeter and for that reason is used where aircraft height over the ground needs to be precisely measured, such as autoland, manual landings, or other low altitude operations. The receiver on the radio altimeter is typically highly accurate, however it may deliver erroneous results in the presence of out-of-band radio frequency emissions from other frequency bands. The radio altimeter must detect faint signals reflected off the ground to measure altitude, in a manner similar to radar. Out-of-band signals could significantly degrade radio altimeter functions during critical phases of flight, if the altimeter is unable to sufficiently reject those signals.

The FAA issued AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) (AD 2021–23–12) to address the effect of 5G C-Band interference on all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. AD 2021–23–12 requires revising the limitations section of the existing AFM to incorporate limitations prohibiting certain operations, which require radio altimeter data to land in low visibility conditions, when in the presence of 5G C-Band interference as identified by NOTAM. The FAA issued AD 2021–23–12 because radio altimeter anomalies that are undetected by the automation or pilot, particularly close to the ground (*e.g.,* landing flare), could lead to loss of continued safe flight and landing.

Since the FAA issued AD 2021–23–12, Boeing has continued to evaluate potential 5G C-Band interference on

[1] The FCC's rules did not make C-Band wireless broadband available in Alaska, Hawaii, and the U.S. Territories.

[2] The regulatory text of the AD uses the term ''5G C-Band'' which, for purposes of this AD, has the same meaning as ''5G'', ''C-Band'' and ''3.7–3.98 GHz.''

aircraft systems that rely on radio altimeter inputs. Boeing issued Boeing Multi Operator Message MOM–MOM–22–0016–01B(R1), dated January 16, 2022, and Boeing Flight Crew Operations Manual Bulletin TBC–26, ''Radio Altimeter Anomalies due to 5G C-Band Wireless Broadband Interference in the United States,'' dated January 17, 2022.

Based on Boeing's data, the FAA identified an additional hazard presented by 5G C-Band interference on The Boeing Company 737–8, 737–9, and 737–8200 airplanes. The FAA determined anomalies due to 5G C-Band interference may affect multiple other airplane systems using radio altimeter data, regardless of the approach type or weather. These anomalies may not be evident until very low altitudes. Impacted systems include, but are not limited to: Autopilot flight director system; autothrottle system; engines; thrust reversers; flight controls; flight instruments; traffic alert and collision avoidance system (TCAS); ground proximity warning system (GPWS); and configuration warnings.

As a result of erroneous radio altimeter data provided to these systems in the event of 5G C-Band interference, takeoff and landing performance can be adversely impacted. This may have multiple effects, including:

- Autothrottle may remain in speed (SPD) mode and may increase thrust to maintain speed during flare instead of reducing the thrust to IDLE at 27 feet radio altitude (RA) or may reduce thrust to IDLE prematurely.
- Thrust reversers may not deploy during rejected takeoff or landing roll.
- Engines may be at higher idle during rejected takeoff or remain at approach idle after touchdown.
- Automatic speedbrake may not deploy after touchdown during the landing roll.
- SPEEDBRAKE EXTENDED light may not be available or may illuminate erroneously during the landing roll.
- SPEEDBRAKE time critical visual and aural warnings may not be available during the landing roll.
- Spoilers may be limited to their maximum in-flight position during manual deployment after rejected takeoff or touchdown during the landing roll.
- Landing Attitude Modifier may be erroneous.
- Other simultaneous flight deck effects associated with the 5G C-Band interference could increase pilot workload.

As a result of these effects, lack of thrust reverser and speedbrake deployment, limited spoiler extension, and increased idle thrust may occur; and brakes may be the only means to slow the airplane. Therefore, the presence of 5G C-Band interference can result in degraded deceleration performance, subsequently resulting in longer than normal landing or rejected takeoff distances, which could lead to a runway excursion. This is an unsafe condition.

The severity of the hazard created by a lack of thrust reverser and speedbrake deployment, limited spoiler extension, and by increased idle thrust, increases when the runway is contaminated with frozen or liquid precipitation. The FAA categorizes runway surface conditions with codes from 6 through 0, with 6 being a dry runway and therefore no detrimental effect on braking, and a code of 0 denoting surface conditions, such as wet ice, in which braking may not be effective.

This AD mandates procedures for operators to account for this longer than normal landing or rejected takeoff distances, for all runway conditions, in the presence of 5G C-Band interference as identified by NOTAM. It prohibits operators from dispatching or releasing airplanes to or from affected airports when certain braking and anti-skid functions on the airplane are inoperable. It also prohibits operators from dispatch or release to, or takeoff or landing on, runways with condition codes 1 and 0.

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

FAA's Determination

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

AD Requirements

This AD requires revising the limitations and operating procedures sections of the existing AFM to incorporate limitations prohibiting the use of certain MEL items, and to incorporate operating procedures for calculating takeoff and landing distances, when in the presence of 5G C-Band interference as identified by NOTAMs.

Compliance With AFM Revisions

Section 91.9 prohibits any person from operating a civil aircraft without complying with the operating limitations specified in the AFM. FAA regulations also require operators to furnish pilots with any changes to the AFM (14 CFR 121.137) and pilots in command to be familiar with the AFM (14 CFR 91.505).

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because during takeoffs and landings, as a result of 5G C-Band interference, certain airplane systems may not properly function, resulting in longer than normal landing or rejected takeoff distances due to the effect on thrust reverser deployment, spoilers, speedbrake deployment, and increased idle thrust, regardless of the approach type or weather. This could result in a runway excursion. The urgency is based on C-Band wireless broadband deployment, which was expected to occur in phases with operations beginning on January 19, 2022. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2022–0017 and Project Identifier AD–2022–00058–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended

change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dean Thompson, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3165; email: *dean.r.thompson@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 177 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$15,045

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–03–20 The Boeing Company: Amendment 39–21937 ; Docket No. FAA–2022–0017; Project Identifier AD–2022–00058–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a determination that, during takeoffs and landings, as a result of this interference, certain airplane systems may not properly function, resulting in longer than normal landing or rejected takeoff distances due to the effect on thrust reverser deployment, spoilers, speedbrake deployment, and increased idle thrust, regardless of the approach type or weather. The FAA is issuing this AD to address degraded deceleration performance, which could lead to a runway excursion.

(f) Compliance

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

(g) Definitions

Runway condition codes are defined in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *Runway Condition Codes*

Runway Condition Code	Runway Condition Description	Reported Braking Action
6	Dry	Dry
5	Wet (smooth, grooved, or porous friction course (PFC)) or frost 3 mm (0.12 inches) or less of: water, slush, dry snow, or wet snow	Good
4	Compacted snow at or below -15°C (5°F) outside air temperature (OAT)	Good to medium
3	Wet (slippery), dry snow, or wet snow (any depth) over compacted snow Greater than 3 mm (0.12 inches) of: dry snow or wet snow Compacted snow at OAT warmer than -15°C (5°F)	Medium
2	Greater than 3 mm (0.12 inches) of: water or slush	Medium to poor
1	Ice	Poor
0	Wet ice, water on top of compacted snow, dry snow, or wet snow over ice	Nil

(h) Airplane Flight Manual (AFM) Revision

(1) Within 2 days after the effective date of this AD: Revise the Limitations Section of the existing AFM to include the information specified in figure 2 to paragraph (h)(1) of this AD. This may be done by inserting a copy of figure 2 to paragraph (h)(1) of this AD into the existing AFM.

BILLING CODE 4910–13–P

Figure 2 to paragraph (h)(1) – *AFM Limitations Revision*

(Required by AD 2022-03-20)

Radio Altimeter 5G C-Band Interference, Takeoff and Landing Performance

The following limitations are required for dispatch or release to airports, and takeoff or landing on runways, in U.S. airspace in the presence of 5G C-Band wireless broadband interference as identified by NOTAM (NOTAMs will be issued to state the specific airports or approaches where the radio altimeter is unreliable due to the presence of 5G C-Band wireless broadband interference).

Minimum Equipment List (MEL)

Dispatch or release with any of the following MEL items is prohibited:

- 32-42-01 – Antiskid Systems
- 32-42-02 – Alternate Antiskid Valves
- 32-42-03 – Automatic Brake System
- 32-44-01 – Parking Brake Valve

Landing Operations on Runways with Condition Code 1 or 0

Dispatch or release to, or takeoff or landing on, runways with a runway condition code of 1 or 0 is prohibited.

Takeoff and Landing Performance

Operators must use the 5G C-Band Interference Takeoff Performance and Landing Distance Calculations procedure contained in the Operating Procedures Section of this AFM.

(2) Within 2 days after the effective date of this AD: Revise the Operating Procedures Section of the existing AFM to include the information specified in figure 3 to paragraph (h)(2) of this AD. This may be done by inserting a copy of figure 3 to paragraph (h)(2) of this AD into the existing AFM.

Figure 3 to paragraph (h)(2) – *AFM Operating Procedures Revision*

(Required by AD 2022-03-20)

5G C-Band Interference Takeoff Performance and Landing Distance Calculations

Dispatch Guidance – Takeoff Performance

Stopping distance during a rejected takeoff (RTO) can be significantly increased due to the following potential effects on airplane systems:

- Limited spoiler extension
- Higher engine idle
- Thrust reversers may not deploy

For the increased stopping distance during an RTO, refer to the Departure Airport, Takeoff Performance section below.

Dispatch Guidance – Destination or Alternate Airport – Landing Performance

Calculate the required landing distance (select Method A or Method B).

Method A: Use of normal landing performance increased by a predetermined percentage

Use Prior to Descent, Required Landing Distance section below.

Method B: Use of the Non-Normal Configuration Landing Distance table for SPOILERS

Use the SPOILERS Non-Normal Configuration Landing Distance table in the Performance chapter of the AFM, or the applicable table below, for flaps 30 or flaps 40.

- Use the distance for MAX MANUAL braking configurations with the appropriate runway condition at estimated time of arrival.
- Apply all of the appropriate distance adjustments to include the reverse thrust adjustment for no reverse (NO REV).

For runway condition codes 6 and 5, obtain the required landing distance by using the higher of:

- The resulting unfactored distance increased by 15%, or
- The normal dispatch calculations.

For runway condition codes 4 and 3, increase the resulting unfactored distance by 15% to obtain the required landing distance.

For runway condition code 2, increase the resulting unfactored distance by 30% to obtain the required landing distance.

End of Method B

Departure Airport, Takeoff Performance
Select Method 1 or 2 to adjust the accelerate stop distance available (ASDA).
Note: Both methods provide an acceptable margin of safety.

Method 1: Adjust the ASDA by a predetermined value.
Adjust the ASDA by using the following adjustment:

Runway Condition Code	Runway Condition Description	Subtract from ASDA
6	Dry	950 feet
5	Wet skid resistant*	2,600 feet
5, 4, or 3	Wet/dry snow/wet snow/compact snow/slippery	3,700 feet
2	Slush or standing water	4,900 feet

*Provided approval to use wet skid resistant data has been received from the appropriate regulatory authority in accordance with the AFM.

Use the adjusted ASDA and complete the takeoff performance calculations using actual departure runway conditions and actual departure environmental conditions. Do not take credit for use of reverse thrust when calculating takeoff performance.

End of Method 1

Method 2: Adjust the ASDA by a predetermined factor.

Multiply the ASDA by the following factor:

Runway Condition Code	Runway Condition Description	ASDA Factor
6	Dry	0.86
5	Wet skid resistant*	0.76
5, 4, or 3	Wet/dry snow/wet snow/compact snow/slippery	0.71
2	Slush or standing water	0.65

*Provided approval to use wet skid resistant data has been received from the appropriate regulatory authority in accordance with the AFM.

Use the adjusted ASDA and complete the takeoff performance calculations using actual departure runway conditions and actual departure environmental conditions. Do not take credit for use of reverse thrust when calculating takeoff performance.

End of Method 2

Prior to takeoff:
Verify normal radio altimeter indications.

Climb out:
- TO/GA mode may not be available

- Monitor pitch mode engagement
- Monitor roll mode engagement
- Autopilot may not engage

Prior to Descent, Required Landing Distance

Do a time of arrival (en route) landing distance assessment using Method A or B. Use the SPOILERS Non-Normal Configuration Landing Distance table in the Performance chapter of the AFM, or the applicable table below, for flaps 30 or flaps 40.

Method A: Use of normal landing performance and increase by a predetermined percentage.

Use the Normal Configuration Landing Distance table for flaps 30 or flaps 40.

Note: The distances and adjustments shown in the Normal Configuration Landing Distance tables are factored and have been increased 15%.

Select the appropriate runway condition.

Select the distance for the MAX MANUAL braking configuration.

Apply all of the appropriate distance adjustments.

Note: Do not apply adjustments for reverse thrust.

To obtain the required landing distance, increase the resulting factored distance by the percentage below in Table 1 based on the runway condition code or runway braking action.

Table 1

Runway Condition Code	Reported Braking Action	Percentage
6	Dry	23%
5	Good	63%
4	Good to medium	56%
3	Medium	65%
2	Medium to poor	113%

Determine autobrake settings using the Determine Autobrake Settings section below.

End of Method A

Method B: Use of the Non-Normal Configuration Landing Distance table for SPOILERS

Use the SPOILERS Non-Normal Configuration Landing Distance table in the Performance chapter of the AFM, or the applicable table below, for flaps 30 or flaps 40.

Select the appropriate runway condition.

Select the distance for MAX MANUAL braking configuration.

Apply all of the appropriate distance adjustments including the reverse thrust adjustment for no reverse (NO REV).

For runway condition codes 6 to 3, increase the resulting unfactored distance by 15% to obtain the required landing distance.

For runway condition code 2, increase the resulting unfactored distance by 30% to obtain the required landing distance.

Determine autobrake settings using the Determine Autobrake Settings section below.

SPOILERS Non-Normal Configuration Landing Distance Tables

737-8 and 737-8200 One Position Tailskid, FLAPS 30, VREF30

	Landing Distances and Adjustments (Feet)								
	Reference Distance	Weight Adjustment	Altitude Adjustment*	Wind Adjustment per 10 Knots	Slope Adjustment per 1%	Temperature Adjustment per 10°C	Approach Speed Adjustment	Reverse Thrust Adjustment	
Runway Condition Code	150,000 LB Landing Weight	Per 10,000 LB Above / Below 150,000 LB	Per 1,000 ft STD / HIGH	Head / Tail Wind	Down / Up Hill	Above / Below ISA	per 5 KTS above VREF	One Reverser	No Reverser
6	4870	250 / -270	130 / 170	-210 / 680	80 / -70	130 / -130	310	180	280
5	6300	420 / -410	230 / 320	-330 / 1160	200 / -170	210 / -210	420	610	1300
4	6890	430 / -430	240 / 330	-350 / 1210	260 / -210	210 / -210	420	740	1620
3	7330	450 / -450	250 / 340	-360 / 1270	310 / -250	220 / -220	420	910	2090
2	8290	610 / -570	330 / 460	-470 / 1660	440 / -340	280 / -280	450	1530	4410

737-8 and 737-8200 Two Position Tailskid, FLAPS 30, VREF30

	Landing Distances and Adjustments (Feet)								
	Reference Distance	Weight Adjustment	Altitude Adjustment*	Wind Adjustment per 10 Knots	Slope Adjustment per 1%	Temperature Adjustment per 10°C	Approach Speed Adjustment	Reverse Thrust Adjustment	
Runway Condition Code	150,000 LB Landing Weight	Per 10,000 LB Above / Below 150,000 LB	Per 1,000 ft STD / HIGH	Head / Tail Wind	Down / Up Hill	Above / Below ISA	per 5 KTS above VREF	One Reverser	No Reverser
6	4670	250 / -250	130 / 170	-210 / 670	80 / -70	120 / -120	300	160	250
5	6030	410 / -380	220 / 320	-320 / 1130	190 / -160	200 / -200	410	550	1170
4	6610	420 / -400	230 / 330	-340 / 1180	240 / -200	200 / -200	410	680	1480
3	7050	430 / -420	240 / 340	-360 / 1240	300 / -240	210 / -200	410	850	1960
2	7980	590 / -540	330 / 460	-460 / 1640	420 / -330	270 / -270	450	1430	4110

737-9 FLAPS 30, VREF30

	Landing Distances and Adjustments (Feet)								
	Reference Distance	Weight Adjustment	Altitude Adjustment*	Wind Adjustment per 10 Knots	Slope Adjustment per 1%	Temperature Adjustment per 10°C	Approach Speed Adjustment	Reverse Thrust Adjustment	
Runway Condition Code	160,000 LB Landing Weight	Per 10,000 LB Above / Below 160,000 LB	Per 1,000 ft STD / HIGH	Head / Tail Wind	Down / Up Hill	Above / Below ISA	per 5 KTS above VREF	One Reverser	No Reverser
6	5030	250 / -250	140 / 170	-210 / 690	90 / -80	130 / -130	310	170	270
5	6530	410 / -380	250 / 330	-340 / 1180	220 / -180	210 / -210	420	610	1290
4	7090	420 / -400	260 / 340	-350 / 1230	270 / -220	220 / -220	420	720	1560
3	7550	430 / -420	270 / 350	-370 / 1290	330 / -260	220 / -220	420	880	1990
2	8530	590 / -530	360 / 480	-480 / 1690	460 / -360	290 / -290	460	1480	4070

737-8 and 737-8200 One Position Tailskid, FLAPS 40, VREF40

	Landing Distances and Adjustments (Feet)								
	Reference Distance	Weight Adjustment	Altitude Adjustment*	Wind Adjustment per 10 Knots	Slope Adjustment per 1%	Temperature Adjustment per 10°C	Approach Speed Adjustment	Reverse Thrust Adjustment	
Runway Condition Code	150,000 LB Landing Weight	Per 10,000 LB Above / Below 150,000 LB	Per 1,000 ft STD / HIGH	Head / Tail Wind	Down / Up Hill	Above / Below ISA	per 5 KTS above VREF	One Reverser	No Reverser
6	4630	300 / -250	140 / 170	-210 / 670	90 / -80	120 / -120	330	160	250
5	5860	490 / -380	230 / 310	-320 / 1110	190 / -160	190 / -190	420	510	1070
4	6450	500 / -390	230 / 320	-340 / 1170	250 / -200	190 / -190	420	640	1380
3	6900	510 / -420	240 / 330	-350 / 1230	310 / -240	200 / -200	410	800	1830
2	7670	670 / -520	320 / 450	-450 / 1610	410 / -320	260 / -260	450	1260	3430

737-8 and 737-8200 Two Position Tailskid, FLAPS 40, VREF40

	Landing Distances and Adjustments (Feet)								
	Reference Distance	Weight Adjustment	Altitude Adjustment*	Wind Adjustment per 10 Knots	Slope Adjustment per 1%	Temperature Adjustment per 10°C	Approach Speed Adjustment	Reverse Thrust Adjustment	
Runway Condition Code	150,000 LB Landing Weight	Per 10,000 LB Above / Below 150,000 LB	Per 1,000 ft STD / HIGH	Head / Tail Wind	Down / Up Hill	Above / Below ISA	per 5 KTS above VREF	One Reverser	No Reverser
6	4600	310 / -250	140 / 170	-210 / 670	90 / -70	120 / -120	330	160	250
5	5830	500 / -370	230 / 310	-320 / 1110	190 / -160	190 / -190	420	510	1060
4	6420	510 / -390	240 / 320	-330 / 1160	250 / -200	190 / -190	420	630	1370
3	6870	520 / -410	250 / 330	-350 / 1220	310 / -240	200 / -200	410	800	1820
2	7630	680 / -520	330 / 450	-450 / 1610	410 / -320	260 / -260	450	1250	3400

737-9 FLAPS 40, VREF40

	Landing Distances and Adjustments (Feet)								
	Reference Distance	Weight Adjustment	Altitude Adjustment*	Wind Adjustment per 10 Knots	Slope Adjustment per 1%	Temperature Adjustment per 10°C	Approach Speed Adjustment	Reverse Thrust Adjustment	
Runway Condition Code	160,000 LB Landing Weight	Per 10,000 LB Above / Below 160,000 LB	Per 1,000 ft STD / HIGH	Head / Tail Wind	Down / Up Hill	Above / Below ISA	per 5 KTS above VREF	One Reverser	No Reverser
6	4920	330 / -250	150 / 180	-210 / 690	90 / -80	130 / -130	330	170	260
5	6280	520 / -370	250 / 340	-330 / 1160	210 / -180	200 / -200	430	550	1150
4	6850	520 / -390	250 / 340	-350 / 1200	270 / -220	210 / -210	430	660	1410
3	7300	540 / -410	260 / 350	-360 / 1260	330 / -260	210 / -210	430	820	1830
2	8140	690 / -510	340 / 470	-460 / 1650	450 / -340	270 / -270	460	1290	3420

*For landing distance at or below 8,000 ft pressure altitude, apply the STD adjustment. For altitudes higher than 8,000 ft, first apply the STD adjustment to derive a new reference landing distance for 8,000 ft then apply the HIGH adjustment to this new reference distance.

Reference distance is based on MAX MANUAL braking, sea level, standard day, no wind or slope and maximum reverse thrust.

Reference distance includes a distance from threshold to touchdown associated with a flare time of 7 seconds.

Distances are based on SPOILERS failure distances which conservatively approximates the effects of 5G interference after the Reverse Thrust Adjustment for no Reversers is applied.

Actual (unfactored) distances are shown.

Note: per procedure, MAX MANUAL braking is not required for normal operations.

End of Method B

Determine Autobrake Settings

- Determine desired AUTOBRAKE setting by using the normal configuration landing distance.

  Note: Normal manual or normal autobrakes can be used. The use of maximum brakes is not needed except as stated in the During Landing section below.

During Approach

- Monitor radio altimeters for anomalies.
- Monitor performance of autopilot and autothrottle. If the autopilot or autothrottle is not performing as expected, disconnect both the autopilot and autothrottle and apply manual inputs to ensure proper control of flight path.

At DA(H), MDA(H), or the Missed Approach Point

- If suitable visual reference is established, disengage the autopilot and autothrottle and continue for a normal manual landing.

- If a go-around is needed, do the go-around and the missed approach procedure either in manual or automatic flight.

During Landing

- Radio altitude-based altitude aural callouts during approach may not be available or may be erroneous.
- Manual deployment of the speedbrakes may be needed.
- If the thrust reversers do not deploy, immediately ensure the speedbrakes are extended, apply manual braking, and modulate as needed for the existing runway conditions.

Note: In some conditions, maximum manual braking may be needed throughout the entire landing roll.

During Go-around and Missed Approach

- TO/GA mode may not be available.
- Monitor thrust and verify that thrust increases.
- Monitor pitch mode engagement.
- Monitor roll mode engagement.
- Autopilot may not engage.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Multi Operator Message MOM–MOM–22–0016–01B(R1), dated January 16, 2022, and Boeing Flight Crew Operations Manual Bulletin TBC–26, ''Radio Altimeter Anomalies due to 5G C-Band Wireless Broadband Interference in the United States,'' dated January 17, 2022.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) AMOCs approved for AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) providing relief for specific radio altimeter installations are approved as AMOCs for the provisions of this AD.

(j) Related Information

(1) For more information about this AD, contact Dean Thompson, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3165; email: *dean.r.thompson@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(k) Material Incorporated by Reference

None.

Issued on January 26, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01995 Filed 1–27–22; 4:15 pm]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0843; Project Identifier MCAI–2020–00256–Q; Amendment 39–21891; AD 2022–01–03]

RIN 2120–AA64

Airworthiness Directives; Umlaut Engineering GmbH (Previously P3 Engineering GmbH) HAFEX (Halon-Free) Hand-Held Fire Extinguishers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Umlaut Engineering GmbH (previously P3 Engineering GmbH) HAFEX (Halon-free) hand-held P3HAFEX fire extinguishers (fire extinguishers). This AD was prompted by reports of a quality control issue on certain fire extinguishers, where the spindle geometries of the fire extinguishers were found to be out of tolerance. This AD requires removing affected fire extinguishers from service. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 7, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 7, 2022.

ADDRESSES: For Umlaut service information identified in this final rule, contact Umlaut Engineering, Blohmstrasse 12, Hamburg, Germany 21079, Phone: 49 0 40 75 25 779 0, email: *hafex@umlaut.com,* or web: *https://www.umlaut.com/hafex.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0843.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0843; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Umlaut Engineering GmbH (previously P3 Engineering GmbH) fire extinguisher part numbers (P/Ns) P3APP003010A and P3APP003010C with a manufacturing date of March 2019 through July 2019 inclusive and with a serial number (S/N) listed in Appendix 1 of Umlaut Vendor Service Bulletin Doc. No. P3VSB000001, Issue C, dated December 13, 2019 (VSB P3VSB000001, Issue C), that may be installed on various model helicopters. The NPRM published in the **Federal Register** on October 8, 2021 (86 FR 56232). In the NPRM, the FAA proposed to require removing affected fire extinguishers from service and prohibit installing affected fire extinguishers on any aircraft.

The NPRM was prompted by EASA AD 2020–0013, dated January 29, 2020 (EASA AD 2020–0013), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model AS 332 C, C1, L, L1, and L2, AS 365 N2 and N3, EC 155 B and B1, EC 175 B, EC 225 LP, SA 330 J, and SA 365 C1, C2, C3, N, and N1 helicopters; Airbus Helicopters Deutschland GmbH Model EC135 P1, P2, P2+, P3, T1, T2, T2+, and T3, EC635 P2+, P3, T1, T2+, and T3, and MBB–BK117 A–1, A–3, A–4, B–1, B–2, C–1, C–2, and D–2 helicopters; Leonardo S.p.A. Model AB139, AB 204B, AB 205 A–1, AB 212, AB 412, AB 412EP, AS–61N, AS–61N1, AW139, AW169, and AW189 helicopters; and WSK PZL–SWIDNIK S.A. Model PZL W–3A and PZL W–3AS helicopters. EASA advises of occurrences that have been reported of a quality issue on certain fire extinguishers, manufactured by Umlaut Engineering GmbH (formerly P3 Engineering GmbH), where the spindle geometries of the extinguishers were found to be out of tolerance. The manufacturing defect was identified in certain serial-numbered fire extinguisher P/Ns P3APP003010A and P3APP003010C with a manufacturing date of March 2019 through July 2019 inclusive, where prolonged exposure (12 hours or more) to high temperature conditions of more than 68 °C (154.4 °F) could cause a non-detectable seizure of the spindle that could cause the fire extinguisher to be inoperative. This condition, if not addressed, could prevent proper extinguishing of a fire in the cabin, possibly resulting in damage to the helicopter and injury to the occupants.

Accordingly, EASA AD 2020–0013 requires replacing affected fire extinguishers and prohibits installing an affected fire extinguisher on any helicopter.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter; Net Jets. Net Jets commented that there is a more recent revision of the service information. The following presents the comments received on the NPRM and the FAA's response to each comment.

Comment Regarding Updated Service Information

Net Jets stated that VSB P3VSB000001, Issue C, which is cited in the applicability paragraph of the NPRM, has been revised to Umlaut Vendor Service Bulletin Doc. No. P3VSB000001, Issue D, dated September 9, 2020 (VSB P3VSB000001, Issue D), and that it adds S/Ns.

Although Net Jets did not request any changes to the NPRM, the FAA infers that Net Jets would like the FAA to update the required service information (VSB P3VSB000001, Issue C), which is required to use to identify an affected fire extinguisher as proposed in the applicability paragraph of the NPRM, to VSB P3VSB000001, Issue D. The FAA reviewed VSB P3VSB000001, Issue D, and while it updates certain information, there are no changes to the S/Ns identified in its Appendix 1. In light of this, the FAA has determined to allow the use of VSB P3VSB000001, Issue C, or VSB P3VSB000001, Issue D, in the applicability paragraph of this final rule.

Conclusion

These products have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed VSB P3VSB000001, Issue C, which specifies procedures for identifying P3HAFEX fire extinguisher P/Ns P3APP003010A and P3APP003010C, with a date of manufacture between March 2019 through July 2019, and an S/N listed in its Appendix 1, to determine if the fire extinguisher should be replaced. VSB P3VSB000001, Issue C, also specifies procedures for removing, installing, and tracking affected P3HAFEX fire extinguishers.

The FAA also reviewed VSB P3VSB000001, Issue D, which specifies the same procedures as VSB P3VSB000001, Issue C, except VSB

P3VSB000001, Issue D, updates Component Maintenance Manual (CMM) references and material information.

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

Differences Between This AD and the EASA AD

EASA AD 2020–0013 is issued against various model helicopters and defines an affected part, whereas this AD is an appliance AD action against affected fire extinguishers because the unsafe condition exists in the appliance itself and not in the installation of the appliance on certain aircraft. EASA AD 2020–0013 identifies some helicopter models that are affected by this unsafe condition that are not identified as possibly affected in this AD because those model helicopters are not FAA type-certificated.

Costs of Compliance

The FAA estimates that this AD affects 762 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Replacing a fire extinguisher takes about 0.25 work-hour and parts cost about $1,200 for an estimated cost of $1,221 per fire extinguisher.

According to Umlaut Engineering GmbH service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Umlaut Engineering GmbH; accordingly, all costs are included in this cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–01–03 Umlaut Engineering GmbH (Previously P3 Engineering GmbH) HAFEX (Halon-Free) Hand-Held Fire Extinguishers: Amendment 39–21891; Docket No. FAA–2021–0843; Project Identifier MCAI–2020–00256–Q.

(a) Effective Date

This airworthiness directive (AD) is effective March 7, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Umlaut Engineering GmbH (previously P3 Engineering GmbH) HAFEX (Halon-free) hand-held P3HAFEX fire extinguisher (fire extinguisher) part numbers P3APP003010A and P3APP003010C with a manufacturing date of March 2019 through July 2019 inclusive and with a serial number listed in Appendix 1 of Umlaut Vendor Service Bulletin Doc. No. P3VSB000001, Issue C, dated December 13, 2019, or Umlaut Vendor Service Bulletin Doc. No. P3VSB000001, Issue D, dated September 9, 2020. These fire extinguishers may be installed on but not limited to the following aircraft certificated in any category:

(1) Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, AS–365N2, AS 365 N3, EC 155B, EC155B1, EC225LP, SA330J, SA–365C1, SA–365C2, SA–365N, and SA–365N1 helicopters;

(2) Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2, MBB–BK117 C–1, MBB–BK117 C–2, and MBB–BK117 D–2 helicopters;

(3) Leonardo S.p.a. Model AB139, AB412, AB412 EP, AW139, AW169, and AW189 helicopters; and

(4) PZL-Swidnik S.A Model PZL W–3A helicopters.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2622, Fire Bottle, Portable.

(e) Unsafe Condition

This AD defines the unsafe condition as a non-conforming fire extinguisher, which could prevent proper extinguishing of a fire in the cabin, and result in subsequent damage to the helicopter and injury to the occupants.

(f) Compliance

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

(g) Required Actions

(1) Within 12 months after the effective date of this AD, remove each fire extinguisher identified in the introductory text of paragraph (c) from service.

(2) As of the effective date of this AD, do not install a fire extinguisher identified in the introductory text of paragraph (c) of this AD on any aircraft.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer,

COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2020–0013, dated January 29, 2020. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0843.

(j) Material Incorporated by Reference

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

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

(i) Umlaut Vendor Service Bulletin Doc. No. P3VSB000001, Issue C, dated December 13, 2019.

(ii) Umlaut Vendor Service Bulletin Doc. No. P3VSB000001, Issue D, dated September 9, 2020.

(3) For Umlaut service information identified in this AD, contact Umlaut Engineering, Blohmstrasse 12, Hamburg, Germany 21079, Phone: 49 0 40 75 25 779 0, email: *hafex@umlaut.com,* or web: *https://www.umlaut.com/hafex.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on December 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01859 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0947; Project Identifier MCAI–2021–00195–R; Amendment 39–21889; AD 2022–01–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters; AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters; and Model SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. This AD was prompted a report of increased vibration during flight. This AD requires the application of alignment markings on, and repetitive inspections of, the main rotor (MR) pitch rod upper links and, depending on findings, the accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 7, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 7, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0947.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0947; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0048, dated February 16, 2021 (EASA AD 2021–0048), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aérospatiale) Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, EC 130 B4, and EC 130 T2 helicopters; Model AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355 NP helicopters; and Model SA 365 C1, SA 365 C2, SA 365 C3, SA 365 N, SA 365 N1, AS 365 N2, and AS 365 N3 helicopters; all serial numbers. Model AS 350 BB and SA 365 C3 helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters; Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters; and Model SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. The NPRM published in the **Federal Register** on October 29, 2021 (86 FR 59892). The NPRM was prompted by a report of increased vibration during flight. The NPRM proposed to require the application of alignment markings on, and repetitive inspections of, the MR pitch rod upper links and, depending on findings, the accomplishment of applicable corrective actions, as specified in EASA AD 2021–0048.

The FAA is issuing this AD to address loss of tightening torque of the screws connecting the MR pitch rods to the horns of the upper links. This condition, if not addressed, could result in loss of one or more MR pitch rod upper links, possibly resulting in loss of control of the helicopter. See EASA AD 2021–0048 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0048 requires the application of alignment markings on the screw, washer, nut, and horn on both sides of each MR pitch rod upper link, and repetitive visual inspections of the two alignment markings to determine if the markings are aligned on both sides. If, during any inspection the markings on one or both sides of an MR pitch rod upper link are found misaligned, the additional actions and corrective actions include the following.

- Measuring the tightening torque value of the nut of the pitch rod upper link and adjusting the nut if it does not meet the specified criteria.
- Inspecting the pitch rod upper link to determine the condition of the bush (bushing) and spherical bearing and to determine if the cups are tight (paint mark in place), and measuring the play. If there is seizing, carbide chips, or the cups are loose (paint mark not in place), the corrective actions include replacing the spherical bearing. If the play measurement is greater than the specified measurement the corrective action is replacing the rod end fitting. Additional actions include checking the bonding and condition of the retaining ring and inspecting the pitch rod bodies for evidence of any impact, scratch, strike, or corrosion.
- Inspecting the pitch rods for chipped finish paint, scratches, impacts, and cracking, and measuring the play. If paint is chipped the corrective action is repair (sanding the affected area and applying touch-up primer and paint). If there is any scratch, an impact with a depth equal to or greater than the specified measurement, or any crack, the corrective action is replacing the pitch rod. If the play measurement is greater than 0.25 mm or there is cracking, the corrective action is replacing the spherical bearing. An additional action, if a helicopter was involved in an incident, is inspecting the straightness of the rod body ''R'' and replacing the pitch rod if the straightness of the rod body is greater than 0.5 mm.
- Inspecting the pitch horn for any evidence of impact, scratch, corrosion, chipped paint, cracking, and any elongated attachment hole; and inspecting the bonding of the retaining ring and measuring dimension ''X'' of the retaining ring. If there is any evidence of impact, scratch, or corrosion, and the depth meets the specified criteria, the corrective actions include touching up the affected area with an abrasive cloth and applying a protective coating and a coat of primer. If there is any cracking, elongated attachment hole, or the impact, scratch, or corrosion depth exceeds the specified criteria, the corrective action is replacing the pitch horn. If paint is chipped the corrective actions include sanding the affected area and applying touch-up primer and paint. If the retaining ring has debonded the corrective action is to rebond the retaining ring. If dimension ''X'' of the retaining ring exceeds the specified criteria, the corrective action is replacing the retaining ring.
- Measuring the geometry of ''G'' of the pitch horn and replacing the pitch horn if the dimension is not within the specified range.
- Installing new split pins, nuts, washers, and a screw on the pitch rod upper link.

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

Costs of Compliance

The FAA estimates that this AD affects 1,266 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this AD.

ESTIMATED COSTS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	0.50 work-hour × $85 per hour = $42.50 per inspection cycle..	$0	$42.50 per inspection cycle.	$53,805 per inspection cycle.

* The FAA has determined that application of alignment markings would take a minimal amount of time at a nominal cost.

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

ON-CONDITION COSTS *

Action	Labor cost	Parts cost	Cost per product
Screw, Washer, Nut, and Split Pin Replacement	1 work-hour × $85 per hour = $85	$40	$125
Spherical Bearing Replacement	4 work hours × $85 per hour = $340	500	840
Pitch Rod Replacement	4 work hours × $85 per hour = $340	3,000	3,340
Pitch Horn Replacement	16 work hours × $85 per hour = $1360	4,000	5,360

* The FAA has determined that ''repair'' of chipped paint would take a minimal amount of time at a nominal cost.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–01–01 Airbus Helicopters: Amendment 39–21889; Docket No. FAA–2021–0947; Project Identifier MCAI–2021–00195–R.

(a) Effective Date

This airworthiness directive (AD) is effective March 7, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus Helicopters helicopters, certificated in any category, identified in paragraphs (c)(1) through (3) of this AD, all serial numbers.

(1) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters.

(2) Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters.

(3) Model SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

(e) Unsafe Condition

This AD was prompted by a report of increased vibration during flight on an Airbus Helicopters Model AS 365 helicopter. Subsequent investigation found a total loss of tightening torque of one screw connecting the main rotor (MR) pitch rod to the horn of its upper link, which led to abnormal wear of the screw and consequently increased the vibrations coming from the MR control chain to the pilot's flight controls. The FAA is issuing this AD to address loss of tightening torque of the screws connecting the MR pitch rods to the horns of the upper links. The unsafe condition, if not addressed, could result in loss of one or more MR pitch rod upper links, possibly resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0048, dated February 16, 2021 (EASA AD 2021–0048).

(h) Exceptions to EASA AD 2021–0048

(1) Where EASA AD 2021–0048 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0048 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2021–0048 specifies discarding parts, this AD requires removing those parts from service.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0048.

(5) Where a work card in the service information referenced in EASA AD 2021–0048 specifies returning a part to the manufacturer, this AD does not include that requirement.

(6) For Model AS350 helicopters: For the visual inspection of the pitch rod upper link, where a work card in the service information referenced in EASA AD 2021–0048 specifies to do an inspection of a pitch rod body for any dent, impact, scratch, or corrosion, and any dent, impact, scratch, or corrosion is found, this AD requires replacing the pitch rod before further flight.

(7) For Model AS355 helicopters: For the visual inspection of the pitch rod upper link, where a work card in the service information referenced in EASA AD 2021–0048 specifies to do an inspection of a pitch rod body for any impact, scratch, strike, or corrosion, and any impact, scratch, strike, or corrosion is found, this AD requires replacing the pitch rod before further flight.

(8) For Model SA365 helicopters: For the visual inspection of the pitch rod upper link, where a work card in the service information referenced in EASA AD 2021–0048 specifies to ''check bonding and state retaining ring on the pitch rods,'' and any discrepancy (*e.g.,* disbonding) is found and no corrective action is specified, before further flight, contact the Manager, General Aviation & Rotorcraft Section, International Validation Branch FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA); for approved corrective actions, and accomplish those actions before further flight. If approved by the DOA, the approval must include the DOA-authorized signature.

(9) For Model SA365 helicopters: For the visual inspection of the pitch horn, if any discrepancy (corrosion, scratch, impact, crack, or debonded retaining ring) is found during the inspection of the pitch horn and there is no corrective action specified in the work card in the service information referenced in EASA AD 2021–0048, before further flight, contact the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA DOA; for approved corrective actions, and accomplish those actions before further flight. If approved by the DOA, the approval must include the DOA-authorized signature.

(10) For Model AS365 helicopters: For the visual inspection of the pitch horn, where a work card in the service information referenced in EASA AD 2021–0048 specifies to do a dye penetrant inspection ''if in doubt,'' this AD requires doing a dye penetrant inspection.

(11) For Model AS350 and EC130 helicopters: Where a work card in the service information referenced in EASA AD 2021–0048 refers to ''the pitch change lever,'' for this AD, that term is equivalent to ''pitch horn.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0048 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In

accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0048, dated February 16, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0048, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0947.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on December 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01864 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0925; Airspace Docket No. 21–ANM–49]

RIN 2120–AA66

Establishment of Class E Airspace; Joseph State Airport, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface of the earth at Joseph State Airport, Joseph, OR. The establishment of airspace supports the airport's transition from visual flight rules to instrument flight rule (IFR) operations and ensures the safety and management of IFR operations within the National Airspace System.

DATES: Effective 0901 UTC, May 19, 2022. 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: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Nathan Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace extending upward from 700 feet above ground level to support IFR operations at Joseph State Airport, Joseph, OR.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 60783; November 4, 2021) for Docket No. FAA–2021–0925 to establish Class E airspace at Joseph State Airport, Joseph, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface of the earth at Joseph State Airport, Joseph, OR.

The Class E airspace is established extending upward from 700 feet above ground level within a 6.5-mile radius of the airport, beginning at the 316° bearing from the airport clockwise to the 170° bearing from the airport, then to the point of beginning 6.5 miles northwest of the airport. This airspace is designed to contain the new Area Navigation (RNAV) approaches into the airport and instrument departures from the airport. The airspace supports the airport's transition from visual flight rules to IFR operations.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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, is non-controversial, and unlikely to result in adverse or negative comments. 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 rule, when promulgated, would 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 exist that warrant the preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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 FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM OR E5 Joseph, OR [New]

Joseph State Airport, OR
(Lat. 45°21′34″ N, long. 117°15′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport beginning at the 316° bearing from the airport clockwise to the 170° bearing from the airport, then to the point of beginning 6.5 miles northwest of the airport.

Issued in Des Moines, Washington, on January 18, 2022.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–01911 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0924; Airspace Docket No. 21–ANM–48]

RIN 2120–AA66

Establishment of Class E Airspace; Monticello Airport, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface of the earth at Monticello Airport, Monticello, UT. The establishment of airspace supports the airport's transition from visual flight rules to instrument flight rule (IFR) operations and ensures the safety and management of IFR operations within the National Airspace System.

DATES: Effective 0901 UTC, May 19, 2022. 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: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Nathan Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace extending upward from 700 feet above ground level to support IFR operations at Monticello Airport, Monticello, UT.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 60781; November 4, 2021) for Docket No. FAA–2021–0924 to establish Class E airspace at Monticello Airport, Monticello, UT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly

available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface of the earth at Monticello Airport, Monticello, UT.

The Class E airspace is established extending upward from 700 feet above ground level within a 6.5-mile radius of the airport. This airspace is designed to contain the new Area Navigation (RNAV) approaches into the airport and instrument departures from the airport. The airspace supports the airport's transition from visual flight rules to IFR operations.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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, is non-controversial, and unlikely to result in adverse or negative comments. 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 rule, when promulgated, would 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 exist that warrant the preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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 FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM UT E5 Monticello, UT [New]

Monticello Airport, UT
(Lat. 37°55′57″ N, long. 109°20′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport.

Issued in Des Moines, Washington, on January 18, 2022.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–01904 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0078; FRL–8726–02–R9]

Finding of Failure To Attain the 2008 Lead and 2010 Sulfur Dioxide Standards; Arizona; Hayden and Miami Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Hayden lead (Pb) nonattainment area (NAA) failed to attain the 2008 Pb primary and secondary national ambient air quality standards (NAAQS or ''standards'') by the applicable attainment date of October 3, 2019. The EPA is also determining that the Hayden and Miami sulfur dioxide (SO_2) NAAs failed to attain the 2010 1-hour SO_2 primary NAAQS by the applicable attainment date of October 4, 2018. As a result of these determinations, the State of Arizona is required to submit by January 31, 2023, revisions to the Arizona State implementation plan (SIP) that, among other elements, provide for expeditious attainment of the Pb NAAQS in the Hayden Pb NAA and the SO_2 NAAQS in the Hayden and Miami SO_2 NAAs by January 31, 2027.

DATES: This rule is effective March 2, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0078. 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 disabilities 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: Ben Leers, Air Planning Office (AIR–2), EPA Region IX, (415) 947–4279, *Leers.Ben@epa.gov.*

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

Table of Contents

I. Background

On May 10, 2021, the EPA proposed to determine that the Hayden Pb NAA failed to attain the 2008 Pb primary and secondary NAAQS [1] by the applicable

[1] The EPA first established primary and secondary Pb standards in 1978 at 1.5 micrograms

Continued

attainment date of October 3, 2019, based upon monitored air quality data from November 2015 to December 2018.[2] In the May 10, 2021 action, the EPA also proposed to determine that the Hayden and Miami SO_2 NAAs failed to attain the 2010 1-hour SO_2 primary NAAQS [3] by the applicable attainment date of October 4, 2018, based upon monitored air quality data from January 2015 to December 2017. The Hayden Pb and SO_2 NAAs include parts of Gila and Pinal counties and exclude the parts of Indian country within the areas. The Miami SO_2 NAA includes parts of Gila County and excludes parts of Indian country within the area.[4]

The proposed rule provided background information on the effects of exposure related to elevated levels of Pb and SO_2, the promulgation of the 2008 Pb and 2010 SO_2 NAAQS, and the designation of the Hayden and Miami areas under the Clean Air Act (CAA) for the 2008 Pb and 2010 SO_2 NAAQS.[5]

In the May 10, 2021 proposed rule, we also described the EPA's obligation under CAA section 179(c)(1) to determine whether an area's air quality meets the 2008 Pb and 2010 SO_2 NAAQS, the EPA regulations establishing the specific methods and procedures to determine whether an area has attained the 2008 Pb and 2010 SO_2 NAAQS, and the Pb and SO_2 monitoring networks operated by the Arizona Department of Environmental Quality (ADEQ) in the Hayden and Miami areas.[6] We also documented our previous review of Arizona's monitoring networks and annual network plans, Arizona's annual certifications of ambient air monitoring data, our 2018 technical systems audit of ADEQ, and our evaluation of monitored Pb and SO_2 data against relevant data completeness requirements to determine validity for comparison against the 2008 Pb and 2010 SO_2 NAAQS, respectively.[7]

Under EPA regulations in 40 CFR 50.16 and in accordance with 40 CFR part 50, appendix R, the 2008 Pb NAAQS is met in an area when the design value is less than or equal to 0.15 micrograms per cubic meter ($\mu g/m^3$) at each eligible monitoring site in the area. The Pb design value at each eligible monitoring site is the maximum valid 3-month arithmetic mean Pb concentration calculated over three years. Under EPA regulations in 40 CFR 50.17 and in accordance with 40 CFR part 50, appendix T, the 2010 1-hour annual SO_2 standard is met when the design value is less than or equal to 75 parts per billion (ppb). The SO_2 design value is calculated by computing the three-year average of the annual 99th percentile daily maximum 1-hour average concentrations.[8]

In the proposed rule, to evaluate whether the Hayden NAA attained the 2008 Pb NAAQS by the October 3, 2019 attainment date, we determined the 2016–2018 design value at each Pb monitoring site in the Hayden NAA using monitored data from November 2015 to December 2018.[9] We determined that both Pb monitoring sites in the Hayden NAA produced valid design values for the 2016–2018 data period. Based on these valid design values, we found that both sites did not meet the 2008 Pb NAAQS of 0.15 $\mu g/m^3$ by the October 3, 2019 attainment date. The Hayden Pb 2018 annual design value site, *i.e.,* the site with the highest design value based on monitored data from November 2015 to December 2018, is the Hillcrest site with a 2018 Pb design value of 0.31 $\mu g/m^3$.

To evaluate whether the Hayden and Miami NAAs attained the 2010 SO_2 NAAQS by the October 4, 2018 attainment date, we determined the 2015–2017 design value at each SO_2 monitoring site in the Hayden and Miami NAAs using monitored data from January 2015 to December 2017.[10] We determined that the one SO_2 monitoring site in the Hayden NAA and two of the three SO_2 monitoring sites in the Miami NAA produced valid design values for the 2015–2017 data period. Based on these valid design values, we found that each SO_2 monitoring site producing a valid 2015–2017 design value in the Hayden and Miami NAAs did not meet the 2010 SO_2 NAAQS of 75 ppb by the October 4, 2018 attainment date. The Hayden SO_2 2017 annual design value site, *i.e.,* the site with the highest design value based on monitored data from January 2015 to December 2017, is the Hayden Old Jail site with a 2017 SO_2 design value of 295 ppb. The Miami SO_2 2017 design value site is the Miami Jones Ranch site with a 2017 SO_2 design value of 221 ppb.

For the Hayden Pb NAA to attain the 2008 Pb NAAQS by October 3, 2019, the 2018 Pb design value at each eligible monitoring site in the Hayden NAA must be equal to or less than 0.15 $\mu g/m^3$. Because at least one site had a 2018 Pb design value greater than 0.15 $\mu g/m^3$, we proposed to determine that the Hayden Pb NAA failed to attain the 2008 Pb NAAQS by the October 3, 2019 attainment date. Similarly, for the Hayden and Miami SO_2 NAAs to attain the 2010 SO_2 NAAQS by October 4, 2018, the 2017 SO_2 design value at each eligible monitoring site in the Hayden and Miami NAAs must be equal to or less than 75 ppb. Because at least one site in both the Hayden and Miami NAAs had a 2017 SO_2 design value greater than 75 ppb, we proposed to determine that the Hayden and Miami SO_2 NAAs failed to attain the 2010 SO_2 NAAQS by the October 4, 2018 attainment date. The May 10, 2021 proposed rule described the CAA requirements that would apply if the EPA were to finalize the proposed findings of failure to attain the 2008 Pb and 2010 SO_2 NAAQS.[11]

Lastly, we also described in the proposed rule that the dominant source of Pb and SO_2 emissions in the Hayden Pb and SO_2 NAAs is the Asarco LLC (''Asarco'') Hayden Smelter, and the dominant source of SO_2 emissions in the Miami SO_2 NAA is the Freeport-McMoRan Miami Inc. (FMMI) Miami Smelter. Due to the unique nature of these two facilities, which are the only batch process primary copper smelters in the country, we requested comment on what additional measures could be feasibly implemented at these facilities under CAA section 179(d)(2) in light of

per cubic meter ($\mu g/m^3$) as a quarterly average. 43 FR 46246 (October 5, 1978). Based on updated health and scientific data in 2008, the EPA revised the Federal Pb standards to 0.15 $\mu g/m^3$ and revised the averaging time for the standards. 73 FR 66964 (November 12, 2008). The EPA established primary and secondary standards at the same level for the 2008 Pb NAAQS. Primary standards provide public health protection, including protecting the health of ''sensitive'' populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Because the primary and secondary Pb standards are the same, we refer to them hereafter in this document using the singular ''Pb standard'' or ''Pb NAAQS.''

[2] 86 FR 24829.

[3] The EPA first established primary SO_2 standards in 1971 at 0.14 parts per million (ppm) over a 24-hour averaging period and 0.3 ppm over an annual averaging period. 36 FR 8186 (April 30, 1971). In June 2010, the EPA revised the NAAQS for SO_2 to provide increased protection of public health, providing for revocation of the 1971 primary annual and 24-hour SO_2 standards for most areas of the country following area designations under the new NAAQS. 40 CFR 50.4(e). The 2010 NAAQS is 75 parts per billion (equivalent to 0.075 parts per million) over a 1-hour averaging period. 75 FR 35520 (June 22, 2010).

[4] For exact descriptions of the Hayden and Miami SO_2 NAAs, refer to 40 CFR 81.303.

[5] 86 FR 24829, 24829–24830.

[6] 86 FR 24830–24832.

[7] 86 FR 24832–24833.

[8] As defined in 40 CFR part 50, appendix T, section 1(c), daily maximum 1-hour values refer to the maximum 1-hour SO_2 concentration values measured from midnight to midnight that are used in the NAAQS computations.

[9] 86 FR 24829, 24833. In accordance with appendix R to 40 CFR part 50, compliance with the Pb NAAQS is determined based on data from 36 consecutive valid 3-month periods (*i.e.,* 38 months, or a 3-year calendar period and the preceding November and December).

[10] 86 FR 24834.

[11] Id.

technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts.

II. Public Comments and Responses

The May 10, 2021 proposed rule provided a 30-day public comment period that closed on June 9, 2021. During this period, seven comment letters were submitted to the EPA in response to the proposed rule. One comment letter was submitted by an anonymous commenter. This comment letter consisted of a pre-publication version of the May 10, 2021 proposed rulemaking and contained no commentary on the proposed action. The six remaining comment letters were submitted by the Arizona Center for Law in the Public Interest (ACLPI), ADEQ, Asarco, FMMI, an additional representative of Asarco, and a private citizen. This section summarizes five of the six substantive comment letters submitted in response to the May 10, 2021 proposal and includes EPA's response to each of these comment letters. The additional comment letter submitted by Asarco's representative consists of more detailed technical comments concerning data quality and validity. We respond to these comments in a separate document available in the docket for this rulemaking.

Comment 1: ACLPI supports the EPA's proposed findings of failure to attain the 2008 Pb and 2010 SO_2 NAAQS in the May 10, 2021 proposed rulemaking and urges the EPA to finalize them as soon as possible so as not to delay implementation of additional control measures necessary to reach attainment of health-based standards for these areas. In response to the EPA's request for comment on additional measures that could be feasibly implemented at the Asarco Hayden Smelter under CAA section 179(d)(2), ACLPI recommends control measures focusing on sources of lead-bearing particles, including the following: (1) Sulfide minerals from crushed ore or concentrate, (2) flash furnace dust, and (3) lead and zinc sulfates likely originating from converter dust. In support of its recommendations, ACLPI cites and encloses with its comment letter a report prepared by James Anderson, Professor Emeritus at the School for Engineering of Matter, Transport and Energy at Arizona State University, entitled *Assessment of the origins of lead-bearing airborne particulates at Hayden, Arizona by electron micro-analysis.*

Response 1: We appreciate the additional information supplied by ACLPI concerning specific sources of lead-bearing particles at the Asarco Hayden facility. We note that the submitted study was conducted in 2017, prior to full implementation of controls for the Hayden Pb NAA, which was required by 2018.[12] For example, Asasrco was required to implement new primary, secondary, and tertiary hooding systems for the converter aisle and a new ventilation system for matte tapping and slag skimming for the flash furnace by July 2018.[13] Accordingly, the data from the 2017 study may not accurately represent the contributions of the facility, including the converter aisle and flash furnace sources, following the implementation of these controls. Furthermore, the study does not address the technological feasibility or cost of any potential controls, which must also be considered in establishing control requirements under 179(d)(2). Therefore, we do not believe this study provides a sufficient basis for us to prescribe specific control measures for the Hayden area SIP revisions under CAA section 179(d)(2) at this time.

Additionally, we note that the EPA has proposed a residual risk and technology review (RTR) for the national emission standards for hazardous air pollutants for primary copper smelting major sources, codified at 40 CFR part 63, subpart QQQ.[14] This proposed rule includes reviews of health risks associated with hazardous air pollutant (HAP) emissions from primary copper smelting major sources and developments in practices, processes, and control technologies under CAA sections 112(f)(2)(A) and 112(d)(6). Based on the findings of these reviews, the EPA has proposed revised and new emissions standards for primary copper smelting major sources. The only two primary copper smelting major sources in the United States and, consequently, the only two sources that are subject to the current major source emissions standards in subpart QQQ and that would become subject to the revised standards proposed in the primary copper smelting RTR, if finalized, are the Asarco Hayden and FMMI Miami smelters. The revised and new emissions standards in the proposed RTR address anode refining furnace point source emissions of particulate matter (PM) (as a surrogate for non-mercury HAP-metals), roofline emissions of PM from anode refining furnaces and smelting furnaces, and point source emissions of mercury from dryers, converters, anode refining furnaces, and smelting furnaces. In the RTR, PM is regulated as a surrogate for non-mercury metal HAP, including Pb. Given that the RTR rulemaking process for these sources is ongoing, we believe it would not be appropriate to require specific additional measures under 179(d)(2) at this time, because such measures could potentially be inconsistent with measures that may ultimately be required under the RTR rulemaking.

While we are not taking final action to prescribe additional measures for the Hayden Pb and SO_2 SIP revisions required under CAA section 179(d)(2) at this time, we encourage ADEQ to consider ACLPI's recommendations and the findings of the Arizona State University report enclosed in ACLPI's comment when determining appropriate measures to be included in the SIP revisions required pursuant to section 179(d)(1) as a result of this action.

Comment 2: ADEQ notes that the Asarco Hayden Smelter has not been operational since October 2019. ADEQ also notes that the EPA's proposed finding of failure to attain considers SO_2 monitoring data gathered prior to the completion of upgrades to the Asarco Hayden Smelter and FMMI Miami Smelter. ADEQ suggests that if the EPA finalizes its proposed determination in the fall of 2021, a new attainment date in late 2026 would be appropriate because it would be consistent with the timeframe established in CAA sections 172(a)(2) and 179(d)(3) and would allow ADEQ to collaborate with Asarco and FMMI to develop new attainment plans fulfilling all applicable requirements.

Response 2: We recognize that the Asarco Hayden Smelter has been inoperational since October 2019 and that the proposed findings of failure to attain were based on monitoring data gathered prior to the completion of upgrades to both smelters. However, CAA section 179(c)(1) requires the EPA to determine whether a nonattainment area has attained the NAAQS based on the area's air quality as of the attainment date. As described in the proposed rule, in accordance with appendix R to 40 CFR part 50, the Pb design value is determined based on monitoring data from the most recent three calendar years and two previous months. The Pb design value as of the October 3, 2019 attainment date is therefore determined based on air quality monitoring data from November 1, 2015 to December 31, 2018. As also described in the proposed rule, in accordance with appendix T to 40 CFR part 50, the SO_2 design value is

[12] See, *e.g.,* 83 FR 31087, 31096 (July 3, 2018), ''Table 6–Control Implementation Schedule and Emission Reductions,'' showing implementation deadlines of July 2018 for multiple controls for the Hayden Pb NAA.

[13] Id.

[14] 87 FR 1616 (January 11, 2022).

based on monitoring data from the most recent three calendar years. The SO_2 design value as of the October 4, 2018 attainment date is therefore determined based on air quality monitoring data from January 1, 2015 to December 31, 2017. The CAA does not provide the EPA with discretion to consider air quality monitoring data collected after the attainment date in making determinations of attainment or failure to attain under section 179(c)(1).

Under CAA section 179(d)(3), the new maximum attainment date for each nonattainment area is the date by which attainment can be achieved as expeditiously as practicable, but no later than five years after the EPA publishes a document in the **Federal Register** determining that the nonattainment area failed to attain the relevant NAAQS (in this case, five years from the date this final rule publishes in the **Federal Register**). To be approved by the EPA, NAA SIP submittals need to ensure that the affected NAAs reach attainment as expeditiously as practicable.

Comment 3: Asarco notes that the Asarco Hayden Smelter has not been operational since October 2019 and that the Pb and SO_2 monitoring data relied upon in the EPA's proposed finding of failure to attain almost entirely predate emissions capture and control improvements installed at the Asarco Hayden Smelter between 2018 and 2020. Asarco details these improvements and states that the EPA should defer action on the proposed finding of failure to attain to allow time for the Asarco Hayden Smelter to resume steady state operation and for monitored Pb and SO_2 data to demonstrate the efficacy of these improvements. Asarco states that the 179(d) proceedings triggered by the finding of failure to attain would create a legal possibility of the imposition on Asarco of hundreds of millions of dollars in additional emissions capture and control obligations and that the financial uncertainty that this would cause could very well spell the permanent end of the Hayden smelter. Asarco argues that the EPA's request for comment on additional measures that could be feasibly implemented at the Asarco Hayden Smelter under CAA section 179(d)(2) is premature in advance of a final finding of failure to attain under CAA section 179(c) and is irrelevant to a determination of whether a finding of failure to attain is warranted. Asarco also argues that the EPA is required to undertake notice and comment rulemaking in response to a SIP revision submitted under CAA section 179(d)(1) before making a final determination of whether additional emissions capture or control requirements at the Hayden smelter are necessary.

Response 3: We acknowledge that the monitoring data relied upon in the proposed action largely predate the emissions capture and control improvements installed at the Asarco Hayden Smelter between 2018 and 2020 and that the smelter has not been operational since October 2019. We note, however, that SIP-approved rules R18–2–B1302 (''Limits on SO_2 Emissions from the Hayden Smelter'') and R18–2–B1301 (''Limits on Lead Emissions from the Hayden Smelter'') required compliance no later than July 1, 2018, and other Pb controls at the Hayden Smelter were required to be implemented by July 13, 2018.[15] Therefore, it appears that the upgrades and optimization projects that Asarco describes as being finalized in late 2018 through 2020 were in addition to those upgrades that were required in the SIP for the purpose of bringing the area into attainment of the SO_2 and Pb NAAQS. This suggests that the current SIP-approved control measures may not have been adequate to provide for attainment and that a SIP revision is therefore needed to make the additional control upgrades performed in late 2018 through 2020 (and any other measures needed to provide for attainment) permanent and enforceable.

Moreover, as discussed in our response to ADEQ's comment in this document (response 2), the EPA is required to determine whether a nonattainment area attained the NAAQS based on the area's air quality as of the attainment date. The CAA does not provide the EPA with discretion to consider air quality monitoring data collected after the attainment date in making determinations of attainment or failure to attain under section 179(c)(1). Therefore, even if we were to delay our determinations of whether the Hayden Pb and SO_2 NAAs attained the NAAQS by the respective attainment dates until the Asarco Hayden Smelter resumes steady state operation, we would not be able to consider monitoring data reflecting the improvements installed at the Asarco Hayden Smelter after those attainment dates. Such data could, however, be considered in future actions, such as a determination under the EPA's clean data policy (discussed in response 4 in this document) or a determination of whether the Hayden Pb and SO_2 NAAs attained the respective NAAQS by the new attainment date triggered by this finding. Furthermore, the new Pb and SO_2 plans that will be due within one year after publication of this action in the **Federal Register** must each include ''a comprehensive, accurate, current inventory of actual emissions.'' [16] These updated inventories must necessarily reflect the controls installed at the Hayden smelter in 2018–2020 and will serve as the foundation for modeling and other analyses in the new plans.

We believe Asarco has mischaracterized the implications of the proposed findings. Contrary to Asarco's suggestion, the development of new attainment plans will not necessarily result in requirements for new emissions controls. If the new plans demonstrate that all applicable Pb and SO_2 attainment-related CAA requirements are satisfied with existing controls (including those installed in 2018–2020), then further controls related to attainment of the Pb and SO_2 NAAQS would not be required. Furthermore, as noted in the proposal, the EPA has already disapproved portions of the 2010 SO_2 attainment plan for the Hayden nonattainment area.[17] Specifically, the EPA disapproved the attainment demonstration and other elements tied to this demonstration.[18] Accordingly, the State would need to submit a revised attainment demonstration and related elements for the Hayden SO_2 NAA, and the EPA would need to propose to approve that future SIP, in order to avoid application of mandatory sanctions under CAA sections 179(a) and 179(b) and 40 CFR 52.31. As also explained in the proposal, the EPA anticipates that Arizona's submission of a new, approvable SO_2 attainment plan in response to a final finding of failure to attain would also satisfy these existing obligations.

We disagree that our request for comment on additional measures that could be feasibly implemented at the Asarco Hayden Smelter under CAA section 179(d)(2) was premature in advance of a finding of failure to attain under CAA section 179(c)(2). Because such a finding automatically triggers a one-year deadline for submittal of a revised SIP meeting the requirements of 179(d)(2), it would be reasonable for the EPA to prescribe specific measures under 179(d)(2) in conjunction with a final action under 179(c)(2) so that the State has adequate notice of the need to include these measures while developing its SIP. However, in this

[15] 83 FR 31087, 31096 (July 3, 2018), ''Table 6–Control Implementation Schedule and Emission Reductions.''

[16] CAA section 172(c)(3).

[17] 85 FR 71547 (November 10, 2020).

[18] Id.

particular case, we are not taking final action to prescribe additional measures for the Hayden Pb and SO_2 SIP revisions under CAA section 179(d)(2) at this time.

Comment 4: FMMI states that the monitoring data relied upon in the EPA's proposed finding of failure to attain do not reflect extensive upgrades to emission control and capture systems implemented at the FMMI Miami Smelter in January 2018. FMMI states that the EPA's proposed finding of failure to attain does not address air quality dispersion modeling or a demonstration that the control strategy in the SIP has been fully implemented. FMMI argues that a more appropriate context for the EPA's request for comment on additional measures that could be feasibly implemented at the FMMI Miami Smelter would be to recognize the following: (1) The upgrades to emission control and capture systems implemented at the FMMI Miami Smelter, (2) ADEQ's dispersion modeling demonstrating attainment of the 2010 1-hour SO_2 NAAQS, and (3) subsequent monitoring data indicating that emission reductions are providing for attainment of the 2010 1-hour SO_2 NAAQS. FMMI cites the EPA's ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (''SO_2 SIP Guidance''),[19] which states:

> The EPA believes that, where a control strategy has recently taken effect and the state can determine based on recent monitoring data or other relevant information that the control strategy will result in attainment once 3 years of data that reflect those controls are available, the required plan revisions can be accomplished in a very streamlined manner. The EPA expects that the submittal to the EPA could simply provide a determination that: (1) All monitors in the affected area have at least 1 calendar year of clean air quality data, (2) the approved SIP has been fully implemented for the area, and (3) emission sources have complied with their SIP requirements.

FMMI notes that, despite implementation of the required capture and control upgrades by January 2018, ''there were still several instances of recorded daily maximum 1-hour SO_2 concentrations above the standard in calendar year 2018.'' FMMI explains that, in response to these exceedances, it ''implemented several measures to improve capture and minimize fugitive SO_2 emissions.'' FMMI further states that the two monitors in the Miami NAA recorded a total of three exceedances of the 1-hour SO_2 NAAQS in 2020, all of which ''were attributed to a specific event or issue at the Miami Smelter that was subsequently resolved,'' and that since January 1, 2021, there have been no exceedances of the 1-hour SO_2 NAAQS recorded at either of these monitors. On this basis, FMMI argues that, because (1) the monitors in the Miami SO_2 NAA have at least one calendar year of clean data, (2) the approved Miami SO_2 NAA SIP has been fully implemented, and (3) the FMMI Miami Smelter is in compliance with its source-specific SIP requirements, the SIP revision required under CAA section 179(d)(1) following a finding of failure to attain under section 179(c)(2) need only affirm the previously approved SIP and establish a new attainment date that reflects three full years of implementation. FMMI also states that certain SIP requirements, including contingency measures, can be suspended if the monitors in the Miami SO_2 NAA have at least one calendar year of data indicating that the area is attaining the standard.

Response 4: As discussed in response 2 of this document, the EPA is required to determine whether a nonattainment area attained the NAAQS based on the area's air quality as of the attainment date, and the CAA does not provide the EPA with discretion to consider air quality monitoring data collected after the attainment date in making determinations of attainment or failure to attain under section 179(c)(1). We acknowledge that the monitoring data relied upon in the proposed action therefore do not fully reflect upgrades to emission control and capture systems implemented at the FMMI Miami Smelter as of January 2018 because some of those upgrades occurred after the area's attainment date. However, we note that the construction schedule set forth in the approved implementation plan indicated that FMMI planned to complete many of the required upgrades in 2016–2017, so the monitoring data in 2016–2017 would have reflected some of these upgrades.[20]

While FMMI states that the EPA's proposed finding of failure to attain does not address air quality dispersion modeling or a demonstration that the control strategy in the SIP has been fully implemented, FMMI also acknowledges that monitoring data from January 1, 2015 to December 31, 2017 do not demonstrate attainment of the SO_2 NAAQS in the Miami NAA by the attainment date. As described in the EPA's SO_2 SIP Guidance, we are not able to make a determination of attainment for an area if the monitors in the area do not yield a design value that meets the NAAQS prior to the applicable attainment date. In the proposed rule, we found that two regulatory air monitors in the Miami NAA produced complete, valid 1-hour SO_2 design values for the 2015–2017 data period. Because complete and valid monitoring data were available to determine that the Miami NAA failed to attain the SO_2 NAAQS by the attainment date, we do not find it necessary or appropriate to consider air quality dispersion modeling or a demonstration that the control strategy in the SIP has been fully implemented in our attainment determination. We acknowledge FMMI's comment that recognizing upgrades to the smelter, dispersion modeling demonstrating attainment, and monitoring data demonstrating progress toward attainment would provide a more appropriate context for our request for comment on additional measures that could be feasibly implemented at the FMMI Miami Smelter. We note that we are not taking final action to prescribe additional measures for the Miami SO_2 SIP revision under CAA section 179(d)(2) at this time.

As noted by FMMI, the SO_2 SIP Guidance indicates that, following a finding of failure to attain, in appropriate circumstances the EPA may approve a revised plan that affirms the previously approved control strategy but establishes a new attainment date. In particular, the SO_2 SIP Guidance indicates that this approach may be appropriate if the state can determine, based on recent monitoring data or other relevant information, that the control strategy in the existing SIP will result in attainment once three years of data reflecting those controls are available.[21] We recognize the progress that the Miami SO_2 NAA has made toward attainment of the 2010 SO_2 NAAQS since emissions control and capture improvements were implemented at the FMMI Miami Smelter in January 2018. However, as FMMI acknowledges in its comment, monitors in the Miami area recorded multiple exceedances of the SO_2 NAAQS in 2018–2020, even after full implementation of the improvements required under the SIP. We appreciate that, since 2018, FMMI has implemented additional improvements to emissions capture at the Miami Smelter to address those exceedances. However, because those

[19] Memorandum dated April 23, 2014, from Stephen D. Page, Director, Office of Air Quality Planning and Standards, EPA, to EPA Regional Air Directors, Regions 1–10, Subject: ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' 11.

[20] ''Arizona State Implementation Plan Revision: Miami Sulfur Dioxide Nonattainment Area for the 2010 SO_2 NAAQS,'' 84 (March 8, 2017), Table 5–4.

[21] SO_2 SIP Guidance, 11.

improvements were implemented after the attainment date, they were evidently not required under the existing SIP. This suggests that the control strategy in the existing SIP is, in fact, not sufficient to provide for attainment of the NAAQS and that substantive revisions to the requirements of the SIP may be needed.

Finally, we do not agree with the commenter's assertion that certain SIP requirements, including contingency measures, can be suspended based on one calendar year of monitoring data indicating no hourly exceedances of the NAAQS level. The commenter appears to be referring to the EPA's clean data policy, which is discussed in the SO_2 SIP Guidance.[22] However, contrary to the commenter's suggestion, a single year of clean monitoring data is not a sufficient basis for the EPA to suspend attainment-related SIP requirements under the SO_2 clean data policy. Rather, ADEQ would need to demonstrate that the area has three consecutive calendar years of air quality monitoring data which show that the area is meeting the standard and provide either (1) modeling of the most recent three years of actual emissions for the area or (2) a demonstration that the affected monitor(s) is located in the area of maximum concentration.[23] We also note that a clean data finding would only suspend the requirements for the State to submit SIP revisions to address certain attainment-related requirements. Such a finding would not affect existing requirements that already apply under the SIP. Such requirements can only be altered by a SIP revision meeting the requirements of CAA section 110(l). Therefore, contrary to the commenter's suggestion, a clean data finding would not alter the States' or sources' ongoing obligations to implement the contingency measures in the previously approved SIP for the Miami NAA that will be triggered by the findings in this action.

Comment 5: One commenter, a private citizen, argues that, due to the unique nature of the Asarco Hayden Smelter and FMMI Miami Smelter, the time allotted for each smelter to retrofit its equipment before the attainment date is capricious and arbitrary. The commenter states that the EPA's finding of failure to attain should consider improvements made at both smelters, the challenges posed to both smelters as a result of the EPA's tightened Pb and SO_2 NAAQS, and the short time frame allotted for both smelters to retrofit their equipment before the applicable attainment dates. Finally, citing CAA sections 110 and 172, the commenter argues that the EPA should seek revisions to the SIP and extend the attainment dates in order to prove the retrofitted smelters have fulfilled requirements under 172(c).[24]

Response 5: We disagree that the time allotted for each smelter to retrofit its equipment before the attainment date is capricious and arbitrary. CAA section 192(a) provides that the attainment date for newly designated Pb and SO_2 nonattainment areas is ''as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.'' [25] Thus, the October 4, 2018 attainment date for the Hayden and Miami SO_2 NAAs and the October 3, 2019 attainment date for Hayden Pb NAA were the latest possible dates permitted by statute. While we acknowledge that the monitoring data relied upon in the proposed action do not reflect all of the emissions control and capture improvements that have been made to date at the Hayden Asarco Smelter and FMMI Miami Smelter, as discussed in response 2 of this document, the EPA is required to determine whether a nonattainment area attained the NAAQS based on the area's air quality as of the attainment date. The EPA does not have the discretion to consider air quality monitoring data collected after the attainment date in making determinations of attainment or failure to attain under CAA section 179(c)(1).

We do not agree with the commenter's suggestion that we should take action under CAA sections 110(h), (j) or (k) in relation to the Hayden Pb, Hayden SO_2, or Miami SO_2 NAAs. CAA subsections 110(h), 42 U.S.C. 7410(h), (''Publication of comprehensive document for each State setting forth requirements of applicable implementation plan'') and 110(j), 42 U.S.C. 7410(j) (''Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards'') have no particular relevance to attainment plans, and we believe the references to these sections may have been in error. If the commenter is suggesting that the EPA seek revisions to the SIP and extend attainment dates under its authority to issue a SIP call under CAA section 110(k)(5), we do not believe such a SIP call is necessary or appropriate for the Hayden Pb, Hayden SO_2, or Miami SO_2 NAAs at this time. The findings in this action trigger new attainment dates [26] and requirements for SIP revisions under CAA section 179(d), and the newly required SIP revisions must meet the requirements of CAA sections 110 and 172, including the provisions of section 172(c), 42 U.S.C. 7502(c) referenced by the commenter.[27]

III. Environmental Justice Considerations

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that Federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs Federal Government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities. To identify environmental burdens and susceptible populations in underserved communities in the Hayden Pb, Hayden SO_2, and Miami SO_2 NAAs, and to examine the implications of the proposed findings of failure to attain the 2008 Pb and 2010 SO_2 NAAQS on these communities, we performed a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[28] Our screening-level analysis indicates that communities in the NAAs affected by this action, particularly in the neighborhoods surrounding the Asarco

[22] Id. at 51–60.

[23] Id. at 57–58.

[24] We interpret the commenter's reference to ''42 U.S.C. 7410 (h)(k)(j) and U.S.C. 7502 (2)(a)'' to refer to CAA sections 110(h), (j), and (k) (42 U.S.C. 7410(h), (j), and (k)), and 172(a)(2) (42 U.S.C. 7502(a)(2)).

[25] Pursuant to CAA sections 172(a)(2)(D) and 192(a), the attainment date extension provision under section 172(a)(2)(A) does not apply to the Pb or SO_2 NAAQS.

[26] As noted in the proposal, under CAA section 179(d)(3), the new attainment date for each nonattainment area is the date by which attainment can be achieved as expeditiously as practicable, but no later than five years after the EPA publishes a final action in the **Federal Register** determining that the nonattainment area failed to attain the applicable Pb or SO_2 standard.

[27] CAA section 179(d)(2).

[28] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen.* The EPA used EJSCREEN to obtain environmental and demographic indicators representing the Hayden and Miami nonattainment areas as well as for buffer areas of approximately 1-, 2-, and 3-mile radii centered around the Asarco Hayden and FMMI Miami smelters. These indicators are included in the file titled ''EJSCREEN summary.xlsx'' available in the rulemaking docket for this action.

Hayden and FMMI Miami smelters, score highly compared to the national average for the EJSCREEN ''Demographic Index,'' which is the average of an area's percent minority and percent low income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898.[29] These neighborhoods also score highly compared to the national average for the ''population with less than high school education'' and ''population over age 64'' indicators. Additionally, these neighborhoods score highly compared to the national average for numerous EJ Index indicators, including the Pb paint EJ Index and wastewater discharge EJ Index.

As discussed in the EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[30] Underserved communities can also experience reduced access to health care, nutritional, and fitness resources, further increasing their susceptibility. In addition to the demographic and environmental indicators identified in our screening level analysis, the proximity of underserved communities to the Asarco Hayden and FMMI Miami smelters (and exposure to Pb and SO_2 emissions from these facilities) contribute to the potential EJ concerns faced by communities in the affected nonattainment areas.

This final action triggers the implementation of contingency measures and requires the State of Arizona to develop updated SIP revisions providing for attainment of the 2008 Pb NAAQS in Hayden and attainment of the 2010 SO_2 NAAQS in Hayden and Miami. The implementation of contingency measures and development of required SIP revisions will result in air quality improvements and human health benefits for Hayden- and Miami-area residents, including those in underserved communities. Conversely, failure to make the determinations in this final action could inhibit or delay the attainment of the 2008 Pb and 2010 SO_2 NAAQS in these areas, perpetuating the EJ concerns potentially faced by communities in these areas. Thus, we believe that finalizing our proposed action will help to reduce disproportionate health, environmental, economic, and climate impacts on disadvantaged communities in the Hayden and Miami areas and that this action will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

[29] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, Pb paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). Depending on the indicator, a community that scores highly for an indicator may have a higher percentage of its population within a demographic group or a higher average exposure or proximity to an environmental health hazard compared to the state, region, or national average. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' section 2 (September 2019).

[30] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

IV. Final Action

Under CAA section 179(c)(1), the EPA is taking final action to determine that the Hayden Pb NAA failed to attain the 2008 Pb primary and secondary NAAQS by the applicable attainment date of October 3, 2019. The EPA is also taking final action to determine that the Hayden and Miami SO_2 NAAs failed to attain the 2010 1-hour primary SO_2 NAAQS by the applicable attainment date of October 4, 2018. As a result of these determinations, the State of Arizona is required under CAA section 179(d) to submit revisions to the Arizona SIP for the Hayden Pb, Hayden SO_2, and Miami SO_2 NAAs that, among other elements, provide for attainment of the respective standards as expeditiously as practicable but no later than January 31, 2027. At this time, we are not prescribing additional measures for the Pb and SO_2 SIP revisions under CAA section 179(d)(2). The SIP revisions required under CAA section 179(d) are due for submittal to the EPA by January 31, 2023. This final action also triggers the implementation of contingency measures adopted in these areas under CAA section 172(c)(9).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This final action requires the State to adopt and submit SIP revisions to satisfy CAA requirements and does not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any 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. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action determines that the Hayden Pb NAA and the Hayden and Miami SO_2 NAAs failed to attain the NAAQS by the applicable attainment dates and triggers existing statutory timeframes for the State to submit SIP revisions. Such a determination in and of itself does not impose any Federal intergovernmental mandate.

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 finding of failure to attain the Pb and SO_2 NAAQS does not apply to tribal areas, and the rule will not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Hayden Pb, Hayden SO_2 and Miami SO_2 nonattainment areas. Thus, this 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. Nonetheless, the EPA notified the San Carlos Apache Tribe of the San Carlos Reservation, which borders the eastern boundary of the Hayden Pb and Hayden SO_2 NAAs, of this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because the effect of this action is to trigger additional planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898. The documentation for this decision is contained in section III of this document. The docket for this rulemaking action includes a summary of environmental justice indicators for communities in the Hayden and Miami areas obtained using the EPA's EJSCREEN tool.

K. 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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2022. 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, Incorporation by reference, Intergovernmental relations, Lead, Pollution, Sulfur dioxide.

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

Dated: January 21, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends 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 D—Arizona

■ 2. Section 52.125 is amended by adding paragraph (h) to read as follows:

§ 52.125 Control strategy and regulations: Sulfur Oxides

* * * * *

(h) Effective March 2, 2022, the EPA has determined that the Hayden and Miami nonattainment areas failed to attain the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standards (NAAQS) by the applicable attainment date of October 4, 2018. This determination triggers the requirements of CAA section 179(d) for the State of Arizona to submit a revision to the Arizona SIP for the Hayden and Miami nonattainment areas to the EPA by January 31, 2023. The SIP revision must, among other elements, provide for attainment of the 1-hour primary SO_2 NAAQS in the Hayden and Miami SO_2 NAAs as expeditiously as practicable but no later than January 31, 2027.

■ 3. Section 52.127 is added to read as follows:

§ 52.127 Control strategy and regulations: Lead.

(a) Effective March 2, 2022, the EPA has determined that the Hayden nonattainment area failed to attain the 2008 primary and secondary lead (Pb) national ambient air quality standards (NAAQS) by the applicable attainment date of October 3, 2019. This determination triggers the requirements of CAA section 179(d) for the State of Arizona to submit a revision to the Arizona SIP for the Hayden nonattainment area to the EPA by January 31, 2023. The SIP revision must, among other elements, provide for attainment of the 2008 Pb NAAQS in the Hayden Pb NAA as expeditiously as practicable but no later than January 31, 2027.

(b) [Reserved]

[FR Doc. 2022–01595 Filed 1–28–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R07–OAR–2021–0667; FRL–9105–02–R7]

Air Plan Approval; Missouri Redesignation Request and Associated Maintenance Plan for the Jackson County 2010 SO_2 1-Hour NAAQS Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 18, 2021, the State of Missouri submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jackson County, Missouri, 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) nonattainment area to attainment and approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. The State provided a supplement to the maintenance plan on

September 7, 2021. In response to these submittals, the EPA is taking the following final actions: Approve the State's plan for maintaining attainment of the 2010 1-hour SO_2 primary standard in the area; and approve the State's request to redesignate the Jackson County SO_2 nonattainment area to attainment for the 2010 1-hour SO_2 primary standard. This redesignation action addresses the EPA's obligation under a consent decree which establishes a deadline of March 31, 2022, for the EPA to determine under Clean Air Act (CAA) section 179(c) whether the Jackson County SO_2 nonattainment area attained the NAAQS by the October 4, 2018, attainment date.

DATES: This final rule is effective on March 2, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0667. 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, *i.e.,* 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 information.

FOR FURTHER INFORMATION CONTACT: Wendy Vit, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7697 or by email at *vit.wendy@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

On February 18, 2021, the State submitted a request for redesignation of the Jackson County SO_2 nonattainment area to attainment and a SIP revision containing a 10-year maintenance plan for the area. On September 7, 2021, the State submitted a supplement to the maintenance plan consisting of a Consent Agreement between Missouri and Vicinity Energy—Kansas City (Vicinity, formerly Veolia-Kansas City) and an updated air dispersion modeling demonstration to support the redesignation. The EPA's proposal at 86 FR 59075 [October 26, 2021] discusses the EPA's review of the redesignation request, the maintenance plan, and the maintenance plan supplement (including the Consent Agreement and updated modeling demonstration) and provides support for the EPA's proposed approval of the request to redesignate the area to attainment and for proposed approval of the 10-year maintenance plan. Additional analysis of the redesignation request, 10-year maintenance plan, Consent Agreement, and supplemental modeling information is provided in a Technical Support Document (TSD) included in this docket. The public comment period on the EPA's proposed rule opened on October 26, 2021, the date of its publication in the **Federal Register** and closed on November 26, 2021. During this period, the EPA received no comments.

II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the February 2021 SIP submittal from November 2, 2020, to December 10, 2020 and held a public hearing on December 3, 2020. The State received and addressed three comments from one source (the EPA). The State revised the maintenance plan based on public comment prior to submitting it to the EPA. Missouri held a public hearing for the September 2021 maintenance plan supplement on July 29, 2021, and made the supplement available for public review and comment from June 28, 2021, through August 5, 2021. Missouri did not receive any public comments on the maintenance plan supplement.

In addition, as explained in the EPA's proposed rule (and in more detail in the technical support document which is included in the docket for this action), the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What are the actions the EPA is taking?

The EPA is taking final action to approve the maintenance plan for the Jackson County 2010 SO_2 1-hour NAAQS nonattainment area into the Missouri SIP (as compliant with CAA section 175A). The maintenance plan demonstrates that the area will continue to maintain the 2010 1-hour SO_2 NAAQS and includes a process to develop contingency measures to remedy any future violations of the 2010 1-hour SO_2 NAAQS and procedures for evaluation of potential violations.

Additionally, the EPA is taking final action to determine that the Jackson County 2010 SO_2 1-hour NAAQS nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS. On this basis, the EPA is approving Missouri's redesignation request for the area and changing the legal designation of the portion of Jackson County designated nonattainment at 40 CFR part 81 to attainment for the 2010 1-hour SO_2 NAAQS.

IV. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. If an area is designated nonattainment of the NAAQS, the CAA provides for the EPA to redesignate the area to attainment upon a demonstration by the state authority that air quality is attaining the NAAQS and will continue to maintain the NAAQS in order to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

The EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within the area. The tool outputs are contained in the docket for this action. The demographic indicators from EPA's EJSCREEN tool demonstrate that there are vulnerable populations in the area, including people of color, low-income populations, linguistically isolated populations, and populations with less than high school-level education.

This action addresses a redesignation determination for the Jackson County, Missouri, area. Under CAA section 107(d)(3), the redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in this document and the

associated technical support document, Missouri has demonstrated that the air quality in the Jackson County area is attaining the NAAQS and will continue to maintain the NAAQS. For these reasons, this action does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

V. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri State Implementation Plan described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, if they meet the criteria of the CAA. 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 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this determination is contained in Section IV of this action, ''Environmental Justice Concerns.''

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).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2022. 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Maintenance plan, Redesignation, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, Designations, Intergovernmental relations, Redesignation, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 14, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320:

■ a. The table in paragraph (d) is amended by adding the entry ''(35)'' in numerical order.

■ b. The table in paragraph (e) is amended by adding the entry ''(82)'' in numerical order.

The additions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
* *	* *	*	*	*
(35) Vicinity Energy—Kansas City	Consent Agreement No. APCP–2021–007.	6/25/2021	1/31/2022 [insert **Federal Register** citation].	

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	* *
(82) Jackson County 1-hour SO_2 NAAQS Maintenance Plan and Maintenance Plan Supplement.	Jackson County	2/18/2021; 9/7/2021	1/31/2022, [insert **Federal Register** citation].	This action approves the Maintenance Plan and the Maintenance Plan Supplement for the Jackson County area.

■ 3. In § 52.1343, add paragraph (d) to read as follows:

§ 52.1343 Control strategy: Sulfur dioxide.

* * * * *

(d) *Redesignation to attainment.* As of March 2, 2022, the Jackson County 2010 SO_2 nonattainment area is redesignated to attainment of the 2010 SO_2 1-hour National Ambient Air Quality Standard (NAAQS) in accordance with the requirements of Clean Air Act (CAA) section 107(d)(3) and EPA has approved its maintenance plan and maintenance plan supplement as meeting the requirements of CAA section 175A.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.326, revise the entry ''Jackson County, MO'' in the table entitled ''Missouri—2010 Sulfur Dioxide NAAQS [Primary]'' to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area [1]	Designation	
	Date [2]	Type
Jackson County, MO	3/2/2022	Attainment.
Jackson County (part).		
The portion of Jackson County bounded by I–70/I–670 and the Missouri River to the north; and, to the west of I–435 to the state line separating Missouri and Kansas.		
* * * * * * *		

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

[2] This date is April 9, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2022–01649 Filed 1–28–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS–WASO–NAGPRA–33240; PPWOVPADU0/PPMPRLE1Y.Y00000]

RIN 1024–AE69

Civil Penalties Inflation Adjustments

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This rule revises U.S. Department of the Interior regulations implementing the Native American Graves Protection and Repatriation Act to provide for annual adjustments of civil penalties to account for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance. The purpose of

these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statute.

DATES: This rule is effective on January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Manager, National NAGPRA Program, (202) 354–2204, National Park Service, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (''the Act''). The Act requires Federal agencies to adjust the level of civil monetary penalties annually for inflation no later than January 15 of each year.

II. Calculation of Annual Adjustments

The Office of Management and Budget (OMB) recently issued guidance to assist Federal agencies in implementing the annual adjustments required by the Act which agencies must complete by January 15, 2022. *See* December 15, 2021, Memorandum for the Heads of Executive Departments and Agencies, from Shalanda D. Young, Acting Director, Office of Management and Budget, re: *Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M–22–07). The guidance states that the cost-of-living adjustment multiplier for 2022, based on the Consumer Price Index (CPI–U) for the month of October 2021, not seasonally adjusted, is 1.06222. (The annual inflation adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U.) The guidance instructs agencies to complete the 2022 annual adjustment by multiplying each applicable penalty by the multiplier, 1.06222, and rounding to the nearest dollar.

The annual adjustment applies to all civil monetary penalties with a dollar amount that are subject to the Act. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. This final rule adjusts the following civil monetary penalties contained in the Department regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA) for 2022 by multiplying 1.06222 by each penalty amount as updated by the adjustment made in 2021:

CFR citation	Description of the penalty	Current penalty including catch-up adjustment	Annual adjustment (multiplier)	Adjusted penalty
43 CFR 10.12(g)(2)	Failure of Museum to Comply	$7,037	1.06222	$7,475
43 CFR 10.12(g)(3)	Continued Failure to Comply Per Day	1,408	1.06222	1,496

Consistent with the Act, the adjusted penalty levels for 2022 will take effect immediately upon the effective date of the adjustment. The adjusted penalty levels for 2022 will apply to penalties assessed after that date including, if consistent with agency policy, assessments associated with violations that occurred on or after November 2, 2015. The Act does not, however, change previously assessed penalties that the Department is collecting or has collected. Nor does the Act change an agency's existing statutory authorities to adjust penalties.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The RFA does not apply to this final rule because the Office of the Secretary is not required to publish a proposed rule for the reasons explained below in Section III.L.

C. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have

taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E. O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The Department has evaluated this rule under its consultation policy and under the criteria in Executive Order 13175 and has determined that the rule has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211; the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects is not required.

L. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by no later than January 15 of each year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual procedure for rulemaking under the APA—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the 2021 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians-claims, Indians-lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Office of the Secretary amends 43 CFR part 10 as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

§ 10.12 [Amended]

■ 2. Amend § 10.12 by:

■ a. In paragraph (g)(2) introductory text, removing ''$7,037'' and adding in its place ''$7,475''.

■ b. In paragraph (g)(3), removing ''$1,408'' and adding in its place ''$1,496''.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–01937 Filed 1–28–22; 8:45 am]

BILLING CODE 4312–52–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (LSC) is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines issued by the U. S. Department of Health and Human Services (HHS).

DATES: Effective January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Karly Satkowiak, Staff Attorney, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; (202) 295–1633, *satkowiakk@lsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (Act), 42 U.S.C. 2996f(a)(2), requires LSC to establish maximum income levels for individuals eligible for legal assistance. Section 1611.3(c) of LSC's regulations establishes a maximum income level equivalent to 125% of the Federal Poverty Guidelines (Guidelines), which HHS is responsible for updating and issuing. 45 CFR 1611.3(c).

Each year, LSC updates appendix A to 45 CFR part 1611 to provide client income eligibility standards based on the most recent Guidelines. The figures for 2022, set out below, are equivalent to 125% of the Guidelines published by HHS on January 12, 2022.

In addition, LSC is publishing a chart listing income levels that are 200% of the Guidelines. This chart is for reference purposes only as an aid to recipients in assessing the financial eligibility of an applicant whose income is greater than 125% of the applicable Guidelines amount, but less than 200% of the applicable Guidelines amount (and who may be found to be financially

eligible under duly adopted exceptions to the annual income ceiling in accordance with 45 CFR 1611.3, 1611.4, and 1611.5).

Except where there are minor variances due to rounding, the amount by which the guideline increases for each additional member of the household is a consistent amount.

List of Subjects in 45 CFR Part 1611

Grant programs—law, Legal services.

For reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR part 1611 as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Revise appendix A to part 1611 to read as follows:

Appendix A to Part 1611—Income Level for Individuals Eligible for Assistance

LEGAL SERVICES CORPORATION 2022 INCOME GUIDELINES *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$16,988	$21,238	$19,538
2	22,888	28,613	26,325
3	28,788	35,988	33,113
4	34,688	43,363	39,900
5	40,588	50,738	46,688
6	46,488	58,113	53,475
7	52,388	65,488	60,263
8	58,288	72,863	67,050
For each additional member of the household in excess of 8, add:	5,900	7,375	6,788

* The figures in this table represent 125% of the Federal Poverty Guidelines by household size as determined by HHS.

REFERENCE CHART—200% OF FEDERAL POVERTY GUIDELINES *

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1	$27,180	$33,980	$31,260
2	36,620	45,780	42,120
3	46,060	57,580	52,980
4	55,500	69,380	63,840
5	64,940	81,180	74,700
6	74,380	92,980	85,560
7	83,820	104,780	96,420
8	93,260	116,580	107,280
For each additional member of the household in excess of 8, add:	9,440	11,800	10,860

* The figures in this table represent 200% of the Federal Poverty Guidelines by household size as determined by HHS.

Dated: January 24, 2022.

Jessica L. Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2022–01922 Filed 1–28–22; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022; RTID 0648–XB744]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2022 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

DATES: This inseason action became applicable at 1200 hours, Alaska local time (A.l.t.), January 26, 2022, and remains in effect through 1200 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea

and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 3,746 metric tons as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021), inseason adjustment (86 FR 74389, December 30, 2021), and reallocation (87 FR 2358, January 14, 2022).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2022 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a document providing time for public comment because the most recent, relevant data only became available as of January 24, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: January 25, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–01814 Filed 1–26–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 20
Monday, January 31, 2022

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–2022–0018; Project Identifier MCAI–2021–00853–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model AS332L2 and EC225LP helicopters. This proposed AD was prompted by a discrepancy in the rotorcraft flight manual (RFM) where the rotorcraft stay-up flying capabilities for Category B operation were provided through performance data only, not as airworthiness limitations that are dependent upon on the number of passengers on board. This proposed AD would require revising the existing RFM for your helicopter, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 17, 2022.

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

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

For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0018.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0018; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@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–2022–0018; Project Identifier MCAI–2021–00853–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0174, dated July 21, 2021 (EASA AD 2021–0174), to correct an unsafe condition for Airbus Helicopters, formerly Eurocopter, Eurocopter France, and Aerospatiale, Model AS 332 L2 and EC 225 LP helicopters.

This proposed AD was prompted by a discrepancy in the RFM where the rotorcraft stay-up flying capabilities for Category B operation were provided through performance data only, not as airworthiness limitations that are dependent upon on the number of passengers on board. The FAA is proposing this AD to address this

discrepancy in the RFM, which, if not addressed, could lead to incorrect determination of the stay-up flying capabilities of the helicopter, resulting in reduced control of the helicopter. See EASA AD 2021–0174 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0174 requires amending (revising) the Limitation Section of the applicable RFM by incorporating new weight limitations that are dependent upon the number of passengers on board.

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

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0174, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0174 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0174 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0174 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0174. Service information referenced in EASA AD 2021–0174 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0018 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2021–0174 requires operators to ''inform all flight crew'' of revisions to the RFM and, thereafter, to ''operate the helicopter accordingly.'' However, this proposed AD would not specifically require those actions.

14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFM. Therefore, including a requirement in this AD to operate the helicopter according to the revised RFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the helicopter in such a manner would be unenforceable.

This proposed AD would allow the owner/operator (pilot) holding at least a private pilot certificate to revise the existing RFM for your helicopter and do the logbook entry, whereas EASA AD 2021–0174 does not specify this. This proposed AD would require these actions to be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v), and the record to be maintained as required by 14 CFR 91.417 or 135.439.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 38 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the existing RFM for your helicopter takes about 0.50 work-hour for an estimated cost of $42.50 per helicopter and $1,615 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2022–0018; Project Identifier MCAI–2021–00853–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 17, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS332L2 and EC225LP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by a discrepancy in the rotorcraft flight manual (RFM) where the rotorcraft stay-up flying capabilities for Category B operation were provided through performance data only, not as airworthiness limitations that are dependent upon the number of passengers on board. The FAA is issuing this AD to address this discrepancy in the RFM, which, if not addressed, could lead to incorrect determination of the stay-up flying capabilities of the helicopter, resulting in reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0174, dated July 21, 2021 (EASA AD 2021–0174).

(h) Exceptions to EASA AD 2021–0174

(1) Where EASA AD 2021–0174 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0174 specifies to ''inform all flight crew and, thereafter, operate the helicopter accordingly,'' this AD does not require those actions.

(3) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0174.

(4) Where paragraph (2) of EASA AD 2021–0174 specifies an acceptable compliance method, replace the text ''which includes information of equal effect to that presented'' with ''which includes information identical to that presented.''

(5) The action required by paragraphs (1) and (2) of EASA AD 2021–0174 may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417 or 135.439.

(i) Special Flight Permit

Special flight permits may be permitted provided that there are no passengers on board.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

(1) For EASA AD 2021–0174, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0018.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

Issued on January 24, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01805 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0020; Project Identifier MCAI–2021–00784–R]

RIN 2120–AA64

Airworthiness Directives; Hélicoptères Guimbal Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–02–20, which applies to certain Hélicoptères Guimbal Model Cabri G2 helicopters. AD 2021–02–20 requires initial and repetitive inspections of certain rotating and non-rotating scissor fittings, and depending on the results, replacing the affected assembly. AD 2021–02–20 also prohibits installing certain main rotor hubs (MRHs) and swashplate guides unless the initial inspection has been accomplished. Since the FAA issued AD 2021–02–20, the MRH and swashplate guide have been redesigned to include a certain part-numbered scissor fitting. This proposed AD would retain certain requirements of AD 2021–02–20, require installation of newly designed parts, provide a terminating action for the initial and repetitive inspections, and revise the applicability. This proposed AD would also extend the repetitive inspection interval and prohibit installing certain MRHs and swashplate guides. 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 17, 2022.

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

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

For service information identified in this NPRM, contact Hélicoptères Guimbal, 1070, rue du Lieutenant

Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *support@guimbal.com;* or at *https://www.guimbal.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0020; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@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–2022–0020; Project Identifier MCAI–2021–00784–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–02–20, Amendment 39–21403 (86 FR 8299, February 5, 2021), (AD 2021–02–20), for Hélicoptères Guimbal Model Cabri G2 helicopters, with rotating or non-rotating scissor fitting part number (P/N) G12–00–200, installed on the MRH or swashplate guide, respectively. AD 2021–02–20 requires within 30 hours time-in-service (TIS) or 30 calendar days, whichever occurs first, inspecting each rotating and non-rotating scissor fitting with the bolts connecting the scissor fittings removed. For this initial inspection, AD 2021–02–20 requires removing the cotter pins and bolts that connect the two scissor fittings, cleaning the outside surface of each scissor fitting, and using a flashlight to visually inspect each scissor fitting for a crack.

AD 2021–02–20 also requires, at intervals not to exceed 50 hours TIS or 6 months, whichever occurs first, repetitive inspections of each scissor fitting without removing the bolts and separating the two scissor fittings. For these repetitive inspections, AD 2021–02–20 requires cleaning each scissor fitting, and while using a flashlight, visually inspecting each scissor fitting for a crack. If, during any inspection, there is a crack, AD 2021–02–20 requires replacing the MRH or swashplate guide, as applicable, before further flight. AD 2021–02–20 also prohibits installing an MRH or swashplate guide with an affected scissor fitting installed, even if new, unless the initial inspection has been accomplished.

AD 2021–02–20 was prompted by EASA AD 2020–0199, dated September 21, 2020, and corrected September 24, 2020 (EASA AD 2020–0199), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Hélicoptères Guimbal (HG) Model Cabri G2 helicopters, all serial numbers. EASA advised of a report of a crack in a rotating scissor fitting discovered during maintenance. According to EASA, the suspected root cause of the crack was corrosion under residual stress. This condition, if not addressed, could result in failure of the rotating or non-rotating scissor fitting on either the MRH or the swashplate guide, and subsequent loss of control of the helicopter.

Accordingly, EASA AD 2020–0199 required an initial and repetitive inspections of the rotating and non-rotating scissor fittings P/N G12–00–200 installed on the MRH or swashplate guide, respectively. If a crack was detected, EASA AD 2020–0199 required replacing the affected MRH or swashplate guide with a serviceable part. EASA AD 2020–0199 prohibited installing certain MRHs and swashplate guides unless the initial inspection was accomplished.

Actions Since AD 2021–02–20 Was Issued

Since the FAA issued AD 2021–02–20, EASA issued AD 2021–0155, dated July 2, 2021 (EASA AD 2021–0155), which supersedes EASA AD 2020–0199. EASA advises a design change was developed for the MRH and swashplate guide including installation instructions for the modification. EASA AD 2021–0155 advises the design change requires installing new scissor fitting P/N G12–00–202, which is not affected by stress corrosion cracking. EASA AD 2021–0155 further advises once a helicopter installs a certain part-numbered MRH and a certain part-numbered swashplate guide containing the newly designed scissor fitting, HG modification (mod) 20–040 is accomplished.

Accordingly, EASA AD 2021–0155 retains the requirements of EASA AD 2020–0199, and requires replacement of the MRH and swashplate guide assemblies with assemblies equipped with the newly designed scissor fitting. EASA AD 2021–0155 also increases the interval for the repetitive inspection and prohibits any affected part to be installed on any helicopter that has HG mod 20–040 installed. EASA AD 2021–0155 allows a terminating action for the initial and repetitive inspections if the

helicopter has been modified and includes the updated modification information.

After AD 2021–02–20 was issued, the FAA determined the applicability should be revised to apply to all HG Model Cabri G2 helicopters rather than be limited to only the helicopters with the affected scissor fitting installed. Therefore, the FAA revised the Applicability paragraph of this proposed AD.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Guimbal Service Bulletin SB 20–012, Revision C; SB 20–011, Revision D; and SB 21–007 Revision C, each dated July 22, 2021 (SB 20–012 Rev C, SB 20–011 Rev D, and SB 21–007 Rev C). SB 20–012 Rev C specifies removing the bolts connecting the two scissor fittings P/N G12–00–200 and accomplishing a one-time detailed inspection for a crack in certain areas. SB 20–012 Rev C also specifies reassembling the two scissor fittings using correct bolt torque limits, installing new cotter pins, and reporting any findings to HG customer support.

SB 20–011 Rev D specifies procedures for a recurring inspection after accomplishment of SB 20–012 Rev C of the same areas of the scissor fittings for a crack as SB 20–012 Rev C, except without removing the bolts which connect the two scissor fittings. SB 20–011 Rev D also specifies reporting any findings to HG customer support. SB 21–007 Rev C specifies instructions for installing the newly designed scissor fitting. This proposed AD would also require Guimbal Service Bulletin SB 20–012, Revision B, dated October 5, 2020 (SB 20–012 Rev B), which the Director of the Federal Register approved for incorporation by reference as of February 22, 2021 (86 FR 8299, February 5, 2021).

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

Other Related Service Information

The FAA also reviewed Guimbal Service Bulletin SB 20–011, Revision C, dated October 5, 2020 (SB 20–011 Rev C). SB 20–011 Rev C specifies the same procedures as SB–20–011 Rev D, except SB 20–011 Rev D updates the applicability and references SB 21–007 Rev C.

The FAA reviewed Guimbal Service Bulletin SB 20–011, Revision B, and SB 20–012, Revision A, each dated September 1, 2020 (SB 20–011 Rev B and SB 20–012 Rev A). SB 20–012 Rev A specifies the same procedures as SB 20–012 Rev B, except SB 20–012 Rev B revises the compliance time, adds the EASA AD identification information, and updates the Situation section description. SB 20–011 Rev B specifies the same procedures as SB 20–011 Rev C, except SB 20–011 Rev C adds the EASA AD identification information and updates the Situation section description.

The FAA also reviewed Guimbal Service Bulletin SB 21–007, Revision B, dated April 4, 2021 which states the same procedures as SB 21–007 Rev C, except SB 21–007 Rev C revises the compliance time to coincide with the effective date of EASA AD 2021–0155.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain inspection and corrective action requirements of AD 2021–02–20. This proposed AD would also require within 60 hours TIS or 6 months, whichever occurs first after the effective date of this proposed AD, and thereafter at intervals not to exceed 60 hours TIS or 6 months, whichever occurs first, leaving each scissor fitting assembled and visually inspecting each scissor fitting for a crack. If there is a crack during the initial inspection or the recurring inspection, this proposed AD would require before further flight, replacing certain parts or as an alternative, installing HG mod 20–040.

This proposed AD would also require, within 60 months or during the next main gearbox overhaul, whichever occurs first after the effective date of this proposed AD, removing from service MRH P/N G12–00–100, or G12–00–101, or G12–00–102 and swashplate guide P/N G21–01–101 or G21–01–102 and installing HG mod 20–040. This proposed AD would also consider installing HG mod 20–040 to be a terminating action for the initial and recurring visual inspections required by this proposed AD.

For any pre-HG mod 20–040 helicopter, as of February 22, 2021 (the effective date of AD 2021–02–20), this proposed AD would prohibit installing an MRH or swashplate guide, with a certain part-numbered rotating or non-rotating scissor fitting installed, unless certain actions have been accomplished. For any post-HG mod 20–040 helicopter, as of the effective date of this AD, this proposed AD would prohibit installing an MRH or swashplate guide, with a certain part-numbered rotating or non-rotating scissor fitting installed, on any helicopter.

Differences Between This Proposed AD and EASA AD 2021–0155

EASA AD 2021–0155 requires detailed inspections, whereas this proposed AD would require cleaning each scissor fitting and visually inspecting each scissor fitting using a flashlight. EASA AD 2021–0155 also requires reporting certain information, whereas this proposed AD would not. EASA AD 2021–0155 requires replacing certain parts if a crack is detected with serviceable parts, whereas this proposed AD would require replacing certain parts with airworthy parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Removing and installing the bolt and cotter pins in the initial inspection would take a minimal amount of time with a minimal parts cost.

Inspecting each scissor fitting would take about 0.5 work-hours for an estimated cost of $43 per fitting, per inspection cycle. There are 2 scissor fittings installed on a helicopter, for an estimated cost of $85 per helicopter and $2,720 for the U.S. fleet, per inspection cycle.

Removing an MRH and swashplate guide and installing the improved MRH and swashplate guide would take about 6 work-hours and parts would cost about $1,608 through the parts exchange program for an estimated cost of $2,118 per helicopter and $67,776 for the U.S. fleet. The FAA expects the majority of operators would use the parts exchange program. If not accomplished through the parts exchange program, an improved MRH and swashplate guide would cost about $8,695 for an estimated cost of $9,205 per helicopter and $294,560 for the U.S. fleet.

The FAA estimates the following costs to do any necessary on-condition replacements that would be required based on the results of the inspection.

The agency has no way of determining the number of aircraft that might need these on-condition replacements:

Replacement of an MRH due to a crack in the scissor fitting with an airworthy MRH would take about 5 work-hours and parts would cost about $7,360 for an estimated cost of $7,785 per helicopter; and replacement of a swashplate guide due to a crack in the scissor fitting with an airworthy swashplate guide would take about 6 work-hours and parts would cost about $1,312 for an estimated cost of $1,822 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–02–20, Amendment 39–21403 (86 FR 8299, February 5, 2021); and

■ b. Adding the following new airworthiness directive:

Hélicoptères Guimbal: Docket No. FAA–2022–0020; Project Identifier MCAI–2021–00784–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by March 17, 2022.

(b) Affected ADs

This AD replaces AD 2021–02–20, Amendment 39–21403 (86 FR 8299, February 5, 2021) (AD 2021–02–20).

(c) Applicability

This AD applies to Hélicoptères Guimbal (HG) Model Cabri G2 helicopters, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control; 6710, Main Rotor Control.

(e) Unsafe Condition

This AD was prompted by a report of a crack in a rotating scissor fitting. The FAA is issuing this AD to detect a crack and prevent failure of a scissor fitting. The unsafe condition, if not addressed, could result in failure of a rotating or non-rotating scissor fitting and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

For helicopters with rotating or non-rotating scissor fitting part number (P/N) G12–00–200, installed on the main rotor hub (MRH) or swashplate guide, respectively: (1) Within 30 hours time-in-service (TIS) or 30 calendar days, whichever occurs first after February 22, 2021 (the effective date of AD 2021–02–20):

(i) Remove the cotter pins and bolts connecting the rotating and non-rotating scissor fitting by following the Required Actions, IPC 4.1–2 a), of Guimbal Service Bulletin SB 20–012, Revision B, dated October 5, 2020 (SB 20–012 Rev B). Remove the cotter pins from service. Clean each scissor fitting. Using a flashlight, visually inspect each scissor fitting by following the Required Actions, IPC 4.1–2 b), of SB 20–012 Rev B. As an alternative to using SB 20–012 Rev B, you may remove the cotter pins and bolts in accordance with the Required Actions, IPC 4.1–2 a), of Guimbal Service Bulletin SB 20–012, Revision C, dated July 22, 2021 (SB 20–012 Rev C), and visually inspect each scissor fitting in accordance with the Required Actions, IPC 4.1–2 b), of SB 20–012 Rev C.

(ii) If there is a crack, before further flight, replace the MRH or swashplate guide with an airworthy part as applicable; or, as an alternative, you may accomplish the modification specified in paragraph (g)(3) of this AD.

(iii) If there is not a crack, reassemble the scissor fittings by following the Required Actions, IPC 4.1–2 c), of SB 20–012 Rev B. As an alternative to using SB 20–012 Rev B, you may reassemble the scissor fittings in accordance with the Required Actions, IPC 4.1–2 c), of SB 20–012 Rev C.

(2) Thereafter, within 60 hours TIS or 6 months, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 60 hours TIS or 6 months, whichever occurs first:

(i) Leaving each rotating and non-rotating scissor fitting assembled, clean each scissor fitting. Using a flashlight, visually inspect each scissor fitting by following the Required Actions, IPC 4.1–2 a), of Guimbal Service Bulletin SB 20–011, Revision D, dated July 22, 2021.

(ii) If there is a crack, before further flight, replace the MRH or swashplate guide, with an airworthy part as applicable; or, as an alternative, you may accomplish the modification specified in paragraph (g)(3) of this AD.

(3) Within 60 months, or during the next main gearbox overhaul, whichever occurs first after the effective date of this AD, remove MRH P/N G12–00–100, or G12–00–101, or G12–00–102 and swashplate guide P/N G21–01–101 or G21–01–102 from service and modify your helicopter by installing MRH P/N G12–00–103 and swashplate guide P/N G21–01–103 containing scissor fitting P/N G12–00–202 (HG modification (mod) 20–040) by following the Required Actions, IPC 2.1–0 a) through k) and m) through aa) of Guimbal Service Bulletin SB 21–007, Revision C, dated July 22, 2021.

Note 1 to paragraph (g)(3): HG mod 20–040, as referenced in paragraphs (g)(3), and (h)(1) and (2) of this AD, is accomplished after installation of MRH P/N G12–00–103 and swashplate guide P/N G21–01–103 containing scissor fitting P/N G12–00–202.

(4) Completing the actions required by paragraph (g)(3) of this AD constitutes a terminating action for the requirements in paragraphs (g)(1) and (2) of this AD.

(h) Parts Installation

(1) For any pre-HG mod 20–040 helicopter: As of February 22, 2021 (the effective date of AD 2021–02–20), do not install an MRH or swashplate guide, with rotating or non-rotating scissor fitting P/N G12–00–200 installed, respectively, on any helicopter,

even if new, unless the actions required by paragraph (g)(1) of this AD have been accomplished.

(2) For any post-HG mod 20–040 helicopter: As of the effective date of this AD, do not install an MRH or swashplate guide, with rotating or non-rotating scissor fitting P/N G12–00–200 installed, respectively, on any helicopter.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g)(1) of this AD if you accomplished Guimbal Service Bulletin SB 20–012, Revision A, dated September 1, 2020, before February 22, 2021 (the effective date of AD 2021–02–20).

(2) This paragraph provides credit for the first instance of the actions required by paragraph (g)(2) of this AD if you accomplished Guimbal Service Bulletin SB 20–011, Revision B, dated September 1, 2020, before February 22, 2021 (the effective date of AD 2021–02–20).

(3) This paragraph provides credit for the actions required by paragraph (g)(2) of this AD if you accomplished Guimbal Service Bulletin SB 20–011, Revision C, dated October 5, 2020, before the effective date of this AD.

(4) This paragraph provides credit for the actions required by paragraph (g)(3) of this AD if you accomplished Guimbal Service Bulletin SB 21–007, Revision B, dated April 4, 2021, before the effective date of this AD.

(j) Special Flight Permits

A special flight permit may be permitted provided that there are no passengers onboard, and the flight is operating under day Visual Flight Rules, for the purpose of ferrying the helicopter to an authorized maintenance facility.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

(1) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

(2) For service information identified in this AD, contact Hélicoptères Guimbal, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *support@guimbal.com;* web *https://www.guimbal.com.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2021–0155, dated July 2, 2021. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2022–0020.

Issued on January 25, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01829 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1173; Project Identifier AD–2021–00917–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 747–8F series airplanes. This proposed AD was prompted by reports of fuselage crown stringer cracking between station (STA) 740 and STA 1000, stringer (S)–7 to S–12. This proposed AD would require repetitive detailed inspections for cracking of fuselage crown stringers and applicable on-condition actions. 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 17, 2022.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced 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. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1173.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1173; 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: Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3964; email: *stefanie.n.roesli@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–2021–1173; Project Identifier AD–2021–00917–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report

summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3964; email: *stefanie.n.roesli@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports of fuselage crown stringer cracking located on the left and right sides at S–7, S–8, S–9, S–10, S–11, and S–12, between STA 740 and STA 1000. Some of these reports were made during airplane production, and others were found on airplanes currently in operation. The existing maintenance inspections cannot reliably detect cracking at multiple stringers and bay frames. Any crack in these locations must be found and repaired before reaching a critical length. Without an inspection, any crack may grow in length and go undetected. This condition, if not addressed, could result in the inability of a structural element to sustain limit load, and could adversely affect the structural integrity of the airplane.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2906 RB, dated July 16, 2021. This service information specifies procedures for repetitive detailed inspections for cracking of fuselage crown stringers, repair of cracks, and a high frequency eddy current (HFEC) inspection for cracking of repaired areas. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Difference Between this Proposed AD and the Service Information'' and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1173.

Clarification of Proposed Inspection Requirements

Table 1 of Boeing Alert Requirements Bulletin 747–53A2906 RB, dated July 16, 2021, specifies repetitive detailed inspections to detect cracking of the side crown stringers on all airplanes. Table 1 of the service information does not specifically state that airplanes with no crack found (''Condition 1'') may have additional work. However, for airplanes with Condition 1 that have any repairs in the inspection area, the HFEC inspection specified in Table 2 of the service information would also be required.

Difference Between This Proposed AD and the Service Information

The applicability in this proposed AD does not refer to paragraph 1., ''Effectivity,'' of Boeing Alert Requirements Bulletin 747–53A2906 RB, dated July 16, 2021, because this service information does not contain a comprehensive list of the airplanes affected by the identified unsafe condition. Therefore, the applicability of this proposed AD is all Model 747–8F series airplanes.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 33 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive detailed inspections.	84 work-hours × $85 per hour = $7,140 per inspection cycle.	$0	$7,140 per inspection cycle.	$235,620 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
HFEC inspection	1 work-hour × $85 per hour = $85	$0	$85.
Repair	Up to 550 work-hours × $85 per hour = $46,750 (per repaired area)	2,400	Up to $49,150.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2021–1173; Project Identifier AD–2021–00917–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 17, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–8F series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of fuselage crown stringer cracking between STA 740 and STA 1000, S–7 to S–12. The FAA is issuing this AD to address cracking in fuselage crown stringers. This condition, if not addressed, could result in the inability of a structural element to sustain limit load, and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2906 RB, dated July 16, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2906 RB, dated July 16, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2906, dated July 16, 2021, which is referred to in Boeing Alert Requirements Bulletin 747–53A2906 RB, dated July 16, 2021.

(h) Exception to Service Information Specifications

Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2906 RB, dated July 16, 2021, use the phrase ''the original issue date of Requirements Bulletin 747–53A2906 RB,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(j) Related Information

(1) For more information about this AD, contact Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3964; email: *stefanie.n.roesli@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced 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.

Issued on December 29, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01860 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1177; Project Identifier AD–2021–00570–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, –300F, and –400ER airplanes. This proposed AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam, which is a material with fire-retardant properties that deteriorate with age. This proposed AD would

require replacing certain BMS 8–39 foam pads with Nomex felt in certain areas, removing certain BMS 8–39 foam pads in a certain area (which includes a general visual inspection to find BMS 8–39 foam pads), and inspecting the corner seals to determine if the corner seals were replaced, and replacing affected corner seals. This proposed AD would also prohibit the installation of BMS 8–39 urethane foam seal in certain locations. 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 17, 2022.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* 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. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1177.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1177; 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: Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3584; email: *Julie.Linn@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–2021–1177; Project Identifier AD–2021–00570–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3584; email: *Julie.Linn@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports of burned BMS 8–39 urethane foam, a material with fire-retardant properties. The fire-retardant properties of BMS 8–39 urethane foam deteriorate with age. The degraded material can be an unacceptable fire fuel source for a fire if exposed to an ignition source. The degraded material in the seals will compromise Halon and smoke retention and fire blocking, which could result in the inability to keep sufficient Halon concentrations within the cargo compartment or contain fire or smoke. These conditions, if not addressed, could result in penetration of smoke or fire into the flight compartment, leading to possible loss of control of the airplane.

Related AD

The FAA issued AD 2013–11–04, Amendment 39–17464 (78 FR 33193, June 4, 2013) (AD 2013–11–04), for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; Model 767–200, –300, –300F, and –400ER series airplanes; and Model 777–200, –200LR, –300, and –300ER series airplanes. For Model 767–200, –300, –300F, and –400ER series airplanes, AD 2013–11–04 requires replacing certain seals made of BMS 8–39 urethane foam in accordance with Boeing Special Attention Service Bulletin 767–25–0381, Revision 1, dated September 17, 2012, which the Director of the Federal Register approved for incorporation by reference as of July 9, 2013 (78 FR 33193, June 4, 2013). AD 2013–11–04 resulted from operator or in-service reports of burned BMS 8–39 urethane foam, and a report from the airplane manufacturer indicating that airplanes were assembled, throughout various areas of the airplane (including flight deck and cargo compartments), with seals made of BMS 8–39 urethane foam. The FAA issued AD 2013–11–04 to address the failure of urethane seals to maintain sufficient halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and to prevent penetration of fire or smoke in areas of the airplane that are difficult to access for fire and smoke detection or suppression.

This NPRM proposes to require additional actions for certain Model 767–200, –300, –300F, and –400ER series airplanes, in accordance with Boeing Special Attention Service Bulletin 767–25–0381, Revision 4, dated April 26, 2021. This NPRM does not propose to supersede AD 2013–11–04. Rather, the FAA has determined that a stand-alone AD would be more appropriate because the additional work applies only to Model 767–200, –300,

–300F, and –400ER series airplanes having certain configurations.

Actions Since AD 2013–11–04 Was Issued

Since AD 2013–11–04 was issued, the FAA has determined that replacement or removal of certain BMS 8–39 urethane foam pads and an inspection of certain corner seals is necessary for certain Model 767–200, –300, –300F, and –400ER airplanes that are in AD 2013–11–04. This proposed AD would only require the actions for Model 767–200, –300, –300F, and –400ER series airplanes, identified as Group 1, Configuration 4; Group 2, 3, 12, and 13, Configuration 3; Group 14, Configuration 1 and 3; Group 15, Configuration 2; and Group 17, Configuration 3 and 4, in Boeing Special Attention Service Bulletin 767–25–0381, Revision 4, dated April 26, 2021. This proposed AD addresses the unsafe condition only for these airplanes as identified in paragraph (c) of this proposed AD. Therefore, this proposed AD would not supersede AD 2013–11–04.

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.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Service Bulletin 767–25–0381, Revision 4, dated April 26, 2021. This service information specifies, among other actions, procedures for replacing certain BMS 8–39 foam pads with Nomex felt in the forward and aft crown area, removing certain BMS 8–39 foam pads in the crown area (which includes a general visual inspection to find BMS 8–39 foam pads) for certain airplanes, inspecting the corner seals to determine if the corner seals were replaced, and replacing affected corner seals. The required actions depend on requirements for use and location of the BMS 8–39 urethane foam in the airplane. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already. This proposed AD would also prohibit the installation of affected parts. For information on the procedures, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1177.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 396 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (1 airplane)	33 work-hours × $85 per hour = $2,805	$0	$2,805	$2,805
Replacement of foam pad with Nomex felt (361 airplanes).	29 work-hours × $85 per hour = $2,465	Negligible *	2,465	889,865
Removal (34 airplanes)	29 work-hours × $85 per hour = $2,465	$0	2,465	83,810

* Parts are Nomex felt, adhesive, and tapes. There are no kits for this required action.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of corner seals	1 work-hour × $85 per hour = $85	Up to $3,848 ..	Up to $3,933.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2021–1177; Project Identifier AD–2021–00570–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 17, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, identified as Group 1, Configuration 4; Group 2, 3, 12, and 13, Configuration 3; Group 14, Configuration 1 and 3; Group 15, Configuration 2; and Group 17, Configuration 3 and 4; in Boeing Special Attention Service Bulletin 767–25–0381, Revision 4, dated April 26, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam, and a report from the airplane manufacturer that airplanes were assembled with seals throughout various areas of the airplane (including flight deck and cargo compartments) made of BMS 8–39 urethane foam, a material with fire-retardant properties that deteriorate with age. The FAA is issuing this AD to address degraded BMS 8–39 urethane foam used in seals, which may fail to maintain sufficient halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and may result in penetration of smoke or fire into the flight compartment, leading to possible loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Within 72 months after the effective date of this AD, do the applicable actions specified in paragraph (g)(1), (2), (3), or (4) of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0381, Revision 4, dated April 26, 2021.

(1) For Group 1, Configuration 4, airplanes; and Group 2, 3, 12, and 13, Configuration 3, airplanes: Replace BMS 8–39 foam pads in the forward and aft crown area with Nomex felt.

(2) For Group 14, Configuration 1 and 3, airplanes; and Group 15, Configuration 2, airplanes: Remove BMS 8–39 foam pads in the crown area.

(3) For Group 17, Configuration 3, airplanes: Replace BMS 8–39 foam pads in the forward and aft crown area with Nomex felt, inspect the corner seals to determine if the corner seals were replaced and if any corner seals were not replaced, within 72 months after the effective date of this AD, replace affected corner seals.

(4) For Group 17, Configuration 4, airplanes: Inspect the corner seals to determine if the corner seals were replaced and if any corner seals were not replaced, within 72 months after the effective date of this AD, replace affected corner seals.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install a BMS 8–39 urethane foam seal on any airplane in any location identified in Boeing Special Attention Service Bulletin 767–25–0381, Revision 4, dated April 26, 2021.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(j) Related Information

(1) For more information about this AD, contact Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3584; email: *Julie.Linn@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced 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.

Issued on January 4, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01856 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register
Vol. 87, No. 20
Monday, January 31, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0076]

Importation of Acer spp. (Acer buergerianum, A. palmatum, and A. pseudosieboldianum) Dwarf Plants From the Republic of Korea Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis relative to the importation of three *Acer* spp. (*Acer buergerianum, A. palmatum,* and *A. pseudosieboldianum*) dwarf plants from the Republic of Korea into the continental United States. Currently, *Acer* spp. are included in our lists of taxa of plants for planting whose importation into the United States is not authorized pending pest risk analysis. Based on the findings of the pest risk analysis, we are proposing to remove *Acer buergerianum, A. palmatum,* and *A. pseudosieboldianum* dwarf plants from the Republic of Korea from the not authorized pending plant risk analysis lists, thereby allowing the importation of such *Acer* spp. into the United States, subject to certain conditions. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 1, 2022.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and enter APHIS–2021–0076 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0076, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Narasimha Chary Samboju, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2038.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart H—Plants for Planting'' (7 CFR 319.37–1 through 319.37–23, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of plants for planting (including living plants, plant parts, seeds, and plant cuttings) to prevent the introduction of quarantine pests into the United States. *Quarantine pest* is defined in § 319.37–2 of the regulations as a plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled. Section 319.37–4 of the regulations provides that certain taxa of plants for planting are not authorized for importation into the United States pending pest risk analysis (NAPPRA) to prevent the introduction of quarantine pests into the United States.

Paragraph (e) of § 319.37–4 describes the process for removing taxa from the NAPPRA lists. After receiving a request to remove taxa from the NAPPRA lists, APHIS will conduct a pest risk analysis (PRA) in response to such a request and make the PRA available for public review and comment. Following the close of the comment period, we will review all comments received and announce our decision regarding the request in a subsequent notice. Currently, *Acer* spp. plants are included on the NAPPRA lists.[1]

The national plant protection organization of the Republic of Korea (South Korea) has requested that we allow the importation of *Acer buergerianum, A. palmatum,* and *A. pseudosieboldianum* as dormant, bare-rooted dwarf (also known as ''bunjae'') plants into the continental United States. In response to this request, we prepared a pest risk assessment that evaluates the request in light of the plant pest risk associated with the importation of *Acer* spp. from South Korea, as well as a risk management document (RMD) based on the pest risk assessment to identify phytosanitary measures that could be applied to mitigate the pest risk of importing *Acer* spp. from South Korea.

Based on the PRA, we are proposing to allow the importation of *Acer buergerianum, A. palmatum,* and *A. pseudosieboldianum* into the continental United States as dormant, bare-rooted dwarf plants, subject to the pest risk mitigation measures required for all approved dwarf plants imported under the APHIS Artificially Dwarfed Plants program,[2] as well as additional commodity-specific risk management measures for these species of *Acer.* These conditions are described in further detail in the RMD that accompanies this notice.

Therefore, in accordance with § 319.37–4(e), we are announcing the availability of our PRA and RMD for public review and comment. These documents may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of these documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding whether to allow the

[1] To view the NAPPRA lists, go to: *https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/permits/plants-and-plant-products-permits/plants-for-planting/ct_nappra.*

[2] To view the requirements of the APHIS Artificially Dwarfed Plants program, go to: *https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf.*

importation of *Acer buergerianum, A. palmatum,* and *A. pseudosieboldianum* as dormant, bare-rooted dwarf plants from South Korea into the continental United States in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will revise the NAPPRA lists to allow the importation of the aforementioned *Acer* spp. from South Korea in accordance with this notice.

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

Done in Washington, DC, this 26th day of January 2022.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–01903 Filed 1–28–22; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee; Correction to Date

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction of meeting date.

SUMMARY: The Commission on Civil Rights is holding a briefing of the Connecticut Advisory Committee on Tuesday, February 15, 2022, at 4:00 p.m. ET. This notice corrects the previous date of Monday, February 14, 2022, to Tuesday, February 15, 2022, at 4:00 p.m. ET. The notice is in the **Federal Register** of Friday, January 21, 2022, in FR Doc. 2022–01119, in the second and third columns of page 3279.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, (202) 381–8915, *ebohor@usccr.gov.*

CORRECTION: Date of Monday, February 14, 2022, at 4:00 p.m. ET to be replaced with meeting date of Tuesday, February 15, 2022, at 4:00 p.m. ET.

Dated: January 26, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01914 Filed 1–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

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 California Advisory Committee (Committee) will hold a meeting via web video conference on Thursday, February 24, 2022, for the purpose of planning the Committee's upcoming panels on the impacts of AB5.

DATES: The meeting will be held on:

- Thursday, February 24, 2022, from 2:00 p.m.–3:30 p.m. Pacific Time

Webex Registration Link: https://tinyurl.com/2p9ajdc9

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Persons with hearing impairments 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 conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Planning for Panel 1 & 2
III. Public Comment
IV. Adjournment

Dated: January 25, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01867 Filed 1–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0023]

RIN 0691–XC127

BE–45: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45). The data collected on the BE–45 survey are needed to measure U.S. trade in insurance services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–45 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 45 days. This Notice is being issued in

conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–45 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. persons whose combined reportable insurance transactions with foreign persons exceeded $8 million (based on absolute value) during the previous calendar year, or are expected to exceed that amount during the current calendar year. See BE–45 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on cross-border insurance transactions between U.S. insurance companies and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–45 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-45help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 45 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0066. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 9 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov*; under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov*; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0066, via email at *OIRA_Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108)

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01830 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0028]

RIN 0691–XC130

BE–577: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (BE–577). The data collected on the BE–577 survey are needed to measure the size and economic significance of U.S. direct investment abroad and its impact on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via phone at (301) 278–9659 or via email at *Ricardo.Limes@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–577 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–577 survey forms and instructions are available at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–577.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/dia* and submitted through mail or fax. Form BE–577 inquiries can be made by

phone to BEA at (301) 278–9261 or by sending an email to *be577@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0004. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via email at *Ricardo.Limes@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0004, via email at *OIRA_Submission@omb.eop.gov.*

(Authority: 22 U.S.C. 3101–3108.)

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01836 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0027]

RIN 0691–XC129

BE–185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE–185). The data collected on the BE–185 survey are needed to measure U.S. trade in financial services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–185 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801, and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 15 U.S.C. 4908(b)). Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–185 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had combined reportable sales of financial services to foreign persons that exceeded $20 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of financial services from foreign persons that exceeded $15 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–185 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions in financial services between U.S. financial services providers and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–185 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-185help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0065. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 10 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0065, via email at *OIRA_Submission@omb.eop.gov.*

(Authority: 22 U.S.C. 3101–3108 and 15 U.S.C. 4908(b))

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01835 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0029]

RIN 0691–XC131

BE–605: Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent (BE–605). The data collected on the BE–605 survey are needed to measure the size and economic significance of foreign direct investment in the United States and its impact on the U.S. economy. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via phone (301) 278–9659 or via email at *Ricardo.Limes@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–605 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–605 survey forms and instructions are available at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–605.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/fdi* and submitted through mail or fax. Form BE–605 inquiries can be made by phone to BEA at (301) 278–9422 or by sending an email to *be605@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0009. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via email at *Ricardo.Limes@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0009, via email at *OIRA_Submission@omb.eop.gov.*

(Authority: 22 U.S.C. 3101–3108.)

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01837 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0026]

RIN 0691–XC128

BE–125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125). The data collected on the BE–125 survey are needed to measure U.S. trade in services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–125 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year

when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–125 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had combined reportable sales of services or intellectual property to foreign persons that exceeded $6 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of services or intellectual property from foreign persons that exceeded $4 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–125 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. international trade in selected services and intellectual property.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–125 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-125help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0067. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 21 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0067, via email at *OIRA_Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108)

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01831 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0022]

RIN 0691–XC126

BE–37: Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37). The data collected on the BE–37 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov*.

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–37 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–37 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. airline operators engaged in the international transportation of passengers, or of U.S. export freight, or the transportation of freight or passengers between two foreign ports, if total covered revenues or total covered expenses were $500,000 or more in the previous year, or are expected to be $500,000 or more during the current year. See BE–37 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. airline operators' foreign revenues and expenses, and count of passengers transported to, or from, the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–37 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-37help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 5 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, via email at *OIRA_Submission@omb.eop.gov*.

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01823 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0019]

RIN 0691–XC123

BE–15: Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Direct Investment in the United States (BE–15). The data collected on the BE–15 survey are needed to measure the size and economic significance of foreign direct investment in the United States and its impact on the U.S. economy. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Kirsten Brew, Chief, Multinational Operations Branch (BE–49), via phone at (301) 278–9152 or via email at *Kirsten.Brew@bea.gov*.

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–15 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. A completed report covering the entity's fiscal year ending during the previous calendar year is due by May 31 (or by June 30 for reporting companies that use BEA's eFile system). This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–15 survey forms and instructions are available at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, and that meets the additional conditions detailed in Form BE–15.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. affiliates of foreign companies.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/fdi* and submitted through mail or fax. Form BE–15 inquiries can be made by phone to BEA at (301) 278–9247 or by sending an email to *be12/15@bea.gov.*

When To Report: A completed report covering an entity's fiscal year ending during the previous calendar year is due by May 31 (or by June 30 for reporting companies that use BEA's eFile system).

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0034. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 23.8 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Kirsten Brew, Chief, Multinational Operations Branch (BE–49), via email at *Kirsten.Brew@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0034, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01819 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0020]

RIN 0691–XC124

BE–29: Annual Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29). The data collected on the BE–29 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–29 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–29 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. agents of foreign carriers who handled 40 or more foreign ocean carrier port calls in the reporting period, or had covered expenses of $250,000 or more in the reporting period for all foreign ocean vessels handled by the U.S. Agent. See BE–29 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign ocean carriers' expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–29 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-29help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0012. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 3 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0012, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01822 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0021]

RIN 0691–XC125

BE–30: Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers (BE–30). The data collected on the BE–30 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–30 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected

pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–30 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. ocean carriers that had total reportable revenues or total reportable expenses that were $500,000 or more during the previous year, or are expected to be $500,000 or more during the current year. See BE–30 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. ocean freight carriers' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–30 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-30help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, via email at *OIRA_ Submission@omb.eop.gov*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01821 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Monday, February 7, 2022 from 10:00 a.m. to 11:00 a.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Thursday, February 3, 2022.

ADDRESSES: The meeting will be held virtually via Microsoft Teams. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted via email to Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, at *jonathan.chesebro@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–482–1297; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 5, 2020. This meeting is being convened under the seventh charter of the CINTAC.

On February 7, 2022 the CINTAC will hold the sixth meeting of its current charter term. The Committee, with officials from the U.S. Department of Commerce and other agencies, will discuss major issues affecting the competitiveness of the U.S. civil nuclear energy industry and discuss proposed recommendations on a regulatory gap analysis and actions that would assist with the deployment of advanced nuclear energy technologies. An agenda will be made available by February 3, 2022 upon request to Mr. Jonathan Chesebro.

Members of the public wishing to attend the public session of the meeting must notify Mr. Chesebro at the contact information above by 5:00 p.m. EST on Thursday, February 3, 2022 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Thursday, February 3, 2022. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before or after the meeting. Comments may be submitted to Mr. Jonathan Chesebro at *Jonathan.chesebro@trade.gov.* For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on

Thursday, February 3, 2022. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: January 25, 2022.

Devin Horne,

Senior International Trade Specialist, Office of Energy and Environmental Industries.

[FR Doc. 2022–01832 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898; A–469–814]

Chlorinated Isocyanurates From Spain and the People's Republic of China: Final Results of the Third Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on chlorinated isocyanurates (chlorinated isos) from Spain and the People's Republic of China (China) would likely lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2021, Commerce published the *Initiation Notice* of the sunset reviews of the *AD Orders,*[1] pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[2] In accordance with 19 CFR 351.218(d)(1), Commerce received timely and complete notices of intent to participate [3] in these sunset reviews from the domestic interested parties within 15 days of the *Initiation Notice.*[4] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.

On November 1, 2021, Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive substantive responses from any respondent interested party with respect to the orders on chlorinated isos from Spain or China. On November 30, 2021, Commerce notified the International Trade Commission that we did not receive adequate responses from respondent interested parties.[6] In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited, *i.e.,* 120-day, sunset reviews of the *AD Orders.*

Scope of the AD Orders

The products covered by the *AD Orders* are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. The *AD Orders* cover all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.5000, 3808.50.4000 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *AD Orders* is dispositive. A full description of the scope of the *AD Orders* is contained in the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *AD Orders* and the magnitude of dumping margins likely to prevail if the *AD Orders* were revoked. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Issues and Decision Memorandum, which 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 *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of the Third Sunset Reviews

Pursuant to sections 751(c) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *AD Orders* would be likely to lead to continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail would be weighted-averagemargins up to the following percentages:

Country	Weighted-average margin (percent)
Spain	24.83
China	285.63

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

[1] *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order,* 70 FR 36562 (June 24, 2005); *see also Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 36561 (June 24, 2005) (collectively, *AD Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 54423 (October 1, 2021) (*Initiation Notice*).

[3] *See* Clearon, OxyChem and Bio-Lab's Letters, ''Five-Year ('Sunset') Review of Antidumping Duty Order on Chlorinated Isocyanurates from China: Notice of Intent to Participate,'' dated October 18, 2021; *see also* ''Five-Year ('Sunset') Review of Antidumping Duty Order on Chlorinated Isocyanurates from Spain: Notice of Intent to Participate,'' dated October 18, 2021.

[4] The domestic interested parties are Clearon Corporation; Occidental Chemical Corporation; and Bio-Lab, Inc.

[5] *See* Domestic Interested Parties' Letters, ''Chlorinated Isocyanurates China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Orders,'' dated November 1, 2021; *see also* ''Chlorinated Isocyanurates from Spain: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Orders,'' dated November 1, 2021.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on October 1, 2021,'' dated November 30, 2021.

[7] *See* Memorandum, ''Decision Memorandum for the Third Expedited Sunset Reviews of the Antidumping Duty Orders on Chlorinated Isocyanurates from Spain and the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: January 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–01933 Filed 1–28–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–869]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that diffusion-annealed, nickel-plated flat-rolled steel products from Japan were made at less than normal value during the period of review (POR), May 1, 2019, through April 30, 2020.

DATES: Applicable January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter of the subject merchandise, Toyo Kohan Co., Ltd. (Toyo Kohan). On July 30, 2021, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] On August 30, 2021, we received case briefs from the petitioner[2] and Toyo Kohan.[3] On September 13, 2021, we received a rebuttal brief from the petitioner.[4] On November 17, 2021, we extended the final results until no later than January 26, 2022.[5]

Scope of the Order

The merchandise subject to the order is diffusion-annealed, nickel-plated flat-rolled steel products from Japan. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum.[7] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which 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 *http://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 the comments received from interested parties, we made certain changes to our calculations in the *Preliminary Results.* For a discussion of these issues, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

As a result of this review, we determine the following weighted-average dumping margin for the period May 1, 2019, through April 30, 2020:

Producer or exporter	Weighted-average dumping margin (percent)
Toyo Kohan Co., Ltd	7.49

Disclosure of Calculations

We intend to disclose the calculations performed for Toyo Kohan in connection with these final results 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 Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Toyo Kohan reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the weighted-average dumping margin for Toyo Kohan 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.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by Toyo Kohan for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[8]

[1] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 41018 (July 30, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] The petitioner is Thomas Steel Strip Corporation.

[3] *See* Petitioner's Letter, ''Case Brief of Thomas Steel Strip Corporation,'' dated August 30, 2021; and Toyo Kohan's Letter, ''Toyo Kohan's Case Brief,'' dated August 30, 2021.

[4] *See* Petitioner's Letter, ''Rebuttal Brief of Thomas Steel Strip Corporation,'' dated September 10, 2021.

[5] *See* Memorandum, ''Extension of Deadline for Final Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated November 17, 2021.

[6] For a full description of the scope of the order, *see Preliminary Results* PDM at 2–3.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings:*

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the *Final Results* of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Toyo Kohan will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 45.42 percent, the all-others rate established in the LTFV investigation.[9] These 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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to 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), which continues to govern business proprietary information in this segment of the proceeding. 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 the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memo

[FR Doc. 2022–01932 Filed 1–28–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

National Travel and Tourism Strategy

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: On behalf of the Tourism Policy Council (TPC), the International Trade Administration (ITA) is seeking public input on the development of a new national strategy, entitled ''the National Travel and Tourism Strategy'' (Strategy), to be produced by the TPC through ITA's National Travel and Tourism Office, which serves as the TPC Secretariat. The TPC will consider the comments received in the development of the Strategy.

DATES: Comments must be received on or before Friday, February 11, 2022.

ADDRESSES: Electronic comments are preferred and may be sent to *NTTOStrategy@trade.gov.* Written comments may be sent to: National Travel and Tourism Office, 1401 Constitution Avenue NW, Suite 10007, International Trade Administration, Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Aguinaga, National Travel and Tourism Office, 1401 Constitution Avenue NW, Suite 10007, International Trade Administration, Washington, DC 20230, *NTTOStrategy@trade.gov,* (202) 482–0140.

SUPPLEMENTARY INFORMATION: The goal of the new Strategy is to improve the competitive position of the United States in attracting international visitors and to increase travel and tourism to promote economic growth and job creation across the United States over the next five years.

The first National Travel and Tourism Strategy was developed in 2012 and updated in 2019. Those documents can be found here: *https://www.trade.gov/tourism-policy-council.* A new Strategy will provide a whole-of-government approach to accelerating full recovery and employment in the travel and tourism sector; restoring U.S. competitiveness in the sector by encouraging more travelers to come to the United States; spreading the economic benefits of travel and tourism across the United States, especially to underserved communities and populations; and preparing the sector for the effects of climate change.

ITA seeks input into the development of the Strategy, including on key stakeholder priorities. The TPC will consider the comments submitted in response to this request, as well as other inputs, in its development of the Strategy. Comments should be limited to no more than five (5) pages total and should address one or more of the following topics:

1. What can the Federal Government do to improve the competitive position of the United States and promote growth in international travel and tourism?

2. How can the Federal Government partner with non-federal entities, including the private sector and state, local, and tribal governments, to improve the competitive position of the United States and promote growth in international travel and tourism? What entities would be the most appropriate to partner with?

Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

[9] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Antidumping Duty Order,* 79 FR 30816 (May 29, 2014).

3. What metric(s) should be used to measure progress in meeting these goals?

Comments should include a reference to this **Federal Register** notice.

Jennifer Aguinaga,

Deputy Director for Policy & Planning, National Travel and Tourism Office, U.S. Department of Commerce.

[FR Doc. 2022–01795 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB634]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BNSF Railway Bridge Heavy Maintenance Project in King County, Washington

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

SUMMARY: NMFS has received a request from BNSF Railway (BNSF) for authorization to take marine mammals incidental to a Railway Bridge Heavy Maintenance Project in King County, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive incidental harassment authorization (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, one-year renewals for each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notification. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 2, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Pauline@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

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 and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

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). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of IHAs) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 17, 2021, NMFS received a request from BNSF Railway (BNSF) for two consecutive IHAs allowing the take of marine mammals incidental to the Railway Bridge 0050–0006.3 (Bridge 6.3) Heavy Maintenance Project in King County, Washington. The application was deemed adequate and complete on November 22, 2021. BNSF's request is for take of a small number of seven species of marine mammal by Level B harassment and Level A harassment. Neither BNSF nor NMFS expects serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

BNSF is proposing to engage in maintenance activities at Bridge 6.3, a bridge with a movable deck to allow vessels to pass. The purpose of this project is to extend the service life of the existing structure by replacing several components of the existing movable span including replacing the existing counterweight, counterweight trunnion bearings, and rocker frame system of the existing movable span. This work would

occur over two years, requiring the issuance of two consecutive IHAs.

In-water activities that could result in take of marine mammals include impact pile driving of 36-inch temporary steel piles (which will be removed via cutting with Broco Rod which is not likely to cause take), vibratory installation and extraction of 14-inch H-piles, vibratory installation and extraction of 12-inch timber piles, hydraulic clipper cutting and extraction of 12-inch timber piles, drilling of 48-inch diameter shafts using oscillator rotator equipment, and removing the pile created by filling the drilled shaft and steel casing with concrete and removing the casing with a diamond wire saw.

Bubble curtains will be used during impact pile driving to reduce in-water sound levels. The work would occur over two years during July 16 through February 15 of each year due to the U.S. Army Corp of Engineers (USACE) in-water work window restrictions for salmonids.

Dates and Duration

BSNF anticipates that the project will requires approximately 122 days of in-water work over 24 months. The proposed IHAs would be effective from July 16, 2022 to July 15, 2023 for Year 1, which would include 113 days of in-water activities and July 16, 2023 to July 15, 2024 for Year 2, which would include 9 days of in-water activities.

Specific Geographic Region

The project activities will occur at BNSF Bridge 6.3, in Ballard, WA, which is located in King County at Latitude 47.666784° North by Longitude −122.402108° West. The Bridge spans the Lake Washington Ship Canal which runs through the city of Seattle and connects the fresh water body of Lake Washington with Puget Sound's Shilshole Bay. The Bridge is located just west of the Hiram M. Chittenden Locks and is the last bridge to span the Lake Washington Ship Canal before it flows into Puget Sound 2,500 ft (772 m) to the west. The Bridge is approximately 1,144 ft (349 m) long and was built in 1917 (See Figure 1). The substrate below the ordinary high water mark (OHWM) is composed of sandy silt intermixed with gravels and riprap. Approximately 75 percent of the Canal shoreline is developed with armored bulkheads, ship holding areas, and other artificial structures.

The nearest pinniped haulouts are located 0.82 mi (Shilshole Bay Jetty) and 1.42 mi (West Point Buoy) away but not in direct line of sight with the construction activity as shown in Figure 6 in the Application.

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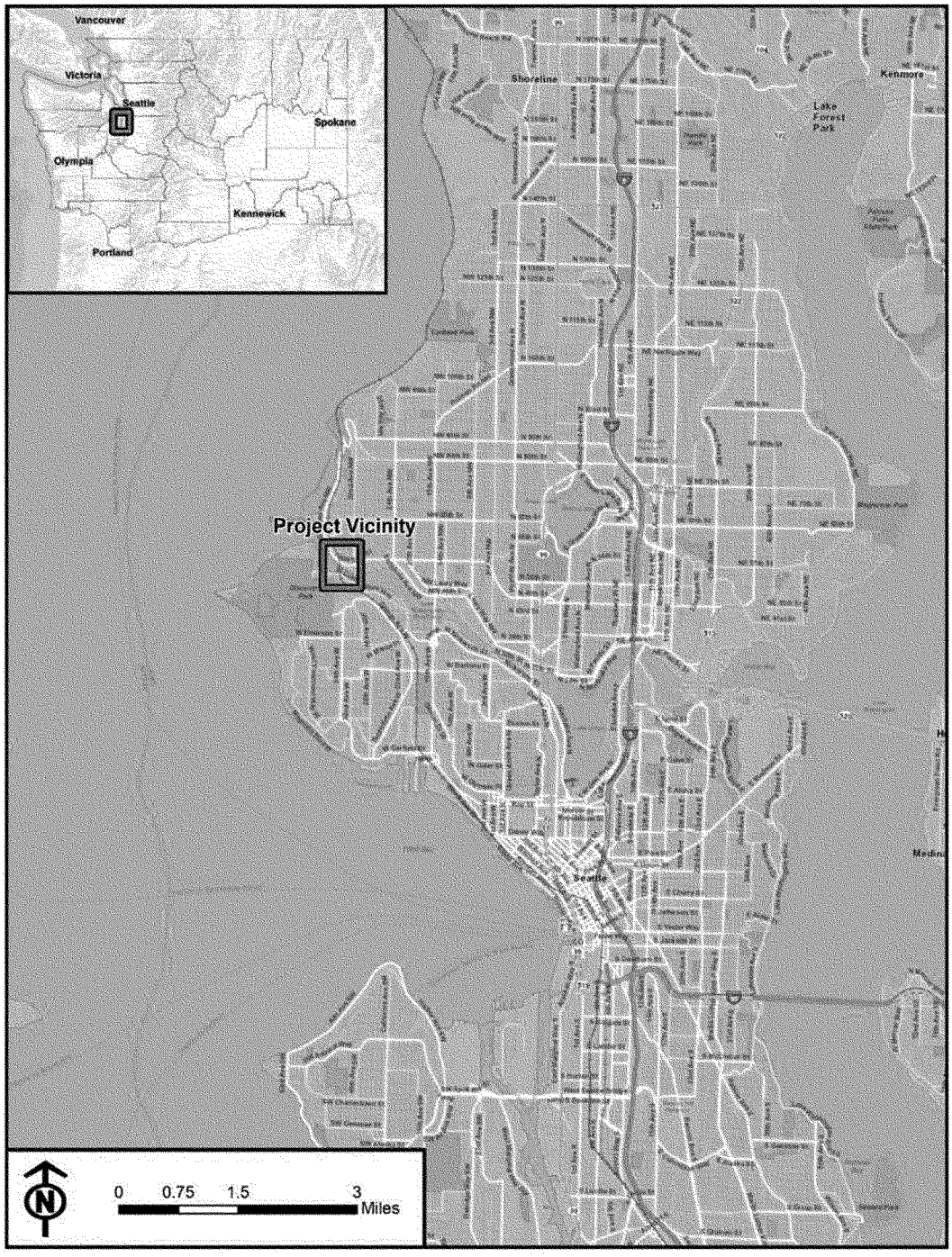

Figure 1. Railway Bridge 6.3 Location

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Detailed Description of Specific Activity

Bridge 6.3 consists of 18 spans supported by 19 piers. Pier 1 is the southern abutment, and Pier 19 is the northern abutment. Piers 6 through 11 are either at the edge of or below the OHWM of the Canal. Pier 6 is at the southern shoreline, adjacent to Commodore Park, and extends partially below the OHWM. Pier 11 is at the base of a steep slope at the northern shoreline and extends partially below the OHWM. Piers 7 through 10 are fully within the Canal. Pier 7 is near the middle of the Canal, and Piers 8, 9, and 10 are to the north of the north guide wall. Span 7 is a movable span (Strauss Heel-Trunnion Bascule) that rotates clockwise up when opening for marine vessels that cannot pass under the bridge when it is in the closed (down) position. (See Appendix A in Application for additional detail).

Work trestles are required to provide access to the superstructure above Piers 8, 9, and 10. Cranes and associated construction equipment will be used atop the work trestles to install the temporary drilled shafts and then replace the existing counterweight, counterweight trunnion bearings, and rocker frame system.

The overall construction process can be segmented into following primary phases:

1. Site Mobilization;
2. Demolish Residential Structures;
3. Install Work Trestles;
4. Install Drilled Shafts;
5. Replace Bascule Span Components;
6. Remove Work Trestles; and
7. Site Demobilization

Only phase 2, 3, 4 and 6 involve in-water work which could result in the harassment of marine mammals. Therefore, the other phases will not be discussed further, although additional information may be found in the application.

Demolish Residential Structures

Previous owners of an adjacent parcel had expanded their dock/deck, float, and shed onto the BNSF right-of-way to the extent that a portion of their structure is attached to bridge Pier 11. This dock and shed are within the footprint of where the western work trestle will be installed and in the general vicinity of where construction barges may need to be deployed. These structures are supported by in-water 80 12-inch timber piles that must be removed prior to installation of the work trestles.

Install Work Trestles

Two temporary work trestles are required to provide construction access to the moveable span, as well as a work platform for support cranes and associated construction equipment and supplies. Each work trestle is composed of a series of large wood planks that rest on steel crossbeams that are welded onto the top of steel support pipe piles. The number and size of the steel pipe piles required for the project is dictated by the anticipated weight of the cranes, counterweight, steel beams, trunnion bearings, support equipment, and industry standard safety factor. All piles will be proofed to a predetermined loading capacity. Each work trestle will be approximately 240 ft (73 m) long by 45 ft (13.7.m) wide. A total of 170 temporary piles (140 in-water and 30 above water) are required (Table 1). A 20 percent contingency is included in this estimate. Pile types include 136 36-inch steel pipe piles and 34 14-inch H-piles.

TABLE 1—TEMPORARY PILE SUMMARY BY CONSTRUCTION PURPOSE

Pile size (inch)	Pile type	Pile use	In-water	Uplands	Total
36	Steel Pipe	Trestle Support	116	20	136
14	H-Pile	Trestle Approach	0	8	8
14	H-Pile	Turbidity Fencing	20	0	20
Subtotal			136	28	140
14	H-Pile	20% Contingency	4	2	6
Total			140	30	170

Trestle approach piles and trestle support piles will be installed with an impact hammer from start to finish due to concerns associated with movement of the existing bridge. A bubble curtain will be utilized during all impact pile driving when water depth is greater than 2 ft (0.6 m). In-water 14-inch H-piles for turbidity fencing will be installed with a vibratory hammer.

Concurrent impact driving of 36-inch steel pipes may be utilized, but BNSF may select to only utilize one pile-driving crew depending on schedule, rate of progress, and number of days remaining in the allowable in-water work window.

Install Drilled Shafts

A total of 22 temporary, 4-foot-diameter drilled shafts may be installed, including 11 immediately west and 11 east of Piers 9 and 10. Drilled shafts are anticipated to be installed by using oscillator rotator equipment with the advanced full-case method. Oscillator rotator equipment is used to excavate a circular hole into the ground. Since the project area likely includes unstable soils, a casing will be used to keep the hole open. The rotator/oscillator method uses hydraulic jacks that use pressure/torque to rotate the casing 20 degrees one direction and then 20 degrees the other direction as it pushes the casing into the substrate. The tip of the first or initial casing has teeth that cut into the earth as it advances. Once one section of casing is installed, another section of casing is connected to the previously installed casing by bolting them together with an impact wrench. This process continues until the design load depth has been reached. Once the casing is fully installed, all the material within it is then removed (with a clamshell bucket or other method) prior to filling the shafts with concrete. The top of the concrete filled shafts or piles are then connected to a platform that will also be formed of concrete. The platform and concrete-filled shafts will be removed after maintenance has been completed.

Note BNSF may use 116 36-inch-diameter pipe piles instead of the drilled shafts. This contingency for 36-inch diameter pipe piles has been included in the estimated total number of 36-inch pipe piles that may be used during this project and analyzed below.

Remove Work Trestles and Shafts

All the temporary work trestle piles will be removed to a depth of 2 ft (0.6 m) below mudline. The piles will be cut by a diver using the Broco Rod cutting method. A diver will make two cuts and then reach/penetrate inside and cut the pipe pile from the inside diameter 2 ft (0.6 m) below mudline. The crane will then be used to snap and lift the pile out of the Canal and off the platform. This operation will continue to the north shoreline until the crane is on land and has removed all the work trestle piles. Drilled shafts will be removed to a depth of 2 ft (0.6 m) below the mudline. The concrete-filled shafts may be cut with a diamond wire saw. In-water 14-inch H-piles or wood/steel posts will be pulled out of the substrate by a crane or vibratory hammer removal as necessary.

During Year 1 12-inch wood piles (12 days) would be extracted while 36-inch steel pipes (10 days), 14-inch H-piles (3 days), and 48-inch drilled shaft casings (88 days) would be installed. During Year 214-inch H-piles (3 days) and 48-inch (6 days) drilled shaft casings would be removed.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information

regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species).*

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. SARs (*e.g.,* Carretta *et al.,* 2021a). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 U.S. Pacific SARs (Carretta *et al.,* 2021a) and 2021 draft Pacific and Alaska SARs (Carretta *et al.,* 2021b, Muto *et al.,* 2021) available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.*

TABLE 2—SPECIES PROPOSED FOR AUTHORIZED TAKE

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [a]	Stock abundance (CV, N_{min}, most recent abundance survey) [b]	PBR	Annual M/SI [c]
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Balaenopteridae (rorquals)						
Minke whale	*Balaenoptera acutorostrata*	California/Oregon/ Washington	-, -, N	915 (0.792, 509, 2018)	4.1	≥ 0.59
Family Delphinidae						
Common Bottlenose Dolphin	*Tursiops truncatus*	California/Oregon/Washington offshore.	-, -, N	3,477 (0.696, 2,048, 2018).	19.70	0.82
Long-beaked Common Dolphin	*Delphinus capensis*	California	-, -, N	83,379 (0.216, 69,636, 2018).	668	≥29.7
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena phocoena*	Washington Inland Waters	-, -, N	11,233 (0.37, 8,308, 2015).	66	≥7.2
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California Sea Lion	*Zalophus californianus*	United States	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>320
Steller sea lion	*Eumetopias jubatus monteriensis.*	Eastern U.S.	-, -, N	43,201 [d] (see SAR, 43,201, 2017).	2,592	113
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina*	Washington Northern Inland Waters.	-, -, N	1,088 (0.15, UNK, 1999) [e].	NA	10.6

a—ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

b—NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

c—These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

d—Best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys.

e—The abundance estimate for this stock is greater than eight years old and is therefore not considered current. PBR is considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

Minke Whale

Minke whales are the most abundant of the rorquals and the population is considered mostly stable globally. In the Pacific, minke whales are usually seen over continental shelves (Brueggeman *et al.,* 1990). In the extreme north, minke whales are believed to be migratory, but in inland waters of Washington and in central California they appear to establish home ranges (Dorsey *et al.,* 1990). They feed on crustaceans,

plankton, and small schooling fish (like sandlance) through side lunging.

Minke whales are reported in Washington inland waters year-round, although few are reported in the winter (Calambokidis and Baird 1994). Minke whales are relatively common in the San Juan Islands and Strait of Juan de Fuca (especially around several of the banks in both the central and eastern Strait), but are relatively rare in Puget Sound.

Common Bottlenose Dolphin

Bottlenose dolphins are distributed worldwide in tropical and warm-temperate waters. In many regions, including California, separate coastal and offshore populations are known (Walker 1981; Ross and Cockcroft 1990; Lowther 2006). They have also been documented in offshore waters as far north as about 41 °N and they may range into Oregon and Washington waters during warm-water periods. Sighting records off California and Baja California (Lee 1993; Mangels and Gerrodette 1994) suggest that offshore bottlenose dolphins have a continuous distribution in these two regions. There is no apparent seasonality in distribution (Forney and Barlow 1998).

Bottlenose dolphins employ a variety of strategies to feed, including both individual and cooperative hunting and techniques such as herding and charging schools of fish, passive listening, and echolocation. The California/Oregon/Washington offshore stock is the one most likely to occur in Washington waters.

Long-Beaked Common Dolphin

The common dolphin has been observed in the project area. There is debate as to whether short-beaked and long-beaked common dolphins are the same species; we separate the two based on COT (2021). Only long-beaked common dolphins have been spotted in central and south Puget Sound (Orca Network 2020) and this report addresses only the California long-beaked common dolphin stock.

Long-beaked common dolphins typically inhabit warmer temperate and tropical waters and are not usually present north of California; however, sightings of live dolphins and dead stranded individuals have been increasing in the Salish Sea since the early 2000s. Common dolphins were sighted in 2003, 2011–12, and 2016–17, with strandings occurring in inland waters in 2012 and 2017. These sighting and stranding events are proximal to El Niño periods. Since June 2016, several common dolphins have remained in Puget Sound and group sizes of 5–20 individuals are often reported (Shuster *et al.,* 2018).

Harbor Porpoise

Harbor porpoise occur along the U.S. west coast from southern California to the Bering Sea (Carretta *et al.,* 2020). They rarely occur in waters warmer than 63 degrees Fahrenheit (17 degrees Celsius). The Washington Inland Waters stock is found from Cape Flattery throughout Puget Sound and the Salish Sea region. In southern Puget Sound, harbor porpoise were common in the 1940s, but marine mammal surveys, stranding records since the early 1970s, and harbor porpoise surveys in the early 1990's indicated that harbor porpoise abundance had declined (Carretta *et al.,* 2020). Annual winter aerial surveys conducted by the Washington Department of Fish and Wildlife from 1995 to 2015 revealed an increasing trend in harbor porpoise in Washington inland waters, including the return of harbor porpoise to Puget Sound (Carretta *et al.,* 2020). Seasonal surveys conducted in spring, summer, and fall 2013–2015 in Puget Sound and Hood Canal documented substantial numbers of harbor porpoise in Puget Sound. Observed porpoise numbers were twice as high in spring as in fall or summer, indicating a seasonal shift in distribution.

In most areas, harbor porpoise occur in small groups of just a few individuals. Harbor porpoise must forage nearly continuously to meet their high metabolic needs (Wisniewska *et al.,* 2016). They consume up to 550 small fish (1.2–3.9 inches (3–10 cm); *e.g.,* anchovies) per hour at a nearly 90 percent capture success rate (Wisniewska *et al.,* 2016).

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California. They breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2008). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Heath and Perrin 2008, Lowry and Forney, 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008).

Pupping occurs primarily on the California Channel Islands from late May until the end of June (Peterson and Bartholomew 1967). Weaning and mating occur in late spring and summer during the peak upwelling period (Bograd *et al.,* 2009). After the mating season, adult males migrate northward to feeding areas as far away as the Gulf of Alaska (Lowry *et al.,* 1992), and they remain away until spring (March–May), when they migrate back. Adult females generally remain south of Monterey Bay, California throughout the year, feeding in coastal waters in the summer and offshore waters in the winter, alternating between foraging and nursing their pups on shore until the next pupping/breeding season (Melin and DeLong, 2000; Melin *et al.,* 2008).

California sea lions regularly occur on rocks, buoys and other structures. Occurrence in the project area is expected to be common. The California sea lion is the most frequently sighted otariid found in Washington waters. Some 3,000 to 5,000 animals are estimated to move into Pacific Northwest waters of Washington and British Columbia during the fall (September) and remain until the late spring (May) when most return to breeding rookeries in California and Mexico (Jeffries *et al.,* 2000). Peak counts of over 1,000 animals have been made in Puget Sound (Jeffries *et al.,* 2000).

Steller Sea Lion

Steller sea lions range along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Large numbers of individuals widely disperse when not breeding (late May to early July) to access seasonally important prey resources (Muto *et al.,* 2019). Steller sea lions were subsequently partitioned into the western and eastern Distinct Population Segments (DPSs; western and eastern stocks) in 1997 (62 FR 24345, May 5, 1997) when they were listed under the ESA. The western DPS breeds on rookeries located west of 144 °W in Alaska and Russia, whereas the eastern DPS breeds on rookeries in southeast Alaska through California. The eastern DPS was delisted from the ESA in 2013.

The eastern DPS and MMPA stock is the only population of Steller's sea lions thought to occur in the project area. In Washington waters, numbers decline during the summer months, which correspond to the breeding season at Oregon and British Columbia rookeries (approximately late May to early June) and peak during the fall and winter months. Steller sea lion abundances vary seasonally with a minimum estimate of 1,000 to 2,000 individuals present or passing through the Strait of

Juan de Fuca in fall and winter months (Jeffries *et al.,* 2000).

Harbor Seal

Harbor seals are found from Baja California to the eastern Aleutian Islands of Alaska (Harvey and Goley, 2011). The animals in the project area are part of the Southern Puget Sound stock. Harbor seals are the most common marine mammal species observed in the project area and are the only one that breeds and remains in the inland marine waters of Washington year-round (Calambokidis and Baird, 1994).

Harbor seals are central-place foragers (Orians and Pearson, 1979) and tend to exhibit strong site fidelity within season and across years, generally forage close to haulout sites, and repeatedly visit specific foraging areas (Grigg *et al.,* 2012; Suryan and Harvey, 1998; Thompson *et al.,* 1998). Depth, bottom relief, and prey abundance also influence foraging location (Grigg *et al.,* 2012).

Harbor seals molt from May through June. Peak numbers of harbor seals haul out during late May to early June, which coincides with the peak molt. During both pupping and molting seasons, the number of seals and the length of time hauled out per day increase, from an average of 7 hours per day to 10–12 hours (Harvey and Goley, 2011; Huber *et al.,* 2001; Stewart and Yochem, 1994).

Harbor seals tend to forage at night and haul out during the day with a peak in the afternoon between 1 p.m. and 4 p.m. (Grigg *et al.,* 2012; London *et al.,* 2001; Stewart and Yochem, 1994; Yochem *et al.,* 1987). Tide levels affect the maximum number of seals hauled out, with the largest number of seals hauled out at low tide, but time of day and season have the greatest influence on haul out behavior (Manugian *et al.,* 2017; Patterson and Acevedo-Gutiérrez, 2008; Stewart and Yochem, 1994).

As indicated above, all 7 species (with 7 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seven marine mammal species (four cetacean and three pinniped (two otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Minke whales are low frequency cetaceans, long-beaked common dolphins and common bottlenose dolphins are mid-frequency cetaceans, harbor porpoises are classified as high-frequency cetaceans, Harbor seals are in the phocid group, and Steller sea lions and California sea lions are otariids.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving and drilling, cutting, and clipping. The effects of underwater noise from BNSF's proposed activities have the potential to result in Level A and Level B harassment of marine mammals in the action area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, vibratory pile removal, drilling by oscillator rotators, cutting with a wire saw, and clipping of wood timbers. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, clipping, cutting, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005). Hydraulic pile clippers are placed over the pile and lowered to the mudline where they use opposing blades in a horizontal motion to cut the existing wood piles. Diamond wire cutting is the process of using wire of various diameters and lengths, impregnated with diamond dust of various sizes, to cut through drilled shaft casing.

The likely or possible impacts of BNSF's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal, drilling, cutting and clipping is the primary means by which marine mammals may be harassed from BNSF's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving and removal noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of drilling, cutting, pile driving and removal noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals

indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles requires a combination of impact pile driving and vibratory pile driving. For this project, these activities would not occur at the same time and there would be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau & Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system

responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with drilling, cutting, clipping, pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from the activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are, in all cases, larger than those associated with airborne sound. As described above there are no regular haulouts in direct line of sight of the project area. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

BNSF's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During drilling, cutting, clipping, impact and vibratory pile driving, elevated levels of underwater noise would ensonify a portion of the Ship Canal and potentially radiate some distance into Shilshole Bay depending on the sound source where both fish and mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles or shafts are installed (and removed in the case of the temporary piles). The sediments on the sea floor will be disturbed during pile

driving and shaft drilling; however, suspension will be brief and localized and is unlikely to measurably affect marine mammals or their prey in the area. In general, turbidity associated with pile installation is localized to about a 25-foot (7.6-meter) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except for the actual footprint of the project. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals in Puget Sound.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave large areas of fish and marine mammal foraging habitat in the nearby vicinity in Puget Sound.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* fishes). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from drilling, cutting, clipping, and pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

The area impacted by the project is relatively small compared to the available habitat in Shilshole Bay and larger Puget Sound. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Additionally, as noted previously, BNSF will adhere to the USACE's in-water work window restrictions on pile extraction and installation (July 16 to January 15) to reduce potential effects to salmonids, including juvenile ESA-listed salmonids. As described in the preceding, the potential for BNSF's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) 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 (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources for pile installation and extraction has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for harbor seals, because predicted auditory injury zones are large. Auditory injury is unlikely to occur for low-frequency cetaceans, mid-frequency cetaceans, high-frequency cetaceans, and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best

available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

BNSF's proposed activity includes the use of continuous (vibratory pile driving and removal, oscillator rotator equipment, wire saw cutting, clipping) and impulsive (impact pile driving) equipment, and therefore both the 120- and 160-dB re 1 µPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). BNSF's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The following pile sizes and installation/extraction methods were analyzed:

- 36-inch steel pipe pile, impact installation, with 5 dB bubble curtain source level reduction under two installation scenarios (1 pile driver or 2 concurrent pile drivers);
- 48-inch steel pipe pile, oscillator installation (drilled shaft);
- 48-inch steel pipe pile, diamond wire saw cutting;
- 14-inch steel H-pile, vibratory installation/extraction;
- 12-inch timber pile, vibratory installation/extraction; and
- 12-inch timber pile, pile clipper extraction.

Impact pile driver installation of 36-inch steel pipe piles analyzed a worst-case scenario consisting of two crews driving 36-inch steel pipe piles simultaneously (Scenario 2) in order to provide maximum flexibility should multiple crews become necessary during construction. It is likely, however, that only one crew will operate at one time (Scenario 1). Based on NMFS guidance, decibel addition is not considered in the 36-inch steel pipe pile impact analysis since during impact hammering or other impulsive sources, it is unlikely that the two hammers would strike at the same exact instant

(or within the 0.1 second average pulse duration). Therefore, the sound source levels will not be adjusted regardless of the distance between the hammers and each source will be analyzed separately.

Vibratory pile driving of 14-inch H-piles, and vibratory and pile clipper extraction of 12-inch timber piles (residential structures demolition) were analyzed in the event these methods become necessary (if, for instance, crane weight alone cannot seat the 14-inch H-piles for the turbidity screen installation or crane torque alone cannot extract timber piles by direct pulling/twisting).

This analysis uses in-water source sound levels for vibratory and impact pile driving from Washington State Department of Transportation Biological Assessment Manual (WDSOT 2020), and California Department of Transportation Division (Caltrans 2015). Analysis of drilled shaft installation used sound source data came from (*HDR, 2011.* Diamond wire saw cutting and hydraulic pile clipper cutting came from the Navy (2019). Source sound levels for each analysis were measured at 10m from the source and based on other projects with the same pile type and size, installation/extraction technique, and similar substrate if no project site-specific information is available.

In cases where multiple sources were provided from the above references, the following methodology was used to select in-water source sound levels to generate a proxy:

1. Select first by corresponding pile size and type;

2. Eliminate those that do not have substrates similar to the project site substrate (*i.e.* sandy silt intermixed with gravels and riprap); and

3. Of the remaining, select highest source sound level to be conservative.

All piles driven and/or proofed with an impact hammer would use a bubble curtain. It is estimated that use of a bubble curtain would result in a minimum of a 5-dB reduction in underwater sound levels during 36-inch pipe pile driving, and this reduction has been included in the estimate to account for a reasonably achievable reduction in sound during underwater construction activity. Source sound levels are summarized in Table 5.

TABLE 5—IN-WATER SOUND SOURCE LEVELS

Pile size (inch)	Pile type	Source	Construction method	dB peak	dB RMS	dB single-strike SEL
36	Steel pipe	Caltrans, 2015. 36-inch steel pipe pile Table I.2–1	Impact	208	190	180
14	H-pile	Caltrans, 2015. 12-inch steel H-pile proxy Table I.2–2	Vibratory		150	
12	Timber Pile	Greenbusch Group, 2018. 12-inch timber pile	Vibratory		152	
12	Timber Pile	NAVFAC SW 2020 Compendium. 13-inch round polycarbonate pile.	Hydraulic Pile Clipper		154	
48	Steel Shaft	HDR Alaska, Inc., 2011. 144-inch steel shaft proxy	Oscillator		143.8	
48	Steel-encased Concrete Shaft.	NAVFAC SW 2020 Compendium. 66-inch steel encased concrete- filled caisson proxy.	Diamond bladed wire saw		161.5	

Transmission loss (TL), expressed as decibels, is the reduction in a specified level between two specified points R1, R2 that are within an underwater acoustic field. By convention, R1 is chosen to be closer to the source of sound than R2, such that transmission loss is usually a positive quantity. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_2/R_1),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = distance from source to distance at which the level is estimated (typically 10-m for pile driving)

R_2 = distance from source to the isopleth associated with the applicable acoustic threshold

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for BNSF bridge site is not available, therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet are shown in Table 6 and the resulting isopleths are reported below in Table 7.

TABLE 6—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

	36-inch steel (scenario 1)	36-inch steel-2 concurrent (scenario 2)	14-inch steel H-pile vibratory install	12-inch timber vibratory extraction	48-inch steel oscillator	48-inch Wire saw cutting	12-inch timber clipper cutting
Spreadsheet Tab Used.	(E.1) Impact pile driving.	(E.1) Impact pile driving.	(A.1) Vibratory pile driving.	(A.1) Vibratory pile driving.	(A) stationary source (non-impulsive, continuous).	(A) stationary source (non-impulsive, continuous).	(A) stationary source (non-impulsive, continuous)

TABLE 6—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS—Continued

	36-inch steel (scenario 1)	36-inch steel-2 concurrent (scenario 2)	14-inch steel H-pile vibratory install	12-inch timber vibratory extraction	48-inch steel oscillator	48-inch Wire saw cutting	12-inch timber clipper cutting
Source Level (Single Strike/shot SEL) and Peak or RMS.	175 SEL/203 Peak.	175 SEL/203 Peak.	150 RMS	152 RMS	143.8 RMS	161.5 RMS	154 RMS
Weighting Factor Adjustment (kHz).	2	2	2.5	2.5	2.5	2.5	2.5
(a) Number of strikes per pile.	1000	1000					
Number piles or shafts per day.	6	12	8	10	0.25	4	20
Duration for single pile (min).			30	15	1920	60	4

Note: Transmission loss coefficient for all sources is 15 and all source level values quoted are at 10m distance.

TABLE 7—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Pile type, size, and pile driving method	Level A zone (meters)					Level B harassment zone (meters)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Scenario 1. 36-inch Steel Pipe Impact Drive (Year 1)	966	34	1,150	517	38	464
Scenario 2. 36-inch Steel Pipe Impact Drive (Year 1)	1,533	55	1,826	820	60	464
14-inch H-Pile Vibratory (Year 1, Year 2)	3	1	5	2	1	1,000
12-inch Timber Vibratory (Year 1)	3	1	5	2	1	1,359
48-inch Drilled Shaft Oscillatory Installation (Year 1)	0.2	0	0.2	0.1	0	386
48-inch Concrete-lined Steel Shaft Diamond Wire Saw Removal Year 2)	1.9	0.2	2.7	1.1	0.1	5,843
12-inch Timber Pile Clipper Year 1)	0.6	0	0.6	0.3	0	1,848

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals and how it is brought together to produce a quantitative take estimate.

Take estimates were calculated using a combination of best available data. Best available density data was for the most part from the U.S. Department of the Navy's Marine Species Density Database Phase III for the Northwest Training and Testing Study Area (Navy 2019) which includes seasonal density estimates: Winter (Dec–Feb), Spring (Mar–May), Summer (Jun–Aug), Fall (Sep–Nov). The project will not work in-water in the Spring as that season is outside the July 16–February 15 in-water work season. The most conservative (highest density) seasonal estimate from the remaining three seasons was used where seasonal overlap exists and densities differ across seasons. Estimated take was calculated using density estimates multiplied by the area of each Level B harassment zone for each pile type multiplied by the number of days of in-water activity for each pile type. In some instances and where noted, observation-based data from WSDOT's Seattle Multimodal Project at Colman Dock Season Three Marine Mammal Monitoring Report (WSDOT 2020a) or other observational data was used instead of U.S. Navy data when Navy density data was zero or extremely low.

BNSF proposes to work in-water for 113 days in Year 1 and 9 days in Year 2, or approximately 5.5 months assuming a 5-day work week for 23 weeks in Year 1 and a half a month assuming a 5-day work week for 2 weeks in Year 2.

Minke Whale

The estimated take was calculated as described above using the Navy's density data which resulted in zero takes of minke whale for both Year 1 and Year 2 as shown in Table 8. Therefore, as described above, we looked at other observational data. The WSDOT Seattle Multimodal Project at Colman Dock Year 3 IHA Monitoring Report observed minke whale presence indicates sightings of a single minke whale over 7 months (WSDOT 2020a). Given this information, BNSF and NMFS conservatively assumed that up to one whale per month could be taken by harassment.

A shutdown zone at the full distance of the level A harassment isopleths (≤ 1533 m) will be applied to avoid take by Level A harassment.

The 113 days of work in Year 1 and 9 days in Year 2, equates to 5.5 months × 1 minke whale/month = 6 encounters with minke whales in Year 1 and 0.5 months × 1 Minke whale/month = 1 whale in Year 2. Therefore, BNSF has requested and NMFS proposes 6 takes by Level B harassment in Year 1 and 1 take by Level B harassment in year in Year 2.

TABLE 8—CALCULATED TAKE OF MINKE WHALE

Activity	Species density (animals/km^2)	Level A area (km^2)	Level B area (km^2)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers)	0.0000054	0.376	0.183	10 (Yr 1)	0	0		

TABLE 8—CALCULATED TAKE OF MINKE WHALE—Continued

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Vibratory 14-inch H-Pile	0.0000054	0.005	0.235	6 (3 Yr 1, 3 Yr 2) ..	0	0	0	0
Vibratory 12-inch Timber Pile	0.0000054	0.005	0.286	8 (Yr 1)	0	0		
Oscillator Install of 4-foot Drilled Shaft	0.0000054	0.000	0.169	88 (Yr 1)	0	0		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	0.0000054	0.000	2.290	6 (Yr 2)			0	0
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.0000054	0.000	0.381	4 (Yr 1)	0	0		

Common Bottlenose Dolphin

Estimated take using the Navy's density estimates for common bottlenose dolphins as described above resulted in zero take in both Year 1 and Year 2 as shown in Table 9. Therefore, as described above, we looked at other observational data. Common bottlenose dolphins have been rare visitors to Puget Sound. However, the WSDOT Seattle Multimodal Project at Colman Dock Year 3 IHA monitoring report observed common bottlenose dolphin at a rate of 6 per month (WSDOT 2020a). In-water work will occur for 113 days in Year 1 and 9 days in Year 2, which would equate to 33 dolphin takes in Year 1 (5.5 months × 6 dolphins/month) and 3 dolphin takes in Year 2 (0.5 months × 3 dolphins/month). A shutdown zone at the full distance of the level A harassment isopleths (≤ 55m) can be effectively applied to avoid Level A take. Therefore, BNSF has requested and NMFS proposes to authorize 33 takes by Level B harassment in Year 1 and 3 takes by Level B harassment in year in Year 2.

TABLE 9—CALCULATED TAKE OF BOTTLENOSE DOLPHIN

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers) ..	0.0000054	0.376	0.183	10 (Yr 1)	0	0		
Vibratory 14-inch H-Pile	0.0000054	0.005	0.235	6 (3 Yr 1, 3 Yr 2) ..	0	0	0	0
Vibratory 12-inch Timber Pile	0.0000054	0.005	0.286	8 (Yr 1)	0	0		
Oscillator Install of 4-foot Drilled Shaft	0.0000054	0.000	0.169	88 (Yr 1)	0	0		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	0.0000054	0.000	2.290	6 (Yr 2)			0	0
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.0000054	0.000	0.381	4 (Yr 1)	0	0		
Total				122	0	0	0	0

Long-Beaked Common Dolphin

Using the Navy's density data, which was zero, estimated take of common dolphins was calculated to be zero in Year 1 and Year 2. Therefore, as described above, we looked at other observational data. Sightings of live dolphins throughout inside waters and Southern Puget Sound have been recorded in 2003, 2011–12, and 2016–17. Group size ranged from 2 (in 2003 and 2011–12) to 5–12 (in 2016–2017) (Shuster *et al.* 2017). Since June 2016, several common dolphins have remained in Puget Sound, group sizes of 5–20 individuals are often reported and some of these groups stayed in the region for several months. Sightings of these animals mostly began in summer and early fall sometimes extending into winter months. (Shuster *et al.,* 2018). We conservatively predict that a group of 20 individuals will be taken on a monthly basis. The Level A harassment shutdown zone for mid-frequency hearing group will be implemented to minimize the severity of any Level A harassment that could occur. The in-water work would occur for 113 days in Year 1 and 9 days in Year 2, which would result in 110 takes (5.5 months × 20 dolphins/month) in Year 1 and 20 takes (1 month × 20 dolphins/month) in Year 2 by Level B harassment. BNSF has requested and NMFS proposes to authorize 110 takes of long-beaked common dolphin by Level B harassment in Year 1 and 10 takes by Level B harassment in year in Year 2.

Harbor Porpoise

Harbor porpoise density estimates based on the Navy's data were used to calculate requested and proposed take as shown in Table 10. Analysis of the size of the level A harassment zones multiplied by density associated with harbor porpoise predicted that two porpoises could be taken by Level A harassment during the 10 days that concurrent driving of 36-in steel piles occurs during year 1. However, take by Level A harassment is unlikely given that the threshold and associated PTS isopleth is based on the acoustic energy accrued over a specified time period and it is unlikely that a highly mobile animal such as the harbor porpoise would spend the that amount if time in the Level A harassment zone. However, given the larger size of the zone and the cryptic nature of harbor porpoises, we have precautionarily proposed to authorize 2 takes by Level A harassment for Year 1. The Level A harassment shut down zone for high frequency hearing group will be implemented to minimize severity of any Level A harassment takes that do occur. Since there will be no impact driving during Year 2, the size of the Level A harassment zone will not exceed 5 m and, therefore, no take by Level A harassment was requested and none has been proposed. BNSF has requested and NMFS proposes to authorize 12 takes of harbor porpoise by Level B harassment in Year 1 and 8 takes by Level B harassment in year in Year 2.

TABLE 10—CALCULATED TAKE OF HARBOR PORPOISE

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers) ..	0.54	0.376	0.183	10 (Yr 1)	2	1	.....	.....
Vibratory 14-inch H-Pile	0.54	0.005	0.235	6 (3 Yr 1, 3 Yr 2) ..	0	1	0	1
Vibratory 12-inch Timber Pile	0.54	0.005	0.286	8 (Yr 1)	0	1	.....	.....
Oscillator Install of 4-foot Drilled Shaft	0.54	0.000	0.169	88 (Yr 1)	0	8	.....	.....
Diamond Wire Saw Removal of 48-inch Drilled Shaft ...	0.54	0.000	2.290	6 (Yr 2)	.....	.....	0	7
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.54	0.000	0.381	4 (Yr 1)	0	1	.....	.....
Total	.....	.....	.....	122	2	12	0	8

Harbor Seal

Harbor seal density estimates based on data from the Navy were initially used to calculate requested and proposed take (Table 11). These estimates, however, do not account for numerous seals feeding on migrating salmonids at Ballard Locks, especially during summer (June–September) months. A new acoustic deterrent device was tested over two years to keep seals away from the Locks (Bogaard, Pers. Comm, 2022). A study report is currently being developed for publication. Study observers were primarily focused on behavioral effects of the deterrent on seals and monitored seal behavioral reactions during 30 minute observation periods up to eight times per day. Actual seal abundance was not recorded. However, observers noted that groups of 5–6 harbor seals were very common from late June through September during the salmon run, although smaller numbers were present throughout the year. It is likely that many of the same animals were observed multiple times across daily observation periods. The in-water work window runs from July 16, 2022 through February 15, 2023. Given this information, NMFS assumed for Year 1 that during the 54 in-water work days between July 16, 2022 and September 30, 2022, 5 harbor seals would be taken per day (270 takes). For the remaining 59 in-water work days between October 1, 2022 and February 15, 2023, a single harbor seal would be taken per day (59) for a total of 329 takes. There are 10 in-water work days that include concurrent impact driving of 36-inch piles when the Level A harassment isopleth is relatively large (1,826 m) (and also exceeds the Level B harassment isopleth (464 m)) so it is possible that Level A harassment could occur in some animals. Also, note that the constrained design of the lock system means that seals would likely spend extended periods in the confined area while feeding. NMFS conservatively assumes that all of these 10 in-water work days would occur during salmon migration (February 15–Sept 30) and that up to one-third of seals taken per day (2) could be exposed to sound energy levels resulting in some degree of Level A harassment (20). The estimated takes by Level A harassment is subtracted from the Level B harassment take to avoid double-counting. Since a smaller number of seals expected to be present during non-migratory period and the seals would have little incentive to congregate near the locks in the absence of salmon, NMFS does not expect any Level A harassment of seals to occur. Therefore, NMFS is proposing during Year 1 to authorize 20 takes by Level A harassment and 309 takes by Level B harassment (329–20).

For Year 2, NMFS assumed that all 9 in-water work days would occur during salmon migration between July 16, 2023 and September 30, 2024 with up to 6 harbor seals taken per day (54). No Level A take harassment is proposed during Year 2 since the largest Level A isopleth for all planned activities is 2 m. However, the density-based estimate was 57 takes as shown in Table 11. Therefore, NMFS is proposing 57 takes of harbor seal by Level B harassment during Year 2.

TABLE 11—CALCULATED TAKE OF HARBOR SEAL

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers) ..	3.91	0.215	0.183	10 (Yr 1)	8	7	.....	.....
Vibratory 14-inch H-Pile	3.91	0.005	0.235	6 (3 Yr 1, 3 Yr 2) ..	0	3	0	3
Vibratory 12-inch Timber Pile	3.91	0.005	0.286	8 (Yr 1)	0	9	.....	.....
Oscillator Install of 4-foot Drilled Shaft	3.91	0.005	0.169	88 (Yr 1)	0	58	.....	.....
Diamond Wire Saw Removal of 48-inch Drilled Shaft ...	3.91	0.005	2.290	6 (Yr 2)	.....	.....	0	54
24-inch Pile Clipper Removal of 12-inch Timber Pile	3.91	0.005	0.381	4 (Yr 1)	0	6	.....	.....
Total	.....	.....	.....	122	8	83	0	57

California Sea Lion

BNSF initially considered California sea lion density estimates to calculate requested take, which resulted in relatively low estimates (4 takes in Year 1 and 3 takes in Year 2 by Level B harassment) as shown in Table 12. However, California sea lions are known to frequent the Ballard Locks to feed on migrating salmon (KUOW, 2020). While no formal research studies have recorded individual numbers of California sea lions at Ballard Locks, news articles reported accounts of California sea lion sightings which ranged from a few to many more (Hakai Magazine, 2018; King 5 News, 2021). Observers associated with the acoustic deterrent device study described above, reported that California sea lions were less numerous than harbor seals, having been seen at a rate of 2–3 per day during peak salmonid migration (Bogaard, Pers. Comm. 2022). They were less common during non-migratory seasons. Given this information, NMFS assumed for Year 1 that during the 54 in-water work days between July 16, 2022 and September 30, 2022, 2 California sea lions would be taken per day (108). For

the remaining 59 in-water work days between October 1, 2022 and February 15, 2023, a single California sea lion would be taken very third day (20). Take by Level A harassment is possible, but unlikely, given that the largest Level A harassment isopleth is 60 m (with a 10 m shutdown zone for otariids) but only during 10 in-water work days which would include impact driving during Year 1. The Level A harassment zone during all other in-water work days in both Year 1 and Year 2 is 1 m or less. A California sea lion would not be expected to remain within the injury zone long enough (5.4 hours) to accrue the amount energy that would result in take Level A harassment. As such, NMFS is proposing during Year 1 to authorize 128 takes by Level B harassment. No takes by Level A harassment are proposed.

For Year 2, NMFS assumed that all 9 in-water work days would occur during peak salmon migration between July 16, 2023 and September 30, 2024 with up to 2 California sea lions taken per day (18). NMFS is proposing to authorize 18 takes of California sea lion by Level B harassment. No Level A take harassment is proposed.

TABLE 12—CALCULATED TAKE OF CALIFORNIA SEA LIONS BY LEVEL B HARASSMENT

Activity	Species density (animals/km^2)	Level A area (km^2)	Level B area (km^2)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers) ..	0.2211	0.023	0.183	10 (Yr 1)	0	0	.....	.....
Vibratory 14-inch H-Pile	0.2211	0.004	0.235	6 (3 Yr 1, 3 Yr 2) ..	0	0	0	0
Vibratory 12-inch Timber Pile	0.2211	0.004	0.286	8 (Yr 1)	0	1	.....	.....
Oscillator Install of 4-foot Drilled Shaft	0.2211	0.000	0.169	88 (Yr 1)	0	3	.....	.....
Diamond Wire Saw Removal of 48-inch Drilled Shaft ...	0.2211	0.000	2.290	6 (Yr 2)	.....	.....	0	3
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.2211	0.000	0.381	4 (Yr 1)	0	0	.....	.....
Total	.....	.....	.....	.....	.....	4	.....	3

Stellar Sea Lion

Stellar sea lion density estimates were initially used to calculate requested take as shown in Table 13. Based on the density data, BNSF has requested a single take for both Year 1 and Year 2. Given the large number of in-water work days in Year 1, NMFS has precautionarily increased the proposed Level B harassment to 5 takes while maintaining the 1 proposed take by Level B harassment as calculated by density estimates in Year 2. Monitors with the acoustic deterrent study did not observe any Steller sea lions during the two years that the study was underway (Bogaard, Pers. Comm, 2022).

TABLE 13—CALCULATED TAKE OF STELLER SEA LIONS BY LEVEL B HARASSMENT

Activity	Species density (animals/km^2)	Level A area (km^2)	Level B area (km^2)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers) ..	0.0478	0.023	0.183	10 (Yr 1)	0	0	.....	.....
Vibratory 14-inch H-Pile	0.0478	0.004	0.235	6 (3 Yr 1, 3 Yr 2) ..	0	0	0	1
Vibratory 12-inch Timber Pile	0.0478	0.004	0.286	8 (Yr 1)	0	0	.....	.....
Oscillator Install of 4-foot Drilled Shaft	0.0478	0.000	0.169	88 (Yr 1)	0	1	.....	.....
Diamond Wire Saw Removal of 48-inch Drilled Shaft ...	0.0478	0.000	2.290	6 (Yr 2)	.....	.....	0	0
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.0478	0.000	0.381	4 (Yr 1)	0	0	.....	.....
Total	.....	.....	.....	.....	.....	1	.....	1

The estimated take by Level A and Level B harassment for all authorized species and stocks by year, and percentage take by stock is shown in Table 14.

TABLE 14—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES, STOCK AND YEAR, AND PERCENTAGE TAKE BY STOCK

Common name	Stock	Abundance	IHA Year 1		Total take as percentage of stock	IHA Year 2		Total take as percentage of stock
			Take A request	Take B request		Take A request	Take B request	
Minke Whale	California/Oregon/Washington ..	915	.....	6	0.66	.....	1	0.11
Common Bottlenose Dolphin	California/Oregon/Washington offshore.	3,477	.....	33	0.95	.....	3	0.09
Long-beaked Common Dolphin	California	83,379	.....	110	0.13	.....	20	0.01
Harbor Porpoise	Washington Inland Waters	11,233	.....	12	0.11	.....	8	0.07
Harbor Seal	Washington Northern Inland Waters.	1,088	20	309	32.6	.....	57	5.2
California Sea Lion	United States	257,606	.....	108	0.04	.....	20	<0.01
Stellar Sea Lion	Eastern U.S	43,201	.....	5	0.01	.....	1	<0.01

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, BNSF will employ the following mitigation measures:

- BNSF must ensure that construction supervisors and crews, the monitoring team, and relevant BNSF staff are trained prior to the start of activities subject to these IHAs, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity;
- If a marine mammal is observed entering or within the shutdown zones indicated in Table 14, pile driving activity must be delayed or halted;
- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone (as shown in Table 14); and
- BNSF, construction supervisors and crews, PSOs, and relevant BNSF staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

The following mitigation measures apply to BNSF's in-water construction activities:

- *Establishment of Shutdown Zones*—BNSF will establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group. In addition to the shutdown zones listed in Table 15, BNSF will shut down construction activity if a humpback or southern resident killer whale is observed approaching or within the specified Level B harassment zone.
- *Protected Species Observers*—The placement of Protected Species Observers (PSOs) during all pile driving and removal activities (described in detail in the Proposed Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile driving and removal. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), drilling, cutting, clipping, pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

TABLE 15—SHUTDOWN ZONES FOR EACH HEARING GROUP AND LEVEL B HARASSMENT ZONES DURING PILE INSTALLATION AND REMOVAL

[Meters]

Pile type, size, and pile driving method	LF	MF	HF	Phocid	Otariid	Level B harassment zone
Scenario 1. Single 36-inch Pipe	1,000	40	1,200	10	10	500
Scenario 2. 2 Concurrent 36-inch Pipe	1,600	60	1,900	10	10	500
14-inch H-Pile	10	10	10	10	10	1,000
12-inch Timber Vibratory	10	10	10	10	10	1,400
48-inch Drilled Shaft Oscillatory Installation	10	10	10	10	10	400
48-inch Concrete-lined Steel Shaft Diamond Wire Saw Removal	10	10	10	10	10	5,900
12-inch Timber Pile Clipper	10	10	10	10	10	1,900

- *Monitoring for Level A and Level B Harassment*—BNSF will monitor the Level B harassment zones to the extent practicable and the entire Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. At least three PSOs

would monitor harassment zones during all in-water construction activities. PSO monitoring stations are described below in the Proposed Monitoring and Reporting section.

- *Pre-activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in drilling, clipping, cutting, pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.
- *Soft Start*—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. This procedure will be conducted three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.
- *Bubble Curtain*—BNSF will use a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system) during impact pile driving. The use of sound attenuation will reduce SPLs and the size of the zones of influence for Level A harassment and Level B harassment. Bubble curtains will meet the following requirements:
  - The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column;
  - The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact; and
  - Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of BNSF's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan found in Appendix E in the application. Marine mammal monitoring during drilling, clipping, cutting, pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;

A minimum of three PSOs located at positions designated in Figure 1 and Figure 2 of the Marine Mammal Monitoring Plan found in Appendix E of

the Application must monitor harassment zones during all in-water construction activities. One PSO would be stationed in close proximity to the construction site. A second PSO would be stationed at Bay Terrace Road which is located east of the Bridge 6.3 on the southern side of the Ship Canal. This location would provide views of ensonified areas radiating into Shilshole Bay as well as waters east of the mouth of the Ship Canal. A third PSO would be located on the north side of the Ship Canal at the Northwest 60th Street Viewpoint west of Bridge 6.3. This location provides views westward towards the mouth of the Ship Canal. A fourth PSO must be on a boat positioned in Puget Sound when a wire saw is being utilized to monitor the extended Level B harassment zone associated with this equipment. A wire saw would be employed on approximately 6 in-water work days. If hydroacoustic monitoring results of diamond wire saw cutting activities show that the entirety of the Level B harassment zone may be viewed by from land-based PSOs, then the PSO on the boat may not be deployed. All results from hydroacoustic monitoring, described in the next section, must be submitted to NMFS. NMFS must approve the removal of the boat-based PSO and modification of the new harassment isopleth.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after drilling, clipping, cutting, pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Drilling, clipping, cutting, Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the drilling, clipping, cutting, pile driving equipment is no more than 30 minutes.

Hydroacoustic Monitoring

Hydroacoustic monitoring will be conducted during in-water pile-driving and wire saw activities and recorded source levels will be compared to the reported sound levels employed as part of this application to determine harassment isopleths modeled in this application. Information about methods, data collection, and reporting are described in the Acoustic Monitoring Plan in Appendix F of the Application. The following representative subsets will be measured:

- A minimum of 15, 36-inch impact driven piles for the Project in the following subsets:
  1. A minimum of 5 piles towards the beginning of pile driving activity;
  2. A minimum of 5 piles towards the middle of pile driving activity;
  3. A minimum of 5 piles towards the latter pile driving activity.
- A minimum of 4, 48-inch drilled shafts oscillated for the Project in the following subsets:
  1. A minimum of 2 drilled shafts towards the beginning of the activity;
  2. A minimum of 2 drilled shafts towards the end of the activity.
- A minimum of 2 48-inch drilled shafts will be monitored when cut with a wire saw.

Reporting

BNSF must submit its draft reports on all monitoring conducted under the IHAs within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method: Drilling, cutting, clipping, impact driving, and vibratory driving and removal; duration of driving time for each pile (vibratory) and number of strikes per pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
- Animal's closest point of approach and estimated time spent within the harassment zone;
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring Plan and, at minimum, must include:

- Hydrophone equipment and methods: Recording device, sampling rate, distance (m) from the pile where recordings were made; depth of water and recording device(s);
- Type and size of pile being driven or cut, substrate type, method of driving or cutting during recordings (*e.g.,* hammer model and energy), and total pile driving or cutting duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;
- For impact pile driving (per pile): Number of strikes; depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 µPa): Root mean square sound pressure level (SPLrms); cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELs-s);
- For wire saw cutting (per pile): Duration of driving per pile; mean, median, and maximum sound levels (dB re: 1 µPa): Root mean square sound pressure level (SPLrms), cumulative sound exposure level (SELcum) (and timeframe over which the sound is averaged); and

• One-third octave band spectrum and power spectral density plot.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region Stranding Hotline (866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS.

The report must include the following information:

i. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

ii. Species identification (if known) or description of the animal(s) involved;

iii. Condition of the animal(s) (including carcass condition if the animal is dead);

iv. Observed behaviors of the animal(s), if alive;

v. If available, photographs or video footage of the animal(s); and

vi. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all of the species listed in Table 14, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below, such as for the potential repeated and prolonged exposure of habituated harbor seals that feed on salmonids traversing through the lock system. The analysis below applies to both the Year 1 and Year 2 proposed IHAs, except where noted otherwise.

Drilling, clipping, cutting, Pile driving and removal activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated by drilling, clipping, cutting, pile driving and removal. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level A or Level B harassment, identified above, while activities are underway.

The nature of the drilling, clipping, cutting, pile driving project precludes the likelihood of serious injury or mortality. The mitigation is expected to ensure that no Level A harassment occurs to any species except harbor seal. The nature of the estimated takes anticipated to occur are similar among all species and similar in Year 1 and Year 2, other than the potential Level A harassment take of harbor seal in Year 1, described further below and the likely comparatively higher number of repeated takes of some small number of harbor seals by Level B harassment during both Year 1 and Year 2

For all species other than harbor seal, take would be limited to Level B harassment (behavioral disturbance and TTS) only. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely include reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Marine mammals present in the vicinity of the action area and taken by Level B harassment are most likely to move away from and avoid the area of elevated noise levels during in-water construction activities. The project site itself is located along a highly developed waterfront with high amounts of vessel traffic and, therefore, we expect that most animals disturbed by project sound would simply avoid the area and use more-preferred habitats. These short-term behavioral effects are not expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in the Puget Sound. Harbor seals that are habituated to in-water construction noise could be exposed for 5.4 hours per day for up to 10 consecutive days during impact driving activities in Year 1 only. These animals would likely remain in close proximity to the locks and may be exposed to enough accumulated energy to result in TTS or PTS (described below). Longer duration exposure could result in TTS in some cases if exposures occur within the Level B TTS zone. As discussed earlier in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Any behavioral effects of repeated or long duration exposures are not expected to negatively impact survival or reproductive success of any individuals. Similarly, given that the exposure to these individuals is not expected to exceed 10 consecutive days for 5.4 or fewer hours at a time for any individual, any limited energetic impacts from the interruption of foraging or other important behaviors are not expected to affect the reproductive success of any individual harbor seals.

In addition to the expected effects resulting from proposed Level B harassment, we anticipate that a limited number of habituated harbor seals (20) may sustain some Level A harassment in the form of auditory injury during 10 days of impact driving proposed for Year 1 only. However, any animals that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities

within regions of hearing that align most completely with the frequency range of the energy produced by pile driving (*i.e.,* the low-frequency region below 2kHz), not severe hearing impairment or impairment in the reigns of greatest hearing sensitivity. If hearing impairment does occur, it is most likely that the affected animal would lose a few dBs in its hearing sensitivity, which in most cases, is not likely to meaningfully affect its ability to forage and communicate with conspecifics. These takes by Level A harassment (*i.e.,* a small degree of PTS) of habituated harbor seals are not expected to accrue in a manner that would affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Portions of the southern resident killer whale range are within the proposed project area and the entire Puget Sound is designated as critical habitat for these whales under the ESA. However, BNSF would be required to shut down and suspend pile driving or pile removal activities when this stock is detected in the vicinity of the project area. We anticipate that take of southern resident killer whale would be avoided. There are no other known important areas for other marine mammals, such as feeding or pupping, areas.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized.
- For all species except harbor seal and only during Year 1, no Level A harassment is anticipated or proposed for authorization.
- The Level A harassment exposures to habituated harbor seals in Year 1 only are anticipated to result in slight PTS, within the lower frequencies associated with impact pile driving.
- Though a small number of habituated harbor seals will accrue Level B harassment in the form of TTS from repeated days of exposure, hearing thresholds are expected to completely recover within minutes to hours.
- Anticipated effects of Level B harassment in the form of behavioral modification would be temporary.
- Although a small portion of the southern resident killer whale critical habitat is within the project area, strict mitigation measures such as implementing shutdown measures and suspending pile driving are expected to avoid take of this stock. No other important habitat for marine mammals exist in the vicinity of the project area.
- We do not expect significant or long-term negative effects to marine mammal habitat.

Year 1 IHA—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from BNSF's construction activities will have a negligible impact on all affected marine mammal species or stocks.

Year 2 IHA—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from BNSF's construction activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for all species during both Year 1 and Year 2. The proposed take of individuals during Year 1 is less than 32.6 percent for harbor seals and less than 1 percent for all other authorized species. During year 2 the proposed take of individuals is less than 5.2 percent of the abundance of the affected species or stock as shown in Table 14. Note that harbor seal take during Year 1 likely includes multiple repeated takes of some small group of individuals. Similarly, for all other authorized species, the proposed take numbers probably represent conservative estimates because they assume all takes are of different individual animals, which is unlikely to be the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Year 1 IHA—Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Year 1 of the project.

Year 2 IHA—Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Year 2 of the project.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it

authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two consecutive IHA's to BNSF for conducting maintenance of Bridge 6.3 in Kings County, WA from July 16, 2022 to July, 15, 2023 (Year 1) and July 16, 2023 to July 15, 2024 (Year 2), provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notification of proposed IHAs for the proposed action. We also request at this time comment on the potential Renewal of the proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notification is planned or (2) the activities as described in the Description of Proposed Activities section of this notification would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notification, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 25, 2022.

Kimberly Damon-Randall,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB742]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to TotalEnergies E&P USA, Inc. (TotalEnergies) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from April 20, 2022, through April 19, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

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), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) 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 (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

TotalEnergies plans to conduct a 3D ocean bottom node (OBN) survey within the North Platte field. The survey area is located in Garden Banks, Green Canyon, Keathley Canyon, and Walker Ridge lease areas with approximate water depths ranging from 725 to 2,180 meters (m). See Figure 1 of the LOA application for a map of the area.

TotalEnergies anticipates using two source vessels, each towing up to three airgun arrays operating in an alternating manner. Each source array will consist of up to 28 elements, with a total volume of 5,200 cubic inches (in^3). Please see TotalEnergies' application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by TotalEnergies in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Coil was selected as the best available proxy survey type in this case, because the spatial coverage of the planned survey is most similar to the coil survey pattern. The planned 3D OBN surveys will each involve source vessels sailing along closely spaced survey lines approximately 50 km in length, completing 2–3 lines per day. The path taken by the vessels to cover these lines will mean that consecutive survey lines sailed will be 1,200 m apart. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although TotalEnergies is not proposing specifically to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 74 km^2 per day, meaning that the coil proxy is most representative of the effort planned by TotalEnergies in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to differences in both the airgun array (28 elements, 5,200 in^3) and the daily survey area planned by TotalEnergies (74 km^2), as compared to those modeled for the rule.

The survey will take place over 100 days, including 65 days of sound source operation. The survey will occur within Zone 5. TotalEnergies expects that the survey would occur entirely within the Summer season. However, it is possible that the survey could occur within Winter and, therefore, the take estimates for each species are based on the season that produces the greater value for the species (*i.e.,* winter or summer).

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

Rice's whales (formerly known as GOM Bryde's whales) [3] are generally found within a small area in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016). Whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014), and a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). Habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

habitat (Roberts *et al.,* 2016), although a ''core habitat area'' defined in the northeastern GOM (outside the scope of the rule) contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29212, 29228, 29280 (June 22, 2018); 86 FR 5322, 5418 (January 19, 2021).

Although it is possible that Rice's whales may occur outside of their core habitat, NMFS expects that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m). TotalEnergies' planned activities will occur in water depths of approximately 725–2,180 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach can result in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales would result in high estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single killer whale group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5322, 5404; January

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

19, 2021). The output of this scaling, where appropriate, is incorporated into an adjusted total take estimate that is the basis for NMFS' small numbers determination, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determination, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determination is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	0	n/a	51	n/a
Sperm whale	1,710	723.2	2,207	32.8
Kogia spp	[3] 646	230.5	4,373	5.3
Beaked whales	7,546	762.1	3,768	20.2
Rough-toothed dolphin	1,297	372.4	4,853	7.7
Bottlenose dolphin	6,148	1,764.4	176,108	1.0
Clymene dolphin	3,651	1,047.8	11,895	8.8
Atlantic spotted dolphin	2,456	704.8	74,785	0.9
Pantropical spotted dolphin	16,568	4,755.0	102,361	4.6
Spinner dolphin	4,439	1,274.1	25,114	5.1
Striped dolphin	1,426	409.3	5,229	7.8
Fraser's dolphin	410	117.7	1,665	7.1
Risso's dolphin	1,073	316.4	3,764	8.4
Melon-headed whale	2,399	707.6	7,003	10.1
Pygmy killer whale	565	166.5	2,126	7.8
False killer whale	898	264.9	3,204	8.3
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	694	204.7	1,981	10.3

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 34 takes by Level A harassment and 612 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of TotalEnergies' proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to TotalEnergies authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: January 26, 2022.

Kimberly Damon-Randall,

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

[FR Doc. 2022–01918 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB668]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of opportunities to submit public comments.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2022 ocean salmon fisheries off the U.S. West Coast. This notice informs the public of opportunities to provide comments on the development of 2022 ocean salmon management measures.

DATES: Written comments on the salmon management alternatives adopted by the Council at its March 2022 meeting, as described in its Preseason Report II, received electronically or in hard copy by 5 p.m. Pacific Time, April 5, 2022, will be considered in the Council's final recommendation for the 2022 management measures.

ADDRESSES: Documents will be available from the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, and will be posted on the Council's website at *http://www.pcouncil.org.* You may submit comments by any one of the following methods:

- Written comments should be sent electronically to Mr. Marc Gorelnik, Chair, Pacific Fishery Management

Council, via the Council's e-Portal by visiting *https://pfmc.psmfc.org*.

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0001 in the Search box. Click on the ''Comment'' tab, complete the required fields, and enter or attach your comments. 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 and the Council will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Fishery Management Council, telephone: 503–820–2280. For information on submitting comments via the Federal e-Rulemaking portal, contact Shannon Penna, NMFS West Coast Region, telephone: 562–676–2148; email: *shannon.penna@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Council has announced the schedule of reports, public meetings, and hearings for the 2022 ocean salmon fisheries on its website (*http://www.pcouncil.org*) and in the **Federal Register** (86 FR 70114, December 9, 2021). The Council will adopt alternatives for 2022 ocean salmon fisheries at its March 8–14, 2022, meeting which is tentatively scheduled to occur in person, in San Jose, CA. Details of this meeting are available on the Council's website (*http://www.pcouncil.org*). On March 22, 2022, ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2022 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Council's website at *http://www.pcouncil.org*. The report will include a description of the salmon management alternatives and a summary of their biological and economic impacts. Public hearings will be held to receive comments on the proposed ocean salmon fishery management alternatives adopted by the Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Council at its April meeting.

All public hearings begin at 7 p.m. Public hearings focusing on Washington and California salmon fisheries will occur simultaneously on March 22, 2022, and the public hearing for Oregon salmon fisheries will occur on March 23, 2022. A summary of oral comments heard at the hearings will be provided to the Council at its April meeting. These public hearings are tentatively scheduled to occur in person, in the cities of Westport, Washington; Coos Bay, Oregon; and Eureka, California. Actual hearing venues or instructions for joining online hearings will be posted on the Council's website (*http://www.pcouncil.org*) in advance of the hearing dates.

Comments on the alternatives the Council adopts at its March 2022 meeting, and described in its Preseason Report II, may be submitted in writing or electronically as described under **ADDRESSES**, or verbally or in writing at any of the public hearings held on March 22–23, 2022, or at the Council's meeting, April 6–13, 2022, which is tentatively scheduled to occur in person, in Seattle, WA. Details of these meetings will be available on the Council's website (*http://www.pcouncil.org*) and will be published in the **Federal Register**. Written and electronically submitted comments must be received prior to the April 2022 Council meeting, in order to be included in the briefing book for the Council's April meeting, where they will be considered in the adoption of the Council's final recommendation for the 2022 salmon fishery management measures. All comments received accordingly will be reviewed and considered by the Pacific Council and NMFS.

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

Dated: January 26, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–01913 Filed 1–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposal To Find That Louisiana Has Satisfied All Conditions of Approval Placed on Its Coastal Nonpoint Pollution Control Program

Correction

In notice document 2022–01586, appearing on pages 4226–4227, in the issue of Thursday, January 27, 2022, make the following correction:

On page 4227, in the third column, the signature block, lines 3 through 9, should read:

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Radhika Fox,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. C1–2022–01586 Filed 1–28–22; 8:45 am]

BILLING CODE 0099–10–D

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before March 2, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0074, at *https://*

comments.cftc.gov/FederalRegister/PublicInfo.aspx

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Duane Andresen, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5492; email: *dandresen@cftc.gov,* and refer to OMB Control No. 3038–0074.

SUPPLEMENTARY INFORMATION:

Title: Core Principles and Other Requirements for Swap Execution Facilities (OMB Control No. 3038–0074). This is a request for an extension of a currently approved information collection.

Abstract: Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') added new section 5h to the Commodity Exchange Act (''CEA'') to impose requirements concerning the registration and operation of swap execution facilities (''SEFs''), which the Commission has incorporated in Part 37 of its regulations as well as other Parts of the Commission's regulations. The information collections under this Control Number are necessary for the Commission to evaluate whether SEFs, or entities applying to become SEFs, comply with the CEA's statutory core principle requirements and part 37 of the Commission regulations.

The final rule, 86 FR 9224 (Feb. 11, 2021), provides relief from certain Part 37 requirements that SEFs found in practice to be operationally unworkable or unnecessarily burdensome. The Commission revised information collection number 3038–0074 to reflect the adoption of amendments to Part 37 of its regulations, but does not believe the amended regulations, as adopted, would impose any other new collections of information that require approval of OMB under the PRA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On November 2, 2021, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 86 FR 60448 (''60-Day Notice'') The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its burden estimate for this collection, Core Principles and Other Requirements for Swap Execution Facilities (OMB Control No. 3038–0074). The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 20.

Estimated Average Burden Hours per Respondent: 387 hours.

Estimated Total Annual Burden Hours: 7,740 hours.

Frequency of Collection: Once (annually).

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 25, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–01810 Filed 1–28–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2022–23 Award Year Deadline Dates

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the 2022–23 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan (Perkins Loan) Program, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the ''Campus-Based programs''), Assistance Listing Numbers 84.038, 84.033, and 84.007.

DATES: The deadline dates for each program are specified in the chart in the **DEADLINE DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Shannon Mahan, Division Chief, Grants & Campus-Based Partner Division, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, room 64C4, Washington, DC 20202–5453. Telephone: (202) 377–3019. Email: *shannon.mahan@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The authority to award new Federal Perkins Loans to students has expired. Institutions that continue to service their Perkins Loans (or contract with a third-party servicer for servicing) are required to report all Perkins Loan activity on the institution's Fiscal Operations Report and Application to Participate (FISAP).

The FWS program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their education.

The Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Electronic Announcements,'' the Department will continue to provide additional information for the individual deadline dates listed in the table under the **DEADLINE DATES** section of this notice. You will also find the information on the Department's Knowledge Center website at: *https://fsapartners.ed.gov/knowledge-center.*

Deadline Dates: The following table provides the 2022–23 award year deadline dates for the submission of applications, reports, waiver requests, and other documents for the Campus-

Based programs. Institutions must meet the established deadline dates to ensure consideration for funding or waiver, as appropriate.

2022–23 Award Year Deadline Dates

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2021–22 funds and the request for supplemental FWS funds for the 2022–23 award year.	The form must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Monday, August 15, 2022.
2. The 2023–24 FISAP (reporting 2021–22 expenditure data and requesting funds for 2023–24).	The FISAP must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The FISAP signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 9003, Niagara Falls, NY 14302. For overnight delivery, mail to: FISAP Administrator, 2429 Military Road, Suite 200, Niagara Falls, NY 14304.	Friday, September 30, 2022.
3. The Work Colleges Program Report of 2021–22 award year expenditures.	The report must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 9003, Niagara Falls, NY 14302. For overnight delivery, mail to: FISAP Administrator, 2429 Military Road, Suite 200, Niagara Falls, NY 14304.	Friday, September 30, 2022.
4. The 2021–22 Financial Assistance for Students with Intellectual Disabilities (Comprehensive Transition Program) Expenditure Report.	The report must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 9003, Niagara Falls, NY 14302. For overnight delivery, mail to: FISAP Administrator 2429 Military Road, Suite 200, Niagara Falls, NY 14304.	Friday, September 30, 2022.
5. NEW ..... The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2023–24 award year—*NEW applicants only*.	The application and agreement must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The signature page must be signed by the institution's chief executive officer with an original signature and sent with all application documents to the U.S. Department of Education using one of the following methods: Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street NE, Room 62B1, ATTN: Work Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	
6. 2023–24 FISAP Edit Corrections	The corrections must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Thursday, December 15, 2022.
7. The 2023–24 FISAP Perkins Cash on Hand Update as of October 31, 2022.	The update must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Thursday, December 15, 2022.
8. Request for a waiver of the 2023–24 award year penalty for the underuse of 2021–22 award year funds.	The request for a waiver of the penalty and the justification must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Monday, February 6, 2023.
9. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2023–24 award year—*RETURNING applicants only*.	The application and agreement must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 9003, Niagara Falls, NY 14302. For overnight delivery, mail to: FISAP Administrator, 2429 Military Road, Suite 200, Niagara Falls, NY 14304.	Monday, March 6, 2023.
10. Request for a waiver of the FWS Community Service Expenditure Requirement for the 2023–24 award year.	The request for a waiver must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Monday, April 24, 2023.

Notes:

- The deadline for electronic submissions is 11:59:00 p.m. (Eastern Time) on the applicable deadline date. Transmissions must be completed and accepted by 11:59:00 p.m. to meet the deadline.
- Paper documents that are sent through the U.S. Postal Service must be postmarked or you must have a mail receipt stamped by the applicable deadline date.
- Paper documents that are delivered by a commercial courier must be received no later than 4:30:00 p.m. (Eastern Time) on the applicable deadline date.

▪ The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), or another unusual circumstance has on an institution in meeting the deadlines.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery (or from a commercial courier), we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Any other proof of mailing or delivery acceptable to the Secretary.

If you mail your paper documents through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from you or a commercial courier between 8:00:00 a.m. and 4:30:00 p.m., Eastern Time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific ''Electronic Announcements,'' which are posted on the Department's Knowledge Center website (*https://fsapartners.ed.gov/knowledge-center*) at least 30 days before the established deadline date for the specific request. Information on these items also is found in the Federal Student Aid Handbook, which is posted on the Department's Knowledge Center website.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations in 2 CFR part 3485.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.*

Richard Cordray,

Chief Operating Officer, Federal Student Aid

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[FR Doc. 2022–01897 Filed 1–28–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0012]

Agency Information Collection Activities; Comment Request; Private School Universe Survey (PSS) 2023–24 Data Collection, and 2023–24 and 2025–26 PSS Frame Development Activities

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision to a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0012. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of

information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Private School Universe Survey (PSS) 2023–24 Data Collection, and 2023–24 and 2025–26 PSS Frame Development Activities.

OMB Control Number: 1850–0641.

Type of Review: A revision of a currently approved information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 27,553.

Total Estimated Number of Annual Burden Hours: 3,897.

Abstract: The Private School Universe Survey (PSS) is conducted by the National Center for Education Statistics (NCES) to collect basic information from the universe of private elementary and secondary schools in the United States. The PSS is designed to gather biennial data on the total number of private schools, teachers, and students, along with a variety of related data, including: Religious orientation; grade-levels taught and size of school; length of school year and of school day; total student enrollment by gender (K–12); number of high school graduates; whether a school is single-sexed or coeducational; number of teachers employed; program emphasis; and existence and type of its kindergarten program. The PSS includes all schools that are not supported primarily by public funds, that provide classroom instruction for one or more of grades K–12 or comparable ungraded levels, and that have one or more teachers. The PSS is also used to create a universe list of private schools for use as a sampling frame for NCES surveys of private schools. No substantive changes have been made to the survey or its procedures since its last approved administration. This clearance is for the 2023–24 PSS data collection, and the 2023–24 and 2025–26 PSS frame building operations.

Dated: January 26, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–01900 Filed 1–28–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development to Improve Services and Results for Children with Disabilities—Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for Personnel Development to Improve Services and Results for Children with Disabilities—Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel, Assistance Listing Number 84.325D. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: January 31, 2022.

Deadline for Transmittal of Applications: April 1, 2022.

Deadline for Intergovernmental Review: May 31, 2022.

Pre-Application Webinar Information: No later than February 7, 2022, the Office of Special Education and Rehabilitative Services (OSERS) will post pre-recorded informational webinars designed to provide technical assistance to interested applicants. The webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Celia Rosenquist, U.S. Department of Education, 400 Maryland Avenue SW, Room 5158, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7373. Email: *Celia.Rosenquist@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants and toddlers, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priorities: This competition includes one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority and competitive preference priority are from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1462 and 1481).

Absolute Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel.

Background:

The purpose of this priority is to support existing doctoral degree programs that prepare special education, early intervention, and related services personnel who are well-qualified for, and can act effectively in, leadership positions as researchers and special education/early intervention/related services personnel preparers in institutions of higher education (IHEs), or as leaders in State educational agencies (SEAs), lead agencies (LAs), local educational agencies (LEAs), early intervention services programs (EIS programs), or schools.

There is a well-documented need for special education, early intervention, and related services leadership personnel who serve critical roles within different settings (Bellamy & Iwaszuk, 2017; Castillo et al., 2014; Montrosse & Young, 2012; NCSI, 2018a; NCSI, 2018b; Robb et al., 2012; Tucker et al., 2020). For example, leadership personnel in IHEs teach practices supported by evidence to future special education, early intervention, related services, and general education professionals. These leaders also conduct research that increases knowledge of effective interventions and services for children, including infants and toddlers, and youth with disabilities. Special education and early intervention administrators who supervise and evaluate the implementation of instructional programs to ensure that State or local agencies are meeting the needs of children with disabilities also perform a critical leadership personnel role. Administrators also ensure that schools and programs meet Federal, State, and local requirements for special education, early intervention, and related services.

All leadership personnel need to promote high expectations and have current knowledge of effective interventions and services that improve outcomes for children with disabilities, including high-need children with disabilities. This knowledge should be applicable to children served in a variety of educational settings (*e.g.,* urban or rural public schools, high-need schools or districts) or early childhood and early intervention settings (*e.g.,* home, community-based, Early Head Start and Head Start, childcare, or preschools). The interventions and services must include those that improve early childhood, educational, or employment outcomes. Leadership personnel are also essential to attracting, preparing, and retaining diverse and qualified individuals to the teaching profession and in providing them with practical knowledge and resources for their careers in education (Billingsley, Bettini, Mathews, & McLeskey, 2020; Brownell, Jones, Sohn, & Stark, 2020).

Critical competencies for special education, early intervention, or related services leadership personnel vary depending on the type of leadership personnel and the requirements of the preparation program but can include, for example, skills needed for postsecondary instruction, administration and supervision, research, policy development or implementation, organizational and system change, communication, and the use of technologies to support in-person and remote teaching (Boscardin & Lashley, 2018; Bruns et al., 2017). Scholars' acquisition of competencies and success in doctoral programs include factors such as supportive supervision, experiential learning opportunities, access to resources, and developing and enhancing professional networks and collaborative learning opportunities (Douglas, 2020; Sverdlik, Hall, McAlpine, & Hubbard, 2018). Networks are viewed as integral to leadership development and critical to addressing complex problems (Cullen-Lester, Maupin, & Lester, 2017; Hoppe & Reinelt, 2010).

Priority:

The purpose of this priority is to support existing doctoral degree programs that prepare special education, early intervention, and related services personnel at the doctoral degree level who are well qualified for, and can act effectively in, leadership positions as researchers and special education/early intervention/related services personnel preparers in IHEs, or as leaders in SEAs, LAs, LEAs, or EIS programs.

Note: Partnerships [1] comprised of two or three IHEs with existing doctoral programs that prepare scholars [2] are included in this priority and eligible to apply for funding. For additional information regarding group applications, refer to 34 CFR 75.127, 75.128, and 75.129.

This priority will provide support to help address identified needs for personnel with the knowledge and skills to establish and meet high expectations for each child with a disability. Programs must culminate in a doctoral degree (Ph.D. or Ed.D.). Applicants must plan to recruit and enroll the proposed number of scholars in the application within the first 12 months of the project period or demonstrate that scholars enrolled after the first 12 months can complete the program by the end of the proposed project period.

Note: Project periods under this priority may be up to 60 months. Projects should be designed to ensure that all proposed scholars successfully complete the program within 60 months of the start of the project. The Secretary may reduce continuation awards for any project in which scholars are not on track to complete the program by the end of that period.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Note: Preparation programs that lead to clinical doctoral degrees in related services (*e.g.,* a Doctor of Audiology degree or Doctor of Physical Therapy degree) are not included in this priority. These types of preparation programs are eligible to apply for funding under the Personnel Preparation in Special Education, Early Intervention, and Related Services priority (84.325K) that the Office of Special Education Programs (OSEP) intends to fund in FY 2022.

To meet the requirements of this priority, an applicant must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how—

(1) The project addresses the need for leadership personnel to promote high expectations and provide, or prepare others to provide, effective interventions and services that improve outcomes for children with disabilities, including high-need children with disabilities.[3]

[1] For the purposes of this priority, a partnership is a group comprised of two or three IHEs with existing doctoral programs in which (a) each IHE enrolls and supports scholars as part of the partnership, and (b) the partnership provides joint experiences each year for scholars to learn from faculty and scholars at each participating IHE that promote the acquisition of leadership competencies through coursework, research, internship experiences, work-based experiences, or other opportunities as a requirement of the project.

[2] For the purposes of this priority, ''scholar'' is limited to an individual who (a) is pursuing a doctoral degree related to special education, early intervention, or related services; (b) receives scholarship assistance as authorized under section 662 of IDEA (34 CFR 304.3(g)); and (c) will be able to be employed in a position that serves children with disabilities for at least 51 percent of their time or case load. See *https://pdp.ed.gov/OSEP/Home/Regulation* for more information.

[3] For purposes of this priority, ''high-need children with disabilities'' refers to children or students (ages birth through 21, depending on the State) who are eligible for services under IDEA, and who may be at risk of educational failure or otherwise in need of special assistance or support because they—(1) are living in poverty, (2) are English learners, (3) are academically far below

Continued

To address this requirement, the applicant must present—

(i) Appropriate and applicable data (*e.g.,* national, State) demonstrating the need for the leadership personnel the applicant proposes to prepare;

(ii) Data demonstrating the success of the doctoral program to date in producing leadership personnel in special education, early intervention, or related services, such as: The professional accomplishments of program graduates (*e.g.,* public service, awards, or publications) that demonstrate their leadership in special education, early intervention, or related services; the average amount of time it takes for program graduates to complete the program; the number and the percentage of scholars who enroll and who graduate, including the number of scholars from underrepresented backgrounds; and the percentage of program graduates finding employment related to their preparation, including those serving students with disabilities in underserved communities (*e.g.,* employed in districts with high rates of poverty); and

Note: Data on the success of a doctoral program should be no more than five years old on the start date of the project proposed in the application. When reporting percentages, the denominator (*i.e.,* the total number of scholars or program graduates) must be provided.

(2) Scholar competencies to be acquired in the program relate to knowledge and skills needed by the leadership personnel the applicant proposes to prepare. To address this requirement, the applicant must—

(i) Identify the competencies needed by leadership personnel to provide, or prepare others to provide, effective interventions and services, including through distance education, that improve outcomes for children with disabilities, including high-need children with disabilities; and

(ii) Provide the conceptual framework of the leadership preparation program, including any empirical support, that will promote the acquisition of the identified competencies needed by leadership personnel.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how—

(1) The applicant will recruit and retain scholars participating in the project and ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the narrative must describe—

(i) The selection criteria the applicant will use to identify high-quality applicants for admission in the program;

(ii) The recruitment strategies the applicant will use to attract high-quality applicants, including specific recruitment strategies targeting high-quality applicants from traditionally underrepresented groups, including underrepresented individuals of color and individuals with disabilities; and

(iii) The approach the applicant will use to help all scholars, including scholars from traditionally underrepresented groups, including underrepresented individuals of color and individuals with disabilities, complete the program within the proposed project period; and

(2) The project is designed to promote the acquisition of the competencies needed by leadership personnel to promote high expectations and provide, or prepare others to provide, effective interventions and services that improve outcomes for children with disabilities, including high-need children with disabilities. To address this requirement, the applicant must—

(i) Describe how the components of the project, such as coursework, research requirements, internship experiences, work-based experiences, program evaluation or other opportunities provided to scholars, will enable the scholars to acquire the competencies needed by leadership personnel the applicant proposes to prepare;

(ii) Describe how the components of the project are integrated in order to support the acquisition and enhancement of the identified competencies needed by leadership personnel the applicant proposes to prepare;

(iii) If the proposed project is a partnership, describe how the components of the project are designed to ensure that scholars have opportunities to work with faculty and scholars at each IHE participating in the partnership that will promote the competencies needed by leaders the project proposes to prepare;

(iv) Describe how the components of the project prepare scholars to promote high expectations and to provide, or prepare others to provide, effective evidence-based interventions and services that improve outcomes for children with disabilities, including high-need children with disabilities, in a variety of educational or early childhood and early intervention settings, including in-person and remote settings;

(v) Demonstrate, through a letter of support from a public or private partnering agency, school, or program, that it will provide scholars with a high-quality internship experience in a high-need LEA,[4] a high-poverty school,[5] a school implementing a comprehensive support and improvement plan,[6] a school implementing a targeted support and improvement plan [7] for children with disabilities, an SEA, an early childhood and early intervention program located within the geographical boundaries of a high-need LEA, or an early childhood and early intervention program located within the geographical boundaries of an LEA serving the highest percentage of schools identified for comprehensive support and improvement or implementing targeted support and improvement plans in the State;

(vi) Describe how the project will partner with diverse stakeholders, including individuals with disabilities and their families and individuals from racially and ethnically diverse backgrounds and their families, to inform and support project components;

(vii) Describe how the project will use resources, as appropriate, available through technical assistance centers, which may include centers funded by the Department;

grade level, (4) have left school before receiving a regular high school diploma, (5) are at risk of not graduating with a regular high school diploma on time, (6) are homeless, (7) are in foster care, or (8) have been incarcerated.

[4] For the purposes of this priority, ''high-need LEA'' means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[5] For the purposes of this priority, ''high-poverty school'' means a school in which at least 50 percent of students are from low-income families as determined using one of the measures of poverty specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school is determined on the basis of the most currently available data.

[6] For the purposes of this priority, a ''school implementing a comprehensive support and improvement plan'' is a school identified for comprehensive support and improvement by the State under section 1111(c)(4)(D) of the ESEA that includes (a) not less than the lowest-performing five percent of all schools receiving funds under Title I, Part A of the ESEA; (b) all public high schools in the State failing to graduate one-third or more of their students; and (c) public schools in the State described under section 1111(d)(3)(A)(i)(II) of the ESEA.

[7] For the purposes of this priority, a ''school implementing a targeted support and improvement plan'' means a school identified for targeted support and improvement by a State that has developed and is implementing a school-level targeted support and improvement plan to improve student outcomes based on the indicators in the statewide accountability system as defined in section 1111(d)(2) of the ESEA.

Note: Use the ''Find a Center or Grant'' link at *https://osepideasthatwork.org* for information about OSEP-funded technical assistance centers.

(viii) Describe the approach that will be used to mentor and support scholars, including scholars from traditionally underrepresented groups, with the goal of helping them acquire competencies needed by leadership personnel and advancing their careers in special education, early intervention, or related services;

(ix) Describe how the components of the project will promote the acquisition of scholars' critical leadership skills, including those related to communication, networking, and collaboration; and

(x) Describe how the components of the project will promote the acquisition of scholars' knowledge of strategies and approaches in attracting, preparing, and retaining future educators, including future educators with disabilities and racially and ethnically diverse future educators, who will work with and provide services to children with disabilities.

(c) Demonstrate, in the narrative section of the application under ''Quality of the project evaluation,'' how the applicant will—

(1) Evaluate how well the goals or objectives of the proposed leadership project have been met. The applicant must describe the outcomes to be measured for both the project and the scholars, particularly the acquisition of scholars' competencies; and the evaluation methodologies to be employed, including proposed instruments, data collection methods, and possible analyses;

(2) Collect, analyze, and use data on current scholars and scholars who graduate from the program to improve the proposed program on an ongoing basis; and

(3) Report the evaluation results to OSEP in the applicant's annual and final performance reports.

(d) Demonstrate, in the narrative under ''Required Project Assurances'' or appendices as directed, that the following program requirements are met. The applicant must—

(1) Include, in Appendix A of the application, the letter of support from the public or private partnering agency, school, or program that will provide scholars with a high-quality internship experience;

(2) Include in Appendix B of the application—

(i) Course syllabi for all coursework in the major and any required coursework for a minor;

(ii) Course syllabi for all research methods, evaluation methods, or data analysis courses required by the degree program and elective research methods, evaluation methods, or data analysis courses that have been completed by more than one scholar enrolled in the program in the last five years; and

(iii) For new coursework, proposed syllabi;

(3) Ensure that the proposed number of scholars will be recruited and enrolled into the program within the first 12 months of the project period or demonstrate that scholars enrolled after the first 12 months can graduate from the program by the end of the proposed project period. The described scholar recruitment strategies, the program components and their sequence, and proposed budget must be consistent with this requirement;

(4) Ensure that efforts to recruit a diverse range of scholars, including diversity of race, ethnicity, or national origin, are consistent with applicable law. For instance, grantees may engage in focused outreach and recruitment to increase the diversity of the applicant pool prior to the selection of scholars;

(5) Ensure that the project will meet the requirements in 34 CFR 304.23, particularly those related to (i) informing all scholarship recipients of their service obligation commitment; and (ii) disbursing scholarships. Failure by a grantee to properly meet these requirements is a violation of the grant award that may result in sanctions, including the grantee being liable for returning any misused funds to the Department;

(6) Ensure that prior approval from the OSEP project officer will be obtained before admitting additional scholars beyond the number of scholars proposed in the application and before transferring a scholar to another preparation program funded by OSEP;

(7) Ensure that the project will meet the statutory requirements in section 662(e) through (h) of IDEA;

(8) Ensure that at least 65 percent of the total award over the project period (*i.e.,* up to 5 years) will be used for scholar support;

(9) Ensure that scholar support costs (*e.g.,* tuition, stipends) are scholarship assistance and not financial assistance awarded on the condition that the scholar working for the grantee (*e.g.,* as graduate assistants);

(10) Ensure that the project will be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws;

(11) Ensure that a revised project budget will be submitted to OSEP should the project not be able to recruit and enroll the proposed number of scholars that can graduate from the program by the end of the project period;

(12) Ensure that the budget includes attendance by the project director at a three-day project directors' meeting in Washington, DC, or virtually, during each year of the project. The budget may also provide for the attendance of scholars at the same three-day project directors' meetings in Washington, DC, or virtually;

(13) Ensure, for partnership projects, that the project narrative addresses how policies, procedures, standards, and fiscal management of the partnership will be established;

(14) Ensure that the project director, key personnel, and scholars will actively participate in the cross-project collaboration, advanced trainings, and cross-site learning opportunities (*e.g.,* webinars, briefings) supported by OSEP. This network is intended to promote opportunities for participants to share resources and generate new knowledge by addressing topics of common interest to participants across projects including Department priorities and needs in the field;

(15) Ensure that if the project maintains a website, it will be of high quality, with an easy-to-navigate design that meets government or industry-recognized standards for accessibility;

(16) Ensure that annual progress toward meeting project goals is posted on the project website;

(17) Ensure that scholar accomplishments (*e.g.,* public service, awards, publications) will be reported in annual and final performance reports; and

(18) Ensure that annual data will be submitted on each scholar who receives grant support (OMB Control Number 1820–0686). The primary purposes of the data collection are to track the service obligation fulfillment of scholars who receive funds from OSEP grants and to collect data for program performance measure reporting under 34 CFR 75.110. Applicants are encouraged to visit the Personnel Development Program Data Collection System (DCS) website at *https://pdp.ed.gov/osep* for further information about this data collection requirement. Typically, data collection begins in January of each year, and grantees are notified by email about the data collection period for their grant, although grantees may submit data as needed, year-round. This data collection must be submitted electronically by the grantee and does not supplant the annual grant performance report

required of each grantee for continuation funding (see 34 CFR 75.590). Data collection includes the submission of a signed, completed Pre-Scholarship Agreement and Exit Certification for each scholar funded under an OSEP grant (see paragraph (d)(5) of this priority).

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award an additional 3 points to an application that meets the competitive preference priority. Applicants should indicate in the abstract if the competitive preference priority is addressed.

This priority is:

Competitive Preference Priority—Applications from New Potential Grantees (0 or 3 points)

(a) Under this priority, an applicant must demonstrate that the applicant (*i.e.,* the IHE) has not had an active discretionary grant under the program from which it seeks funds, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, in the last five years before the deadline date for submission of applications under the 84.325D program.

(b) For the purpose of this priority, a grant or contract is active until the end of the grant's or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 304.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Note: In accordance with 34 CFR 75.200(b)(4), the Department may award a cooperative agreement under this program if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

Estimated Available Funds: The Administration has requested $250,000,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2022, of which we intend to use no less than $6,250,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

Estimated Range of Awards: $225,000–$250,000 per year for an individual IHE; $450,000–$500,000 per year for a two-IHE partnership application; and $675,000–$750,000 for a three-IHE partnership application.

Estimated Average Size of Awards: $237,500 per year for an individual IHE; $475,000 per year for a two-IHE group application; and $712,500 per year for a three-IHE group application.

Maximum Award: For a single budget period of 12 months, we will not make an award exceeding: For an individual IHE, $250,000; for a two-IHE group

application, $500,000; and, for a three-IHE group application, $750,000.

Estimated Number of Awards: Up to 25 awards for individual IHEs. However, the total number of awards may change depending on the number of group application awards under the absolute priority.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs and private nonprofit organizations.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* Cost sharing or matching is not required for this competition.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated;

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project; and

(iii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(b) *Quality of project services (45 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(ii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field; and

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(c) *Quality of the project evaluation (25 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(iv) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(d) *Quality of the management plan and adequacy of resources (20 points).*

(1) The Secretary considers the quality of the management plan and the adequacy of resources for the proposed project.

(2) In determining the quality of the management plan and the adequacy of resources, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iv) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(v) The extent to which the budget is adequate to support the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer

effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on the quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include (1) the percentage of preparation programs that incorporate scientifically or evidence-based [8] practices into their curricula; (2) the percentage of scholars completing preparation programs who are knowledgeable and skilled in evidence-based practices for children with disabilities; (3) the percentage of scholars who exit preparation programs prior to completion due to poor academic performance; (4) the percentage of scholars completing preparation programs who are working in the area(s) in which they were prepared upon program completion; (5) the Federal cost per scholar who completed the preparation program; (6) the percentage of scholars who completed the preparation program and are employed in high-need districts; and (7) the percentage of scholars who completed the preparation program and who are rated effective by their employers.

In addition, the Department will gather information on the following outcome measures: (1) The percentage of scholars who completed the preparation program and are employed in the field of special education for at least two years; (2) the number and percentage of scholars proposed by the grantee in their application that were actually enrolled and making satisfactory academic progress in the current academic year; and (3) the number and percentage of enrolled scholars who are on track to complete the training program by the end of the project's original grant period.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit

[8] For the purposes of this performance measure, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2022–01878 Filed 1–28–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before April 1, 2022. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Phillip Harmonick, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or by email at *Phillip.Harmonick@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Phillip Harmonick, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 287–1594, *Phillip.Harmonick@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions 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 through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5118.

(2) *Information Collection Request Titled:* Technology Partnerships Ombudsmen Reporting Requirements;

(3) *Type of Review:* Extension;

(4) *Purpose:* DOE's Alternative Dispute Resolution Office is one of four entities that collects reports required by the Technology Transfer Commercialization Act of 2000 from technology partnership ombudsmen at each DOE national laboratory. These reports are intended to demonstrate the extent to which each national laboratory has incorporated alternative dispute resolution techniques into its respective technology transfer program.

(5) *Annual Estimated Number of Respondents:* 17;

(6) *Annual Estimated Number of Total Responses:* 68;

(7) *Annual Estimated Number of Burden Hours:* 17;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $873.

Statutory Authority: Section 11 of the Technology Transfer Commercialization Act of 2000, Public Law 106–404, codified at 42 U.S.C. 7261c(c)(3)(C).

Signing Authority

This document of the Department of Energy was signed on January 26, 2022, by Poli A. Marmolejos, Director, Office of Hearings and Appeals, 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 January 26, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–01935 Filed 1–28–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces a virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho Cleanup Project (ICP). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 24, 2022; 8:00 a.m.–2:30 p.m.

The opportunities for public comment are at 10:00 a.m. and 1:15 p.m. MT.

These times are subject to change; please contact the ICP Citizens Advisory Board (CAB) Administrator (below) for confirmation of times prior to the meeting.

ADDRESSES: This all-virtual meeting will be open to the public virtually via Zoom only. To attend virtually, please contact Jordan Davies, ICP CAB Administrator, by email *jdavies@northwindgrp.com* or phone (720) 452–7379, no later than 5:00 p.m. MT on Tuesday, February 22, 2022.

FOR FURTHER INFORMATION CONTACT: Jordan Davies, ICP CAB Administrator, by phone (720) 452–7379 or email *jdavies@northwindgrp.com* or visit the Board's internet homepage at *https://energy.gov/em/icpcab.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda (agenda topics may change up to the day of the meeting; please contact Jordan Davies for the most current agenda):

Recent public outreach
Idaho Cleanup Project overview
Integrated Waste Treatment Unit (IWTU) update
Introduction to Idaho Environmental Coalition, LLC (IEC)
Munitions and Explosives of Concern (MEC)
Fiscal Year (FY) 2023 budget; FY 2024 budget priorities
Budget recommendation discussion

Public Participation: The virtual meeting is open to the public via Zoom only. To sign-up for public comment, please contact the ICP CAB Administrator (above) no later than 5:00 p.m. MT on Tuesday, February 22, 2022. In addition to participation in the live public comment sessions identified above, written statements may be filed with the Board either five days before or five days after the meeting by sending them to the ICP CAB Administrator at the aforementioned email address. Written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the

meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Jordan Davies, ICP CAB Administrator, phone (720) 452–7379 or email *jdavies@northwindgrp.com.* Minutes will also be available at the following website: *https://www.energy.gov/em/icpcab/listings/cab-meetings.*

Signed in Washington, DC, on January 25, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–01883 Filed 1–28–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Advisory Committee on Coal

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of re-establishment.

SUMMARY: Pursuant to the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Advisory Committee on Coal (formerly National Coal Council) will be re-established for a two-year period. The Committee will provide advice, information, and recommendations to the Secretary of Energy on a continuing basis regarding general policy matters relating to coal issues.

SUPPLEMENTARY INFORMATION: The charter for the National Coal Council (NCC) lapsed on November 20, 2021 in light of DOE's commitment to fully evaluate the need to expand the scope of advisory work of the committee. In particular, the charter for the re-established National Advisory Committee on Coal (NACC) has been modernized to reflect matters currently faced by the coal industry, workers, and communities; and the priorities outlined in the Energy Policy Act of 2005, Public Law 109–48 (as amended, most recently by Public Law 116–260 on December 27, 2020) and the Bipartisan Infrastructure Law, Public Law 117–58.

Committee members will be chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Committee will also have diverse members who represent interests including the environmental remediation, regional development experts and others as determined by the Secretary. Membership and representation of all interests will be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulation

The re-establishment of the Committee has been deemed essential to the conduct of the Department's business and in the public interest in conjunction with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Tom Sarkus at (412) 386–5981; email: *thomas.sarkus@netl.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on January 26, 2022, by Miles Fernandez, Acting Committee Management Officer, 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 January 26, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–01934 Filed 1–28–22; 8:45 am]

BILLING CODE 6450–01–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: RP22–495–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: Compliance filing: NXUS OFO January 2022 Penalty Disbursement Report to be effective N/A.

Filed Date: 1/25/22.

Accession Number: 20220125–5084.

Comment Date: 5 p.m. ET 2/7/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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.

Dated: January 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01895 Filed 1–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–871–000]

Jicarilla Solar 2 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 Jicarilla Solar 2 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 14, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: January 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01891 Filed 1–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM21–9–000]

Technical Conference on Financial Assurance Measures for Hydroelectric Projects; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Commission staff-led technical conference to discuss whether, and if so, how the Commission should require additional financial assurance mechanisms in the licenses and other authorizations it issues for hydroelectric projects, to ensure that licensees have the capability to carry out license requirements and, particularly, to maintain their projects in safe condition. The technical conference will be held on Tuesday, April 26, 2022, from approximately 12:00 p.m. to 5:00 p.m. Eastern time. The conference will be held virtually.

The technical conference will be open for the public to attend virtually, and there is no fee for attendance. Supplemental notices will be issued prior to the conference with further details regarding the agenda and how to participate as a panelist. Information on this conference will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact *HydroFinancialAssurance@ferc.gov.* For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: January 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01892 Filed 1–28–22; 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: EC19–68–001.

Applicants: Clearway Energy Group LLC, Clearway Energy, Inc.

Description: Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act of Clearway Energy Group LLC, et al.

Filed Date: 1/24/22.

Accession Number: 20220124–5204.

Comment Date: 5 p.m. ET 2/14/22.

Docket Numbers: EC22–12–000.

Applicants: Calhoun Power Company, LLC, Alabama Power Company.

Description: Supplement [Exhibit B—Model Protective Order] for Non-Public Versions Filed in the January 21, 2022 Deficiency Letter Response of Calhoun Power, LLC.

Filed Date: 1/21/22.

Accession Number: 20220121–5222.

Comment Date: 5 p.m. ET 2/11/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL19–58–010.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance EL19–58 & ER19–1486 Request 7-Day Comment Period & Exp. Consideration to be effective N/A.

Filed Date: 1/21/22.

Accession Number: 20220121–5188.

Comment Date: 5 p.m. ET 1/31/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1385–002; ER19–828–004; ER20–539–004; ER20–1338–003; ER20–1853–001; ER20–2505–002; ER20–2506–001.

Applicants: Dakota Range III, LLC, Triple H Wind Project, LLC, Whitehorn Solar LLC, King Plains Wind Project, LLC, East Fork Wind Project, LLC, Solomon Forks Wind Project, LLC, Bluestone Farm Solar, LLC.

Description: Notice of Non-Material Change in Status of Bluestone Farm Solar, LLC, et al.

Filed Date: 1/24/22.

Accession Number: 20220124–5202.

Comment Date: 5 p.m. ET 2/14/22.

Docket Numbers: ER20–1968–001; ER20–2100–003.

Applicants: The Dayton Power and Light Company, PJM Interconnection, L.L.C., Alkali Solar LLC.

Description: Compliance Filing of The Dayton Power and Light Company with respect to the Clinton 345 kV/69 kV Transformer Project.

Filed Date: 1/24/22.

Accession Number: 20220124–5201.

Comment Date: 5 p.m. ET 2/14/22.

Docket Numbers: ER22–876–000.

Applicants: Minco Wind II, LLC.

Description: Tariff Amendment: Minco Wind II, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5062.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–877–000.

Applicants: Minco Wind III, LLC.

Description: Tariff Amendment: Minco Wind III, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5064.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–878–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–01–25 Contracts Management Enhancements to be effective 3/27/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5065.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–879–000.

Applicants: Lone Valley Solar Park I LLC.

Description: § 205(d) Rate Filing: Notice of Change in Category Seller Status in the SW Region to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5075.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–880–000.

Applicants: Lone Valley Solar Park II LLC.

Description: § 205(d) Rate Filing: Notice of Change in Category Seller Status in the SW Region to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5083.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–881–000.

Applicants: Rising Tree Wind Farm LLC.

Description: § 205(d) Rate Filing: Notice of Change in Category Seller Status in the SW Region to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5091.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–882–000.

Applicants: Rising Tree Wind Farm II LLC.

Description: § 205(d) Rate Filing: Notice of Change in Category Seller Status in the SW Region to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5095.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–883–000.

Applicants: Rising Tree Wind Farm III LLC.

Description: § 205(d) Rate Filing: Notice of Change in Category Seller Status in the SW Region to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5097.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–884–000.

Applicants: Tampa Electric Company.

Description: § 205(d) Rate Filing: Section 205 Revised Depreciation Rates to be effective 1/1/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5104.

Comment Date: 5 p.m. ET 2/15/22.

Docket Numbers: ER22–885–000.

Applicants: Evergreen Gen Lead, LLC.

Description: § 205(d) Rate Filing: Amended and Restated Facilities Use Agreement to be effective 1/26/2022.

Filed Date: 1/25/22.

Accession Number: 20220125–5122.

Comment Date: 5 p.m. ET 2/15/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01894 Filed 1–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–874–000]

Graphite Solar 1, 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 Graphite Solar 1, 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 14, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: January 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01890 Filed 1–28–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9490–01–OA]

Notification of a Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the chartered Science Advisory Board. The purpose of the meeting is to (1) conduct a consultation with EPA on research needed to improve the state of the science supporting cumulative impact assessments; (2) discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions with regard to SAB review of planned EPA actions; and (3) conduct a quality review of the draft SAB report, *Review of the Multi-Agency Radiation Survey and Site Investigation Manual, Revision 2.*

DATES: The public meeting of the chartered Science Advisory Board will be held on Wednesday, March 2, 2022, from 1:00 p.m. to 5:00 p.m. (Eastern Time) and Monday, March 7, 2022, from 1:00 p.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone (202) 564–2155, or email at *armitage.thomas@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the chartered Science Advisory Board will hold a public meeting to conduct a consultation with the EPA, discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions, and conduct a quality review of an SAB draft report. The chartered SAB will conduct a consultation with the EPA on research needed to improve the state of the science supporting cumulative impact assessments. The chartered SAB will also discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions with regard to SAB review of planned EPA actions. In addition, the chartered SAB will conduct a quality review of the SAB draft report titled *Review of the Multi-Agency Radiation Survey and Site Investigation Manual, Revision 2.*

Availability of Meeting Materials: All meeting materials, including the agenda will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above by February 23, 2022, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by February 23, 2022, for consideration at the public meeting on March 2, 2022, and March 7, 2022. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Thomas H. Brennan,

Director, Science Advisory Board Staff Office.

[FR Doc. 2022–01941 Filed 1–28–22; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, February 10, 2022.

PLACE: Because of the COVID–19 pandemic, the public may only virtually attend this meeting. If you would like to virtually attend, at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' and then select ''Events.''

From there, access the linked ''Instructions for board meeting visitors.''

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Approval of January 13, 2022 Minutes
- Report on the Young, Beginning, and Small Farmers and Ranchers Forum
- Report on Farm Input Prices
- Conservators and Receivers Proposed Rule

CONTACT PERSON FOR MORE INFORMATION: If you need more information, need assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–02058 Filed 1–27–22; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting. In addition, a full list of the TAC membership is attached to the Public Notice.

DATES: Monday, February 28, 2022, starting at 10:00 a.m., via video conference and will be available to the public via the internet.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ha, Chief, Policy and Rules Division, 202–418–2099; *Michael.Ha@FCC.gov.*

SUPPLEMENTARY INFORMATION: This is the first meeting of the Technological Advisory Council for 2022. This serves as Notice that, consistent with the Federal Advisory Committee Act, Federal Communications Commission (FCC or Commission) Chairwoman Jessica Rosenworcel has appointed members to serve on the Technological Advisory Council (TAC).

A full list of the TAC membership is attached to the Public Notice, DA 22–56, released January 19, 2022, *https://www.fcc.gov/document/fcc-announces-membership-and-first-meeting-tac.* The TAC, comprised of a diverse group of leading technology experts, provides technical expertise to the Commission to identify important areas of innovation and develop informed technology policies supporting the United States' competitiveness in the global economy. The TAC will consider and advise the Commission on topics such as 6G, artificial intelligence, advanced spectrum sharing technologies, and emerging wireless technologies, including new tools to restore internet access during shutdowns and other disruptions.

Meetings are broadcast live with open captioning over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Michael Ha, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Michael.Ha@fcc.gov* or U.S. Postal Service Mail (Michael Ha, Federal Communications Commission, Room 2–A665, 45 L Street NE, Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at (202) 418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Ronald T. Repasi,

Acting Chief, Office of Engineering and Technology.

[FR Doc. 2022–01919 Filed 1–28–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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 the BHC Act (12 U.S.C. 1842(c)).

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 March 2, 2022.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *CBTX, Inc., Beaumont, Texas;* to merge with Allegiance Bancshares, Inc., and thereby indirectly acquire Allegiance Bank, both of Houston, Texas.

Board of Governors of the Federal Reserve System, January 26, 2022.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–01920 Filed 1–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22CC; Docket No. CDC–2022–0010]

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 proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Assessment for the *Be Antibiotics Aware* Consumer and Healthcare Professional (HCP) Campaign. Individuals who have opted to be contacted for surveys will be screened for eligibility and given access to an online survey to assess the *Be Antibiotics Aware* campaign, which is designed to optimize antibiotic prescribing and use.

DATES: CDC must receive written comments on or before April 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0010 by either of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS 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 *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 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

Assessment for the *Be Antibiotics Aware* Consumer and HCP Campaign—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Antibiotic resistance (AR) is one of the most urgent threats to public health in the United States. Antibiotic resistant bacteria have grown more virulent, prevalent, and diverse and can spread between human and animals. Each year there are more than 2.8 million antibiotic-resistant infections in the United States and 35,000 individuals die as a result. At least 30 percent of antibiotics prescribed to outpatients and emergency departments are unnecessary which amounts to 47 million excess prescriptions per year. One of the main side effects of taking antibiotics is alteration of the microbiome which could lead to infections such as *C. difficile,* the inability to treat infections, prolonged illness, or even death. Risk factors for AR include lack of knowledge, sub-therapeutic doses, excessive use, antibiotic residues, and incorrect storage. In addition, there can be impacts on productivity, healthcare costs, and it can serve as a drain on the economy.

The National Action Plan calls for federal agencies to accelerate their response to AR. The goals of the National Action Plan are to coordinate strategic actions in order to ''improve the health and well-being of all Americans across the One Health Spectrum.'' In 2015, the National Action Plan set off with the goal to reduce inappropriate outpatient antibiotic use by 50 percent by 2020. It prioritizes prevention and control to prevent infection and reduce the need for antibiotics. Their approach, One Health, recognizes the inter-relatedness of humans, animals, and the environment. One way to decrease the use of unnecessary antibiotic prescriptions is through antibiotic stewardship.

The goals of the *Be Antibiotics Aware* campaign are to seek optimization of antibiotic prescribing and use in order to improve patient safety and healthcare quality and to combat AR by raising knowledge and awareness, and motivating behavior change among target consumer and HCP audiences. Online panel surveys will be utilized to recruit participants. Surveys will be distributed to consumer target groups both pre- and post-campaign.

Consumer audiences include:

(1) Spanish speaking women, ages 18–64,

(2) Healthy adults who visit urgent care, ages 18–64,

(3) Community dwelling older adults, ages 65+, and

(4) Family caregivers of nursing home (long-term care) residents.

HCP audiences include:

(1) Hospitalists,

(2) Dentists,

(3) Community pharmacists,

(4) Physicians and advanced practice providers in nursing homes, and

(5) Nurses in nursing homes.

This evaluation will assist CDC in determining if the *Be Antibiotics Aware* media campaign was successful in raising knowledge and awareness and motivating behavior change among target consumer and HCP audiences in select markets. The information gathered from this evaluation will also be used to inform refinement and implementation of the campaigns (materials and tactics).

CDC requests OMB approval for an estimated 68 annual burden hours. There is no cost 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)	Total burden (in hours)
Consumers	*Be Antibiotics Aware* Consumer Pilot Assessment Pretest.	50	1	20/60	17
Consumers	*Be Antibiotics Aware* Consumer Pilot Assessment Posttest.	50	1	20/60	17
HCPs	HCP *Be Antibiotics Aware* Campaign Pretest	50	1	20/60	17
HCPs	*Be Antibiotics Aware* Posttest	50	1	20/60	17
Total					68

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–01886 Filed 1–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0015]

Advisory Committee on Immunization Practices (ACIP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public comment. The meeting will be webcast live via the World Wide Web.

DATES: The meeting will be held on February 23–24, 2022, from 10:00 a.m. to 5:00 p.m., EST (times subject to change). Written comments must be received on or before February 24, 2022.

ADDRESSES: You may submit comments identified by Docket No. CDC–2022–0015 by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24–8, Atlanta, Georgia 30329–4027, Attn: ACIP Meeting.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

Written public comments submitted 72 hours prior to the ACIP meeting will be provided to ACIP members before the meeting.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24–8, Atlanta, Georgia 30329–4027; Telephone: (404) 639–8367; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the CDC Director and appear on CDC immunization schedules must be covered by applicable health plans.

Matters To Be Considered: The agenda will include discussions on, hepatitis B vaccines, influenza vaccines, pneumococcal vaccine, cholera vaccine, human papillomavirus vaccine, MMR vaccine, respiratory syncytial virus vaccine, and tickborne encephalitis vaccine. Recommendation votes on cholera vaccine and tickborne encephalitis vaccine are scheduled. No Vaccines for Children (VFC) votes are scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit *https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html.*

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: Written comments must be received on or before February 24, 2022.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the February 23–24, 2022, ACIP meeting must submit a request at *http://www.cdc.gov/vaccines/*

acip/meetings/ no later than 11:59 p.m., EST, February 21, 2022, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by February 22, 2022. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–01820 Filed 1–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22CB; Docket No. CDC–2022–0011]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal Agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Assessment for the *Get Ahead of Sepsis (GAOS)* Consumer Campaign. This assessment collects on-line survey data from target consumer groups and healthcare professionals (HCP) before and after the campaign.

DATES: CDC must receive written comments on or before April 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0011 by either of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS 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 *regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 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

Assessment for the *Get Ahead of Sepsis* (GAOS) Consumer Campaign—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Sepsis is a life threating emergency, and it is the body's overactive and toxic response to an infection. Each year 1.7 million adults in the United States develop sepsis, with 270,000 fatalities. Sepsis is the leading cause of death in hospitals and one out of three hospital fatalities are due to sepsis infection. Sepsis management in U.S. hospitals is the highest when compared to inpatient cost for all other medical conditions. Annual costs are estimated to be over $62 billion.

In media and public health campaigns, antimicrobial resistance and sepsis are rarely presented together which does not make their linkage apparent. It has been concluded that sepsis and antimicrobial stewardship should not be discussed in isolation. Surprisingly, 24 percent of adults in the U.S. have never heard of sepsis, so this presents a unique opportunity for future messaging campaigns.

The goals of the GAOS educational campaign are to prevent and reduce infections that lead to sepsis and to optimize healthcare quality and patient safety by raising awareness, knowledge, and motivating behavior change related to sepsis prevention, early recognition, and appropriate treatment among consumer target audiences. A panel survey will be utilized to recruit participants. Surveys will be distributed to consumer target groups and HCPs both before and after the media campaign and partner outreach.

Consumer audiences include:

(1) Cancer patients and their caregivers (English speaking),

(2) Patients who survived severe COVID–19 or sepsis and their caregivers (English speaking),

(3) Women who care for a young child (children ages 12 and younger; English speaking),

(4) Women who care for a young child (children ages 12 and younger; Spanish speaking),

(5) Women who care for an aging parent 65+ (English speaking),

(6) Women who care for an aging parent 65+ (Spanish speaking),

(7) Men aged 65+ with one or more chronic conditions (English speaking), and

(8) Healthy adults 65+ (English speaking).

HCP audiences include:

(1) Emergency Medical Services personnel (English speaking),

(2) Nurse Practitioners and Physician Assistants who work at urgent care clinics (English speaking),

(3) Emergency Department triage nurses (English speaking),

(4) General medical ward staff (English speaking),

(5) Primary care physicians (English speaking),

(6) Long-term care (LTC) nurses (English speaking), and

(7) LTC medical technicians and sitters (English speaking).

This program evaluation will assist CDC in determining if the media campaign, along with partner outreach, was successful in changing awareness, knowledge, and behaviors of consumers and HCPs in select target markets. The data collected will also be used to inform future refinement and implementation of the campaign (materials and tactics).

CDC requests OMB approval for an estimated 68 annual burden hours. 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)	Total burden (in hours)
Consumer	*Get Ahead of Sepsis* Consumer Pre-test	50	1	20/60	17
Consumer	*Get Ahead of Sepsis* Consumer Post-test	50	1	20/60	17
HCPs	*Get Ahead of Sepsis* HCP Campaign Pre-test.	50	1	20/60	17
HCPs	*Get Ahead of Sepsis* HCP Campaign Post-test.	50	1	20/60	17
Total					68

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–01885 Filed 1–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0978; Docket No. CDC–2022–0012]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Emerging Infections Program (EIP). EIP is a population-based surveillance system designed to collect information via active, laboratory case finding that is used for detecting, identifying, and monitoring emerging pathogens.

DATES: CDC must receive written comments on or before April 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0012 by either of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS 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 *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 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

Emerging Infections Program (EIP) (OMB Control No. 0920–0978, Exp. 4/30/2022)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Emerging Infections Programs (EIPs) are population-based centers of excellence established through a network of state health departments collaborating with academic institutions; local health departments; public health and clinical laboratories; infection control professionals; and healthcare providers. EIPs assist in local, state, and national efforts to prevent, control, and monitor the public health impact of infectious diseases.

Activities of the EIPs fall into the following general categories: (1) Active surveillance; (2) applied public health epidemiologic and laboratory activities; (3) implementation and evaluation of pilot prevention/intervention projects; and (4) flexible response to public health emergencies. Activities of the EIPs are designed to: (1) Address issues that the EIP network is particularly suited to investigate; (2) maintain sufficient flexibility for emergency response and new problems as they arise; (3) develop and evaluate public health interventions to inform public health policy and treatment guidelines; (4) incorporate training as a key function; and (5) prioritize projects that lead directly to the prevention of disease.

A Revision is being submitted to make existing collection instruments clearer and to add several new forms specifically surveying laboratory practices. These forms will allow the EIP to better detect, identify, track changes in laboratory testing methodology, gather information about laboratory utilization in the EIP catchment area to ensure that all cases are being captured, and survey EIP staff to evaluate program quality.

CDC requests OMB approval for an estimated burden of 61,956 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
State Health Department	ABCs Case Report Form	10	809	20/60	2,697
	ABCs Invasive Pneumococcal Disease in Children and Adults Case Report Form.	10	127	10/60	212
	ABCs *H. influenzae* Neonatal Sepsis Expanded Surveillance Form.	10	6	10/60	10
	ABCs Severe GAS Infection Supplemental Form.	10	136	20/60	453
	ABCs Neonatal Infection Expanded Tracking Form.	10	37	20/60	123
	FoodNet Campylobacter	10	970	21/60	3,395
	FoodNet Cyclospora	10	42	10/60	70
	FoodNet Listeria monocytogenes	10	16	20/60	53
	FoodNet Salmonella	10	855	21/60	2,993
	FoodNet Shiga toxin producing E. coli.	10	290	20/60	967
	FoodNet Shigella	10	234	10/60	390
	FoodNet Vibrio	10	46	10/60	77
	FoodNet Yersinia	10	55	10/60	92
	FoodNet Hemolytic Uremic Syndrome Case Report Form.	10	10	1	100
	FoodNet Clinical Laboratory Practices and Testing Volume.	10	70	20/60	233
	FluSurv-NET Influenza Hospitalization Surveillance Network Case Report Form.	10	764	25/60	3,183
	FluSurv-NET Influenza Hospitalization Surveillance Project Vaccination Phone Script Consent Form (English).	10	333	5/60	278
	FluSurv-NET Influenza Hospitalization Surveillance Project Vaccination Phone Script (Spanish).	10	333	5/60	278
	Influenza Hospitalization Surveillance Project Provider Vaccination History Fax Form (Children/Adults).	10	333	5/60	278
	FluSurv-NET Laboratory Survey	10	16	10/60	26

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
	HAIC—MuGSI Case Report Form for Carbapenem-resistant Enterobacteriaceae (CRE) and Acinetobacter baumannii (CRAB).	10	500	28/60	2,333
	HAIC—MuGSI Extended-Spectrum Beta-Lactamase-Producing Enterobacteriaceae (ESBL/iEC).	10	4200	25/60	17,500
	HAIC—Invasive Methicillin-resistant Staphylococcus aureus (MRSA) Infection Case Report Form.	10	340	28/60	1,587
	HAIC—Invasive Methicillin-sensitive Staphylococcus aureus (MSSA) Infection Case Report Form.	10	584	28/60	2,725
	HAIC—CDI Case Report and Treatment Form.	10	1650	38/60	10,450
	HAIC Candidemia Case Report	10	200	30/60	1,134
	HAIC—Annual Survey of Laboratory Testing Practices for C. difficile Infections.	10	16	19/60	51
	HAIC—CDI Annual Surveillance Officers Survey.	10	1	15/60	3
	HAIC—Emerging Infections Program *C. difficile* Surveillance Nursing Home Telephone Survey (LTCF).	10	45	5/60	38
	HAIC—Invasive Staphylococcus aureus Laboratory Survey.	10	11	20/60	37
	HAIC—Invasive Staphylococcus aureus Supplemental Surveillance Officers Survey.	10	1	10/60	17
	HAIC—Laboratory Testing Practices for Candidemia Questionnaire.	10	20	12/60	40
	HAIC MuGSI CA CP–CRE Health interview (new).	100	10	30/60	50
	HAIC MuGSI Supplemental Surveillance Officer Survey (new).	10	1	15/60	3
	HAIC Death Ascertainment Variables.	10	8	1440/60	10,080
Total	.....	.....	.....	.....	61,956

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–01826 Filed 1–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–22AD]

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 Research Data Center Proposal (RDC) Proposal for Access to Confidential Data for the National Center for Health Statistics 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 25, 2021 to obtain comments from the public and affected agencies. CDC received one non-substantive 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

Research Data Center Proposal for Access to Confidential Data for the National Center for Health Statistics—Existing Collection in use without an OMB Control Number—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306(b)(4) of the Public Health Service (PHS) Act (42 U.S.C. 242k(b)(4)), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, receive requests for providing data and statistics to the public. NCHS receives requests for confidential data from the public through the Research Data Center Proposal for Access to Confidential Data. This is a request for approval from OMB to collect information via the Researcher Data Center proposal.

As part of a comprehensive data dissemination program, the Research Data Center (RDC), National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), requires prospective researchers who need access to confidential data to complete a research proposal. Researchers self-select whether they need access to confidential data to answer their research questions. The RDC requires the researcher to complete a research proposal so NCHS understands the research proposed, whether confidential data are available to address the research questions, how the confidential data will be used, and what data outputs the researcher needs to satisfy their project. The completed proposal is sent to NCHS for adjudication on whether the proposed research is possible. NCHS estimates receipt of an average of 110 proposals per year. All information collection is conducted electronically.

OMB approval is requested for three years. The estimated burden per response is three hours and there are no costs to respondents other than their time to complete the proposal. The total estimated annualized burden is 330 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
Researcher	Research Data Center proposal	110	1	3

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–01824 Filed 1–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22CA; Docket No. CDC–2022–0013]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Fire Fighter Fatality Investigation and Prevention Program Survey which will evaluate fire department implementation of the National Institute for Occupational Safety and Health (NIOSH) Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) recommendations. The evaluation will assess whether NIOSH FFFIPP recommendations are utilized by fire departments, identify barriers to implementation of recommendations, and identify areas for potential intervention projects.

DATES: CDC must receive written comments on or before April 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0013 by either of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS 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 *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, H21–8, Atlanta, Georgia 30329; phone: 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

Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) Survey—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The FFFIPP conducts independent investigations of fire fighter (FF) line-of-duty deaths and recommends ways to prevent deaths and injuries. In 2003, an evaluation was conducted to determine the extent to which recommendations from NIOSH investigations of FF fatalities are being implemented by fire departments (FDs). Since then, there have been changes to the FFFIPP recommendations and methods of disseminating FFFIPP reports. For example, there have been changes to: (1) The details and types of recommendations for preventing FF fatalities, and (2) the method to disseminate the FFFIPP reports to FDs (driven in large part by cost). Dissemination methods have evolved from hardcopy mailings to FDs to internet-based, with notifications of new FFFIPP reports by the fire service media and if FDs sign-up at the NIOSH website for notifications of new reports.

Understanding how or if NIOSH recommendations are used by various types of FDs will allow a better understanding of barriers to the use of proven prevention recommendations and help identify approaches to improve the delivery of services to FDs. Additionally, we will gain insight into whether changes to the communication and dissemination have impacted the reach of these recommendations. Knowing if different types of FDs are aware of and willing to access FFFIPP reports and recommendations in non-print formats is critical, as these recommendations cannot have the intended impact of saving FF lives if large numbers of FDs do not know where to find NIOSH reports or have the resources to access them.

This data collection will assess FD implementation of the NIOSH FFFIPP recommendations and identify barriers to implementation of recommendations. Results will provide an understanding of current FD operational procedures, insight into motor vehicle-related activities and related policies and identify whether FFFIPP recommendations are being utilized by FDs. Findings will inform strategies for communication of future recommendations and identify areas for potential intervention projects in order to improve the delivery of services and help ensure an effective and efficient stakeholder experience with the FFFIPP.

The estimate for burden hours is based on a pilot test of the survey instrument by eight FD personnel. In the pilot test, the average time to complete the survey including time for reviewing instructions, gathering needed information, and completing the survey was 10–25 minutes. For the purposes of estimating burden hours, the upper limit of this range is used. There are screening questions at the beginning of the survey so all respondents may not actually participate.

The respondent universe is based on: (1) 4,500 FDs, (2) eight strata (region, department type), and (3) position (FF, chief, company officer). An estimated 13,500 respondents are anticipated to participate in the survey. The annual respondent burden is estimated to be 4,050 hours.

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)
Fire Fighters	Survey	4,500	1	18/60	1,350
Fire Chiefs	Survey	4,500	1	18/60	1,350
Company Officers	Survey	4,500	1	18/60	1,350
Total					4,050

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–01825 Filed 1–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–0078]

Principles of Premarket Pathways for Combination Products; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry and FDA staff entitled ''Principles of Premarket Pathways for Combination Products.'' This guidance presents FDA's current thinking on principles for premarket review of combination products. This guidance includes general, high-level information regarding what combination products are, coordination within FDA and interaction between FDA and sponsors regarding combination product regulation, and how combination products are reviewed by FDA before

they are marketed. The guidance also includes recommendations on how to determine which type of premarket submissions may be appropriate for combination products. FDA is publishing this guidance as part of its efforts to implement the 21st Century Cures Act (Cures Act) and in keeping with the Agency's long-standing commitment to transparency, efficiency, and regulatory consistency to facilitate development of safe and effective combination products. This guidance finalizes the draft guidance of the same title that published on February 6, 2019.

DATES: The announcement of the guidance is published in the **Federal Register** on January 31, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–0078 for ''Principles of Premarket Pathways for Combination Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002, 301–796–8930, *john.weiner@fda.hhs.gov* or *combination@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and FDA staff entitled ''Principles of Premarket Pathways for Combination Products.'' This guidance presents FDA's current thinking on principles for premarket review of combination products. This guidance includes general, high-level information regarding what combination products are, coordination within FDA and interaction between FDA and sponsors regarding combination product regulation, and how combination products are reviewed by FDA before they are marketed. The guidance also includes recommendations on how to determine which type of premarket submissions may be appropriate for combination products, as well as illustrative examples.

Section 3038 of the Cures Act (Pub. L. 114–255), enacted in December 2016, substantially amended section 503(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353(g)), the principal section of the FD&C Act expressly addressing combination products. General themes of these amendments include enhancing clarity, predictability, efficiency, and consistency of premarket regulatory expectations for combination products, including by ensuring that Agency components and staff coordinate appropriately on premarket review of these products, and that Agency thinking is aligned in conducting these reviews. This guidance is part of FDA's efforts to implement section 3038 of the Cures Act.

In the **Federal Register** of February 6, 2019 (84 FR 2236), FDA announced the availability of the draft guidance of the same title. FDA received comments and considered those comments as the guidance was finalized. The final guidance clarifies the guidance including its applicability across combination product types and additional detail regarding processes for interacting with the Agency.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Principles of Premarket Pathways for Combination Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 3 and in the guidance ''How to Prepare a Pre-Request for Designation (Pre-RFD)'' have been approved under OMB control number 0910–0523. The collections of information for applications for FDA approval to market a new drug (certain provisions of 21 CFR part 314) have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under 0910–0338; and the collections of information in section 351(k) of the Public Health Service Act (42 U.S.C. 262) have been approved under 0910–0719. The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 860, subparts A through C, have been approved under OMB control number 0910–0138; the collections of information in the guidance document ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' have been approved under OMB control number 0910–0756; and the collections of information in 21 CFR part 860, subpart D, for De Novo classifications have been approved under OMB control number 0910–0844.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/combination-products/guidance-regulatory-information/combination-products-guidance-documents, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 26, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01925 Filed 1–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0008]

Advisory Committee; Vaccines and Related Biological Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the renewal of the Vaccines and Related Biological Products Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Vaccines and Related Biological Products Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the December 31, 2023, expiration date.

DATES: Authority for the Vaccines and Related Biological Products Advisory Committee will expire on December 31, 2023, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6306, Silver Spring, MD 20993–0002, 240–402–8006, *Prabhakara.Atreya@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Vaccines and Related Biological Products Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective vaccines and related biological products for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases, and, as required, any other products for which FDA has regulatory responsibility. The Committee also considers the quality and relevance of FDA's research program, which provides scientific support for the regulation of these products and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of 15 voting members, including the Chairperson (the Chair). Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of immunology, molecular biology, rDNA, virology, bacteriology, epidemiology or biostatistics, vaccine policy, vaccine safety science, federal immunization activities, vaccine development including translational and clinical evaluation programs, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. Ex Officio voting members, one each from the Department of Health and Human Services, the Centers for Disease Control and Prevention, and the National Institutes of Health may be included. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests. There may also be an alternate industry representative.

The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) Expertise is required that is not available among current voting standing

members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members) or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

If functioning as a medical device panel, a non-voting representative of consumer interests and a non-voting representative of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/vaccines-and-related-biological-products-advisory-committee/charter-vaccines-and-related-biological-products-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: January 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01858 Filed 1–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Childhood Vaccines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Commission on Childhood Vaccines (ACCV) will hold public meetings for the 2022 calendar year (CY). Information about the ACCV, agendas, and materials for these meetings can be found on the ACCV website at *https://www.hrsa.gov/advisory-committees/vaccines/index.html.*

DATES: ACCV meetings will be held on:

- March 3, 2022, 10:00 a.m. Eastern Time (ET)–4:00 p.m. ET;
- June 2, 2022, 10:00 a.m. ET–4:00 p.m. ET;
- September 1, 2022, 10:00 a.m. ET–4:00 p.m. ET; and
- December 1, 2022, 10:00 a.m. ET–4:00 p.m. ET.

ADDRESSES: Meetings may be held in-person or virtually. For updates on how the meeting will be held, visit the ACCV website 30 business days before the meeting date, where instructions for joining meetings either in-person or remotely will be posted. In-person ACCV meetings will be held at 5600 Fishers Lane, Rockville, Maryland 20857. For meeting information updates, go to the ACCV website meeting page at *https://www.hrsa.gov/advisory-committees/vaccines/meetings.html.*

FOR FURTHER INFORMATION CONTACT: Annie Herzog, Division of Injury Compensation Programs, HRSA, 5600 Fishers Lane, 08N186B, Rockville, Maryland 20857; 301–443–6634; or *ACCV@HRSA.gov.*

SUPPLEMENTARY INFORMATION: The ACCV provides advice and recommendations to the Secretary of HHS on policy, program development, and other issues related to the implementation of the National Vaccine Injury Compensation Program and concerning other matters as described under section 2119 of the Public Health Service Act (42 U.S.C. 300aa–19).

Since priorities dictate meeting times, be advised that times and agenda items are subject to change. Refer to the ACCV website listed above for any meeting updates that may occur. For CY 2022 meetings, agenda items may include, but are not limited to: Updates from the Division of Injury Compensation Programs, Department of Justice, Office of Infectious Disease and HIV/AIDS Policy (HHS), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). Refer to the ACCV website listed above for all current and updated information concerning the CY 2022 ACCV meetings, including draft agendas and meeting materials posted 5 calendar days before the meeting(s).

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting(s). Oral comments will be honored in the requested order and may be limited as time allows. Requests to submit a written statement or make oral comments to ACCV should be sent to Annie Herzog using the contact information above at least 5 business days before the meeting date(s).

Individuals who need special assistance or another reasonable accommodation should notify Annie Herzog using the contact information listed above at least 10 business days before the meeting(s) they wish to attend. If in-person meetings occur, they will be held in a federal government building and attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days before the meeting to facilitate their entry into the building. All attendees are required to present government-issued identification before entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–01848 Filed 1–28–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: February 24–25, 2022.

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: Alyssa Todaro Brooks, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000F, Bethesda, MD 20892, (301) 827–9299, *brooksaly@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; IRAP—Infectious Diseases and Reproductive Health.

Date: March 2–3, 2022.

Time: 9:00 a.m. to 8:30 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: Ananya Paria, MPH, MS, CGH, DHSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007H, Bethesda, MD 20892, (301) 827–6513, *pariaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.

Date: March 3–4, 2022.

Time: 7:00 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: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, *lystranne.maynard-smith@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication and Related Neuroscience.

Date: March 3–4, 2022.

Time: 8:30 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: Jyothi Arikkath, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–1042, *arikkathj2@mail.nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: March 3–4, 2022.

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: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: March 3–4, 2022.

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: Aurea D. De Sousa, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, (301) 827–6829, *aurea.desousa@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Behavioral Neuroscience.

Date: March 3–4, 2022.

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: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–875–2215, *qinmei@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Sensory and Motor Neurosciences, Cognition and Perception.

Date: March 3–4, 2022.

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: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Maximizing Investigators' Research Award C Study Section.

Date: March 3–4, 2022.

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: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@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: January 25, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01882 Filed 1–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Study Section Member Conflict Applications Review Panel.

Date: March 16, 2022.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: January 26, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01902 Filed 1–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Solicitation; request for applicants for appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) requests that qualified individuals interested in serving on the FEMA National Advisory Council (NAC) apply for appointment as identified in this notice. Pursuant to the *Post-Katrina Emergency Management Reform Act of 2006* (PKEMRA), the NAC advises the FEMA Administrator on all aspects of emergency management, incorporating input from and ensuring coordination with state, local, tribal, and territorial governments, and the non-governmental and private sectors. The NAC consists of up to 35 members, all of whom are experts and leaders in their respective fields. FEMA seeks to appoint individuals to 11 discipline-specific positions on the NAC and up to 3 members as Administrator Selections. If other positions open during the application and selection period, FEMA may select qualified candidates from the pool of applications.

DATES: FEMA will accept applications until 11:59 p.m. Eastern Daylight Time on March 31, 2022.

ADDRESSES: The preferred method for application package submission is by email. Application packages by U.S. Mail may not be considered. Please submit using the following method:

- *Email: FEMA-NAC@fema.dhs.gov.* Save materials in one file using the naming convention, ''Last Name_First Name_NAC Application'' and attach to the email. The Office of the NAC will send you an email that confirms receipt of your application and will notify you of the final status of your application once FEMA selects new members.

FOR FURTHER INFORMATION CONTACT: Rob Long, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency; *FEMA-NAC@fema.dhs.gov,* 202.646.2700. For more information on the NAC, including membership application instructions, visit *https://www.fema.gov/about/offices/national-advisory-council.*

SUPPLEMENTARY INFORMATION: The NAC is an advisory council established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. appendix. As required by PKEMRA, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters. FEMA is requesting that individuals who are interested in and qualified to serve on the NAC apply for appointment to an open position in one of the following discipline areas: Climate Change (Special Government Employee (SGE)); Cybersecurity (SGE); Disabilities, Access, and Functional Needs (Representative (Rep.)); Elected State Officials (Rep.); Emergency Management (Rep.); Emergency Medical Provider (Rep.); Non-Elected Local Official (Rep.); Non-Elected State Government Officials (Rep.); Public Health (SGE); and two (2) Standards Setting and Accrediting (Rep.). The Administrator may appoint up to three (3) additional candidates to serve as FEMA Administrator Selections (as SGE appointments). Please visit *https://www.fema.gov/my/about/offices/national-advisory-council/meetings/membership-applications* for further information on expertise required to fill these positions. Appointments will be for 3-year terms, or for the remainder of an existing term that is open. Appointments begin in December 2022.

The NAC Charter contains more information and can be found at: *https://www.fema.gov/sites/default/files/documents/fema_nac-amended-charter_102921.pdf.*

If you are interested, qualified, and want FEMA to consider appointing you to fill an open position on the NAC, please submit an application package to the Office of the NAC as listed in the **ADDRESSES** section of this notice. There is no application form; however, each application package MUST include the following information:

- Cover letter, addressed to the Office of the NAC, that includes or indicates: Current position title and employer or organization you represent, home and work addresses, and preferred telephone number and email address; the discipline area position(s) for which you would like consideration; why you are interested in serving on the NAC; and how you heard about the solicitation for NAC members;
- A summary of the most important accomplishments that qualify you to serve on the NAC, in the form of three to five bullets in less than 75 words total;
- Resume or Curriculum Vitae (CV); and
- One Letter of Recommendation addressed to the Office of the NAC.

Your application package must be less than eight total pages to be considered by FEMA. Information contained in your application package should clearly indicate your qualifications to serve on the NAC and fill one of the current open positions. FEMA will not consider incomplete applications. FEMA will review the information contained in application packages and make selections based on: (1) Leadership attributes; (2) emergency management experience; (3) expert knowledge in identified discipline area; and (4) ability to meet NAC member expectations. FEMA will also consider overall NAC composition, including diversity (including, but not limited to geographic, demographic, and experience) and a mix of officials, emergency managers, and emergency response providers from state, local, tribal, and territorial governments, when selecting members.

Appointees may be designated as a Special Government Employee (SGE) as defined in section 202(a) of Title 18, U.S.C., as a Representative member, or as a Regular Government Employee (RGE). SGEs speak in a personal capacity as experts in their field and Representative members speak for the stakeholder group they represent. Candidates selected for appointment as SGEs are required to complete a new entrant Confidential Financial Disclosure Form (Office of Government Ethics (OGE) Form 450) each year. You can find this form at the Office of Government Ethics website (*http://www.oge.gov*). However, please do not submit this form with your application.

The NAC generally meets in person twice per year. FEMA does not pay NAC members for their time, but may reimburse travel expenses such as airfare, hotel lodging, and other transportation costs within Federal Travel Regulations when pre-approved by the Designated Federal Officer. NAC members must serve on one of the NAC subcommittees, which meet regularly by virtual means, usually teleconference call. FEMA estimates the total time commitment for subcommittee participation to be2 hours per week (more for NAC leadership).

DHS does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, political affiliation, disability and genetic information, age, membership in an

employee organization, or other non-merit factor. In order for the Administrator to fully leverage broad-ranging experience and education, the NAC must be diverse with regard to professional and technical expertise. The Administrator will also pursue opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people, and will strive to achieve a widely diverse candidate pool for all NAC recruitment actions. Current DHS and FEMA employees, including FEMA Reservists, are not eligible for membership. Federally registered lobbyists may apply for positions designated as Representative appointments but are not eligible for positions that are designated as SGE appointments.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–01901 Filed 1–28–22; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0009]

Homeland Security Academic Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Request for applicants for appointment to the Homeland Security Academic Advisory Council (HSAAC).

SUMMARY: The Secretary of Homeland Security (Secretary) is requesting senior-level individuals who are interested in serving on the Homeland Security Academic Advisory Council (HSAAC), a discretionary federal advisory committee, to apply for appointment as identified in this notice. Pursuant to the Secretary's authority within the Homeland Security Act, this agency-led committee will be established and will operate under the provisions of the Federal Advisory Committee Act (FACA). The primary purpose of the HSAAC will be to provide advice and recommendations to the Secretary and DHS senior leadership on matters related to homeland security and the academic community.

DATES: Resume and category of interest will be accepted until 11:59 p.m. Eastern Standard Time on February 15, 2022.

ADDRESSES: Due to COVID–19 safety precautions, mailed applications will not be accepted. The sole method of submission is via email to *DHSAcademic@hq.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Acting Executive Director Traci Silas via email at *DHSAcademic@hq.dhs.gov* or via phone at 202–603–1142.

SUPPLEMENTARY INFORMATION: In addition to this notice, DHS may solicit members through correspondence with its existing contact list of faith-based organizations, Congressional partners, and White House staff.

Members of the HSAAC are appointed by the Secretary for specified terms of appointment. The HSAAC membership selection and appointment process is designed to ensure continuity of HSAAC membership, and to afford the Secretary the advisory input of the most capable, diverse, and novel perspectives that the country has to offer. Individuals who are interested in serving on the committee are invited to apply for consideration for appointment. There is no application form; however, a current resume and category of interest is required. The appointment will be for a term of up to 3 years. Individuals selected for the appointment will serve as Representatives or regular government employees (where applicable). All non-federal members must also complete a background investigation, a gratuitous service agreement and a non-disclosure agreement.

HSAAC will meet as often as needed to fulfill its mission, but typically four times each fiscal year to address its objectives and duties. The committee will aim to meet in person at least once each fiscal year with additional meetings held via teleconference. HSAAC members may be reimbursed for travel and per diem incurred in the performance of their duties as members of the committee. All travel for HSAAC business must be approved in advance by the Designated Federal Officer. To the extent practical, members can serve on any subcommittee that is established.

DHS does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a diverse candidate pool for all its recruitment actions.

The HSAAC will consist of up to 30 members who are appointed by and serve at the pleasure of the Secretary. In order for the Secretary to fully leverage broad-ranging experience and education, the HSAAC must be diverse with regard to professional and technical expertise. DHS is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people. Members are appointed as representative members, except that members from federal agencies are appointed as non-voting ex-officio members. To ensure a diverse, inclusive and balanced membership, membership includes the following:

(a) Up to four members representing higher education associations

(b) Up to two members representing higher education law enforcement, public safety, and emergency management associations

(c) Up to two members representing four-year colleges and universities

(d) Up to two members representing two-year community colleges

(e) Up to two members representing Historically Black Colleges and Universities (HBCUs)

(f) Up to two members representing Hispanic serving institutions

(g) Up to two members representing Tribal colleges

(h) Up to two members representing the Asian American, Native American and Pacific Islander serving institutions

(i) Up to four members representing K–12 school systems, to include schools, school systems, and state educational agencies

(j) Up to two members representing Education Employee Associations/Labor Organizations

(k) Up to one member from the DHS Science and Technology Center of Excellence

(l) Up to one member from Cybersecurity and Infrastructure Security Agency (CISA) School Safety Task Force

(m) Up to one member from the DHS Center for Prevention Programs and Partnership

(n) Up to one member from US Secret Service National Threat Assessment Center

(o) Up to one member from Federal Emergency Management Agency (FEMA) higher education initiatives

(p) Up to one member from the DHS Office for Civil Right and Civil Liberties (CRCL)

(q) Up to one member from the Department of Education

(r) Up to one member from the Department of State

(s) Up to one member from the Department of Justice

(t) Up to one member from the Department of Health and Human Services

HSAAC is the sole advisory committee and public forum within DHS providing advice on matters

relating to DHS's engagement with the academic community.

Zarinah T. Silas,

Acting Executive Director and Acting Designated Federal Officer.

[FR Doc. 2022–01839 Filed 1–28–22; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Pascua Yaqui Tribe of Arizona Solar and Renewable Energy Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Pascua Yaqui Tribe of Arizona Solar and Renewable Energy Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into wind and solar leases without further BIA approval.

DATES: BIA issued the approval on December 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pascua Yaqui Tribe of Arizona.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415 (h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for

the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pascua Yaqui Tribe of Arizona.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01876 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada Tribal Lands Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada Tribal Lands Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

DATES: BIA issued the approval on December 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal

funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01875 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Ysleta del Sur Pueblo Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Ysleta del Sur Pueblo Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into agriculture, business, residential, wind and solar, and wind energy evaluation leases without further BIA approval.

DATES: BIA issued the approval on January 21, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Ysleta del Sur Pueblo.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682

(May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Ysleta del Sur Pueblo.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01873 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Eastern Shawnee Tribe of Oklahoma Agricultural Leasing Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Eastern Shawnee Tribe of Oklahoma Agricultural Leasing Act under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into Agricultural leases without further BIA approval.

DATES: BIA issued the approval on December 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Eastern Shawnee Tribe of Oklahoma.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker*

analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Eastern Shawnee Tribe of Oklahoma.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01871 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana Lands Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter business and wind and solar leases without further BIA approval.

DATES: BIA issued the approval on January 24, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH ACT authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land.

Confederated Tribes of the Chehalis Reservation v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01870 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Confederated Tribes of the Grand Ronde Community of Oregon Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Confederated Tribes of the Grand Ronde Community of Oregon Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business, residential, recreational, religious, and educational leases without further BIA approval.

DATES: BIA issued the approval on January 24, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104 *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant

Secretary—Indian Affairs, has approved the Tribal regulations for the Confederated Tribes of the Grand Ronde Community of Oregon.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR a72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Confederated Tribes of the Grand Ronde Community of Oregon.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01869 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Eastern Shawnee Tribe of Oklahoma Business Leasing Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Eastern Shawnee Tribe of Oklahoma Business Leasing Act under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into Business leases without further BIA approval.

DATES: BIA issued the approval on December 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each,

without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Eastern Shawnee Tribe of Oklahoma.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Eastern Shawnee Tribe of Oklahoma.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01872 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Eastern Shawnee Tribe of Oklahoma Residential Leasing Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Eastern Shawnee Tribe of Oklahoma Residential Leasing Act under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into Residential leases without further BIA approval.

DATES: BIA issued the approval on January 24, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Eastern Shawnee Tribe of Oklahoma.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415 (h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Eastern Shawnee Tribe of Oklahoma.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01868 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Tule River Indian Tribe of the Tule River Reservation, California Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Tule River Indian Tribe of the Tule River Reservation, California Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into agriculture, business, residential, wind and solar, and wind energy evaluation leases without further BIA approval.

DATES: BIA issued the approval on December 16, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Tule River Indian Tribe of the Tule River Reservation, California.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including

terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Tule River Indian Tribe of the Tule River Reservation, California.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–01877 Filed 1–28–22; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1296]

Certain Adalimumab, Processes for Manufacturing or Relating to Same, and Products Containing Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 17, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of AbbVie Inc. of Chicago, Illinois; AbbVie Biotechnology Ltd. of Bermuda; and AbbVie Operations Singapore Pte. Ltd. of Singapore. A supplement to the complaint was filed on January 4, 2022. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States and the sale of certain adalimumab, processes for manufacturing or relating to same, and products containing same by reason of the misappropriation of trade secrets and tortious interference with contractual relations, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 25, 2022, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States or in the sale of certain products identified in paragraph (2) by reason of the misappropriation of trade secrets and tortious interference with contractual relations, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''adalimumab (drug substance and drug product), vials, prefilled syringes, autoinjectors or other presentations containing same, and the methods of manufacturing and processes for making the same'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

AbbVie Inc., 1 North Waukegan Rd., North Chicago, IL 60064

AbbVie Biotechnology Ltd, Harbour Fiduciary Services Limited, Thistle House, 4 Burnaby Street, Hamilton HM11, Bermuda

AbbVie Operations Singapore Pte. Ltd., 23 Tuas South Avenue 6, Singapore 637022

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Alvotech hf., Sæmundargata 15–19, 101 Reykjavik, Iceland

Alvotech Germany GmbH, Karl-Heinz-Beckurts-Str. 13, 52428, Jülich, Nordrhein-Westfalen, Germany

Alvotech Swiss AG, Thurgauerstrasse 54 Zürich, 8050 Switzerland

Alvotech USA Inc., 1201 Wilson Blvd., Ste 2130, Arlington, VA, 22209

Ivers-Lee AG, Kirchbergstrasse 160, Burgdorf, Bern, 3400 Switzerland

Teva Pharmaceutical Industries Ltd., 5 Basel Street, Petach Tikva, 49131 Israel

Teva Pharmaceuticals USA Inc., 1090 Horsham Road, North Wales, PA 19454

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a/the respondents to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing

such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 26, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01917 Filed 1–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1294]

Certain High-Performance Gravity-Fed Water Filters and Products Containing the Same; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 27, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Brita LP of Switzerland. Letters supplementing the complaint were filed on January 10, 2022. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-performance gravity-fed water filters and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,167,141 (''the '141 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 25, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–6, 20–21, and 23–24 of the '141 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''gravity-fed water filters that meet a specified combination of high-performance criteria relating to filter rate and lead volume, lead reduction, and lifetime usage, and water container products that are sold with such filters'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Brita LP, Faubourg du Lac 11, 2000 Neuchatel NE, Switzerland

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

EcoLife Technologies, Inc., 17910 Ajax Cir, City of Industry, CA 91748

Qingdao Ecopure Filter Co., Ltd., No. 13, Yishengbai Road, Environmental Protection Industry Zone, Jimo, Qingdao, Shandong Province, 266201, China

Kaz USA, Inc., 1 Helen of Troy Plaza, El Paso, TX 79912–1150

Helen of Troy Limited, 1 Helen of Troy Plaza, El Paso, TX 79912–1150

Zero Technologies, LLC, 7 Neshaminy Interplex, Suite 116, Trevose, PA 19053

Culligan International Co., 9399 W Higgins Rd., Rosemont, IL 60018

Vestergaard Frandsen Inc., 333 W Ostend St., Suite 300, Baltimore, MD 21230

Mavea LLC, 1800 Blakenship Road, Suite 200, West Linn, OR 97068

Brita GmbH, Heinrich-Hertz-Str. 4, 65232 Taunusstein, Germany

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 25, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01850 Filed 1–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–588]

Foreign Trade Zones (FTZs): Effects of FTZ Policies and Practices on U.S. Firms Operating in U.S. FTZs and Under Similar Programs in Canada and Mexico

AGENCY: United States International Trade Commission.

ACTION: Notice of investigation and scheduling of public hearing.

SUMMARY: Following receipt on December 14, 2021 of a request from the U.S. Trade Representative (USTR), under section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission (Commission) instituted Investigation No. 332–588, *Foreign Trade Zones (FTZs): Effects of FTZ Policies and Practices on U.S. Firms Operating in U.S. FTZs and Under Similar Programs in Canada and Mexico,* for the purpose of preparing a report that provides an overview of economic activity in FTZs operating in the United States, Canada, and Mexico since 2016, an overview of current FTZ policies and practices in the United States, Canada, and Mexico, and an analysis of the effects of current FTZ policies and practices in the United States, Canada, and Mexico on the cost-competitiveness of products of firms operating in these FTZs.

DATES:

May 3, 2022: Deadline for filing requests to appear at the public hearing.

May 5, 2022: Deadline for filing prehearing briefs and statements.

May 10, 2022: Deadline for filing electronic copies of oral hearing statements.

May 17, 2022: Public hearing.

May 24, 2022: Deadline for filing posthearing briefs and statements.

November 30, 2022: Deadline for filing all other written submissions.

April 14, 2023: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices are in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Due to the COVID–19 pandemic, the Commission's building is currently closed to the public. Once the building reopens, persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Project Leader Fernando Gracia (202–205–2747 or *Fernando.Gracia@usitc.gov*), co-Deputy Project Leader Ann Marie Carton (202–205–2781 or *Annmarie.Carton@usitc.gov*), or co-Deputy Project Leader Lin Jones (202–205–3246 or *Lin.Jones@usitc.gov*), for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Jennifer Andberg, Office of External Relations (202–205–3404 or *publicaffairs@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background: As requested in the letter received from the USTR on December 14, 2021, the Commission has instituted an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on the economic activity in FTZs, current FTZ policies and practices, and the effects of those policies and practices, in the United States, Canada, and Mexico, on the cost-competitiveness of products of firms operating in these FTZs. For the purposes of this investigation, the term FTZs includes U.S. FTZs and similar programs in Canada and Mexico.

Specifically, the USTR requested that the Commission provide a report that includes the following:

- An overview of economic activity in FTZs operating in the United States, Canada, and Mexico since 2016. The overview should include to the extent practicable:
  - Data on the number of firms operating in FTZs.
  - Data on FTZ employment.
  - A list of the leading sectors/industries participating in FTZs.
  - Data on shipments into FTZs and exports from FTZs.
  - Data on foreign direct investment in FTZs.
- An overview of the current FTZ policies and practices in the United States, Canada, and Mexico. To the extent information is available, describe:
  - FTZ tariff treatment.
  - Other relevant policies and practices that affect the cost-competitiveness of products of U.S. firms operating in FTZs.
- To the extent practicable, an analysis of the effects of current FTZ policies and practices in the United States, Canada, and Mexico on the cost-competitiveness of products of firms operating in these FTZs. The analysis should include:
  - A description of these effects of these policies and practices on the relative production costs of U.S. firms operating in FTZs in the United States, Canada, and Mexico.
  - A description of the effects on U.S. employment.
  - A description of the effects on selected U.S. sectors/industries operating in FTZs in the United States, Canada, and Mexico, including through the use of case studies as appropriate.
  - A review of recent literature on the effects of FTZs on U.S. firm competitiveness and production.

As part of its investigation, the Commission intends to conduct a survey, and will post the survey on its website at a later date.

As requested by the USTR, the Commission will deliver the report on April 14, 2023. Since the USTR has indicated that USTR intends to make this report available to the public in its entirety, the Commission will not include confidential business or national security classified information in its report.

Public Hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on May 17, 2022. More detailed information about the hearing, including how to participate, will be posted on the Commission's website at (*https://usitc.gov/research_and_analysis/what_we_are_working_on.htm*).

Requests to appear at the hearing should be filed no later than 5:15 p.m. on May 3, 2022, in accordance with the requirements in the ''Written Submissions'' section below. All prehearing briefs and statements should be filed not later than 5:15 p.m., May 5, 2022. To facilitate the hearing, including the preparation of an accurate written transcript of the hearing, oral testimony to be presented at the hearing must be submitted to the Commission electronically no later than noon, May 10, 2022. All posthearing briefs and statements should be filed no later than 5:15 p.m., May 24, 2022. Posthearing briefs and statements should address matters raised at the hearing. For a description of the different types of

written briefs and statements, see the ''Definitions'' section below.

In the event that, as of the close of business on May 3, 2022, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should check the Commission website in the preceding paragraph for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than the dates provided for in this notice. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Definitions of Types of Documents That May Be Filed; Requirements: In addition to requests to appear at the hearing, this notice provides for the possible filing of four types of documents: prehearing briefs, oral hearing statements, posthearing briefs, and other written submissions.

(1) *Prehearing briefs* refers to written materials relevant to the investigation and submitted in advance of the hearing, and includes written views on matters that are the subject of the investigation, supporting materials, and any other written materials that you consider will help the Commission in understanding your views. You should file a prehearing brief particularly if you plan to testify at the hearing on behalf of an industry group, company, or other organization, and wish to provide detailed views or information that will support or supplement your testimony.

(2) *Oral hearing statements (testimony)* refers to the actual oral statement that you intend to present at the public hearing. *Do not* include any confidential business information in that statement. If you plan to testify, you must file a copy of your oral statement by the date specified in this notice. This statement will allow Commissioners to understand your position in advance of the hearing and will also assist the court reporter in preparing an accurate transcript of the hearing (*e.g.,* names spelled correctly).

(3) *Posthearing briefs* refers to submissions filed after the hearing by persons who appeared at the hearing. Such briefs: (a) Should be limited to matters that arose during the hearing, (b) should respond to any Commissioner and staff questions addressed to you at the hearing, (c) should clarify, amplify, or correct any statements you made at the hearing, and (d) may, at your option, address or rebut statements made by other participants in the hearing.

(4) *Other written submissions* refer to any other written submissions that interested persons wish to make, regardless of whether they appeared at the hearing, and may include new information or updates of information previously provided.

In accordance with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8) the document must identify on its cover (1) the type of document filed (*i.e.,* prehearing brief, oral statement of (name), posthearing brief, or written submission), (2) the name of the person or organization filing it, and (3) whether it contains confidential business information (CBI). If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters of written documents (other than oral hearing statements) are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

Confidential Business Information: Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the USTR, the Commission will not include any confidential business information in its report. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the report that the Commission sends to the USTR should include a summary with their written submission and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the report'' at the top of the page. The summary may not exceed 500 words and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

Issued: January 26, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01916 Filed 1–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1295]

Certain Integrated Circuit Products and Devices Containing the Same; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 29, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Future Link Systems, LLC of Santa Clara, California. A supplement

was filed on January 18, 2022. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuit products and devices containing the same by reason of infringement of certain claims of U.S. Patent No. 7,685,439 (''the '439 patent'') and U.S. Patent No. 8,099,614 (''the '614 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 25, 2022, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–6 of the '439 patent and 1–9 of the '614 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''processors, mobile phones, tablets, personal computers, and streaming devices containing processors'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Future Link Systems, LLC, 3945 Freedom Circle, Suite 900, Santa Clara, CA 95054

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Advanced Micro Devices, Inc., 2485 Augustine Drive, Santa Clara, CA 95054

Apple, Inc., One Apple Park Way, Cupertino, CA 95014

Broadcom Inc., 1320 Ridder Park Drive, San Jose, CA 95131

Broadcom Corp., 1320 Ridder Park Drive, San Jose, CA 95131

Qualcomm Inc., 5775 Morehouse Drive, San Diego, CA 92121

Qualcomm Technologies Inc., 5775 Morehouse Drive, San Diego, CA 92121

Amlogic Holdings Ltd., Collas Crill Corporate Services Limited, P.O. Box 709, Floor 2, Willow House, Cricket Square, Grand Cayman, KY1–107, Cayman Islands

Amlogic (CA) Co., Inc., 2518 Mission College Blvd., Suite 120, Santa Clara, CA 95054

Realtek Semiconductor Corp., 2 Innovation Road II, Hsinchu Science Park, Hinschu 300, Taiwan

Dell Technologies Inc., One Dell Way, Round Rock, TX 78682

HP INC., 1501 Page Mill Road, Palo Alto, CA 94304

Acer Inc., 8F, 88 Sec. 1, Xintai 5th Rd., Xizhi, New Taipei City 221, Taiwan

Acer America Corp., 1730 N First St., Suite 400, San Jose, CA 95112

Lenovo Group Ltd., New Town Plaza Phase 1, Hong Kong, China

Lenovo (United States) Inc., 1009 Think Place, Morrisville, North Carolina 27560

Motorola Mobility LLC, 222 W Merchandise Mart Plaza, Suite 1800, Chicago, Illinois 60654

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 26, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01887 Filed 1–28–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20–07]

Bradley H. Chesler, M.D.; Decision and Order

On January 8, 2020, a former Assistant Administrator, Diversion Control Division, of the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Bradley H. Chesler, M.D. (hereinafter, Respondent) of Escondido, California. Administrative Law Judge Exhibit (hereinafter, ALJ Ex.) 1, (OSC) at 1. The OSC proposed the revocation of Respondent's DEA Certificate of Registration No. BC1317165 (hereinafter, COR or registration) and the denial of any pending application to modify or renew the registration and any applications for any other DEA registrations pursuant to 21 U.S.C. 824(a)(4) and 823(f), because Respondent's ''registration is inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 824(a)(4) and 823(f)).

On January 28, 2020, counsel for the Respondent requested a hearing, which, following a series of continuances due to the COVID–19 pandemic, was conducted August 25, 2020, through September 1, 2020, at the DEA Hearing Facility in Arlington, Virginia with parties, counsel, and witnesses participating by video teleconference (VTC). On November 5, 2020, Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, the Chief ALJ) issued his Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD). On December 2, 2020, the Respondent filed exceptions to the Recommended Decision (hereinafter, Resp't Exceptions) and on December 15, 2020, the Government filed its Response to Government's Exceptions (hereinafter Gov't Response). I address the Respondent's Exceptions in the Recommendation Section, and throughout the relevant portions of the record and I issue the final order in this case following the RD. The ALJ transmitted the record to me on February 19, 2020. Having reviewed the entire record, I adopt the ALJ's rulings, findings of fact, as modified, conclusions of law and recommended sanction with minor modifications, where noted herein. *A

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

*B After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, I have set forth my recommendation findings of fact and conclusions of law below.

The Allegations

Although, as discussed in greater detail, *infra*, much of the OSC in this case is burdened with a drafting peculiarity, it is clear that the Government's intent is to seek revocation of the Respondent's COR based on the alleged commission of acts that would render the continuation of his registration status as being inconsistent with the public interest. *See* ALJ Ex. 1 at 1. At principal issue in the case is the Respondent's controlled substance prescribing as it relates to ten patients. Four of the patients (collectively, Board Patients) were the subject of findings by the Medical Board of California, and charts of the other six patients (collectively, Six Patients) were reviewed by the Government's medical expert.[1] On consent of the parties, the OSC in this matter was amended in accordance with a post-hearing order granting partial summary disposition. ALJ Ex. 25.

The Evidence

Stipulations

The parties entered into factual stipulations which were accepted prior to the commencement of the hearing. Accordingly, the following factual matters are deemed conclusively established in this case:

1. The Respondent currently possesses DEA COR No. BC1317165, which expires by its own terms on August 31, 2020.[2]

2. The Respondent was issued California Physician and Surgeon License No. A43963 on August 31, 1987.

3. Alprazolam is a Schedule IV Controlled Substance.

4. Carisoprodol is a Schedule IV Controlled Substance.

5. Fentanyl is a Schedule II Controlled Substance.

6. Hydrocodone is a Schedule II Controlled Substance.

7. Hydromorphone is a Schedule II Controlled Substance.

8. Lorazepam is a Schedule IV Controlled Substance.

9. Morphine is a Schedule II Controlled Substance.

10. Oxycodone is a Schedule II Controlled Substance.

11. Temazepam is a Schedule IV Controlled Substance.

The Government's Case

The Diversion Investigator

The Government presented the evidence of Diversion Investigator (hereinafter, DI). DI testified that he has been a DI for two and a half years, the majority of which has been in DEA's San Diego Field Office. Tr. 45–46. DI was the lead investigator in the case that culminated in the present charges. Tr. 46–47. He testified that the investigation into the Respondent began when DEA received information, around March 2019, from the Medical Board of California that an accusation was filed against the Respondent for over-prescribing controlled substances. Tr. 47. DI's testimony was used to authenticate a number of Government Exhibits,[3] consisting of documents

*A I have made minor, nonsubstantive, grammatical changes to the RD and nonsubstantive conforming edits. Where I have made substantive changes, omitted language for brevity or relevance, or where I have added to or modified the Chief ALJ's opinion, I have noted the edits in brackets, and I have included specific descriptions of the modifications in brackets or in footnotes marked with an asterisk and a letter. Within those brackets and footnotes, the use of the personal pronoun ''I'' refers to myself—the Administrator.

*B I have omitted the RD's discussion of the procedural history to avoid repetition with my introduction.

[1] Specific patients are referred to by their initials in this Recommended Decision. The Board Patients include Patients A, B, D, and E, ALJ Ex. 1 ¶ 31, while Patients AA, BB, JD, DD, SM, and ET comprise the Six Patients, *id.* ¶¶ 8–30. The Government does not allege that there is any overlap between these two sets of patients. *Id.* at 11 n.14.

[2] Inasmuch as the parties agree that the Respondent has represented that he has made timely application for a renewal of his COR (ALJ Exs. 39, 40), his registration remains intact pending the conclusion of these proceedings. *See* 5 U.S.C. 558(c); 21 CFR 1301.36(i).

[3] Government Exhibit 1 is a print-out of the Respondent's COR. Gov't Ex. 1. Government Exhibit 2 contains medical records for Patient AA. Gov't Ex. 2. Government Exhibit 3 comprises prescriptions for Patient AA, taken from Government Exhibit 2. Gov't Ex. 3. Government Exhibit 4 contains medical records for Patient BB. Gov't Ex. 4. Government Exhibit 5 comprises prescriptions for Patient BB, taken from Government Exhibit 4. Gov't Ex. 5. Government Exhibit 6 contains medical records for Patient JD. Gov't Ex. 6. Government Exhibit 7 comprises prescriptions for Patient JD, taken from Government Exhibit 6. Gov't Ex. 7. Government Exhibit 8 contains medical records for Patient DD. Gov't Ex. 8. Government Exhibit 9 comprises prescriptions for Patient DD, taken from Government Exhibit 8. Gov't Ex. 9. Government Exhibit 10 contains medical records for Patient SM. Gov't Ex. 10. Government Exhibit 11 comprises prescriptions for Patient SM, taken from Government Exhibit 10. Gov't Ex. 11. Government Exhibit 12 contains medical records for Patient ET. Gov't Ex. 12. Government Exhibit 13 comprises prescriptions for Patient ET, taken from Government Exhibit 12. Gov't Ex. 13. Government Exhibit 14 is a CURES report for Patient AA. Gov't Ex. 14. Government Exhibit 15 is a CURES report

Continued

obtained during the course of the investigation. Among the exhibits introduced through the testimony of DI was an order (Board Order) issued by the Medical Board of California (MBC or the Board) regarding the Respondent's treatment of the four Board Patients. *See* Gov't Ex. 30.

DI presented as an objective regulator and investigator with no discernable motive to fabricate or exaggerate. In addition to being uncontroverted, the testimony of this witness was sufficiently detailed, plausible, and internally consistent to be afforded full credibility in this case.

Dr. Timothy Munzing, M.D.

The Government presented the expert testimony of Dr. Timothy Munzing. Dr. Munzing's *curriculum vitae* (CV) [4] reflects nearly four decades of experience practicing primary care medicine,[5] teaching, and serving as a medical expert reviewer for various state and federal agencies in cases involving controlled substance prescribing.[6] Tr. 72; Gov't Ex. 20. The witness testified that he is (and for thirty-five years has been) a clinical professor at the University of California, Irvine,[7] and among his published scholarly work is an article published in a peer-reviewed publication regarding controlled substance prescribing. Tr. 74–75, 81; Gov't Exs. 20, 35. Dr. Munzing was tendered [8] and accepted as an expert witness in the prescribing of controlled substances in the State of California, including for the management of pain. Tr. 89.

Dr. Munzing agreed to confine his testimony to outlining the standard of care for controlled substance prescribing in California, and to avoid conflating the bedrock standards with any discussion of best practices or his view of optimum treatment options. *Id.* at 93–94, 205–06. According to Dr. Munzing, under the applicable standard in California, the process of controlled substance prescribing must commence with the taking of a patient history. *Id.* at 94. The history must include queries about the length, location, and duration of any pain symptoms, as well as any comorbid medical or mental health conditions, and what (if any) treatment modalities have been deployed to date. *Id.* at 94–95. Any and all controlled and non-controlled medications being taken by the patient must be factored into the history. *Id.* at 96. In Dr. Munzing's view, where controlled substances have been utilized, strong consideration must be given to any indications of historical drug and/or alcohol abuse. *Id.* at 95.

A physical examination that includes the taking of vital signs and a detailed, focused examination of the locus of any discomfort is also a required element that must precede controlled medication prescribing. *Id.* at 96–97. Comorbid physical conditions encountered in a physical exam (*e.g.,* breathing or cardiac issues) may impact prescribing decisions. *Id.* at 97.

The third prescribing prerequisite, according to the witness, is reaching a determination as to whether to order additional objective testing of the patient. *Id.* at 98. Where controlled substances are contemplated by the physician, he/she should query the state prescription monitoring program (PMP), which in California is the Controlled Substance Utilization Review and Evaluation System (CURES). *Id.* at 98–99.

According to Dr. Munzing, the fourth step in the prescribing process is to assess the patient based on the information acquired in the other steps. *Id.* at 100. The physician must process available information to formulate a differential diagnosis of the etiology of the symptoms. *Id.* at 100–02. An important element of the assessment stage is to stratify the patient's risks of opioid or other substance abuse attendant upon utilizing controlled substances. *Id.* at 99, 102–04. The risk stratification piece of the equation remains an ongoing evaluation throughout the treatment of a patient as an aspect of meeting the applicable standard of care. *Id.* at 108–10.

Once the assessment has been conducted, the next step in the process is to individualize the treatment of the patient by setting objectives and procuring informed consent for the designated treatment modalities. *Id.* at 104–05. Informed consent includes ''[n]otifying the patient about the common potential side effects or adverse effects,'' as well the additional risks posed by taking controlled substances as prescribed, to include addiction or substance use disorder, overdose, and death. *Id.* at 131–N; *see also id.* at 205–06.

Dr. Munzing stressed that throughout the process, ''clear[,] true, and . . . appropriate documentation'' is a required element of the standard of care for controlled substance prescribing in California. *Id.* at 105–07. The witness explained the documentation requirements this way:

> Document . . . the history . . . , document the exam, document the vital signs, document . . . how you came up with the risk stratification, document the assessment. If you've done laboratory imaging, document those, and then document an appropriate management plan including either in the [progress] note or separate from the [progress] note an informed consent, especially sharing the most serious potential problems of the management figure.

Id. at 106–07.

Dr. Munzing's view is that treatment risk stratification, coupled with periodic informed consent, is a process that must continue throughout the treatment of the patient. *Id.* at 111. A high-risk patient should be re-stratified and get renewed informed consent annually, whereas a lower risk patient can be addressed less frequently in this regard. *Id.* at 111, 204.

The Government's expert testified that he reviewed patient charts corresponding to the Six Patients [9] from the Respondent's practice and determined that the Respondent's controlled substance prescribing did not meet the applicable standard of care in California.[10] Tr. 120. There were numerous observations that Dr. Munzing offered in support of his position. For example, the progress notes showed no indicia that the Respondent or his staff conducted a physical examination, gauged heart or lung function, performed an abdomen check, [on AA] or took any vital signs from the other patients [over the majority of time period covered by the allegations].*[C] Gov't Exs. 2, 4, 6, 8, 10; Tr. 165–66, 182, 191, 193, 231–32

for Patient BB. Gov't Ex. 15. Government Exhibit 16 is a CURES report for Patient JD. Gov't Ex. 16. Government Exhibit 17 is a CURES report for Patient DD. Gov't Ex. 17. Government Exhibit 18 is a CURES report for Patient SM. Gov't Ex. 18. Government Exhibit 19 is a CURES report for Patient ET. Gov't Ex. 19. Government Exhibit 30 is a decision by the California Board concerning the Respondent. Gov't Ex. 30. Government Exhibit 31 is a report from the Medical Examiner for Patient AA. Gov't Ex. 31. Government Exhibit 37 is a portion of a CURES report concerning the Respondent, from November 2019 to August 2020 and pertaining to Patient SM. Gov't Ex. 37.

[4] Gov't Ex. 20.

[5] Dr. Munzing testified that most pain management treatment in the United States is conducted by primary care physicians. Tr. 88–89.

[6] Dr. Munzing testified that he has been compensated for his professional work as an expert, including by DEA in this case. Tr. 83.

[7] Tr. 80.

[8] Tr. 76.

[9] Patients AA, BB, JD, DD, SM, and ET.

[10] Some of the prescriptions reviewed by the Government's expert included those issued by physician assistants (PAs) who worked within the Respondent's practice. Dr. Munzing's testimony that the Respondent was responsible for the prescriptions issued by these PAs, *see* Tr. 174, is in accord with California Business and Professions Code § 3502.1(d).

*[C] I have amended this sentence based on Respondent's Exceptions, which noted that Dr. Munzing's testimony regarding the lack of physical examination and lack of heart and lung function and abdomen check were limited to Patient AA—the patient who died of an overdose, and which noted that Respondent began taking vital signs from his patients in 2018. Resp't Exceptions at 12.

(Patient AA);[11] *D Tr. 407–08 (Patient BB); Tr. 384–89 (Patient JD); Tr. 477–79 (Patient DD); Tr. 329–31, 349–52 (Patient SM). Further, Dr. Munzing identified instances where the Respondent's patients were maintained on doses of medications that far exceeded the morphine milligram equivalent (MME)[12] recommended by the Centers for Disease Control and Prevention (CDC)[13] guidance without documentation that the patient was afforded an informed consent that explained the risks inherent in such treatment. Tr. 120; Gov't Exs. 2–8, 10–13; Tr. 132–37, 139, 141–43, 145, 148–49, 156–57, 164–65, 169, 179–84, 191–92, 204–05, 224–25, 231–32, 271, 306–07 (Patient AA); Tr. 401–02, 406–07, 409–15, 417–22 (Patient BB); Tr. 384–89, 393–400 (Patient JD); Tr. 477–79, 481–84, 488, 490–95 (Patient DD); Tr. 314–17, 321–23, 328–32, 350–51, 353–56, 360–62, 365, 370–72, 377–82 (Patient SM); *E Tr. 424–29, 431–35, 437–38, 440–47, 450 (Patient ET). Likewise, controlled substances were prescribed in high-risk combinations[14] that significantly elevated the risk of such things as central nervous system (CNS)/respiratory depression, overdose, and death[15] without documented informed consent. Gov't Exs. 2–8, 10–13; Tr. 157–58, 164–65, 167, 191–92, 224–26, 231–32, 276–78, 302–03 (Patient AA); Tr. 409–14, 418–22 (Patient BB); Tr. 387, 393–400 (Patient JD); Tr. 477–81, 483–84, 488, 490–94 (Patient DD); Tr. 321–23, 329–32, 351–56, 360–62, 365, 370–72, 377–82 (Patient SM); Tr. 424–29, 431–35, 437–38, 440–47, 450 (Patient ET). Dr. Munzing also identified instances in the Respondent's patient charts where clear flags of potential diversion were present but not resolved prior to controlled substance prescribing. For example, the witness pointed to places in the medical records where anomalous urine drug screens (UDSs) were recorded, yet seemingly ignored,[16] without documented patient counseling or medication modification. Gov't Exs. 3, 11, 13; Tr. 149–55, 180–82, 196, 198, 206–09, 224–26, 228–31, 271–75, 279–82, 289–302 (Patient AA);[17] Tr. 362–64, 371–72 (Patient SM); Tr. 438–440 (Patient ET). Another category where the Government's expert found prescribing that, in his view, was below the applicable standard was in the area of early refill prescribing. According to Dr. Munzing, the charts he reviewed showed many instances where the Respondent wrote prescriptions refilling controlled substance prescriptions before the prior medications should have been expended.[18] Gov't Exs. 2–5, 8, 10, 11; Tr. 158–59, 169–72, 177–78, 180–81, 184–89, 224–26, 271 (Patient AA); Tr. 409–17 (Patient BB); Tr. 486–89 (Patient DD); Tr. 338–47, 349–50 (Patient SM).*F Dr. Munzing testified that regarding Patients AA,[19] BB,[20] JD,[21] DD,[22] SM,[23] and ET,[24] over 150 controlled substance prescriptions were issued below the applicable standard in California, and were thus not issued in the usual course of professional practice by the Respondent.

One of the Six Patients merits additional discussion. On November 11, 2017, Patient AA died in his apartment

[11] Although the chart maintained by the Respondent's practice on Patient AA reflected a diagnosis of hypereosinophilic syndrome (HES), it is Dr. Munzing's judgment that references in the record that conflate this treatment with cancer are not accurate. Tr. 194. Further, Dr. Munzing testified that the Respondent's progress notes indicate that the pain medication prescribed for this patient by the Respondent were to treat a lower back ailment, not HES. *Id.* at 194–95. As discussed, *supra,* the San Diego Medical Examiner reached a similar conclusion. Gov't Ex. 31 at 5.

*D Dr. Munzing testified that there must be some exam even for an established patient, because ''this patient is at much higher risk. We don't know whether anyone is checking the patient's heart, lung exam, vital signs, despite these levels. Because of that, you're monitoring the patient to try to keep them as safe as possible.'' Tr. 166. When asked if he could point to a source for this statement, Dr. Munzing credibly stated, ''Do I know anywhere where it says you must do exactly this? No, but I do know that one needs to monitor and try to keep the patient as safe as possible. That's part of trying to keep the patient as safe as possible.'' *Id.* at 168. I credit Dr. Munzing's testimony.

[12] Dr. Munzing testified that the MME is a protocol by which medications can be compared by using an equivalent dosage of morphine as a common denominator. Tr. 121–22. In California (and in the present record), the term morphine equivalent dosage (MED) is used interchangeably with MME. *Id.* at 22, 121–23. The record contains MME conversion tables published by the Center for Medicare and Medicaid Services (CMMS) and the Centers for Disease Control and Prevention (CDC). Gov't Exs. 26, 27; Tr. 124–31.

[13] The witness testified that the CDC set 90 MME as a high dose. Tr. 131–L; *see also* Gov't Ex. 23 at 24–25. [However, Dr. Munzing stated that there is no maximum MME because ''some patients need a higher amount, and so there's—there's no written absolute amount, but there's certainly—one certainly needs to look at the risk to the patients, the potential benefits, and attempt to mitigate the risks.'' Tr. 131–B.]

*E For example, Dr. Munzing testified that on October 31, 2016, Respondent prescribed SM, Soma, diazepam, fentanyl patch, oxycodone, and Norco, and the combined MME of the three opioids is 960 and included the trinity cocktail (*see* n.14). Tr. 353–55l; *see also, e.g.,* Tr. 389 (1,234 MME to JD); Tr. 407 (1,920 MME to BB).

[14] Dr. Munzing testified that a particularly high-risk combination includes an opioid, benzodiazepine, and muscle relaxer. Tr. 324–26. This combination, colloquially known as ''the trinity,'' creates increased euphoria, which increases the risk of substance use disorder, and elevates the risk for respiratory depression. *Id.* at 323–26. [Respondent prescribed the trinity to Patient S.M. Tr. 323, *e.g.* GX 11 at 11 and 281. Dr. Munzing further opined that the trinity prescription was a ''red flag'' of abuse or diversion. Tr. 324. He testified that it was not always outside the standard of care to prescribe the trinity in 2016, but ''you are adding to the risk for the patient, both the risk of addiction, the risk of overdose, and the risk of death. And when you are increasing the risk, one needs to really identify it, notify the patient, and divulge to the patient that they are at increased risk.'' Tr. 395–96.]

[15] Tr. 167.

[16] In some instances, in the face of obviously anomalous UDS results, the chart incorrectly reflected that the results were consistent with the patient's treating program. Tr. 198–200, 209, 216; Gov't Ex. 2 at 75 (Patient AA); [*see also e.g.,* Tr. 364 (Gov't Ex. 10 at 517 (UDS negative for opioids SM was prescribed and the note says UDS is ''consistent with the medication program.'')]

[17] According to Dr. Munzing, chart notes that indicate that some of the medication was prescribed to be taken ''PRN'' (as needed) do not resolve the conflict because the dosage level was sufficiently high that declining to take the medication for the three days or so it would take to produce a clean urine catch would result in profound withdrawal symptoms. Tr. 151–53, 281–87. Additionally, if the patient was taking the medication sporadically, the refills would not have been as consistent as the records indicate they were. *Id.* at 151–55, 209, 281–89.

[18] Dr. Munzing acknowledged that on a very occasional basis, to accommodate life contingencies such as weekends and vacations, the standard of care can absorb one or two days of flexibility regarding refill timing. Tr. 158. However, where the early prescribing forms a pattern resulting in a significant potential reservoir of extra medication, as is the case with the Respondent's patients, the controlled substance prescribing falls below the standard of care. *Id.* at 158–63. The standard of care requires that early prescription fills have an annotated ''do not fill before'' note on the prescription. *Id.* at 162–63. Dr. Munzing's view is that irrespective of the date the medication is ultimately dispensed to the patient (a date which can be procured by a query to the CURES system), it is the early prescribing of the drug that renders a prescribing event below the applicable standard of care. *Id.* at 175–76. [''When you repeatedly write it early then it's providing opportunity for the patient to get more than what you're prescribing.'' Tr. 176). Additionally, the] Government's expert testified that the early refill phenomenon was confirmed by consultation with CURES [demonstrating that the individuals had in fact filled the prescriptions early on the dates that they were prescribed]. Tr. 217–21; Gov't Ex. 2 at 14–15.

*F Dr. Munzing testified that, for example, for Patient SM, prescriptions were issued two days early for a year. Tr. 347 (*e.g.* Gov't 11 at 45–46 (prescriptions for Valium, fentanyl patches, oxycodone and Norco)). He stated that for SM there are ''over a dozen times in a row where every time you're approximately two days early or average two days early. Over time, you've ended up getting a lot of extra medication. And either that medication is going and used by the patient in addition to what was felt necessary by the doctor. Or they may end up diverted in some other way.'' Tr. 348. He concluded that although this might happen a few times and not cause concern, ''after three or four times it arose, then it becomes a pattern and becomes a problem that you are falling below the standard of care.'' *Id.* at 348. Another example of early fills occurred to Patient DD, who was prescribed high dosages of opioids between 1–6 days early over sequential months. Tr. 486–491; Gov't Ex. 9 at 189–198.

[19] Tr. 164, 192–93, 195, 203–04, 210–12, 225, 232, 271–73, 275–76, 278–79, 292, 295, 300–01, 303–06.

[20] Tr. 407–08, 415–16, 418, 421–22.

[21] Tr. 388–89, 393–97, 400–01.

[22] Tr. 486, 487–96.

[23] Tr. 332, 352, 365, 369, 371.

[24] Tr. 429–32, 435, 437–38, 442, 446, 450.

due to a drug overdose. Gov't Ex. 31 at 5. The San Diego Chief Deputy Medical Examiner (ME) ruled the cause of death as ''fentanyl, clonazepam, alprazolam, ketamine, hydrocodone, and morphine toxicity,'' and determined that the overdose was accidental. *Id.* Interestingly, although the Medical Examiner's report (ME Report), like much of the Respondent's progress notes, noted that Patient AA's ''medical history was significant for 'terminal blood and bone marrow cancer,' '' the examination revealed that ''[n]o terminal malignancy was identified.'' *Id.* Thus, the Medical Examiner's conclusions in this regard are consistent with Dr. Munzing's view that the HES that Patient AA was afflicted with was not cancerous,*[G] and that the Respondent's pain protocols were directed at the patient's lower back ailments. Tr. 194–95. Dr. Munzing testified that among the drugs listed in the ME Report as toxicity causes of death, the Respondent's practice was prescribing hydrocodone and morphine, and that the charts demonstrated awareness that Patient AA was also taking a benzodiazepine.[25] Tr. 310. [Dr. Munzing testified that these two prescriptions, ''were felt to be contributors to the death, the hydrocodone and the morphine,'' and that it was not just one of the controlled substances that caused death, but a ''multitude, it's toxicity, a multitude of drugs including a couple [Respondent] prescribed.'' *Id.*]

Overall, Dr. Munzing's testimony was authoritative, reasonable, and supported by the admitted evidence of record. The witness presented as a qualified, knowledgeable, and dispassionate expert evaluator of the Respondent's controlled substance prescribing practices. Although, unlike the Respondent and Dr. Polston, Dr. Munzing does not practice pain medicine exclusively and does not hold a Board subspecialty in pain management, his testimony was supportive, objective, and convincing. Dr. Munzing's testimony was unburdened by the keen interest that the Respondent has in the outcome of the case. Indeed, as discussed elsewhere in this Recommended Decision, Dr. Munzing's presentation was sufficiently persuasive that on several occasions the Respondent accepted Dr. Munzing's conclusions and changed his practices *[H] as a result of what he heard at the hearing. As discussed, *infra,* when confronted by the Respondent's agreement with Dr. Munzing's testimony, Dr. Polston actually altered his view to conform with the Respondent's version. This willingness to support the Respondent's opinions based merely on being advised of them undermined the weight that could be attached to Dr. Polston's presentation. Accordingly, in this Recommended Decision, Dr. Munzing's opinions will be afforded controlling weight.

The Respondent's Case

The Respondent

The Respondent presented his own testimony at the hearing. He testified that since his graduation from the University of Minnesota in 1985, and the completion of his residency at the University of California, Irvine, he has been practicing medicine for over thirty-one years, all in Escondido, California. Tr. 895–97. The Respondent's CV [26] reflects that he is Board Certified in Physical Medicine and Rehabilitation and holds subspecialty certifications in Pain Medicine and Neuromuscular and Electrodiagnostic Medicine. Resp't Ex. G; *see also* Tr. 899. The Respondent reckons that he has treated over 20,000 patients in the course of his professional life, and that his current patient base consists of adults between the ages of 18 and 97, each of whom has ''a pain condition that causes some sort of functional deficit.'' Tr. 900–01. According to the Respondent, the patients carry ''diagnoses from orthopedic, to neurology, to stroke, to debilitating rheumatologic diseases.'' *Id.* The Respondent testified that as a pain specialist, he routinely handles patients with high-impact pain conditions,[27] that 100% of his patient base is referrals, and that at the outset of patient establishment he vets the patients for doctor shopping, early refills, indicators of abuse and/or diversion, and on some occasions has referred prospective patients to addictionologists. Tr. 949–50. By his own account, he has never been sued for malpractice, never settled any malpractice litigation, and other than his recent entanglements with the California Board, his state medical license has never been subjected to sanction or limitation. *Id.* at 901.

During his testimony, the Respondent narrated those of the Government's allegations which he accepts, elaborated on some areas where he took issue, and in other areas he assumed a hybrid, more nuanced stance.

Regarding the Government's allegation that ten [28] aberrant UDS results related to Patient AA were not adequately addressed and documented by patient queries and resolution,[29] the Respondent simply confessed error without particular equivocation. Tr. 934. Regarding his custom of simply marking aberrant UDS results with the letters PRN (*i.e.,* that the medication was written to be taken as needed), the Respondent agreed that he ''needed to do more questioning of the patient, more documentation of that questioning, and then more reaction in terms of the patient reactions.'' *Id.; see also id.* at 1071.

*[G] I note that Respondent took Exception to the fact that the Chief ALJ ''seems to insinuate that because no malignancy was found during post mortem examination, that AA's HES was not cancerous.'' Resp't Exceptions at 17 (citing RD at 9). It is not relevant to this case whether AA's malignancy ultimately was cancerous. It would only be relevant if I were to credit Dr. Polston's testimony that there is a different standard of care for cancer patients. I agree with the Chief ALJ and do not credit that testimony. *See infra* n.87.

[25] According to Dr. Munzing, alprazolam, a specific causal medication cited in the ME Report, was one of the three benzodiazepines that the Respondent was prescribing. Tr. 310–11. Dr. Munzing also noted that the ME Report found evidence of oxycodone in Patient AA's system (Gov't Ex. 31 at 11), but apparently did not find the drug in a sufficient quantity that it was included among the toxicity causes of death. Tr. 311–12.

*[H] Respondent argued in his Exceptions that he only changed one practice as a result of the hearing. Resp't Exceptions at 18. However, Respondent does argue that he changed other of his practices *before* the hearing. *Id.* I take note of this discrepancy, and to the extent Respondent finds it important, agree that the record only demonstrates that he only changed one of his practices as a result of the hearing. Respondent continues to adhere to his position that the new practice regarding refills that he instituted as a result of the hearing is not mandated by the standard of care, in spite of his own actions and the Chief ALJ's finding herein that the substantial evidence in the record demonstrates that it is. *Id.* (''Physicians in the San Diego area prescribe in this fashion, and Dr. Polston testified it is not below the standard of care to refill medications two days early. [] Notwithstanding this, Respondent took notice of what Dr. Munzing stated and immediately changed his practice to remedy this issue.'') The Government points out that in spite of similar arguments from Respondent in the MBC case, the MBC found that it was a violation for Respondent to prescribe greater than a 30 day supply, and yet, Respondent did not change this practice until August of 2020. Gov't Response at 30 (citing Gov't Ex. 30 at 134). Although Respondent changed this practice at the hearing, I cannot be sure that he will continue to implement this change in the future given his delay in recognizing the failure and his continued arguments that the practice is not required.

[26] The Respondent's CV was received into the record. Resp't Ex. G; Tr. 898.

[27] The Respondent testified that he employs the Stanford definition of high-impact pain conditions, which he explained as ''somebody that's had pain greater than six months, with significant functional deficits.'' Tr. 951. The Respondent further explained that high-impact pain patients are a subset of chronic pain patients, with the latter comprising 20% of all national pain patients and the former representing 8%, with some ''affect [on] function in some form, [that is,] standing, walking, sitting, driving, sleeping, [and] self-care.'' *Id.* at 952.

[28] This allegation was modified from 12 to 10 instances on the unopposed motion from the Government. ALJ Ex. 25.

[29] ALJ Ex. 1 ¶ 14.d.

Similarly, the Respondent confessed error regarding the manner in which he timed his prescriptions which, as the Government alleged,[30] resulted in the potential for significant reservoirs of excess medicine for Patient AA. Tr. 935–39. While commending himself for his practice of seeing Patient AA every twenty-eight days, the Respondent testified that he has now implemented corrections to his prescribing practice which circumscribes future controlled substance prescriptions to twenty-eight days.[31] Tr. 936–39, 1071.

The Respondent also conceded that to the extent the Government alleges [32] that he failed to adequately document the basis for the extremely high opioid dosage he prescribed to Patient AA, that is true. Tr. 928–29. The Respondent refined his position in this way:

> I see in retrospect the documentation could be better, and I respect [the Government expert's] criticism when he was saying that the documents should show the next doctor what's going on. And I did not feel that I was able to do that.

Id. at 929. While conceding the inadequacy of the documentation, the Respondent did provide some explanatory details about the course of his treatment of Patient AA's pain symptoms with controlled substances. The Respondent explained that upon assuming his pain management care, Patient AA ''had been a lobster fisherman in Boston, had gotten in car wrecks, had a finger rotting, and also had had [sic] the onset of [HES, and h]e was in quite a bit of hurt.'' *Id.* at 930. According to the Respondent, he held his level of pain medication steady, notwithstanding the patient's requests to the contrary, and reemphasized his contention that he was treating this patient during the evolution of professional pain management guidance. *Id.* at 930, 1068.

The Respondent took issue with the Government's contention that chart entries regarding Patient AA ''indicate that [he] never discussed the risks of opioids with'' the patient.[33] Tr. 931. He testified that, in his view, these risks were discussed with Patient AA, and while agreeing that he has beefed up the quality of his documentation based on the Government expert's testimony, his opinion is that the level of the discussion that occurred in the pain contract executed with the patient did meet the required standard, and the Government's allegation to the contrary is not supported. *Id.* at 931–32. As an example, the Respondent pushed back on the opinion of the Government's expert that the failure to mention the risk of death is problematic. *Id.* According to the Respondent, while true that the pain contract did not precisely detail the risk of death, ''it did discuss respiratory depression, which is usually the antecedence of that.'' *Id.* at 932. Still, while not conceding fault in this regard, the Respondent testified that [''it should be better'' and] he has developed an opioid informed consent document that ''plug[s] that hole.'' *Id.* The Respondent ultimately allowed that specific mention of death is ''important to mention to the patient, and . . . is something [that he] want[s] to do better and need[s] to do.'' *Id.*

The Government specifically alleges that the Respondent's concurrent prescribing of opioids and benzodiazepines to Patient AA was a ''red flag of abuse or diversion'' and ''represented a dangerous combination, and constituted an extreme departure from the standard of care for the practice of medicine.'' ALJ Ex. 1 ¶ 14.c. In his testimony, the Respondent sidestepped the principal issues of this allegation somewhat, by countering that, notwithstanding the absence of documentation in this regard, the risks of benzodiazepines were discussed with the patient and his standards for documenting such discussions has been enhanced. Tr. 933. No mention was made about the opinion of the Government's expert regarding whether the prescribing combination fell below the standard, only that the issue of benzodiazepine risks were discussed, if not pristinely documented. *Id.*

The Respondent was unequivocal in his view that, contrary to the Government's allegation,[34] the Government's expert,[35] and the ME Report,[36] his prescribing was not a contributing factor in Patient AA's untimely demise. Tr. 943. The way the Respondent sees it, Patient AA would not have died had he not taken fentanyl and drank alcohol, both of which the Respondent feels were covered in the patient advisals set forth in the pain agreement and executed by the patient. *Id.* at 943–45. When pressed on the issue, the Respondent provided the following elucidation on his own self-exoneration:

> [Patient AA] had been on a combination of medications for a long time with no issues, and I feel badly that this event happened, but I honestly saw no issue where what we were providing was a significant component to someone who had so much additional medication in his system.

Id. at 943. The Respondent testified that he had no sense, indication, or warning that addiction or other substances were issues with Patient AA, based upon the following observations: ''I never had him come early for his appointments, [he] never asked for additional medication, no exhibited behaviors, never was there alcohol.'' *Id.* at 944–45. Absent from his consideration in this regard was the ever-growing reservoir of extra medications the patient was receiving from refills that preceded the anticipated medication exhaustion dates [37] or the aberrant UDS results that were never addressed and documented.[38]

The Respondent detailed his experience with the balance of the Six Patients, much of it following the same pattern, notwithstanding a nuance or two. He agreed that the Government was right with respect to the potential reservoir of medication created by his temporally-truncated prescribing practices.[39] Tr. 960–62. By the Respondent's account, the patients established with his office with painful medical issues and high-dosage MMEs, and he either maintained the patients at the pain medication levels they arrived at, notwithstanding their protestations to the contrary, or in some cases, according to the Respondent, he was able to effect some reductions.

The Respondent testified that such was the case with Patient BB. *Id.* at 946–49, 953–55, 957–58. The Respondent testified that Patient BB resisted his attempts to taper her pain medication,[40] and ultimately left his practice as a

[30] ALJ Ex. 1 ¶ 14.e.

[31] The Respondent later explained that he realized the validity of this aspect of his prescribing while listening to Dr. Munzing's testimony, and started to implement corrective actions during the course of this hearing. Tr. 1311–12.

[32] ALJ Ex. 1 ¶ 14.a.

[33] ALJ Ex. 1 ¶ 14.b.

[34] ALJ Ex. 1 ¶ 14.f.

[35] Tr. 310–12.

[36] Gov't Ex. 31 at 5. The ME Report, in pertinent part, renders the following ultimate conclusion: ''Based on the [report's integral] findings and the history and circumstances of [Patient AA's] death as currently known, the cause of death is best listed as 'fentanyl, clonazepam, alprazolam, ketamine, hydrocodone, and morphine toxicity' and the manner of death as 'accident.''' *Id.*

[37] Tr. 158–59, 169–72, 177–78, 180–81, 184–89, 224–26, 271.

[38] Tr. 149–55, 180–82, 196, 198, 206–09, 224–26, 228–31, 271–75, 279–82, 289–302. [Further, the Government highlighted that Respondent did not test for Ketamine or fentanyl in the UDS on September 19, 2017. Tr. 1098 (citing Gov't Ex. 2 at 535).]

[39] ALJ Ex. 1 ¶ 18.d.

[40] The Respondent testified that the patient resisted his attempts to set her up with a behavioral health evaluation and detoxification process, and that he made numerous (ultimately fruitless) attempts to sort things out with her insurance provider and her (concurrently prescribing) primary care physician. Tr. 969–75.

response to her frustrations.[41] Tr. 947, 969–70. He took issue with the Government's allegation that the MME level he prescribed for this patient was ''extraordinarily high,'' [42] opining that it was an appropriate dose under the circumstances, and conceding only that he ''was not happy with [his] documentation at that point in time and [that he] fixed it.'' Tr. 956; *see also id.* at 1068. In describing what he thought could be improved with his level of documentation, the Respondent allowed, in retrospect, that his documentation was ''basic'' and ''wasn't descriptive enough.'' *Id.* at 956. The Respondent also resisted the Government's allegation that his medical records were deficient in that they contained no discussion of the risks and benefits of opioid therapy.[43] The Respondent adhered to the view that the pain contract that he executed with this patient was sufficient to satisfy the requirement that the risks were discussed and true informed consent was obtained. Tr. 957–58.*I The Respondent likewise declined to budge from his position that although his standard pain contract at the time made no mention of death, language which included the risk of respiratory depression was sufficient, contrary to the Government's allegation and the position of its expert. *Id.* at 958–59.

Consistent with much of his presentation, the Respondent was unwilling to agree with the Government's allegation that prescribing the combination of opioids and benzodiazepines constituted an extreme departure from the standard of care,[44] but [] acknowledged that he was unhappy with Patient BB's chart because it was ''not as acceptable as [he would] like it to be with specific benzodiazepine interactions.'' Tr. 960. The Respondent asserted that his standard paperwork has now been improved to include such interactions. He also testified that he has changed his practice to conform with certain views expressed by the Government's expert witness. *Id.* at 957.

The same testimonial pattern was present regarding Patient JD. The patient came to the Respondent's practice on a referral with a dramatic and acute set of pain etiologies [45] and on a high dosage of medication.[46] In the Respondent's estimation, continuation of this patient's high controlled substance dosing was not ''an extreme departure from the standard of care for the practice of medicine,'' [47] based on what he perceived as the best professional guidance available at the time and the existing medication level the patient was at when referred to his practice. Tr. 982–83, 1068. The Respondent explained that in his view, the available guidance regarding the pain management of patients has been the subject of considerable evolution over the past fourteen years. *Id.* at 901–02; *see also id.* at 930. The Respondent's handling of the issue contained a high level of nuance.

> At that time, we're *just coming off* of the decade of maybe 2000, 2010. Pain is a fifth vital sign. *There's no limits to dosing.* You dose to function, you don't dose to milligram quantity. And that, I believe that's how he got up to that level before he came to me. So at that point, it was *not an unheard-of* dosage.

Id. at 982 (emphasis supplied). Unpacking this analysis is somewhat instructive. Even accepting the Respondent's view that pain medication guidance was evolving, it is difficult to assess the significance that should be placed on his estimation of ''just coming off of the decade of maybe 2000, 2010'' [48] of a divergent approach. To the extent that the decade the Respondent was referring to took place [ ] ended (as he says) in 2000, Patient JD established with the Respondent's practice ten years later, in 2010. There is no indication in the record or any available source that expert guidance inexorably changed by the decade or how long it would take to ''come off'' such a decade, even if there were some logic to this statement. Likewise, the notation that any decade had ''no limits to dosing'' [49] dangerous controlled substances strikes as inconsistent with the limits of human endurance and common sense; and to justify the level at which he was medicating this patient by saying ''it was not an unheard-of dosage'' [50] is far from a persuasive endorsement of his controlled substance prescribing practices. Even taking the Respondent's testimony in the most indulgent light possible, ''not unheard-of'' cannot be a meter that his actions are measured by to gauge whether he complied with the applicable controlled substance prescribing standard in California. When asked for clarification as to whether he agreed with the Government's allegation regarding his dosing, the Respondent supplied the following *non sequitur:*

> I don't. As I stated, I received him at the higher dose. That's why it's coming to me, and I'm supposed to be the one who will contain it, control it, and reduce it over time while trying to increase function.

Tr. 983. The only self-criticism the Respondent offered was that his ''documentation should have been better at that point in time . . . and [that he] wish[es he] had done a better job of documenting.'' *Id.*

Again, the Respondent clung to his view that the Government's allegation that his records fail to indicate sufficient opioid risks discussions with the patient [51] is unfounded because his standard pain contract language at the time (although improved since) was sufficient to do the job. Tr. 984–85. While again confessing error [52] regarding the 28-day visit vs. the 30-day early prescription issuance,[53] with respect to the Government's allegation that prescribing a combination of opioids and benzodiazepines to Patient JD fell below the standard of care,[54] the

[41] The Respondent testified that other than the late Patient AA and Patient BB, the other four of the Six Patients are still under his care. Tr. 962.

[42] ALJ Ex. 1 ¶ 18.a.

[43] ALJ Ex. 1 ¶ 18.b.

*I Respondent seemingly contradicted his previous testimony that he always had the conversations with his patients on cross-examination, when he stated: ''The—the informed consent document is better than it was before. It's actually an informed consent document. But, as you know, informed consent is more than just a document. It's the discussions surrounding it, and I think that's what we're doing much better with.'' Tr. 1070. This statement undermines his previous testimony that true informed consent was obtained, but just not documented. He also appeared to change his position regarding whether his previous pain agreements met the minimum standard of care with respect to informed consent—answering that they did not. *Id.* Regardless, as explained herein, it is unnecessary to conclude whether or to what extent he had these discussions, because the documentary evidence does not demonstrate that he did. Further, even if he had, he waivered on acknowledging whether discussing the risk of death associated with the medications, even if they are taken as prescribed, was essential to the standard of care. So even if he did have conversations about the risks, it is still unclear whether the content of those conversations met the standard of care as Dr. Munzing described it. Finally, I credit Dr. Munzing's testimony that the issue of discussing risk is universal in medicine, because a lay person is not expected to know what the consequence of respiratory depression is. *See also infra* n.*S for further discussion of Respondent's testimony regarding informed consent in the context of his purported acceptance of responsibility.

[44] ALJ Ex. 1 ¶ 18.c.

[45] According to the Respondent, Patient JD was status post a catastrophic vehicular/pedestrian strike, and had avascular necrosis involving one shoulder and both hips, cervical radiculopathy with osteophytes, ankylosing spondylitis affecting the lower spine, Lyme disease, multiple lower extremity fractures, and complex regional pain syndrome (RSD). Tr. 977–81.

[46] Tr. 976, 986–87.

[47] ALJ Ex. 1 ¶ 21.a.

[48] Tr. 982.

[49] Tr. 982.

[50] *Id.*

[51] ALJ Ex. 1 ¶ 21.b.

[52] The Respondent testified, ''That was a very easy one to fix with literally no fuss at all.'' Tr. 986; *see also id.* at 1071.

[53] ALJ Ex. 1 ¶ 21.d.

[54] ALJ Ex. 1 ¶ 21.c.

Respondent offered only that he engaged the patient with an ultimately successful protocol to eventually wean him off the benzodiazepine. Tr. 985–86. In fact, the Respondent testified that during the course of his treatment of Patient JD, he successfully weaned him off multiple benzodiazepines and significantly reduced the overall MME of the medications he was taking. *Id.* at 988–89.

The pattern repeated itself with respect to Patient DD. The Respondent owned up to the early refill allegation.[55] Tr. 998–99, 1071. The Respondent testified that upon intake this patient had complicated orthopedic problems [56] that had been treated by another pain doctor prior to the referral. Tr. 990. Consistent with his description of the other Six Patients, the Respondent testified that Patient DD arrived on a high MME level of controlled medications, which was ultimately reduced through the Respondent's efforts. *Id.* at 991–95, 1001. The Respondent disputed the Government's allegation that the MME levels of the medications he prescribed to Patient DD ''constituted an extreme departure from the standard of care for the practice of medicine,'' [57] claiming that the medication levels were appropriate because (in his view, at that time) level of function (not the dosage) was the touchstone, and also because a review of prior medical records gave the Respondent no indication of the patient requesting early refills.[58] Tr. 995, 1068. The only culpability the Respondent would assume in this regard came from the quality of the templates in his electronic medical record software. *Id.* at 995–96. Once again, as he did in addressing the other Six Patients, the Respondent eschewed any responsibility for documenting deficiencies related to explaining the risks and benefits of opioid use by pointing to the language employed by the standard pain contract he was using at the time. *Id.* at 996.

The analysis presented in the Respondent's testimony about Patient SM did not differ substantially from the manner in which he described his treatment of the other members of the Six Patients group. According to the Respondent, at the time of her referral to his practice, Patient SM presented with pain from complex and serious etiologies,[59] and was being maintained on high-MME levels of pain medication combined with benzodiazepines. Tr. 1003–05. The Respondent testified that he worked to reduce the MME levels [60] and eliminate the benzodiazepines [61] from the treatment equation. Tr. 1005. The Respondent accepted error regarding his early refill practices,[62] but again defended his dosing levels against the Government's allegation that the levels were sufficiently high that they constituted ''an extreme departure from the standard of care for the practice of medicine.'' [63] Tr. 1005–06, 1068. His answer was once again that the only conceivable hiccup in the prescribing [64] was his level of documentation. Tr. 1006. The Respondent explained it this way: ''Looking at it now, with the lens that I have, I can see that the documentation should have been better.'' *Id.* However, the documentation deficits the Respondent owned up to regarding this patient, like the others, did not extend to the Government's allegation regarding the failure to adequately document risk warnings associated with opioid use,[65] as he again explained that, in his opinion, his standard pain contract covered this area sufficiently.[66] Tr. 1006–07. Similarly, the Respondent was resistant to the concept that dual prescribing benzodiazepines with opioids fell below the applicable standard as charged by the Government,[67] but offered instead that he ''should have done a better job of documenting the risks of benzodiazepines.'' Tr. 1007–08.

The Respondent adhered to a like pattern in his testimony regarding Patient ET. This referred patient arrived at his practice with high MME levels and sobering etiologies [68] behind his symptoms. Tr. 1012–13. The Respondent again confessed error on his unintended early refills issue,[69] and allowed that his documentation was inadequate,[70] but testified that, based on the science at the time and the medications she was on when she came into his care, he stood behind his dosing decisions,[71] and that he reduced this patient's MME dosing. Tr. 1015–22. The Respondent referenced a report [72] (PMC Report) prepared regarding Patient ET at the Respondent's request by the University of California San Diego Pain Management Clinic (PMC). Tr. 1015.*[J] The Respondent's testimonial assessment of the PMC Report's conclusion is that:

> [PMC] said there was nothing more to offer from their perspective, in terms of intervention. And they recommended we continue the path, and that we continue to wean the patient.

Id. The PMC Report does indeed recommend continuation of physical therapy and does state that it declines to recommend interventions, but it also recommends the addition of conservative therapies such as osteopathic manipulative medicine (OMM), acupuncture, and alternative medicine modalities, and states: ''Continue medications per [the Respondent], recommend weaning if possible.'' [73] Gov't Ex. 12 at 992.

The Respondent, consistent with the view he espoused in his Corrective Action Plan (CAP),[74] initially maintained his uniform position that the standard pain management contract he was employing at the time satisfied the applicable standard of care regarding his obligation to inform Patient ET about the risks associated with prescribing opioids,[75] but then, in

[55] ALJ Ex. 1 ¶ 23.c (as amended, *see* ALJ Ex. 25 at 2, ¶ 7).

[56] According to the Respondent, Patient DD had a catastrophic lumbar spinal collapse, had endured multiple surgeries and an infected pain pump, as well as an unsuccessful go at a dorsal cord stimulator, and was presenting with surgically-placed titanium spinal rods that had snapped. Tr. 991.

[57] ALJ Ex. 1 ¶ 23.a.

[58] [Omitted.]

[59] According to the Respondent, Patient SM suffered from cervical and lumbar issues, underwent multiple surgeries and other procedures, and ultimately lost the ability to swallow. Tr. 1003–04.

[60] Tr. 1010–12.

[61] The Respondent testified that he ultimately discontinued the trinity combination of medications for this patient. Tr. 1008.

[62] Tr. 1008 (''I see that as a processing error, as we talked about before. It's a very simple thing to correct, and it's already been implemented.''); *see also id.* at 1071.

[63] ALJ Ex. 1 ¶ 26.a.

[64] According to the Respondent, ''The dosing was appropriate, considering her medical condition, the fact that that's what she was on previously. And, again, that's where we start, and then we move down from there.'' Tr. 1006.

[65] ALJ Ex. 1 ¶ 26.b.

[66] Regarding this patient, and throughout the proceedings, the Respondent suggests that his forms had room for some improvement, but does not agree that utilization of this form to satisfy informed consent regarding the risks of opioid therapy falls below the standard. Tr. 1007 (''I am always in a state of continuous quality improvement, and I recognize that as an issue. We have corrected it.'').

[67] ALJ Ex. 1 ¶ 26.c.

[68] The Respondent testified that Patient ET carried diagnoses of hemiplegic migraine, was status post cervical surgery, and had cervical radiculopathy. Tr. 1012–13.

[69] Tr. 1027–28.

[70] Tr. 1024.

[71] Tr. 1022–24, 1068.

[72] Gov't Ex. 12 at 987.

*[J] Respondent admitted that for this patient there was ''a component of opiate use disorder'' and that she was weaned off all of the pain medication and now, years later, being prescribed Suboxone, which ''does have some pain implications and can reduce the craving for patients who need to cut back with their medication.'' Tr. 1020, 1021.

[73] An undated, handwritten note in the margin of the PMC Report reads: ''Noted wean attempt in progress.'' Gov't Ex. 12 at 992; Tr. 1016.

[74] Resp't Ex. M at 5, ¶ 4.

[75] Tr. 1024–26.

something of a departure from his prior assessments, testified that ''[o]n the issue of informed consent, the documents were not adequate.'' Tr. 1026. The Respondent explained his unexpected change in perspective this way:

> I needed to talk more about the actual conversations I had with the patient, the potential risks, including death, which was not mentioned specifically. And I see that as a deficit in my reading, documentation and my discussion with the patient.

Id.; see also id. at 1070. Oddly, this change of heart only apparently applied to his treatment of Patient ET, but the Respondent also testified that he has since introduced a specific opioid consent contract. *Id.* at 1039–40. While the Respondent maintained that his pain agreement was sufficient in all cases (other than Patient ET), he testified that the opioid consent document ''was created specifically to plug some of the gaps that the pain agreement was not fully compliant [sic].'' *Id.* at 1040. The Respondent further testified that he ''felt like [he] needed to expand [his] offerings in terms of informed consent, to be fully compliant.'' *Id.* at 1041. Thus, the Respondent testified (consistent with the position he took in his CAP) [76] that the pain contracts did meet the standard, then in the case of Patient ET that they did not meet the standard, then he testified to his creation of a separate opioid consent document ''to plug some of the gaps'' in the aforementioned pain agreements that were ''not fully compliant.'' [77] *See* Tr. 1040–41. It would not be hyperbolic to suggest that the Respondent's view on this issue in his testimony was all over the place and did not enhance his credibility.

The Respondent resisted the Government's allegation that he failed to appropriately respond to one of Patient ET's UDS results based on his view that the result was not aberrant. *Id.* at 1028. Specifically, the Respondent testified that although Patient ET supplied a urine sample that tested positive for temazepam (a medication she was not prescribed), temazepam, according to the Respondent, is a metabolizer of diazepam (a medication that the Respondent had prescribed). *Id.* The Respondent followed up by offering that he has enhanced his internal office mechanisms for responding to UDS results that appear inconsistent. *Id.* at 1028–29.

The Respondent described numerous improvements he has effected in his electronic medical records software [78] so that an increased level of detail and analysis would be reflected in the future.[79] Tr. 1029–34, 1038–39, 1044, 1047–52; Resp't Ex. M at 4–7. When pressed as to why a multitude of prior notes showed that no one in his office had been taking weight measurements or other vital signs, the Respondent conceded that he ''should have been doing it.'' Tr. 1034. The Respondent explained some improvements he incorporated into his practice, and explained that he now sees one less patient per hour under his new protocol. *Id.* at 1041–43, 1053. He also testified that his staff now takes blood pressure readings from his patients. *Id.* at 1039. The Respondent explained that all his office notes correspond to his new, more detailed protocols, and offered that:

> I'm much happier. The patients are better informed. And I feel as though each of these notes, when I finish, we have all the facts, whoever goes to the primary physician and anybody else in the circle of care. And I just feel like I'm doing a much better job of inter-operability and cooperation with the other physicians.

Id. at 1052. He also added that he ''always want[s] to improve'' [80] and that he has ''never stepped down from a challenge.'' *Id.* at 1062.

The Respondent made clear in his testimony that he only accepted responsibility for the deficiencies he was willing to acknowledge at the hearing. *Id.* In addition to his electronic recordkeeping enhancements, the Respondent testified that he no longer prescribes the trinity combination of medications,[81] and has eliminated carisoprodol from the medicines he prescribes. Tr. 1065. Throughout the hearing, the Respondent adhered to his position that his prescribing did not fall below the applicable standard of care, due to the available knowledge at the time, the high MME levels the patients carried upon his first encounter with them, and his eventual efforts to wean them down.[82] Tr. 1068–69, 1073. By his reckoning, his only potential prescribing missteps in this regard were the unintentional early refills and the quality of his documentation, both of which he argues have since been remedied.

Surprisingly, although, as discussed, *supra,* the findings of the California Board set forth in the Board Order are entitled to preclusive effect in these proceedings,[83] the Respondent devoted no portion of his testimony to any of those issues. Thus, although the Board Order established much of the Government's overall case, the Respondent's testimony offered neither an acceptance of responsibility nor a plan of remedial action concerning those issues.

As is always the case in these proceedings, among the witnesses who testified at this hearing, the Respondent unarguably possesses the greatest interest in the outcome, and hence, the greatest motivation to enhance, modify, or even fabricate his testimony. However, even apart from the risk of implicit bias, the Respondent's testimony presented a robust array of other reasons to eschew accepting his version of events without a significant level of skepticism. The Respondent initially testified, as he argued in his CAP, that his standard pain medication contracts satisfied the applicable standard of care relative to the required appraisal of the risks of opioid use and combined prescribing to his patients. However, when the identical issue arose regarding one of his patients, Patient ET, the Respondent suddenly changed course and claimed that his standard pain medication contracts did not meet the standard, and even cited this as a reason that he changed his practice and

[76] Resp't Ex. M at 5, ¶ 4.

[77] In his CAP, the Respondent highlighted language he added to his standard pain medication agreement, implicitly arguing that the agreement, as modified, satisfies the standard without a separate opioid consent agreement. Resp't Ex. M at 33, ¶ 15; Tr. 1061.

[78] The Respondent testified that his medical records have been electronically maintained since 2005. Tr. 924.

[79] The Respondent testified that these enhancements were not the result of the DEA investigation, but rather, his experience with the Administrative Law Judge handling the state licensing proceedings. Tr. 1052.

[80] The Respondent testified to completing two continuing medical education (CME) courses in 2017 through the UCSD School of Medicine. Tr. at 1057–59. The Respondent personally attended a two-day course on physician prescribing and a two-day course on medical record keeping. *Id.; see* Resp't M at 47, 49.

[81] The Respondent did not admit that his combination prescribing fell below the standard of care, and pointed out that the CDC qualified its admonition against combining opioids and benzodiazepines as to be avoided ''whenever possible.'' Tr. 1072. The Respondent maintains that the relative merits of prescribing the trinity combination in the past ''was not clear.'' *Id.* at 1073.

[82] The Government assisted the witness in highlighting the fact that, notwithstanding progress notes expressing an intention to wean, not all of his opioid medication titrations have pointed downward. Tr. 1074–96. [For just one example, Respondent's notes for SM stated that attempts at reducing the medication were met with decreased function, but there were no substantial attempts to reduce in the actual prescribing as demonstrated in the records from March 2014 until April 2018. Tr. 1080, 1084; Gov't Ex. 10 at 149.] The Respondent offered that he encouraged some of his patients to reduce their medications below the amounts he was prescribing, but unpersuasively conceded that such a recommendation would not be documented in his charting. *Id.* at 1103–04.

[83] *See Robert L. Dougherty, M.D.,* 76 FR 16823, 16834 (2011).

introduced specific opioid consent documents and implemented changes to his standard pain medication contracts. Additionally, although the Respondent consistently defended his high-MME prescribing based on his practice of titrating the medications down, a review of his progress notes reflects that although this was a consistently-documented intention that would presumably be understood by anyone reviewing his charting, the reality was that in many instances weaning was not effected, and later notes, instead of reflecting the failure to taper, just continued to express the purported aspiration. The potential inescapable inference here is that inexorably repeated comments supposedly seeking to taper and failing to document no progress in that regard was intentional window dressing to create a variety of plausible deniability. Another aspect of the Respondent's presentation that was unhelpful to his credibility was the manner in which he addressed his perception that medical literature on the issue of opioid prescribing presented an evolving landscape. As discussed, *supra,* the Respondent depicted his prescribing decision point as ''just coming off of the decade of maybe 2000, 2010[, where p]ain is a fifth vital sign[and t]here's no limits to dosing.'' Tr. 982. To be sure, scientific guidance is rarely fixed in any field, much less medicine, and controlled substance prescribing in the medical field has seen its fair share of fluctuation. But even assuming the accuracy of this broad reality, defending the prescribing of dangerous and powerful controlled substances to his patients based on something as vague as what ''decade'' *K he was ''coming off'' does not reflect a serious analysis of the issue or any level of reflective circumspection. Medical science does not adjust itself based on the inexorable flipping of the calendar decades, and it would be impossible to even define when a prescriber was ''coming off'' one decade and jumping into another, even if this were a realistic concept—which it is not. Is a month after a decade ''coming off''? Is three or five years? Suffice it to say that this sort of glib dismissal of the proper standard to be applied to controlled substance prescribing at the moment he was writing prescription after prescription did not enhance the level of credibility and reliability that can be reasonably assigned to the Respondent's testimony.

That is not to say that the Respondent is entirely incredible or that his professional opinions are to be easily dispatched. The Respondent is an experienced, knowledgeable, well-credentialed physician with a considerable level of subject-matter expertise. There were aspects of his biographical information, the progress of his career, and even some aspects of his testimony regarding treatment that were reliable and believable and should be relied upon and believed, but where the Respondent's testimony conflicts with the testimony of other witnesses and evidence of record (which is substantial), it must be viewed with a heightened level of scrutiny.

Dr. Gregory Polston, M.D.

The Respondent presented the expert testimony of Dr. Gregory Polston.[84] Dr. Polston's CV reflects that he has been Board Certified in Anesthesiology for over twenty years, has held a subspecialty certification in Pain Medicine for nearly twenty years,[85] and completed a pain fellowship at the University of California, San Diego (UCSD). Tr. 1140, 1142–43, 1146–47; Resp't Ex. K. The witness testified that he is currently the Assistant Director of the Center for Pain Management at UCSD, the Sector Chief for the Pain Service at the Veteran's Affairs Medical Center in San Diego, and his current medical practice is exclusively devoted to patients with acute or chronic pain. Tr. 1141–42, 1148; Resp't Ex. K. Dr. Polston was tendered [86] and accepted [87] as an expert witness in controlled substance prescribing in California, including controlled substance prescribing for intractable pain. Tr. 1153–54.

The Respondent's expert testified that he reviewed patient files for the Six Patients from the Respondent's practice and (at least initially) testified that the Respondent's controlled substance prescribing did meet the standard of care in California. *Id.* at 1193, 1224–26, 1229–30, 1284. Specifically, the witness opined that the amount of medication the Respondent prescribed for each of the Six Patients was within the standard the care. *Id.* at 1167, 1192–93, 1199, 1204, 1211, 1217–18, 1224–26. To support his reasoning, Dr. Polston identified patient records that stated the patients had a diagnosis that could be painful and/or the patients' history contained evidence of multiple pain, indicating the patients were candidates for opiate therapy.[88] Gov't Exs. 2–4, 6, 8, 10, 12; Tr. 1155–56, 1166–67 (Patient AA); Tr. 1186–88, 1190–93 (Patient BB); Tr. 1196–99, 1203 (Patient JD); Tr. 1206–10 (Patient DD); Tr. 1214–15 (Patient SM); Tr. 1222–24 (Patient ET). He also explained that, in determining whether to prescribe controlled substances, a physician should consider subjective input from patients and increased functionality, and then pointed to instances in the record where subjective input and functionality were identified. Tr. 1167, 1184 (Patient AA); Tr. 1191–92 (Patient BB); Tr. 1201, 1203–04 (Patient JD); Gov't Ex. 8; Tr. 1210–11 (Patient DD); Gov't Ex. 10; Tr. 1215–17 (Patient SM). The Respondent's expert explained his view of functionality analysis this way:

> Initially physicians would consider the functional report of pain or reduction in pain as being more important. As time evolved we felt that function was more important and it's a balancing act. There are some patients who

*K Respondent took exception to the Chief ALJ's comment that Respondent was vague as to the exact decade. Resp't Exceptions at 23 n.6 (''[Respondent] states clearly the time is 2010. This means the decade of pain occurred approximately between 2000–2010.''). Even if the Respondent was clear in this statement, what remains unclear is the issue that the Chief ALJ highlighted—how long after the decade can Respondent still claim ignorance as to the dangers of prescribing high levels of opioids? The prescribing activity in the OSC allegations falls between 2014 and 2019, so if Respondent is claiming that this ''decade of pain'' ended around 2010, it is not credible that the decade would still be affecting the standard of care four to nine years (almost an another entire decade) after it ended. Respondent notably stretches the decade to around 2012 in his Exceptions using Dr. Polston's declaration, but even taking this expanded timeframe into account, he cannot cover the activity in question. Resp't Exceptions at 24 (citing Ex. L). In fact, the Government points out that the evidence demonstrates that Respondent's prescribing behavior did not begin to change until around the same time that the California Medical Board was preparing to file an action against Respondent, which was ''ultimately filed on October 5, 2017.'' Gov't Response at 33 (citing Gov't Ex. 30 at 4).

[84] Dr. Polston testified that he has been compensated by the Respondent for his professional work as an expert in this case. Tr. 1285.

[85] Dr. Polston testified that there is no pain management board certification available, and that the added pain management qualification awarded by the American Board of Anesthesiologists is the closest that a physician can get to a board certification in pain management. Tr. 1146–47.

[86] Tr. 1148–49.

[87] During *voir dire,* Dr. Polston stated that his expert opinion was influenced by statements the Respondent made during preparation sessions with the Respondent's counsel. Tr. 1151–52. The tribunal recognized Dr. Polston as an expert but directed the witness to inform the tribunal at any point during his testimony if his opinion was influenced by an explanation or elaboration that the Respondent gave during a preparation session. *Id.* at 1153–54.

[88] Dr. Polston explained that Patient AA's primary diagnosis was HES, which he classifies as a form of cancer. Tr. 1155–56. In Dr. Polston's opinion, it was important that Patient AA had a cancer diagnosis because ''the guidelines are much different for chronic benign pain versus cancer pain.'' *Id.* at 1156. Remarkably, the witness explained that, in his view, a cancer diagnosis ''really strips away nearly all guidelines'' for prescribing controlled substances. *Id.* at 1157. It was clear from Dr. Polston's testimony that his perception that the Respondent was treating this patient for cancer essentially dissolved other constraints that might otherwise be placed on his pain medication prescribing.

report less function as you reduce medicines because they say they have more pain, they reduce their activity, and have more anxiety and more difficulty. There are some patients that go the other way and find more function as the medicines go down and that is something that, you know, that you are always trying to use both of those markers as a way to judge whether the therapy is appropriate.

Tr. 1202–03.

Dr. Polston also testified that the Respondent reduced the MME levels for Patients JD,[89] DD,[90] SM,[91] and ET,[92] and that the Respondent met the standard of care by virtue of the reductions he made in these patients' MME levels. Tr. 1200, 1213, 1221, 1228–29. However, according to Dr. Polston, reducing MMEs is not always necessary to meet the standard of care,[93] and the Respondent met the standard of care when he did not reduce Patient AA's opioid dosage. Tr. 1284. After being directed to the autopsy report for Patient AA, Dr. Polston opined that the Respondent's prescriptions were not a contributing factor to Patient AA's overdose death. *Id.* at 1182; *see also* Gov't Ex. 31. According to Dr. Polston, ''[t]his patient, if he would not have taken the fentanyl, added in the alcohol and the ketamine, . . . would be still alive.'' Tr. 1182. [Dr. Polston later clarified his testimony on cross-examination that the fentanyl, alcohol and ketamine ''are contributing to his death,'' but that ''to say that those are precise cause of death, no, I cannot go that far.'' Tr. 1280.]

Dr. Polston also testified that after reviewing all patient records presented to him, it was his opinion that the Respondent met the standard of care with respect to informed consent. *Id.* at 1229–30. However, when asked if it would change his opinion if he learned that the Respondent believed his care of the patients fell below the standard of care in regards to informed consent, Dr. Polston answered affirmatively; that is, learning that the Respondent's view that he failed to meet the standard would change Dr. Polston's mind on the issue. *Id.* at 1231–32. The witness explained his change in opinion this way: ''[I]f he's reviewing his records and says that he did not meet the standard of care then I would agree with that.'' *Id.* at 1232.

The witness initially testified that there was no evidence of early refills in this case, and that the Respondent's practice of writing prescriptions of thirty day dosages every twenty-eight days was within the standard of care in California. *Id.* at 1232–33, 1236–38.*[L] However, when Dr. Polston was asked if it would change his opinion if he learned that the Respondent believed his prescribing every twenty-eight days fell below the standard of care, he answered affirmatively. *Id.* at 1239. The witness altered his expert opinion based on the Respondent's alleged testimony, explaining that ''he alone will know precisely what was going on at that appointment when he's writing it, and if he . . . feels that he was below the standard of care then I would say that, that would be below the standard of care.'' *Id.*

Dr. Polston also testified regarding medical records presented by the Government that bore indicia of anomalous UDS results regarding Patient AA. Tr. 1243–44, 1250–53. Dr. Polston identified Patient AA's UDSs as inconsistent (not aberrant),*[M] testifying that there was no indication in the records that he reviewed of aberrant behavior by Patient AA, and opining that the purported inconsistency could have resulted from the patient being a rapid metabolizer.[94] Tr. 1244–45, 1281–82. In his opinion, the Respondent's handling of the inconsistent UDS results in the charts was rendered within the standard of care by the act of the Respondent writing the letters PRN on some of the screens and by seeing the patient on a regular basis. *Id.* at 1263–65. However, when Dr. Polston was informed that the Respondent testified that even he believed that he fell below the standard of care when he dealt with the inconsistent UDSs, the witness again deserted the opinion he had previously offered with conviction and (with equal conviction) testified that it had become his (new) opinion that the Respondent did in fact not meet the standard of care in this category. *Id.* at 1265–66.

Overall, Dr. Polston's unabashed willingness to forsake his purported expert opinions at the first sign that the Respondent offered testimony that conflicted with those opinions obviously created internal inconsistencies that undermined the weight that can be attached to his presentation. While there is no question that the witness's credentials were impressive, Dr. Polston presented an overall impression that he was present to support the Respondent's position, even where the Respondent's position evolved. It was unhelpful that Dr. Polston initially testified that the Respondent's controlled substance prescribing did meet the standard of care in California, but when confronted by the Respondent's agreement with Dr. Munzing's testimony regarding informed consent, early refills, and anomalous UDSs, Dr. Polston unhesitatingly changed his view to conform with the Respondent's version. It was almost as if to say that his expert opinion was whatever the Respondent may have said before, now, or later, even if the Respondent's position toggled back and forth. To offer ''whatever he said'' as an expert opinion is not a feature that enhances the reliability that can be attached to the views expressed by a purported expert. Suffice it to say that Dr. Polston's amenability to instantly change course and support the Respondent's fluid opinions, based merely on being advised of them, undermines the weight that can be attached to his testimony. Additionally, at one point in his testimony, the Respondent's expert testified that ''the guidelines are much different for chronic benign pain versus cancer pain.'' Tr. 1156. According to Dr. Polston, a cancer diagnosis ''really strips away nearly all guidelines'' for prescribing controlled substances.[95] Tr.

[89] Tr. 1200.

[90] Tr. 1211–13; *see* Resp't Exs. D at 1051–55, L at 8–9, ¶ 27.

[91] Tr. 1214, 1219–20; *see* Resp't Exs. E at 1494, L at 10, ¶ 29.

[92] Tr. 1226–28; *see* Resp't Ex. L at 10–11, ¶ 32.

[93] Tr. 1273–76, 1284.

*[L] I also found Dr. Polston's testimony about whether early fills are outside the standard of care to be evasive. ''I don't think that's good care. I'm not sure, you know, the—your argument over time is concerning to me, but I can say that I know that that occurs. The standard of care is what reasonable physicians in the community would approve, and I have seen that in the community at multiple different levels.'' When the Chief ALJ pressed him to clarify, he said, ''I would say best practices is not to do that, but I see reasonable physicians in the community doing that.'' Tr. 1237–38.

*[M] I did not find Dr. Polston's argument about the difference between aberrant and inconsistent urine screens to be credible. He seemed to want to justify his stance that these drug screens did not rise to what he deemed ''aberrant'' no matter what the circumstance. Respondent's counsel asked if ''there [was] any indication in any of the drug results or any of the records that [he] reviewed that this patient was having aberrant behavior and not just inconsistent?'' Dr. Polston answered, ''Yes. These appeared to me inconsistent and that those results were the same. I am concerned that there was multiple times. But in some ways, multiple times also means that there was something unusual about that.'' Tr. 1282. He first references a concern that could make these UDS results ''aberrant,'' but then decides that that very concern is, in actuality, a reason not to be concerned. This logic is circular and evasive. Regardless of which term is used, the heart of the matter here is whether or not there needed to be documentation of the resolution of the aberrant or inconsistent UDS. Dr. Polston seemingly attempted to evade and confuse this issue.

[94] Neither the Patient AA charts nor the balance of this record (including the Respondent's testimony) bore any indication that this patient was a rapid metabolizer, or that the Respondent believed he might be a rapid metabolizer.

[95] Even setting aside the relative merits of this view, [it is unclear from the Medical examiner's report whether AA, in fact, had cancer, and given that he died of an overdose, it certainly is not a

1157. The unique concept that a particular diagnosis would obliterate any controlled substance prescribing standard was offered here without any supporting sources and challenges common sense. Under a mild extrapolation of this logic, a near-lethal, or even lethal dose of controlled pain medication would not be excluded from Dr. Polston's view of acceptable prescribing.

That is not to say that Dr. Polston is entirely unreliable. Like the Respondent, this is an extremely experienced and well-credentialed professional. There were certainly aspects of his biographical information, the progress of his career, and even some testimony regarding treatment and prescribing that presented as sensible and consistent with the record, and those opinions and information should be relied upon. However, it is where Dr. Polston's testimony conflicts with the testimony of other expert testimony and evidence of record that reliance becomes problematic. Specifically, where Dr. Polston's expert testimony conflicts with the testimony of Dr. Munzing, it is Dr. Munzing's view that must control.

Other facts necessary for a disposition of this case are set forth in the balance of this Recommended Decision.

The Analysis

Public Interest Determination: The Standard

Under 21 U.S.C. 824(a)(4), the Agency may revoke the COR of a registrant if the registrant ''has committed such acts as would render his registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Congress has circumscribed the definition of public interest in this context by directing consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

''These factors are to be considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Any one or a combination of factors may be relied upon, and when exercising authority as an impartial adjudicator, the Agency may properly give each factor whatever weight it deems appropriate in determining whether a registrant's COR should be revoked. *Id.; see Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Moreover, the Agency is ''not required to make findings as to all of the factors,'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *Morall,* 412 F.3d at 173, and is not required to discuss consideration of each factor in equal detail, or even every factor in any given level of detail, *Trawick* v. *DEA,* 861 F.2d 72, 76 (4th Cir. 1988) (holding that the Administrator's obligation to explain the decision rationale may be satisfied even if only minimal consideration is given to the relevant factors, and that remand is required only when it is unclear whether the relevant factors were considered at all). The balancing of the public interest factors ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest . . . .'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009).

In adjudicating a revocation of a DEA COR, the Government has the burden of proving that the requirements for the revocation it seeks are satisfied. 21 CFR 1301.44(e). Where the Government has met this burden by making a *prima facie* case for revocation of a registrant's COR, the burden of production then shifts to the registrant to show that, given the totality of the facts and circumstances in the record, revoking the registrant's COR would not be appropriate. *Med. Shoppe-Jonesborough,* 73 FR 364, 387 (2008). Further, ''to rebut the Government's *prima facie* case, a[] registrant is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the re-occurrence of similar acts.'' *Jeri Hassman, M.D.,* 75 FR 8194, 8236 (2010); *accord Krishna-Iyer,* 74 FR 464 n.8. In determining whether and to what extent a sanction is appropriate, consideration must be given to both the egregiousness of the offense established by the Government's evidence and the Agency's interest in both specific and general deterrence. *David A. Ruben, M.D.,* 78 FR 38363, 38364, 38385 (2013).

Normal hardships to the registrant, and even to the surrounding community, which are attendant upon lack of registration, are not a relevant consideration. *See Linda Sue Cheek, M.D.,* 76 FR 66972, 66972–73 (2011); *Gregory D. Owens, D.D.S.,* 74 FR 36751, 36757 (2009). Further, the Agency's conclusion that ''past performance is the best predictor of future performance'' has been sustained on review in the courts, *Alra Labs., Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), as has the Agency's consistent policy of strongly weighing whether a registrant who has committed acts inconsistent with the public interest has accepted responsibility and demonstrated that he or she will not engage in future misconduct, *Hoxie,* 419 F.3d at 483.[96]

Although the burden of proof at this administrative hearing is a preponderance-of-the-evidence standard, *see Steadman* v. *SEC,* 450 U.S. 91, 100–03 (1981), the Agency's ultimate factual findings will be sustained on review to the extent they are supported by ''substantial evidence,'' *Hoxie,* 419 F.3d at 482. While ''the possibility of drawing two inconsistent conclusions from the evidence'' does not limit the Administrator's ability to find facts on either side of the contested issues in the case, *Shatz* v. *U.S. Dep't of Justice,* 873 F.2d 1089, 1092 (8th Cir. 1989) (internal citation omitted), all ''important aspect[s] of the problem,'' such as a respondent's defense or explanation that runs counter to the Government's evidence, must be considered, *Wedgewood Vill. Pharmacy* v. *DEA,* 509 F.3d 541, 549 (D.C. Cir. 2007); *see Humphreys* v. *DEA,* 96 F.3d 658, 663 (3d Cir. 1996). The ultimate disposition of the case ''must be 'in accordance with' the weight of the evidence, not simply supported by enough evidence 'to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.'" *Steadman,* 450 U.S. at 99 (quoting *Consolo* v. *FMC,* 303 U.S. 607, 620 (1966)).

Regarding the exercise of discretionary authority, the courts have recognized that gross deviations from past agency precedent must be adequately supported, *Morall,* 412 F.3d at 183, but mere unevenness in

stretch to question whether he had other motivations for seeking medication. Gov't Ex. 31 at 5; Tr. 194–95. However, I find that whether or not AA had cancer is not relevant to my overall finding that Respondent prescriptions to AA were issued beneath the applicable standard of care and outside the usual course of professional practice.]

[96] The Agency has repeatedly upheld this policy. *See Ronald Lynch, M.D.,* 75 FR 78745, 78754 (2010) (holding that the respondent's attempts to minimize misconduct undermined acceptance of responsibility); *George Mathew, M.D.,* 75 FR 66138, 66140, 66145, 66148 (2010); *George C. Aycock, M.D.,* 74 FR 17529, 17543 (2009); *Krishna-Iyer,* 74 FR 463; *Steven M. Abbadessa, D.O.,* 74 FR 10077, 10078 (2009); *Med. Shoppe-Jonesborough,* 73 FR 387.

application does not, standing alone, render a particular discretionary action unwarranted. *Chein* v. *DEA,* 533 F.3d 828, 835 (D.C. Cir. 2008), *cert. denied,* 555 U.S. 1139 (2009); *cf. Dep't of Homeland Security* v. *Regents of Univ. of Cal.,* 140 S. Ct. 1891, 1913 (2020) (holding that an agency must carefully justify significant departures from prior policy where reliance interests are implicated). It is well settled that, because the Administrative Law Judge has had the opportunity to observe the demeanor and conduct of hearing witnesses, the factual findings set forth in this Recommended Decision are entitled to significant deference, *see Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951), and that this Recommended Decision constitutes an important part of the record that must be considered in the Agency's final decision, *see Morall,* 412 F.3d at 179. However, any recommendations set forth herein regarding the exercise of discretion are by no means binding on the Administrator and do not limit the exercise of that discretion. *See* 5 U.S.C. 557(b); *River Forest Pharmacy, Inc.* v. *DEA,* 501 F.2d 1202, 1206 (7th Cir. 1974); *Attorney General's Manual on the Administrative Procedure Act* § 8(a) (1947).

[Factor One

In this case, it is undisputed that Respondent holds a valid state medical license in California. However, possession of a state license does not entitle a holder of that license to a DEA registration. *Mark De La Lama, P.A.,* 76 FR 20011, 20018 (2011). It is well established that a ''state license is a necessary, but not a sufficient condition for registration.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). The ultimate responsibility to determine whether a DEA registration is consistent with the public interest resides exclusively with the DEA, not to entities within state government. *Edmund Chien, M.D.,* 72 FR 6580, 6590 (2007), *aff'd Chien* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008).

In determining the public interest, the ''recommendation of the appropriate State licensing board or professional disciplinary authority . . . shall be considered.'' 21 U.S.C. 823(f)(1). Two forms of recommendations appear in Agency decisions: (1) A recommendation to DEA directly from a state licensing board or professional disciplinary authority (hereinafter, appropriate state entity), which explicitly addresses the granting or retention of a DEA COR; and (2) the appropriate state entity's action regarding the licensure under its jurisdiction on the same matter that is the basis for the DEA OSC. *John O. Dimowo, M.D.,* 85 FR 15800, 15810 (2020); *see also Vincent J. Scolaro, D.O.,* 67 FR 42060, 42065 (2002).

In this case, neither the MBC nor any other state entity has made a direct recommendation to DEA regarding whether the Respondent's controlled substances registration should be suspended or revoked. There is evidence on the record that on October 29, 2019, the MBC found that the Respondent violated state law by prescribing dangerous controlled substances to the Board Patients. Gov't Ex. 30 at 147, 157–61, 196–199. The MBC found in favor of revocation, but stayed the revocation pending completion of probation. *Id.* at 168.

The evidence before me is different than the evidence that was before the MBC. It demonstrates that Respondent engaged in additional violations of state and federal law with respect to his prescribing practices. The fact that the MBC chose to stay the revocation of Respondent's state medical license carries minimal weight under Factor One, because there is no evidence that the MBC would have made the same decision in the face of the additional misconduct found herein involving different patients.*[N] Further, it is noted that, in spite of the decision's stay, the Board actually found in favor of revocation, which does not indicate a substantial amount of trust in Respondent. For all of these reasons, the terms of the MBC Order have been considered, but I find that they have little impact on the public interest inquiry in this case. *See Jeanne E. Germeil,* 85 FR 73786, 73799 (2020); *see also John O. Dimowo, M.D.,* 85 FR 15810. It ultimately is the Administrator who makes a determination of whether maintaining a COR is in the public interest as defined by the CSA, and the Administrator's purview is focused on entrusting Respondent with a controlled substances registration, which is a much more narrow inquiry than a medical license generally. *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5490 (2019).

In sum, while the terms of the MBC are not dispositive of the public interest inquiry in this case and are minimized due to the differences in the evidence in the MBC Order, the record evidence before me and the severity of the sanctions ordered by the MBC, I consider the stay of the MBC's revocation of Respondent's California medical license and give it minimal weight in Respondent's favor, because the charges could have immediately resulted in the revocation of his medical license, instead of a stayed revocation. *See Jennifer St. Croix,* 86 FR 19010, 19022 (2021). Even with this minimal weight in his favor, I do not find Respondent's continued registration to be within the public interest as explained below.]

Factors Two and Four: The Respondent's Experience Dispensing Controlled Substances and Compliance With Federal, State, and Local Law

The Government has founded its theory for sanction exclusively on Public Interest Factors Two (the Respondent's experience conducting regulated activity) and Four (the Respondent's compliance with state and federal laws related to controlled substances), and it is under those two factors that the lion's share of the evidence of record relates.[97] In this case, the gravamen of the allegations in the OSC as well as the factual concentration of much of the evidence presented, share as a principal focus the manner in which the Respondent has managed that

*[N] In *Dimowo,* the Acting Administrator found that ''[a]lthough statutory analysis [of the CSA] may not definitively settle . . . [the breadth of the cognizable state 'recommendation' referenced in Factor One], the most impartial and reasonable course of action is to continue to take into consideration all actions indicating a recommendation from an appropriate state;'' however, *Dimowo* also limited the ''recommendations'' DEA would consider to the ''actions of an appropriate state entity on the same matters, particularly where it rendered an opinion regarding the practitioner's medical practice in the state due to the same facts alleged in the DEA OSC.'' *John O. Dimowo,* 85 FR 15810. Although the same ''matters'' may include similar types of violations, in this case, I have no indication that the MBC would have made a similar decision in the face of these additional violations and misconduct.

[97] [Omitted the Chief ALJ's discussion of Factor One and added it into the text above]. [T]here is no record evidence of a conviction record relating to regulated activity (Factor Three). Even apart from the fact that the plain language of this factor does not appear to emphasize the absence of such a conviction record, myriad considerations are factored into a decision to initiate, pursue, and dispose of criminal proceedings by federal, state, and local prosecution authorities which lessen the logical impact of the absence of such a record. *See Dougherty,* 76 FR 16833 n.13; *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010) (''[W]hile a history of criminal convictions for offenses involving the distribution or dispensing of controlled substances is a highly relevant consideration, there are any number of reasons why a registrant may not have been convicted of such an offense, and thus, the absence of such a conviction is of considerably less consequence in the public interest inquiry.''), *aff'd, MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011); *Ladapo O. Shyngle, M.D.,* 74 FR 6056, 6057 n.2 (2009). Therefore, the absence of criminal convictions militates neither for nor against the revocation sought by the Government. Since the Government's allegations and evidence fit squarely within the parameters of Factors Two and Four and do not raise ''other conduct which may threaten the public health and safety,'' 21 U.S.C. 823(f)(5), Factor Five considerations are inapplicable and militate neither for nor against the sanction sought by the Government in this case.

part of his practice relative to prescribing controlled substances and acts allegedly committed in connection with that practice. Thus, it is analytically logical to consider Public Interest Factors Two and Four together. That being said, Factors Two and Four involve analysis of both common and distinct considerations.

Regarding Factor Two, it is beyond argument that the Respondent is a well-credentialed, experienced medical practitioner who has been treating many patients for many years. Resp't Ex. G; Tr. 898. There is likewise no evidence of record that, prior to his present difficulties, that the Respondent has been the subject of discipline by state or federal authorities relative to his controlled substance prescribing. [Omitted for brevity.] The Respondent's experience as a registrant is lengthy, and there is no evidence to contradict his contention that he has treated many, many patients, but the Agency has long held that benign experience cannot overcome intentional misconduct, and that the misconduct established by record evidence is considered under both Factors Two and Four. *See Roberto Zayas, M.D.,* 82 FR 21410, 21422 n.27 (2017) (announcing that ''misconduct is misconduct whether it is relevant under Factor Two, Factor Four, or Factor Five, or multiple factors''). Thus, the balance of the evidence related to Factor Two, per the Agency's interpretation, will be considered below together with Factor Four.

As discussed, *supra,* Factor Four compels consideration of the Respondent's compliance with state and federal laws related to controlled substances. The DEA regulations provide that to be effective, a prescription must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. 21 CFR 1306.04(a). The Supreme Court has opined that, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006). Further, the Agency's authority to revoke a registration is not limited to instances where a practitioner has intentionally diverted controlled substances. *Bienvenido Tan,* 76 FR 1763, 17689 (2011); *see Dewey C. MacKay, M.D.,* 75 FR 49956, 49974 n.35 (2010) (noting that revocation is not precluded merely because the conduct was ''unintentional, innocent, or devoid of improper motive'') (citation omitted).

To effectuate the dual goals of conquering drug abuse and controlling both legitimate and illegitimate traffic in controlled substances, ''Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the [Controlled Substance Act (CSA)].'' *Gonzales* v. *Raich,* 545 U.S. 1, 13 (2005). Consistent with the maintenance of that closed regulatory system, subject to limited exceptions not relevant here, a controlled substance may only be dispensed upon a prescription issued by a practitioner, and such a prescription is unlawful unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a); *see* 21 U.S.C. 829. Furthermore, ''[a]n order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and the person knowingly . . . issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' 21 CFR 1306.04(a).

The prescription requirement is designed to ensure that controlled substances are used under the supervision of a doctor, as a bulwark against the risk of addiction and recreational abuse. *George C. Aycock, M.D.,* 74 FR 17529, 17541 (2009) (citing *Gonzales,* 546 U.S. at 274); *see also United States* v. *Moore,* 423 U.S. 122, 135, 142–43 (1975) (noting that evidence established that a physician exceeded the bounds of professional practice when he gave inadequate examinations or none at all, ignored the results of the tests he did make, and took no precautions against misuse and diversion). The prescription requirement likewise stands as a proscription against doctors ''peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales,* 546 U.S. at 274. A registered practitioner is authorized to dispense, which the CSA defines as ''to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of a practitioner.'' 21 U.S.C. 802(10); *see also Rose Mary Jacinta Lewis,* 72 FR 4035, 4040 (2007). The courts have sustained criminal convictions based on the issuing of illegitimate prescriptions where physicians conducted no physical examinations or sham physical examinations. *United States* v. *Alerre,* 430 F.3d 681, 690–91 (4th Cir. 2005), *cert. denied,* 574 U.S. 1113 (2006); *United States* v. *Norris,* 780 F.2d 1207, 1209 (5th Cir. 1986).

''Under the CSA, it is fundamental that a practitioner must establish and maintain a [*bona fide*] doctor-patient relationship in order to act in the usual course of . . . professional practice and to issue a prescription for a legitimate medical purpose.'' *Mackay,* 75 FR 49973 (citation omitted); *Patrick W. Stodola, M.D.,* 74 FR 20727, 20731 (2009); *Ladapo O. Shyngle, M.D.,* 74 FR 6056, 6057–58 (2009). The CSA generally looks to state law to determine whether a *bona fide* doctor-patient relationship was established and maintained. *Stodola,* 74 FR 20731; *Kamir Garces-Mejias, M.D.,* 72 FR 54931, 54935 (2007); *United Prescription Servs., Inc.,* 72 FR 50397, 50407 (2007).

While true that the CSA authorizes the ''regulat[ion of] medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood,'' *Gonzales,* 546 U.S. at 909–10, and the agency also evaluates state standards. *Joseph Gaudio, M.D.,* 74 FR 10083, 10090 (2009); *Garces-Mejias,* 72 FR 54935; *United Prescription Servs.,* 72 FR 50407. In this adjudication, the evaluation of the Respondent's prescribing practices must be consistent with the CSA's recognition of state regulation of the medical profession and its bar on physicians from engaging in unlawful prescribing. *Aycock,* 74 FR 17541.*O

Here, the relevant state law provisions largely mirror the CSA where they do not go beyond it. *Compare* Cal. Health & Safety Code § 11153(a) *with* 21 CFR 1304.06(a). California Health and Safety Code § 1153(a), like its CSA counterpart,[98] provides that ''[a] prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.'' California law further provides that ''[r]epeated acts of clearly excessive prescribing'' constitutes unprofessional conduct for a physician. Cal. Bus. & Prof. Code § 725(a). Additionally, gross negligence, incompetence, and repeated negligent acts can subject a physician to sanction by the state medical board. Cal. Bus. & Prof. Code § 2234.

California has specifically classified two categories of controlled substance prescriptions as *per se* illegal:

(1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled

*O Omitted for clarity.

98 21 U.S.C. 802(21), 823(f).

substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

Cal. Health & Safety Code § 11153(a). A practitioner in California who knowingly issues such an illegal prescription faces criminal exposure. Cal. Health & Safety Code § 11153(b).

During the course of his testimony, the Government's expert, Dr. Munzing, outlined six elements that compose the standard of care for prescribing controlled substances in the usual course of professional treatment in California. Dr. Munzing explained that a physician must acquire a patient history, conduct a physical examination of the patient, determine whether additional data is necessary, produce an assessment of the patient that includes risk stratification, create an individualized treatment plan and obtain informed consent, and have proper documentation throughout each step. Tr. 94–111. These elements laid out by Dr. Munzing are consistent with instructions provided by the California Board in its publication, *Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons* (the MBC Guide). *See* Gov't Ex. 21 at 57–61. The MBC Guide also lays out six basic components to assist practitioners in meeting the standard of care in managing pain patients: History/physical examination; treatment plan, objectives; informed consent; periodic review; consultation; and records. *Id.* at 59–61. The California Board supplies the following explanation for acquiring a patient history and conducting a physical examination:

> A medical history and physical examination must be accomplished. This includes an assessment of the pain, physical and psychological function; a substance abuse history; history of prior pain treatment; an assessment of underlying or coexisting diseases or conditions; and documentation of the presence of a recognized medical indication for the use of a controlled substance.

Id. at 59. The California Board explains producing an assessment of the patient, or the creation of a treatment plan, as follows:

> The treatment plan should state objectives by which the treatment plan can be evaluated, such as pain relief and/or improved physical and psychosocial function, and indicate if any further diagnostic evaluations or other treatments are planned. The physician and surgeon should tailor pharmacological therapy to the individual medical needs of each patient. Multiple treatment modalities and/or a rehabilitation program may be necessary if the pain is complex or is associated with physical and psychosocial impairment.

Id. In clarifying informed consent, the California Board states that physicians ''should discuss the risks and benefits of the use of controlled substances and other treatment modalities with the patient, caregiver, or guardian.'' *Id.* at 60.

The California Board also suggests that a physician ''should periodically review the course of pain treatment of the patient and any new information about the etiology of the pain or the patient's state of health.'' *Id.* In addressing consultation, the California Board advises that ''physicians should give special attention to those pain patients who are at risk for misusing their medications including those whose living arrangements pose a risk for medication misuse or diversion.'' *Id.* Dr. Munzing emphasized the importance of the documentation requirement to ensuring patient safety. Tr. 105–07. Dr. Munzing's explanation of the documentation requirements mirrored the California Board's guidelines.

> The physician and surgeon should keep accurate and complete records according to [the five other controlled substance prescribing components], including the medical history and physical examination, other evaluations and consultations, treatment plan objectives, informed consent, treatments, medications, rationale for changes in the treatment plan or medications, agreements with the patient, and periodic reviews of the treatment plan.

Gov't Ex. 21 at 61.

The applicable California Code provisions are consistent with the standards outlined by the Government's expert, Dr. Munzing. Further, the Respondent (and ultimately his expert) acceded that his controlled substance prescribing fell below the applicable standard of care in California in regard to prescribing early refills, addressing inconsistent UDSs, and (at least with respect to Patient ET) acquiring adequate informed consent. Accordingly, on these issues, the testimony of the Government's expert stands uncontroverted on the present record. When an administrative tribunal elects to disregard the uncontradicted opinion of an expert, it runs the risk of improperly declaring itself as an interpreter of medical knowledge. *Ross* v. *Gardner,* 365 F.2d 554 (6th Cir. 1966). There is no shortage of reliable expert knowledge in the present record, at least regarding these issues, it is uncontroverted, and it is not favorable to the Respondent.

At issue in this case is the Respondent's controlled substance prescribing to ten patients: The four Board Patients that were the subject of findings by MBC, and the Six Patients that were evaluated by Dr. Munzing. While the evidence of record is generally discernible, the same cannot entirely be said of the allegations propounded by the Government in its OSC relating to the Six Patients. While it is likely that the Government's intention was to contend that the Respondent issued prescriptions to the Six Patients for controlled substances outside the usual course of professional practice, that is not entirely reflected in the plain language of the Government's charging document.

As discussed, *supra,* the CSA authorizes the Agency to impose a sanction upon a finding that a registrant ''has committed such acts as would render his registration under [21 U.S.C. 823] inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). Thus, for the Government to satisfy its *prima facie* burden, it must allege facts that, if sustained, would actually demonstrate that the registrant committed such acts as would render his registration inconsistent with the public interest. *See id.* Here, in a subset of allegations relating to the Six Patients (the He-Opined Allegations), the Government does not allege actions, conduct, or omissions attributable to the Respondent, but rather conclusions or observations made by its own medical expert. ALJ Ex. 1 ¶¶ 14.a, c, d, e, f; ¶¶ 18.a, c, d; ¶¶ 21.a, c, d; ¶¶ 23.a, c; ¶¶ 26.a, c, d; ¶¶ 30.a, c, d. The plain language of each of the He-Opined Allegations points not to conduct or omissions made by the Respondent, but merely to the fact that (at some unspecified point in time) the Government's expert concluded that certain matters were true.[99] [Omitted for brevity.]

In pursuing a sanction under the Administrative Procedure Act (APA) the Government is obligated to provide timely notice to a respondent, *inter alia,* of ''the matters of law and fact asserted.'' 5 U.S.C. 554(b)(3); *see also* 21 CFR 1301.37(c). The Agency is required to provide a respondent with notice of those acts which the Agency intends to rely upon in seeking a sanction so as to provide a full and fair opportunity to challenge the factual and legal basis for the Agency's action. *CBS Wholesale Distribs.,* 74 FR 36746, 36749 (2009). An administrative charging document is not subject to the same level of formality as

[99] [Omitted for relevance.]

required in a criminal indictment or a pleading filed in a civil case, *Clair L. Pettinger, M.D.,* 78 FR 61591, 61596 (2013); *Roy E. Berkowitz, M.D.,* 74 FR 36758, 36759–60 (2009), but neither is the requirement meaningless or illusory. The notice must be adequate, but the allegation as written, must also establish culpability if proved. [Omitted for brevity.]

However, [ ] the Agency has embraced the concept of litigation by consent. *Grider Drug #1 and Grider Drug #2,* 77 FR 36746, 44070 n.23 (2012). Where, as here, a respondent has been provided with adequate notice of an allegation, was afforded a full and fair opportunity to litigate the issue, and did fully litigate the issue without objection, the Agency has applied the well-established principle of litigation by consent to adjudicate that which was intentionally tried by the parties. However, the analysis of litigation by consent is fact specific and the Agency may not base its decision on an issue that was inadvertently tried by the parties. *See Farmacia Yani,* 80 FR 29053, 29059 (2015). ''Implied consent is not established merely because one party introduced evidence relevant to an unpleaded issue and the opposing party failed to object to its introduction. It must appear that the parties understood the evidence to be aimed at the unpleaded issue.'' *Id.* (internal citations omitted).

It is beyond argument that the He-Opined Allegations are unartfully pleaded, but it is likewise irrefutable that the parties mutually understood that they were litigating the issue of whether the controlled-substance prescribing issues set forth in a subset of those allegations depicted conduct that fell below the applicable standard. In fact, the Respondent, through his counsel, frequently tracked along with the OSC allegations and phrased many of his queries on whether the Government-expert's criticisms raised by the He-Opined Allegations were valid. *See, e.g.,* Tr. 535, 643, 929, 932–33, 962, 981, 983, 1005, 1182. Additionally, this issue was not raised by the Respondent in his closing brief. *See* ALJ Ex. 37. This case raises no realistic notice issues, and the language related to the opinions of the Government's expert will be treated here as surplusage that does not impact the validity of the charges or the findings. Accordingly, based on the conduct of the parties at the hearing, as well as their post-hearing briefs, the He-Opined Allegations will be considered as if the underlying actions are alleged, not as if the conclusions of the Government's expert (at some unspecified time) are the single issue (that is: as they were drafted and served on the Respondent and this tribunal).[100] *P

During the course of this case, Dr. Munzing delivered his expert opinion that the Respondent's charts did not reflect that he adequately discussed the risks attendant upon the opiate course of treatment he was employing on the Six Patients. While the Respondent and Dr. Polston held differing views of this perspective, Dr. Munzing's views on this issue (and all the issues upon which he opined in this case) are afforded controlling weight. Accordingly, OSC Allegations 14.b, 18.b, 21.b, 23.b, 26.b, and 30.b are *sustained*.

Similarly, Dr. Munzing's expert opinion, supported by the findings of the San Diego Medical Examiner's Office in its ME Report [101] (although in conflict with the views of the Respondent and Dr. Polston), that controlled substances prescribed by the Respondent were among the contributing factors to Patient AA's death,[102] is likewise afforded controlling weight. Accordingly, OSC Allegations 12 and 14.f are *sustained*.

The Respondent's practice of refilling 30-day controlled substance prescriptions every 28 days for the Six Patients, causing a reservoir of extra medication, is an area where the Respondent, during the course of his testimony, was able to agree with the expert opinion of Dr. Munzing. Accordingly, as amended,[103] OSC Allegations 14.e, 18.d, 21.d, 23.c, 26.d, and 30.c are *sustained*.

Although the Respondent remained convinced about the validity of the controlled medications and dosages he prescribed to the Six Patients, as well as the combinations of medicines in the context of the time and the ailments he was treating, in general he did not resist the Government's view, supported by the expert opinion of Dr. Munzing, that the documentation generated in the Respondent's charting of the Six Patients was inadequate to a point where it fell below the applicable standard of care. Dr. Munzing's expert opinion has been afforded controlling weight. Accordingly, OSC Allegations 14.a, 14.c,*Q 18.a, 18.c, 21.a, 21.c, 23.a, 26.a, 26.c, and 30.a are *sustained*.

The OSC contains allegations regarding controlled substances with doses and amounts specific to each of the Six Patients. The record contains sufficient evidence to preponderantly sustain the amounts alleged for Patients

[100] [Footnote omitted for clarity.]

*P I agree with the Chief ALJ that the OSC's drafting was imprecise. I note that the OSC did include overarching acts or omissions in addition to the more-specific expert opinions. The OSC stated that Respondent ''violated federal and California law by issuing prescriptions for controlled substances outside the usual course of profession practice and not for a legitimate medical purpose, to more than six patients.'' *See, e.g.,* OSC at 3; *see also id.* at 2 (''a prescription for a controlled substance is legitimate only if 'issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.' '' (citing 21 CFR 1306.04(a))). Therefore, although I agree with the Chief ALJ that the drafting could be improved, I also agree with him that Respondent was adequately noticed of the allegations against it in this case.

[101] Gov't Ex. 31 at 5.

[102] The Government did not allege, nor is it necessary for this Recommended Decision to find, that the Respondent's prescribing was the sole or even principal factor [or a ''significant component,'' Tr. 943] in Patient AA's overdose death.

[103] ALJ Ex. 25.

*Q In his Exceptions, Respondent claims that the Chief ALJ recommended sustaining allegations 14c and 18c that Respondent's concurrent prescribing of opioids and benzodiazepines was beneath the standard of care ''without discussing the reasons why.'' Resp't Exceptions at 10. Respondent claims, as he did many times in this case, that the CDC Guidelines ''do not prohibit this combination.'' *Id.* Dr. Munzing testified that ''the fact that you prescribe a benzodiazepine to [sic] an opioid, the risk of overdose goes up ten-fold. That's a significant increase.'' Tr. 448. He stated that ''the FDA and the CDC both came out with—one was a black box warning by the FDA; the other is the CDC guidelines, but it was known before that time. It was in literature by 2015, potentially earlier than that.'' Tr. 449. Dr. Munzing further testified that because ''the patient is being put at significantly increased risk,'' the standard of care requires that ''[i]t certainly needs to be recognized, addressed, and if the patient has conditions that the potential benefit is outweighed by the potential risk, which it would be hard to show that in this case. Doctors need to well document that and show that alternatives are really not an option.'' Tr. 449. Therefore, Respondent's testimony that he had discussions with these patients regarding the risks, but simply did not document those discussions ''as well as [he] should have,'' Tr. 933, does not address the other issues that Dr. Munzing raised, such as documenting that alternatives are not an option. The testimony Respondent cites to in its Exceptions clearly only addresses documenting the discussion of the risks with the patient, not alternative treatments or the risks of the combination generally. Resp't Exceptions at 11. Further, even if I found, in accordance with Respondent and Dr. Polston, that ''in the year 2014, prescribing opioids and benzodiazepines was not outside the standard of care,'' the Government's allegations would still include several years of prescribing to AA and BB, during which Respondent's documentation did not address the concerns that the co-prescribing of these substances raised. Resp't Exceptions at 11 (citing Ex. L at 10). Dr. Polston notably did not testify about this combination and the only reference to it is in his report as the Respondent cited, which is given limited weight given my inability to assess the credibility of these statements. Ultimately, I find that the record evidence clearly supports the Government allegations related to the concurrent prescribing, and I do not find Respondent's Exception to be meaningful in my overall assessment that Respondent issued prescriptions beneath the standard of care and outside the usual course of professional practice to AA and BB, particularly given the multitude of other reasons why these prescriptions fell beneath the standard.

AA,[104] BB,[105] JD,[106] and ET [107] as charged. Accordingly OSC Allegations 8, 15, 19, and 27 are *sustained*. However, the amounts specified regarding Patients DD [108] and SM [109] are more problematic, and it is at least possible that a greater investment on the part of the Government in this regard could have been more helpful.[110] Although subsection (1) of the Patient DD OSC dosage/amount allegation references ''patches,'' only lozenges were raised by the evidence, and there is no evidence to support the subsection (4) reference to eight fills of temazepam. Accordingly, OSC Allegation 22 is *sustained in part* to the extent that subsection (1) alleges ''a quantity of fentanyl citrate,'' subsections (2) and (3) are *sustained* as charged, and subsection (4) is *not sustained*. Similarly, the dosage/amount allegation pertaining to Patient SM contains insufficient quantitative evidence to support the amounts specified in subsections (3), (4), and (5).[111] Accordingly, OSC Allegation 24 is *sustained in part* to the extent that subsection (3) alleges ''a quantity of diazepam,'' subsection (4) alleges ''a quantity of fentanyl,'' and subsection (5) alleges ''a quantity of oxycodone.'' Subsections (1) and (2) are *sustained* as charged.*[R 112 113 114 115 116 117 118]

The Government alleges that the Respondent examined CURES reports eight times regarding Patient BB, but presented no evidence that this occurred (or why it would be relevant to the extent he had done so).[119] Accordingly, OSC Allegation 17 is *not sustained*.

The Government alleges that on multiple occasions where the Respondent encountered anomalous urine drug screen results relative to two of the Six Patients,[120] his medical charting failed to reflect actions that would have been required to stay within the standard of care. Dr. Munzing's expert opinion has been afforded controlling weight, and although the Respondent pushed back regarding Patient SM,[121] in general, he accepted that his documentation in this regard was lacking. Accordingly, OSC Allegations 9, 10, 14.d, 28, and 30.d are *sustained*.

The Government introduced an October 29, 2019 order (Board Order) issued by the California Board regarding disciplinary action taken by MBC against the Respondent. Gov't Ex. 30. In DEA administrative proceedings, factual findings and legal conclusions based on state law reached by state administrative tribunals are given preclusive effect. *Robert L. Dougherty, M.D.,* 76 FR 16823, 16830 (2011); *Gilbert Eugene Johnson, M.D.,* 75 FR 65663, 65666 (2010); *see also James William Eisenberg, M.D.,* 77 FR 45663, 45663–64 (2012) (holding that official notice taken of findings in a state medical board censure order gives those findings preclusive effect). State medical boards are presumed to be the expert agency with the authority to determine whether one of its practitioners has engaged in unprofessional conduct or provided incompetent medical care, and ''[w]here . . . a state medical board has determined that a practitioner's conduct violated the standard of care, its findings of fact and conclusions of law are not subject to relitigation before the Agency.'' *Ruben,* 78 FR 38369. The key inquiry is not whether a full evidentiary hearing was conducted in the prior proceedings, but whether the parties had a full and fair opportunity to litigate the issues prior to the Agency's decision. *Jose G. Zavaleta, M.D.,* 78 FR 27431, 27434 (2013).

The Board Order introduced by the Government includes the following findings related to MBC's decision that the Respondent violated state and/or federal law and engaged in unprofessional conduct by prescribing dangerous controlled substances to the Board Patients. Gov't Ex. 30 at 147, 157–61. MBC's findings regarding the Board Patients are herein discussed *in seriatim*.

With respect to Board Patient A, MBC found that the Respondent prescribed opioids to Patient A, between December 2011 and early 2013, in an amount that exceeded 300 MEDs. *Id.* at 129–30. While prescribed these large quantities of controlled substances, Patient A ''reported lack of analgesia and continued chronic pain, and decreased function, and [ ] displayed aberrant behaviors.'' *Id.* at 129. MBC found that the Respondent ''committed gross negligence in his care and treatment of Patient A'' by continuing to prescribe high dose opioids even though her chronic pain was not effectively treated with the prescribed medications and she displayed aberrant behaviors. *Id.* at 128–29, 157. Accordingly, inasmuch as the California Board's findings are *res judicata* in these proceedings, OSC Allegation 31.a, which pertains to Patient A, must be and is *sustained*. *See*

[104] ALJ Ex. 1 ¶ 8.

[105] ALJ Ex. 1 ¶ 15.

[106] ALJ Ex. 1 ¶ 19.

[107] ALJ Ex. 1 ¶ 27.

[108] ALJ Ex. 1 ¶ 22.

[109] ALJ Ex. 1 ¶ 24.

[110] *See Gregg & Son Distributors,* 74 FR 17517, 17517 n.1 (2009) (clarifying that ''it is the Government's obligation as part of its burden of proof and not the ALJ's responsibility to sift through the records and highlight that information which is probative of the issues in the proceeding''). In addressing the specifically-alleged amounts of medications prescribed to the Six Patients, the Government's closing brief avers that the Respondent issued ''numerous prescriptions'' of a particular controlled substance to a patient and then provides a general reference to a contemporaneously-filed attachment. ALJ Ex. 35 at 5–9. Not to put too fine a point on the matter, but this methodology is less helpful than it could have been in this case because the attachment is regrettably hobbled by numerous entries that appear to be less than entirely accurate. For instance, the chart attachment for Patient DD contains no reference to patches of fentanyl citrate, modafinil, or temazepam (although OSC Allegation 22 alleges specific amounts of each), it lists only 58 prescription dates (while OSC Allegation 22 alleges 93 separate fills of fentanyl patches and 60 separate fills of OxyContin), and it appears that it may even be missing a third page. *See id.* at 41–42. The chart attachment for Patient BB includes at least one prescription issued by the Respondent outside of the timeframe alleged in OSC Allegation 15. *See id.* at 33–35. Further, multiple prescriptions listed in the Patient SM chart attachment contain inaccurate dosages and medications. *See id.* at 43–46.

[111] *See Gregg & Son Distributors,* 74 FR 17517 n.1 (noting that ''it is the Government's obligation as part of its burden of proof . . . to sift through the records and highlight that information which is probative of the issues in the proceeding'').

*[R] The Government allegations also included references to ''letters of concern'' from insurance companies that identified the high level of MMEs that Respondent was prescribing. ALJ Ex. 1 ¶ 13, 16, 35, 29, 20; *See e.g.,* Gov't Ex. 2 at 522–23, 542–44, 596–98, 672–74. The Chief ALJ sustained some of the allegations related to the letters of concern, and in doing so, noted issues with the Government's evidence. RD at 39. I am declining to consider these letters as separate violations—they appear to more support the overall notion that Respondent's prescribing was in violation 21 CFR 1306.04; however, there is little explanation on the record supporting the direct relevance of the letters, and there is ample evidence on the record to support finding a violation of 21 CFR 1306.04 without such letters. As such, I have omitted this section of the RD.

[112] Omitted. *See* n.*R *supra.*

[113] Omitted. *See* n.*R *supra.*

[114] Omitted. *See* n.*R *supra.*

[115] Omitted. *See* n.*R *supra.*

[116] Omitted. *See* n.*R *supra.*

[117] Omitted. *See* n.*R *supra.*

[118] Omitted. *See* n.*R *supra.*

[119] Again, *see Gregg & Son Distributors,* 74 FR 17517 n.1 (clarifying that ''it is the Government's obligation as part of its burden of proof and not the ALJ's responsibility to sift through the records and highlight that information which is probative of the issues in the proceeding'').

[120] ALJ Ex. 1 ¶¶ 9, 10, 14.d (Patient AA); ¶¶ 28, 30.d (Patient ET).

[121] The Respondent testified that he did not feel that Patient ET's positive drug screen result for temazepam was truly aberrant because, in his view, that result was consistent with a medication (diazepam) that he had prescribed. Tr. 1028. Although the Government did not present evidence to refute the Respondent's proposition in this regard, Dr. Munzing's opinion has been afforded controlling weight.

[122] Gov't Ex. 30 at 5.

[123] Stips 1,2.

[124] *See* 21 CFR 1301.44(e).

[125] *See Dougherty,* 76 FR 16830; *Johnson,* 75 FR

Dougherty, 76 FR 16830; *Johnson,* 75 FR 65666.

Regarding Board Patient B, the California Board found that the Respondent committed gross negligence when he failed to discuss the attendant risks and benefits of controlled substances and failed to enter into a pain management agreement with Patient B. Gov't Ex. 30 at 130, 146, 158. The Respondent additionally prescribed greater than 30-day supplies of controlled substances to Patient B on multiple occasions during 2013, which the Board found to constitute gross negligence. *Id.* at 131, 144, 158. Accordingly, inasmuch as the California Board's findings are *res judicata* in these proceedings, OSC Allegations 31.b and 31.c, which pertain to Patient B, must be and are *sustained. See Dougherty,* 76 FR 16830; *Johnson,* 75 FR 65666.

MBC found that the Respondent's treatment of Board Patient D was grossly negligent in that he continued to prescribe her controlled substances despite aberrant behaviors, possible addiction, and noncompliance with her pain management agreement. Gov't Ex. 30 at 135, 158. In finding that the Respondent failed to adequately monitor his treatment of Patient D, the Board identified that the Respondent could have employed, but did not, UDSs and random pill counts as monitoring methods. *Id.* at 136. Notably, the California Board found that, for at least one prescription, the Respondent's conduct with respect to Patient D was an ''extreme departure'' from the standard of care for medical professionals in California. *Id.* at 98, 136–37. Accordingly, inasmuch as the California Board's findings are *res judicata* in these proceedings, OSC Allegation 31.d, which pertains to Patient D, must be and is *sustained. See Dougherty,* 76 FR 16830; *Johnson,* 75 FR 65666.

With respect to Board Patient E, the California Board found the Respondent's conduct to similarly be grossly negligent. Gov't Ex. 30 at 137, 158. MBC found that the Respondent prescribed controlled substances to Patient E without ''taking a systematic and thorough history including vitals, without periodically reviewing and documenting efficacy of treatment, without regularly assessing for possible diversion, and without discussing the risks, benefits, and alternatives of pharmacological treatment.'' *Id.* at 137; *see also id.* at 158. Moreover, MBC found that the Respondent further departed from the standard of care in prescribing methadone to Patient E, a known alcoholic, when methadone and alcohol are known to be contraindicated. *Id.* at 139–40, 148, 158, 161. Inasmuch as the California Board's findings are *res judicata* in these proceedings, OSC Allegations 31.e and 31.f, which pertain to Patient E, must be and are *sustained. See Dougherty,* 76 FR 16830; *Johnson,* 75 FR 65666.

All subsections of OSC Allegation 31(the Board Patient Allegations) are *sustained*, and any one of these subsections, standing in isolation is (and all, when considered collectively are) sufficient to satisfy the Government's *prima facie* burden in this case.

OSC Allegations 1 and 2 (COR and state licensure status) are *sustained* based on the evidence [122] and stipulations [123] of record.

Accordingly, even in the face of the Respondent's lengthy experience as a practitioner and registrant, a balancing of Factors Two and Four militate strongly and powerfully in favor of the imposition of the revocation sanction sought by the Government.

Recommendation

The evidence of record preponderantly establishes that the Respondent has committed acts which render his continued registration inconsistent with the public interest. *See* 21 U.S.C. 824(a)(4). Since the Government has met its burden [124] in demonstrating that the revocation it seeks is authorized, to avoid sanction the Respondent must show that, given the totality of the facts and circumstances, the revocation sought by the Government is not warranted. *See Med. Shoppe-Jonesborough,* 73 FR 387. In order to rebut the Government's *prima facie* case, the Respondent must demonstrate not only an unequivocal acceptance of responsibility but also a demonstrable plan of action to avoid similar conduct in the future. *See Hassman,* 75 FR 8236. On the present record he has accomplished neither objective.

Agency precedent is clear that a respondent must unequivocally admit fault as opposed to a ''generalized acceptance of responsibility.'' *The Medicine Shoppe,* 79 FR 59504, 59510 (2014); *see also Lon F. Alexander, M.D.,* 82 FR 49704, 49728 (2017). To satisfy this burden, the respondent must show ''true remorse'' or an ''acknowledgment of wrongdoing.'' *Michael S. Moore, M.D.,* 76 FR 45867, 45877 (2011). The Agency has made it clear that an unequivocal acceptance of responsibility is an unwaivable condition precedent for avoiding a sanction. *Dougherty,* 76 FR 16834 (citing *Krishna-Iyer,* 74 FR 464). This feature of the Agency's interpretation of its statutory mandate on the exercise of its discretionary function under the CSA has been sustained on review. *Jones Total Health Care Pharmacy, LLC* v. *DEA,* 881 F.3d 823, 830–31 (11th Cir. 2018); *MacKay* v. *DEA,* 664 F.3d 808, 822 (10th Cir. 2011); *Hoxie,* 419 F.3d at 483.

As discussed, *supra,* the findings of the California Board, which are afforded preclusive effect here,[125] preponderantly and conclusively establish the Board Patient Allegations, and are sufficient standing alone to satisfy the Government's *prima facie* case for revocation. Yet beyond noting that MBC declined to impose greater sanctions than it could have,[126] the Respondent did not address those charges in his testimony or accept responsibility for any of the misconduct established therein. In his closing brief, the Respondent addressed the Board Order only insofar that he argued that it did not impact Public Interest Factor One (recommendation from an authorized state licensing authority) to his detriment. ALJ Ex. 37 at 3–4.[127] [128] The Agency has consistently held that without record evidence of both prongs (acceptance of responsibility and remedial steps aimed at avoiding recurrence), neither is relevant. *Ajay S. Ahuja, M.D.,* 84 FR 5498 n.33; *Jones Total Health Care, LLC,* 81 FR 79188, 79202–03 (2016); *Hassman,* 75 FR 8236. Thus, as the record stands, the Government has established OSC Allegations 31.a—31.f, which collectively and separately make out the Government's *prima facie* case for revocation, and the Respondent has offered no acceptance of responsibility. Hence, on this posture, based exclusively on the Board Patient Allegations and irrespective of the remainder of the analysis, it would be impossible under the Agency's interpretation of the CSA for the Respondent to avoid sanction.

The Respondent's defense fares no better regarding the balance of the Government's case related to the Six Patients. During his testimony, the Respondent accepted responsibility for a standard office practice that yielded each of the Six Patients a bounty of extra medicine, but not much else. In

[122] Gov't Ex. 30 at 5.

[123] Stips 1,2.

[124] *See* 21 CFR 1301.44(e).

[125] *See Dougherty,* 76 FR 16830; *Johnson,* 75 FR 65666.

[126] Tr. 1064–65.

[127] [omitted for relevance.]

[128] [omitted for relevance.]

fact, the Respondent was careful to limit his acceptance to the deficiencies he was willing to acknowledge at the hearing.[129] Tr. 1062. He agreed that most [130] of the anomalous UDS results merited additional patient queries and documentation in his charts, and, in general, that the level of his medical record documentation could bear some level of improvement in the future. But the Respondent stridently adhered to the medical correctness of his controlled substance choices and dosing, based primarily on the only mostly accurate premise that he received the patient at a high dose, the somewhat accurate premise that he was engaged in a taper,[131] and the untenable premise that the practice of pain management was ''just coming off of the decade'' where there was ''no limits to dosing.'' Tr. 982. At one point in his testimony, he described a high dosage to one of the Six Patients as ''not an unheard-of dosage.'' *Id.* The meaning (or timing) of ''coming off of the decade'' [132] was never clear, and the concept that there was ever a point in time where there were ''no limits to dosing'' [133] is unsupported in this record and dubious at best.

Furthermore, during the hearing, the Respondent sporadically persisted in his position that the standard pain management contracts executed by each of the Six Patients constituted an adequate risks/benefits discussion to support informed consent. Admittedly, he seemed to acknowledge at some points that the opioid risks discussion would have benefitted by adding more detail (*e.g.,* such as the risk of death [134]), but it would not be at all fair to say that this record paints a picture that demonstrates that he understands that the standard pain medication contract he employed did not meet the standard. It is clear from the plain language of the pain management contracts that these instruments were designed to advise patients of the consequences associated with medication-related non-compliance, not to supply adequate informed consent. Although the Respondent agreed that the pain management contracts did not advise the patients, *inter alia,* that death is a risk associated with the high dosage levels he was employing (or continuing), the Respondent maintained that the contracts did the job.[135] By the Respondent's reckoning, the fact that the pain management contract mentioned the potential for respiratory depression was sufficient, because respiratory depression ''is usually the antecedence of [death].'' Tr. 932. This tack was particularly puzzling in light of the revelation that the Respondent ultimately did generate an opioid informed consent document that ''plug[s] that hole.'' *Id.* The Respondent's inconsistent approach to this issue seemed dependent upon who was asking the questions and how the questions were framed. At one point during his testimony, when pressed on the issue, the Respondent seemed to offer a limited acknowledgement:

> I needed to talk more about the actual conversations I had with the patient, the potential risks, including death, which was not mentioned specifically. And I see that as a deficit in my reading, documentation and my discussion with the patient.

Id. at 1026. [Omitted. The Chief ALJ noted, and I agree, that Respondent waivered on whether he had the level of detailed conversations about risk that Dr. Munzing credibly testified were required by the standard of care, to include the risk of death, with his patients.]*S [136] On the present record it is far more plausible that such detailed conversations with the Six Patients never occurred, and that glossing over the issue by saying he wished he documented it better is unhelpful to the credibility of his position. The Respondent at once seemed to express understanding, even detailing a remedial step to improve documentation, but simultaneously declined to accept responsibility for the focus of the remedial step he implemented. The Respondent took essentially the same approach regarding his prescribing of dangerous combinations of drugs; *to wit,* that it was only the depth of his documentation that was lacking. More fundamentally, the Government's position is that the Respondent's high level of opioid prescribing created a sufficient danger to his patients such that he was required under the applicable standard of care in California to provide a specific warning

[129] Even in his closing brief, the Respondent's purported acceptance of responsibility, which is limited to the Six Patients allegations, reads this way: ''By way of mitigation/remediation, [the Respondent] acknowledged and accepted responsibility for deficiencies contained in the OSC.'' ALJ Ex. 37 at 32, ¶ 209 (record citation omitted). The Respondent's carefully-worded closing-brief assertions that he has ''unequivocally accepted responsibility *for his deficiencies, as stated herein,*'' *id.* at 38 (emphasis added), and that he ''admitted and took responsibility *for numerous deficiencies that happened in the past,*'' *id.* at 39 (emphasis added), strike as a trifle too layered to satisfy the Agency's requirement of an unequivocal acceptance of responsibility. Indeed, the Respondent's closing brief represents that ''he unequivocally accepted responsibility with respect to *most of the allegations* levied against him,'' *id.* at 41 (emphasis supplied), and lists five areas where he reckons he got the acceptance job done, *id.* at 41–42. No effort is made on any level to accept any responsibility regarding the Board Patient Allegations.

[130] Regarding a UDS for Patient ET that reflected a positive result for temazepam, the Respondent testified that he does not feel that this was anomalous because the patient had been prescribed diazepam, which according to the Respondent, would metabolize into yielding a positive temazepam result. Tr. 1028–29; *see also* ALJ Ex. 37 at 31.

[131] Although the Respondent's progress notes frequently referenced his intention to wean down medications, the record evidence demonstrated that for extended periods of time these notes were limited to aspirations, and the medication was not reduced. The Respondent's post-hearing-brief argument that he was, in essence, resisting the urge to ''abruptly taper'' or suddenly discontinue opioid therapy, ALJ Ex. 37 at 8, ¶¶ 49–50, is unpersuasive here, as the Government has not ascribed fault to the failure to engage in recklessly fast weaning of his patients' medications. No weaning whatsoever took place regarding Patient AA, and no weaning for extended periods was evident regarding the balance of the Six Patients.

[132] Tr. 982.

[133] *Id.*

[134] Tr. 932, 1026.

[135] The Respondent took a like position in the CAP he filed with the Agency. Resp't Ex. M at 4–5.

*S Respondent argues in his Exceptions that Respondent ''unambiguously testified his pain agreement was not an adequate document and it needed to be improved.'' Resp't Exceptions at 25. Respondent did testify at times that he had conversations with his patients about the risks and he did admit that his pain management agreement ''should be, and has been improved.'' Tr. 25. I also agree with the Chief ALJ that Respondent pushed back at one point about whether he needed to include death, RD at 11–12 (citing Tr. 932). Contrary to Respondent's contention, it is not clear from the record whether he specifically discussed the risk of death with his patients, which Dr. Munzing testified was necessary under the standard of care. Regarding having ''words such as death,'' Respondent stated, ''I think it's important to mention to the patient, and that is something I want to do better and need to do.'' Tr. 932. Nowhere did Respondent clearly testify that he discussed the risks, including the risk of death with his patients. *See also* n.136 and n.*I *supra.* Considering the fact that Respondent and the Chief ALJ and myself had to pull strands of the record to try to eke out an understanding of Respondent's position on whether he had detailed discussions with his patients, including about the risk of death, and whether he believed he needed to have these detailed discussions to meet the standard of care, there is not enough on the record to find that Respondent accepted responsibility unequivocally, which necessarily includes a clear acknowledgement of the wrongdoing.

[136] The Respondent testified that he had an opioid risk discussion with Patient AA, but only ''in the context of his original pain agreement'' and supplied a vague reference to ''subsequent discussions.'' Tr. 931. In his closing brief, the Respondent avers that the evidence evinces ''multiple discussions with [Patient AA] regarding the pain treatment agreement and the patient's medication program.'' ALJ Ex. 37 at 11, ¶ 74. Regrettably, the record citations supplied by the Respondent in his closing brief do not support the proposition that the risks associated with a high opioid protocol were discussed with the patients. *See, e.g.,* ALJ Ex. 37 at 17, ¶ 109; 21, ¶ 132; 25, ¶ 156. Even the few potential exceptions do not address high-dosage opioids, but rather ''[t]he risks and benefits of the medical program.'' *See, e.g.,* Gov't Ex. 6 at 376, 390 (cited at ALJ Ex. 37 at 21, ¶ 132).

to those patients about the risks associated with such high levels of pain killers. The Government's expert reliably testified to that standard of informed consent, and the Respondent never [clearly and unequivocally] accepted responsibility for the absence of such a [detailed] warning; whether documented in his charts or not.

The Respondent likewise declined to take any responsibility for any role that his prescribed medications [or any of his misconduct] played in the unfortunate death of Patient AA. Although this patient died from an overdose of multiple medications, some of which were prescribed by the Respondent, because Patient AA did not appear early for refills or ask for additional medications,[137] the Respondent, even in his closing brief,[138] adheres to the position that his prescribing played no role in Patient AA's overdose death, notwithstanding the contrary views held by the Government's expert [139] and the San Diego Medical Examiner.[140]

[Respondent notes in his Exceptions, that he believes that the Chief ALJ did not adequately credit him for what he contends was unequivocal acceptance of responsibility for failing to take vital signs for his patients until 2018. Resp't Exceptions at 13 (*citing* Tr. 1034 ''When I consult with my orthopedist and surgeons and so on, whom I was in the department with, and we'd look at their notes, they didn't contain that. And quite honestly, looking back on it, it was really a defect on my part that I wasn't collecting it, and I should have been doing it.*[T]). Respondent is correct to point out that this statement is much closer to accepting responsibility for found misconduct; however, he is incorrect in characterizing this statement as unequivocal. He begins his statement with a minimizing excuse—that no one else in his Department was doing it, and he uses the pronoun ''we'' to make clear that he was acting with consensus of others of some kind,*[U] but most importantly, this statement is lacking in an understanding of the gravity of his misconduct. Dr. Munzing testified that vital signs are monitored ''to try to keep [the patients] as safe as possible'' due the high risk of the high dosages being prescribed to them. Tr. 166. I find Respondent's statement here, and elsewhere, where he claims to accept responsibility, to be lacking in a complete understanding and acknowledgment of these risks and the potential consequences of his misconduct. ''[T]he degree of acceptance of responsibility that is required does not hinge on the respondent uttering 'magic words' of repentance, but rather on whether the respondent has credibly and candidly demonstrated that he will not repeat the same behavior and endanger the public in a manner that instills confidence in the Administrator.'' *Stein,* 84 FR 46973. Respondent's statement acknowledges the mistake, but it lacks remorse, and it lacks recognition or even acknowledgement of the impact. I agree with the Chief ALJ that Respondent handled these issues with the gravity that someone would apply to nitpicks—that he is now checking boxes, as opposed to really changing his viewpoint. For all of these reasons, although I credit Respondent for admitting some fault on the vital signs violation, I cannot find that Respondent has unequivocally accepted responsibility, even for something that was clearly found in this case and in the MBC case against him.]

Although the Respondent testified that he has improved the detail level of his electronic charting, [takes vital signs from his patients to ensure their safety,] no longer prescribes dangerous combinations of controlled substances, now eschews the prescribing of carisoprodol, and has taken various courses to address controlled substance prescribing and documenting, in light of his refusal to enter an unequivocal acceptance of responsibility, his expressed, commendable plans further his case not at all.

To be sure, the transgressions alleged and proved here are serious and numerous, but it is at least arguable that a true, unequivocal acceptance of responsibility, coupled with a thoughtful plan of remedial action could have gone a long way to supporting a creditable case for at least some level of sanction lenity. Indeed, while true that Agency precedent holds that the lack of an unambiguous acceptance of responsibility and remedial action plan are a cold bar to the avoidance of a sanction,[141] the wisdom of the Agency's policy is vindicated in this case by the reality that the Respondent still believes that the gravamen of his transgressions amount to little more than documentation deficiencies and a numerical prescribing practice error. He feels his dosing and medicine combinations were appropriate,[142] that the Six Patients received adequate informed consent about the high opioid levels through their pain contracts, and that although Patient AA died as a result of an overdose where his drugs were irrefutably *among* the medications that precipitated the fatality, that it was simply not his fault. The Respondent's message is essentially that the Government is nitpicking a knowledgeable practitioner, and to make the regulators happy he will clean up his documentation and drop dangerous combinations of medications from his treatment repertoire. And regarding the Board Patient Allegations, he has offered no responsibility acceptance whatsoever [on the record of this hearing.] It is not necessary or wise to conjecture whether an unequivocal acceptance of responsibility would have yielded a different result here. The fact is that it was not a part of the record.

The Agency is thus faced with a choice of imposing a registration sanction or imposing none and therein creating a fair likelihood that it will be instituting new proceedings, charging the same conduct against the same doctor, soon thereafter. To the extent the Respondent, after being present at this hearing, does not see that he was not acting as a reliable registrant, it is highly unlikely that he will see the light in a month, a week, or a day from an Agency action that affords him another chance.

In determining whether and to what extent imposing a sanction is appropriate, consideration must also be given to the Agency's interest in both specific and general deterrence and the

[137] Tr. 943–45.

[138] ALJ Ex. 37 at 13, ¶ 86.

[139] Tr. 310–12.

[140] Gov't Ex. 31 at 5. The ME Report, in pertinent part, renders the following ultimate conclusion: ''Based on the [report's integral] findings and the history and circumstances of [Patient AA's] death as currently known, the cause of death is best listed as 'fentanyl, clonazepam, alprazolam, ketamine, hydrocodone, and morphine toxicity' and the manner of death as 'accident.''' *Id.*

*[T] Respondent also notes that ''in response to criticism elsewhere, [he] started using the Vital Signs.'' Although he did not specifically reference it directly, in spite of arguing that he had accepted responsibility for the MBC's findings, I am assuming that he is referring to the California Medical Board complaint that was alleged against him around the time when he started taking vital signs. Tr. 1033.

*[U] *See Stein,* 84 FR 46972 (finding that a registrant's attempts to minimize his misconduct weigh against a finding of unequivocal acceptance of responsibility); *see also Ronald Lynch, M.D.,* 75 FR 78745, 78754 (2010) (Respondent did not accept responsibility noting that he ''repeatedly attempted to minimize his [egregious] misconduct''); *Michael White, M.D.,* 79 FR 62957, 62967 (2014) (finding that Respondent's ''acceptance of responsibility was tenuous at best'' and that he ''minimized the severity of his misconduct by suggesting that he thinks the requirements for prescribing Phentermine are too strict.'').

[141] *Hassman,* 75 FR 8236.

[142] Even in his closing brief, the Respondent highlights (with italics for emphasis) the concept that the CDC does not prohibit prescribing a combination of opioids and benzodiazepines. ALJ Ex. 37 at 12, 18.

egregiousness *[V] of the offenses established by the Government's evidence. *Ruben,* 78 FR 38364, 38385. Considerations of specific and general deterrence in this case militate in favor of revocation. Specific deterrence is something of a mixed bag here. On one hand, the Respondent has credibly related that he has deployed a prescribing regimen that addresses the systemic early refill issue identified by the Government, he has taken CME classes that address helpful standards, and he credibly testified that he has cleaned up some of his documentation. However, as discussed, *supra,* the Respondent has not supplied any indication that, beyond picayune electronic documentation complaints, and understandable early refills,[143] that he has done anything worthy of a sanction. The Respondent did not present as a practitioner who intends to change the high level of his dosing, and there is no real way to track whether the Respondent genuinely intends to indefinitely limit the combination prescribing that he continues to feel was warranted. On the whole, [ ]*[W] the issue of specific deterrence supports a sanction. [The Chief ALJ found that specific deterrence supports a sanction, but that it was an ''admittedly close case.'' *[X] Although I agree that Respondent has made steps to improve his practice, I am not convinced by his limited and equivocal acceptance of responsibility that he will not repeat similar behavior once his probation period in California has ended. Therefore, I find that the issue of specific deterrence weighs in favor of revocation.]

As the regulator in this field, the Agency bears the responsibility to deter similar misconduct on the part of others for the protection of the public at large. *Ruben,* 78 FR 38385. This record contains such a high volume of errant prescribing and even an overdose death for which the Respondent eschews responsibility. To continue the Respondent's DEA registration privileges on the present record would send a message to the regulated community that it is acceptable to keep prescribing powerful drugs to multiple patients, in dangerous combinations, for years, even contributing to the death of a patient, until you get caught; and even then, it is not even required to admit your mistakes. The interests of general deterrence militate convincingly in favor of a sanction on this record.

Regarding the egregiousness of the Respondent's conduct, as discussed, *supra,* the Respondent prescribed inordinately high levels of medication to a host of patients, in dangerous combinations, with inadequate documentation and informed consent for many years, and one of his prescribed medications was a contributing factor in the death of one of those patients. These actions were not borne of an understandable misapprehension of his responsibilities, or an isolated misstep taken in the midst of a busy medical practice. The conduct preponderantly established on this record is extremely troubling, and warrants a substantial sanction.

A balancing of the statutory public interest factors, coupled with consideration of the Respondent's failure to unequivocally accept responsibility, and the Agency's interest in deterrence, supports the conclusion that the Respondent should not continue to be entrusted with a registration.

Accordingly, it is respectfully recommended that the Respondent's DEA COR should be *revoked,* and any pending applications for renewal should be *denied.*

Dated: November 5, 2020.

John J. Mulrooney, II,

Chief Administrative Law Judge.

Respondent's Exceptions

On December 1, 2020, Respondent filed its Exceptions to the RD. I find that Respondent's Exceptions are either without merit or irrelevant to my Decision as explained below. Therefore, I reject Respondent's Exceptions and affirm the RD's conclusion that Respondent's continued registration is inconsistent with the public interest, and that revocation is the appropriate sanction.

Exception 1

(I) Respondent first argues that Dr. Munzing should not have been accepted as an expert in controlled substance prescribing for pain management. Resp't Exceptions at 2. Respondent's argument is based on his concern that his attorney raised at the hearing that ''the credibility and weight'' given to the testimony of Dr. Munzing should be limited due to the fact that he does not generally treat patients on high dosages of opioids.*[Y] Tr. 85. The Chief ALJ admitted Dr. Munzing as an expert in ''the standard of care in prescribing controlled substances in the State of California including for the management of pain.'' Tr. 89.*[Z] Dr. Munzing was not qualified as an expert in the practice of pain management, which Government counsel specifically made clear at the hearing. Tr. 84. For that matter, neither was Respondent's Expert, Dr. Polston, who was tendered and accepted as an expert witness in controlled substance prescribing in California, including controlled substance prescribing for

*[V] The Administrator has noted that ''there may be some instances in which the proven misconduct is not so egregious as to warrant revocation . . . and a respondent, while offering a less than unequivocal acceptance of responsibility[,] nonetheless offers sufficient evidence of adequate remedial measures to rebut the Government's proposed sanction.'' *Roberto Zayas, M.D.,* 82 FR 21410, 21429 (2017). This is not such an instance. Although I do give credit to Respondent's remedial measures, I do not find that I can ultimately trust him to continue implementing them without constant monitoring by this Agency, and as stated herein, he has not given me reason to extend him such a benefit. Furthermore, the violations herein are egregious and absolutely warrant revocation.

[143] In fact, notwithstanding his seeming acknowledgement of this below-standard activity, his closing brief reminds that his expert witness, Dr. Polston, testified that this practice ''is NOT below the standard of care and it is something that reasonable physicians in the community have done.'' ALJ Ex. 37 at 13, ¶ 85 (emphasis in original).

*[W] The Chief ALJ found that specific deterrence supports a sanction and I strongly agree. Although Respondent has made steps to improve his practice, I am not convinced by his limited and equivocal acceptance of responsibility that he will not repeat similar behavior once his probation period in California has ended. It is unclear to me that he understands the gravity of the misconduct alleged against him and that he has reacted appropriately and with the amount of contrition and acceptance that would convince me that he will not slip back into his old prescribing habits. Therefore, I find that the issue of specific deterrence weighs strongly in favor of revocation.

*[X] Respondent takes this statement, which was evaluating one of the many aspects that I consider when deciding a sanction, out of context, arguing that ''it is clear that Judge Mulrooney had a difficult time in deciding his recommendation.'' Resp't Exceptions at 34 (citing RD at 48). I disagree that the Chief ALJ had a difficult time deciding his recommendation. He stated clearly, and I agree, that ''the conduct preponderantly established on this record is extremely troubling, and warrants a substantial sanction.'' RD at 49.

*[Y] Given the evidence, which Respondent repeatedly highlighted, that he had successfully managed to reduce the MME of his patients and the fact that the witnesses were largely in agreement that reduction of the high dosages was important to the applicable standard of care, I find this argument to be confusing. *See, e.g.,* Tr. 1204 (Dr. Polston opining that Respondent's dosing was within the California standard of care, because ''in total, the patient showed indications and the doses of opioids were being reduced as the care was ongoing''); *see also* Resp't Exceptions at 10 (touting that ''[o]ver time, [Respondent] brought each one of them down drastically. Today, he does not accept any patients who are on daily MMEs over 90, and *93% of his current patients are at 90 MME or below.*'' (emphasis in original)). It seems that Respondent is suggesting that the fact that Dr. Munzing has limited risk to his patients by prescribing at lower MME levels somehow makes him less of an expert. I cannot agree. It also seems a particularly odd argument given Respondent's assertions that he, himself, no longer prescribes at these levels to most of his patients.

*[Z] Furthermore, it is noted that the Chief ALJ repeatedly ensured that the experts stayed within the scope of their expertise. *See, e.g.,* Tr. 100 (''We are only talking about the standard of care for controlled substance prescribing in California—the minimum standard of care'').

intractable pain. Tr. 1153–54. In this Exception, Respondent reframes the primary issue in this case to be about the practice of pain management, when the underlying issue is actually whether Respondent's prescribing of controlled substances was within the applicable standard of care and usual course of professional practice in California. Respondent also conveniently ignores the fact that the MBC found specifically that Respondent's prescribing was beneath the standard of care with respect to some of the patients at issue in this case (the Board Patients). For the other patients (the Six Patients), Respondent mischaracterizes Dr. Munzing's testimony. Dr. Munzing testified that identified instances where the Respondent's patients were maintained on doses of medications that far exceeded the morphine milligram equivalent (MME) recommended by the Centers for Disease Control and Prevention (CDC) guidance without documentation that the patient was afforded an informed consent that explained the risks inherent in such treatment. Tr. 120; Gov't Exs. 2–8, 10–13; Tr. 132–37, 139, 141–43, 145, 148–49, 156–57, 164–65, 169, 179–84, 191–92, 204–05, 224–25, 231–32, 271, 306–07 (Patient AA); Tr. 401–02, 406–07, 409–15, 417–22 (Patient BB); Tr. 384–89, 393–400 (Patient JD); Tr. 477–79, 481–84, 488, 490–95 (Patient DD); Tr. 314–17, 321–23, 328–32, 350–51, 353–56, 360–62, 365, 370–72, 377–82 (Patient SM); Tr. 424–29, 431–35, 437–38, 440–47, 450 (Patient ET). Respondent argues that Dr. Munzing testified that ''he does not know the precise amount of MMEs a patient should be prescribed,'' and concludes that ''[i]t is appalling that credibility is given to an expert who does not know the proper dose of MMEs, yet opines the amounts Respondent prescribed are somehow incorrect.'' Resp't Exceptions at 3 (citing Tr. 704–06). A closer look at Dr. Munzing's testimony demonstrates a much more measured and neutral picture. Tr. 131–B (explaining that there is no maximum amount of MME because ''some patients need a higher amount, and so there's—there's no written absolute amount, but there's certainly—one certainly needs to look at the risk to the patients, the potential benefits, and attempt to mitigate the risks''); Tr. 704–05 (responding to the question ''[s]o what's the exact dose that you should be receiving?'' with ''[w]ell, obviously, you know that one can't say—I mean, you could have many people with the same symptoms and the dosage required would be very different. Again, as I said before, you balance the benefit of the treatments including prescribed medications and other treatments with risk . . . and so you just can't say here's the number. But what I can say is that the risk is incredibly high. We don't know whether or not medications at one-half or one-third this dosage may give the same level of benefit. Many times that is the case. And so that we don't know because we haven't actually tried that as far as what we can see here in the notes.'').

Contrary to Respondent's argument, I find Dr. Munzing's opinion to be rational and to permit much more flexibility in prescribing than Respondent would like to make it seem. The problem with Respondent's prescribing of these high levels of MMEs is not the level itself—it is the risk associated with that level, which has been objectively established, and whether the Respondent adequately addressed that risk. The record demonstrates that he repeatedly did not address the risk for these patients over the course of many years, or at the very least did not meet many of the documentation requirements for addressing the risks.

I agree with the Chief ALJ that Dr. Munzing was qualified as an expert in the standard of care in prescribing controlled substances in the State of California including for the management of pain, and I reject Respondent's Exception.

(II) Respondent next argues that Dr. Munzing's testimony should not be given controlling weight over that of Dr. Polston for much of the same reasons that underlie his arguments that Dr. Munzing should not have been qualified as an expert. Respondent specifically picks apart the Chief ALJ's rationale for finding Dr. Munzing more credible. In particular, he highlights that Respondent ''only changed *one thing* in response to Dr. Munzing's testimony, not many things.'' Resp't Exceptions, at 4 (highlighting that Respondent *only* changed his early prescribing practices as a result of Dr. Munzing's testimony). Respondent also dedicates an entire Exception 6 to this issue, stating ''[w]hile it is accurate that Respondent agreed with Dr. Munzing's criticisms on other issues, he did not change his practices with respect to those issues after Dr. Munzing's testimony. In fact, the bulk of the criticisms that Dr. Munzing had with Respondent's care stemmed from care prior to April 2019.'' Respondent then emphasizes that he is following the standard of care as described by Dr. Munzing now, and in fact, he argues that the record demonstrates that he began to do so after April 2019.*[AA]

I find Respondent's argument about disqualifying Dr. Munzing's expert testimony on the applicable standard of care to be incongruous with his argument that his practices now follow the standard of care as described by Dr. Munzing. If he only changed one thing as a direct result of Dr. Munzing's testimony at the hearing, that is noted, but the record demonstrates, and Respondent actively argues, that he has changed *many* of his practices since the time period covered by the majority of the allegations in the OSC, and those practices clearly comport with the standard of care described by Dr. Munzing. I find that the standard of care as described by Dr. Munzing was supported by the record in this case, by California laws and guidance and even by the findings of the California Medical Board against the Respondent for the Board Patients. Further, I agree with the Chief ALJ that Dr. Polston's version of the standard of care was less credible in that it shifted, was often vague and argumentative and that his testimony did not come across as neutral (regardless of the noted objective issues with neutrality for both paid experts).*[BB] Therefore, I reject Respondent's Exception.

*[AA] In doing so, Respondent opines that it ''is critical for the Administrator's analysis because the Government's own expert is testifying that as of April of 2019, Dr. Chesler had addressed the issues with which he was concerned and was practicing within the standard of care.'' Resp't Exceptions at 18 (*citing* Tr. 763–64 Dr. Munzing opining that *one* progress note for Patient BB at the end of the Government's allegations in April 2019 was more in line with the standard of care as he had described it). The part of my analysis to which this finding might be ''critical'' is whether Respondent has accepted responsibility and instigated remedial measures such that I can entrust him with a registration. I credit Respondent for implementing practices that are more in line with meeting the standard of care in California and I hope that he continues to practice within the standard of care in the future, as I am sure does the Medical Board of California. Even assuming all of his current practices and all of his practices before and after the allegations are completely beyond criticism, which I do, the record still demonstrates that he prescribed beneath the applicable standard of care and outside the usual course of professional practice in California to many patients over the course of many years and in violation of federal and state law. Further, the record demonstrates that these violations were egregious and that, regardless of whether Respondent contributed to the cause, a patient died, and another patient had opiate use disorder (*Supra* n.*J), and all of the Six Patients and Board Patients were at some amount of risk due to the high dosages they were prescribed.

*[BB] Again, Respondent's general medical decisionmaking is not the basis for the allegations in the OSC—the OSC allegations are focused on whether or not the identified prescriptions were issued in accordance with the applicable standard of care and in the usual course of professional practice and in accordance with state law. *See*

Continued

Exception 2

Respondent next takes Exception to the individual findings on the allegations as sustained by the Chief ALJ. I have addressed some of these in footnotes in the actual findings *supra.*

I note in particular here that Respondent took Exception to the finding that a physician ''must avoid or carefully justify MMEs beyond 90 mg per day'' and those related to the combination of controlled substances. Resp't Exceptions at 8, 10, 11. In sustaining these allegations, the Chief ALJ stated the following:

> Although the Respondent remained convinced about the validity of the controlled medications and dosages he prescribed to the Six Patients, as well as the combinations of medicines in the context of the time and the ailments he was treating, in general he did not resist the Government's view, supported by the expert opinion of Dr. Munzing, that the documentation generated in the Respondent's charting of the Six Patients was inadequate to a point where it fell below the applicable standard of care.

RD at 38.

In taking Exception to these findings, Respondent once again tries to reframe the question regarding whether his prescribing was beneath the applicable standard of care and outside the usual course of professional practice by attempting to make this question into a determination about whether his patients ''demonstrated an etiology consistent with a need for pain treatment.'' Resp't Exceptions at 9. He emphasizes that the ''medical record shows a patient was receiving a functional benefit and pain relief based on the medications prescribed.'' *Id.* In support of Respondent's argument, I note that the MBC Guide does include objectives in the treatment plan, such as ''pain relief and/or improved physical and psychosocial function.'' MBC Guide at 59. However, I credit Dr. Munzing, who testified, ''[W]ell, I mean, it's good to get improved function. It's good to get reduced pain. Nowhere is the issue that this person has extremely risky treatments. And so in no way do we know whether or not this patient might get the same benefits from having medication that's one-quarter or one-third, one tenth the amount. We just don't know that.'' Tr. 719. Again, the overarching issue with Respondent's prescriptions is whether or not they were issued within the standard of care and usual course of professional practice. The record clearly indicates that Respondent's prescribing at dosages with high MMEs and combination prescribing put his patients at risk, and his documentation clearly did not adequately address those risks either with adequate informed consent or adequate acknowledgements of the risks and formulation of a plan to reduce the MME levels for many of the years of the allegations. Regardless of whether the patients were transferred to Respondent at high levels of MMEs or on dangerous, highly abused combinations of controlled substances, and regardless of whether he eventually, after several years, managed to reduce their MME levels or wean them off of the combinations,*[CC] the medical records do not demonstrate that he adequately addressed these risks when they existed. Therefore, I reject Respondent's Exception and sustain the Chief ALJ's finding that, particularly given the high levels of MME and the combination of controlled substances that Respondent was prescribing, ''the documentation generated in the Respondent's charting of the Six Patients was inadequate to a point where it fell below the applicable standard of care.'' RD at 38.

Exception 3

Respondent takes Exception to the Chief ALJ's findings that he did not conduct physical examinations on patients other than AA. I have amended the RD where Respondent has asked for clarification *supra* and have addressed Respondent's contention that he accepted responsibility in the Recommendations Section *supra.* Respondent also took Exception to the Chief ALJ's finding that Respondent did not take vital signs from the patients, noting that ''[w]hile this is true in the beginning of the time of review, Respondent made significant changes over time and began taking vital signs in 2018.'' *Id.* Respondent states that he took vital signs for all patients from that period on, *id.,* however, unfortunately, AA died on November 11, 2017, so he did not receive the benefit of Respondent's improved practices. I have made an addition to clarify the RD in accordance with Respondent's Exceptions. The fact that Respondent *only* failed to take vital signs from his patients for approximately four out of the five years covered by the Government's allegations, during which he was issuing controlled substance prescriptions at high levels of MMEs to his patients, who were at increased risk for respiratory depression, does not alter my finding that the prescriptions for controlled substances at issue in this case were issued outside the standard of care.

Exception 4

I have addressed Respondent's Exception related to informed consent in *supra* n.*I and *S.

Exception 5

Respondent takes Exception to the finding that the prescriptions he issued to AA contributed to his death. Resp't Exceptions at 16. The OSC alleged that Respondent's ''prescriptions to Patient AA were a contributing factor to Patient AA's overdose death.'' OSC at 14.f. The ME Report, in pertinent part, renders the following ultimate conclusion: ''Based on the[report's integral] findings and the history and circumstances of [Patient AA's] death as currently known, the cause of death is best listed as 'fentanyl, clonazepam, alprazolam, ketamine, hydrocodone, and morphine toxicity' and the manner of death as 'accident.' '' *Id.* Dr. Munzing stated that based on this report, ''[t]wo of the medications that were prescribed were felt to be contributors to the death, the hydrocodone and the morphine.'' Tr. 312. ''It's a multitude, it's toxicity, a multitude of drugs including a couple he prescribed.'' *Id.* According to Dr. Polston, the controlled substances prescribed did not contribute to A.A.'s death. He stated, ''[t]his patient, if he would not have taken the fentanyl, added in the alcohol and the ketamine, . . . would be still alive.'' Tr. 1182. Dr. Polston later clarified his testimony on cross-examination that the fentanyl, alcohol and ketamine ''are contributing to his death,'' but that ''to say that those are precise cause of death, no, I cannot go that far.'' *[DD] Tr. 1280.

generally, OSC. The expert testimony in this case is necessary, in conjunction with California law and guidelines, to understand the applicable standard of care. Dr. Munzing clearly demonstrated his expertise in how the standard of care applied to the facts in this case and furthermore, his testimony regarding his expertise was credible. In those places where Dr. Munzing's and Dr. Polston's testimony differed regarding the standard of care, California law and guidelines aligned more closely with Dr. Munzing's testimony. Accordingly, I affirm the ALJ's decision to qualify Dr. Munzing as an expert in this case and to credit his testimony over Dr. Polston's.

*[CC] Respondent states that ''the Administrator should find that Respondent's mere prescribing of these medications was not below the standard of care.'' Resp't Exceptions at 11. I find nowhere in the RD that makes such a statement. Respondent seems again to be trying to reframe the violations. He seems intent on limiting his violations to what he partially accepted responsibility for—that ''his documentation should have been better,'' *id.,* but he does not seem to understand the serious implications of his failure to document—that he was putting his patients at risk without adequately addressing those risks in the medical records—without demonstrating his planning and the thinking behind his prescribing actions, which as found herein is required by the standard of care and state law.

*[DD] Based on Dr. Polston's clarification, I cannot characterize Dr. Polston's testimony regarding the

I find that the substantial evidence on the record as described above supports the Chief ALJ's finding that the controlled substances prescribed by Respondent to AA were *among* the contributing factors to his overdose. However, the overarching issue for Patient AA, and all of the patients, is whether the alleged prescriptions were issued beneath the applicable standard of care in California and outside the usual course of professional practice, and the evidence clearly demonstrates that Respondent did not issue the alleged prescriptions to AA within the standard of care. I am not surprised by Respondent's adherence to his position that his prescriptions did not contribute to AA's death, considering the cascading implications that such a finding could have on his liability, but I also find that his testimony on this issue did not compel me to believe that he had more than a passing regret regarding any of his prescribing decisions related to AA. Regardless of whether the hydrocodone and the morphine actually contributed to his death, the evidence demonstrates that AA was abusing controlled substances, Respondent had been prescribing controlled substances to AA for a considerable period of time and did not detect this, in spite of several negative UDS for one of his prescriptions, and importantly, Respondent's medical records for AA offer little-to-no ability for the Agency to find out what was occurring. Furthermore, the fact is that one of Respondent's patients died of an overdose. In light of such a drastic occurrence, I would expect some sort of acknowledgement of the wrongdoing surrounding this incident, even without taking fault for the actual death. Instead, Respondent stated, ''[AA] had been on a combination of medications for a long time with no issues, and I feel badly that this event happened, but I honestly saw no issue where what we were providing was a significant [*[EE]] component to someone who had so much additional medication in his system.'' Tr. 943.*[FF]

Respondent's sole statement of regret related to AA's death was that he ''feels badly.'' This casual throw away statement does nothing to acknowledge the magnitude of the situation and furthermore focuses the entire attention of his remorse on himself and the way that he feels about the death, which is apparently ''badly.'' *See Nicholas Roussis M.D.,* 86 FR 59190, 59194 (2021) (finding that ''remorse and acceptance of responsibility are not the same thing and . . . Respondent's consistent focus on his own suffering does not suggest an unequivocal acceptance of responsibility, but rather, suggests regret for the negative consequences that he has personally faced.''). Respondent provided no acknowledgement that any of the wrongdoing, even the conduct that he admitted to, related to his care of AA could have played a small part in the patient's overdose. Had Respondent documented informed consent that he had discussed the risk of death with AA, had he documented that he conducted a physical examination or vital signs, had he more completely addressed the negative UDS in the records, had he addressed the high levels of MMEs he was prescribing and shown that he was carefully assessing all of these risks, then I doubt that AA's death would be an issue in this case. The questions that are unanswered with respect to AA's death demonstrate the true value of a prescribing practitioner's documented rationale.

Additionally, I do not find that Respondent has adequately accepted responsibility for his misconduct related to this patient, even setting aside whether or not the two controlled substances he prescribed were *among* the contributing factors to his death. Furthermore, my finding that Respondent has not accepted responsibility for something so serious, has significant implications about whether I can entrust him with a controlled substances registration in the future.

Exception 6

I have addressed Exception 6 related to Respondent's change in his practices in *supra* n.*H.

Exception 7

Respondent also takes Exception ''to the conclusion he did not accept responsibility for misconduct in the Medical Board of California case.'' Resp't Exceptions at 19–20. In support of his argument, he cites to several findings in the MBC case where ''he admitted he committed repeated negligent acts.'' *Id.* (citing Gov't Ex. 30 at 150–51). Instead of diving into the MBC's opinion on this issue, I will review the evidence to which the Respondent points that he accepted responsibility in that proceeding. Respondent himself states that ''the MBC ALJ specifically made mention of this [Respondent's acceptance of responsibility] with respect to Patients D and E and further ruled that Respondent believed the care provided to A, B and C was appropriate and that the fact that he did not admit to mistakes with those patients was not a factor in the outcome of the case.'' *Id.* at 20. Essentially, Respondent is admitting that he did not fully accept responsibility in the MBC case, but arguing that because the MBC did not consider his non-acceptance as essential to its decision, I should not either. However, what matters to me in carrying out my responsibility under the CSA is whether Respondent can be entrusted with a registration. ''Respondent must convince the Administrator that his acceptance of responsibility and remorse are sufficiently credible to demonstrate that the misconduct will not recur.'' *Stein,* 84 FR 46974.

Respondent did testify that he made changes to his medical practice ''regarding the Medical Board situation, which you know about, was highlighting some of the same—these are the same cases, the same era. It was my reaction to that, to show them that I was making a good faith effort to repair this.'' Tr. 1052. It appears to me that this statement was very careful, stumbling almost, not to acknowledge that the MBC found many of the exact same type of violations of the standard of care as were at issue in this hearing. And in fact, even though Respondent brought it up in his testimony, he still did not take a moment to accept responsibility for the MBC findings on the record, but stated that his reasoning for the changes to his practice was to ''show them''—the MBC—that he was now complying with the standard of care. *Id.* I do credit Respondent for stating that he is ''happier'' about these changes. *Id.* However, as further discussed below and herein, Respondent has not unequivocally accepted responsibility for the Board Patients or the Six Patients.

Furthermore, I find it relevant to whether Respondent accepted responsibility for the MBC findings that Respondent continued to argue that his prescribing practices were historically within reason, given what he described

cause of AA's death as ''unequivocal,'' as Respondent would suggest. Resp't Exceptions at 16.

*[EE] It is noted that Respondent used the term ''significant component,'' which seems to acknowledge that the controlled substances he prescribed were a component of the death and contradicts his Exception to the Chief ALJ's finding that these controlled substances were ''*among* the contributing factors'' to AA's death. RD at 38.

*[FF] Respondent also stated, ''I feel badly because I know he was supposed to be and I'm still not sure what had him take this test.'' Tr. 945. It is unclear from the record what test he is referring to or what AA was supposed to be doing—possibly exhibiting signs of addiction? But again, the testimony that Respondent felt ''badly'' did not amount to any sort of acceptance of responsibility for the prescriptions he issued to this patient beneath the standard of care.

as the end of a ''decade of pain.'' On October 29, 2019, the MBC had clearly stated:

> [A]s commented on earlier in this decision, the evaluation of respondent's treatment of all of these patients needs to be looked at in terms of the risks to these patients and respondent's efforts to size up and manage these risks using the tools available to him. By November 2011, when the CDC declared prescription drug abuse to be a nationwide epidemic, respondent as a pain specialist was on notice that he needed to use the tools available to him, whether UDTs, cup screens, pill counts, and/or CURES, *and* he also need to critically assess patients and what they told him. Respondent was slow to respond to this change in the opioid pain management landscape and did not consistently use the tools available to him. Even when he did use these tools and was put on notice of potential problems, he did not take actions to protect his patients from their risky aberrant behaviors.

Gov't Ex. 30 at 165.

Respondent states on the one hand that he has addressed and accepted responsibility the issues that the MBC found, while still re-hashing arguments that the MBC discredited—that his prescribing practices were explained given the historical period that had just ended. The MBC found that ''Respondent was slow to respond to this change in the opioid pain management landscape and did not consistently use the tools available to him.'' *Id.* Had Respondent really understood and accepted responsibility for the MBC findings, I find it doubtful that he would have attempted to excuse his behavior in his DEA hearing.

Exception 8

Respondent again argues that he has adequately responsibility. I have discussed some of these specific arguments in the Recommendation Section and throughout where relevant.

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

Respondent argues that he ''accepted full responsibility for deficiencies for which he agreed with Dr. Munzing. There were other allegations for which he provided a defense, as stated herein. Dr. Chesler should not be made to accept responsibility for allegations for which he does not believe are accurate. That would be disingenuous and not something he should do as an honorable and credible person.'' Resp't Exceptions at 28. I disagree, as explained in more detail *supra* that Respondent unequivocally and credibly accepted responsibility for the deficiencies for which he agreed with Dr. Munzing. With respect to his high dosing levels and combination prescribing, which seem to be primarily the focus of his continued disagreement with Dr. Munzing, I am confounded as to why he continues to argue these points, while also stating that he no longer prescribes these combinations or at these levels.

Additionally, although Respondent repeatedly admitted that his documentation ''could be better,'' *see, e.g.,* Tr. 929, he gives little weight or understanding to these statements. Respondent's cavalier assumptions about his documentation responsibilities and the fact that he did not undertake this responsibility with seriousness weigh against my ability to entrust him with a registration. *See Singh, M.D.,* 81 FR 8248 (''[U]ntil . . . [a] Respondent can convincingly show he accepts the authority of the law and those bodies charged with enforcing it and regulating his activities, granting [ ] a DEA registration will gravely endanger the public.''). The truth is that it is not possible to tell whether Respondent's care was as appropriate as he claims because his recordkeeping did not support those claims. Nowhere is this more obvious than with Patient AA.

With respect to the dosing levels, Respondent argues that I should now trust him because he has corrected something that he does not believe was a mistake. He then states that if DEA wants to ensure that he does not prescribe at high levels, ''a CURES monitoring program could easily be set up between him and the DEA to track prescriptions for all patients.'' Resp't Exceptions at 32. DEA is responsible for regulating more than just Respondent and Respondent has already violated my trust through the multiple, egregious proven allegations. Ensuring that a registrant is trustworthy to comply with all relevant aspects of the CSA without constant oversight is crucial to the Agency's ability to complete its mission of preventing diversion within such a large regulated population.*[GG] *Jeffrey Stein, M.D.,* 84 FR 46974. I do not see how I can believe that Respondent has accepted responsibility for his actions and reformed, while arguing that the rationale underlying some of those reforms is superfluous. His acceptance of responsibility did not adequately convince me that he can be entrusted with a registration. Once his state probation ends and the scrutiny is off of him, I am not convinced that he will continue the practices that he put in place, when he does not believe that they are necessary in the first place or truly demonstrate a grasp of their gravity and importance.

Exception 9

Lastly, Respondent argues that ''[d]isciplining Respondent based upon findings of the deficiencies in the Recommended Decision is inconsistent with, and has no nexus to, the DEA's stated goals of avoiding diversion.'' *[HH] Resp't Exceptions at 33. The Government, however, is not required to prove that diversion resulted from the unauthorized issuance of prescriptions. *Arvinder Singh, M.D.,* 81 FR 8247, 8249 (2016). Rather, when a practitioner violates the CSA's prescription requirement, set forth in 21 CFR 1306.04(a), by issuing a prescription without a legitimate medical purpose and outside the course of professional practice, the DEA essentially considers the prescription to have been diverted. *George Mathew, M.D.,* 75 FR 66146. Furthermore, the Agency is not, as Respondent suggests, required to find intentional misconduct in order to support a sanction. Resp't Exceptions at 33. DEA decisions have found that ''just because misconduct is unintentional, innocent, or devoid of improper motive, [it] does not preclude revocation or

*[GG] With a regulated community of nearly two million registrants, DEA must be able to rely on registrants to comply with the standard of care without constantly monitoring them. *See* DEA FY 2020 Budget Request *available at https://www.justice.gov/jmd/page/file/1142431/download.*

*[HH] It is noted that the CSA's core purposes are not, as Respondent suggests, limited to diversion, but also include abuse of controlled substances. *See John O. Dimowo, M.D.,* 85 FR 15800, 15810 n.K, M (2020), Further, ''it is axiomatic that another core purpose of the CSA is to protect patients from the drug-related deaths and injuries that may result from drug abuse and diversion.'' *Salman Akbar M.D,* 86 Fed Reg. 52181, n.*O (2021). In this case, there is evidence that Respondent's prescribing put his patients at risk and that he did not document informed consent surrounding that risk. Further, there is evidence on the record that a patient died of an overdose, and regardless of whether the controlled substances Respondent prescribed contributed to that death, the overdose itself indicates abuse. Additionally, there is evidence that another one of Respondent's patients had opiate use disorder by Respondent's admission. *Supra* n.*J. And finally, there is evidence that AA was possibly not taking his oxycodone and that patients were repeatedly receiving extra controlled substances beyond their prescriptions—all of which have the potential to contribute to diversion. Therefore, even though, contrary to Respondent's assertion, I am not required to find evidence of abuse and diversion in order to find in favor of a sanction, I disagree with Respondent's bold assertion that ''there is no evidence of addiction or medication abuse.'' Resp't Exceptions at 33.

denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify the revocation of an existing registration . . .'' *Bobby D. Reynolds, N.P., Tina L. Killebrew, N.P., & David R. Stout, N.P.,* 80 FR 28643, 28662 (2015) (quoting *Paul J. Caragine,* Jr. 63 FR 51592, 51601 (1998). In fact, the Agency has found in favor of revocation in cases where registrants have failed to document their prescribing decisions—a violation which has been clearly established in this case. The Agency has repeatedly emphasized that ''[c]onscientious documentation is . . . not just a ministerial act, but a key treatment tool and vital indicator to evaluate whether the physician's prescribing practices are within the usual course of professional practice.'' *Cynthia M. Cadet, M.D.,* 76 FR 19,450, 19,464 (2011) (internal citation and quotation omitted); *see also Kaniz F. Khan-Jaffery, M.D.,* 85 FR 45,667, 45,686 (2020) (''DEA's ability to assess whether controlled substances registrations are consistent with the public interest is predicated upon the ability to consider the evidence and rationale of the practitioner at the time that she prescribed a controlled substance—adequate documentation is critical to that assessment.'').

The case at hand demonstrates prescribing beneath the applicable standard of care and outside the usual course of professional practice in California to multiple patients over the course of many years. I agree with the Chief ALJ that this conduct was egregious and I agree with his rationale for sanction. As stated above, for many reasons, I cannot find that I can entrust Respondent with a registration.

Accordingly, I reject Respondent's Exceptions and affirm the RD's conclusion that Respondent's registration should be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. BC1317165 issued to Bradley H. Chesler, M.D. Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I further hereby deny any pending application of Bradley H. Chesler, M.D., to renew or modify this registration, as well as any other pending application of Bradley H. Chesler, M.D. for registration in California. This Order is effective March 2, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–01838 Filed 1–28–22; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–947]

Bulk Manufacturer of Controlled Substances Application: Siegfried USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Siegfried USA, LLC. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 1, 2022 Such persons may also file a written request for a hearing on the application on or before April 1, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on December 8, 2021, Siegfried USA, LLC., 33 Industrial Park Road, Pennsville, New Jersey 08070–3244, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Dihydromorphine	9145	I
Hydromorphinol	9301	I
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Phenylacetone	8501	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium tincture	9630	II
Oxymorphone	9652	II
Tapentadol	9780	II

The company plans to manufacture the above-listed controlled substance in bulk for development of a new active pharmaceutical ingredient (API) and validation for a Drug Master File submission to the Food and Drug Administration. No other activity for this drug code is authorized for this registration.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2022–01816 Filed 1–28–22; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–4]

Austin J. Kosier, M.D.; Decision and Order

On September 30, 2021, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Austin J. Kosier, M.D. (hereinafter, Respondent) of Zanesville, Ohio. OSC, at 1 and 3. The OSC proposed the revocation of Respondent's Certificate of Registration No. FK6714504. It alleged that Respondent ''[does] not have authority to dispense or prescribe controlled substances in the [s]tate of Ohio, the state in which [Respondent is] registered with DEA.'' *Id.* at 1 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on or about May 12, 2021, the State Medical Board of Ohio issued an Order suspending Respondent's state license to practice medicine and surgery. *Id.* at 2. The Order was effective immediately and ordered that Respondent ''immediately cease the practice of medicine and surgery in Ohio.'' *Id.*

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

On October 25, 2021, Respondent timely requested a hearing by email.[1] Administrative Law Judge Exhibit (hereinafter, ALJX) 4 (Request for Hearing). Respondent's Request for Hearing also indicated that Respondent was ''considering the submission of a corrective action plan.'' *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Teresa A. Wallbaum (hereinafter, the ALJ). On October 25, 2021, the ALJ issued a Briefing Schedule. *See* ALJX 5. The Government timely complied with the Briefing Schedule by filing a Notice of Filing of Evidence and Motion for Summary Disposition (hereinafter, Motion for Summary Disposition) on November 10, 2021. Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD), at 2; *see also* ALJX 6. In its Motion for Summary Disposition, the Government requested summary disposition and recommended that Respondent's DEA registration be revoked based on Respondent's lack of authority to handle controlled substances in Ohio, the state in which he is registered with the DEA. Motion for Summary Disposition, at 5. On November 30, 2021, Respondent untimely filed a Memorandum in Opposition of Respondent [sic] to Government's Motion for Summary Disposition (hereinafter, Respondent's Opposition). RD, at 2; *see also* ALJX 7.[2] Respondent's Opposition argued that there ''does not exist and [sic] mandate under the [Controlled Substances Act] whereas [the] tribunal shall or must revoke or suspend the [DEA registration] of a physician under a state summary suspension.'' Respondent's Opposition, at 1. Respondent's Opposition also noted that Respondent's state medical license, though suspended, was still intact;[3] that ''[t]he issue that led to his current case [was] unrelated to the practice of medicine and was in no way arose [sic] in the course and scope of practice'';[4] and that ''[Respondent] has had no previous issues in any way with his medical license in the past.'' *Id.* Moreover, Respondent's Opposition highlighted ''the unbelievable work [Respondent] has done and is continuing to do within the medical community and specifically an online training and tutorial platform for health care practitioners and medical students around the world.'' *Id.* at 2–3. Finally, Respondent's Opposition highlighted that Respondent ''has also taken [the] opportunity to maintain and enhance his own medical education'' with CME courses. *Id.* at 3. Respondent's Opposition sought the denial of the Government's Motion for Summary Disposition and for the Tribunal to either grant Respondent's request for a hearing or to stay the matter pending the outcome of the Ohio Medical Board hearing. *Id.*

On December 2, 2021, the ALJ granted the Government's Motion for Summary Disposition, finding that ''[t]here is no genuine issue of material fact in this case'' because ''[t]he Government has established that Respondent currently lacks a medical license.'' RD, at 7–8. The ALJ recommended that Respondent's DEA registration be revoked and that any application to renew or modify his DEA registration be denied ''because Respondent lacks state authority to handle controlled substances in Ohio.'' *Id.* at 8. By letter dated December 27, 2021, the ALJ certified and transmitted the record to me for final Agency action. Transmittal Letter, at 1. The ALJ also advised that neither party filed exceptions. *Id.*

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Respondent's DEA Registration

According to Agency records, Respondent is the holder of DEA Certificate of Registration No. FK6714504 at the registered address of 2916 Vangader Dr., Zanesville, OH 43701. Pursuant to this registration, Respondent is authorized to dispense controlled substances in Schedules II through V as a practitioner. Respondent's registration expires on December 31, 2022.

The Status of Respondent's State License

On May 12, 2021, the State Medical Board of Ohio (hereinafter, the Board) issued a Notice of Summary Suspension and Opportunity for Hearing (hereinafter, Summary Suspension) and an Entry of Order. Government Exhibit (hereinafter, GX) A, at 3 and 5. According to the Summary Suspension, on or about December 16, 2019, ''the Franklin County Court of Common Pleas filed an indictment alleging [Respondent] had committed attempted unlawful sexual contact with a minor'' on or about September 10, 2019. *Id.* Further, according to the Summary Suspension, ''[o]n or about November 13, 2020, [Respondent] appeared before the Court for a hearing on [his] application for intervention in lieu of conviction for these offenses'' and ''[t]he Court granted [Respondent's] application.'' *Id.* The Summary Suspension states that ''[Respondent] pleaded guilty to [the] felony offenses at a subsequent hearing held on or about December 9, 2020'' and ''[t]he Court ordered further proceedings be stayed while [Respondent was] under community control.'' *Id.* In its Entry of Order on May 12, 2021, the Board found that ''[Respondent's] continued practice presents a danger of immediate and serious harm to the public'' and ordered, effective immediately, that Respondent's license to practice medicine and surgery in the state of Ohio be summarily suspended, that Respondent ''immediately cease the practice of medicine and surgery in Ohio,'' and that Respondent ''immediately refer all active patients to other appropriate physicians.'' *Id.* at 3.

According to Ohio's online records, of which I take official notice, Respondent's medical license is still suspended and inactive.[5] Ohio License

[1] Though the Request for Hearing itself is undated, the record indicates that the Request for Hearing was filed on October 25, 2021. *See* Order Directing the Government to File Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule (hereinafter, Briefing Schedule), at 1. I find that the Government's service of the OSC was adequate and that the Request for Hearing was timely filed on October 25, 2021.

[2] As a result of Respondent's untimely filing, on November 30, 2021, the ALJ issued an Order to Show Good Cause Regarding Respondent's Late Filing (hereinafter, Order to Show Good Cause). *See* ALJX 8. On November 30, 2021, Respondent timely filed a Response to Order to Show Good Cause stating that the untimely filing was due to a death in Respondent's counsel's family. RD, at 2; *see also* ALJX 9. The ALJ found that ''the delay was minimal and caused no prejudice to the Government'' and thus accepted Respondent's Opposition. RD, at 2.

[3] According to Respondent's Opposition, the Ohio Medical Board ''issued a summary suspension pending the outcome of a Medical Board Hearing in January of 2022.'' *Id.* at 2. Further, according to Respondent's Opposition, the suspension ''was based on a provision in the Ohio Administrative Code that allows the Ohio Medical Board to summarily suspend a license of a physician based on [the] physician's entry into an intervention program to address a mental health matter'' and ''[t]he matter at hand with [Respondent] is his ongoing struggle with his homosexuality.'' *Id.*

[4] *See supra* n.3.

[5] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the

Look Up, *https://elicense.ohio.gov/oh_verifylicense* (last visited date of signature of this Order). Accordingly, I find that Respondent is not currently licensed to practice medicine in Ohio, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR 27617.

Moreover, because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the final outcome of the underlying action may still be pending. What is consequential is my finding that Respondent is not currently authorized to dispense controlled substances in Ohio, the state in which he is registered with the DEA.

Under Ohio law, ''[n]o person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog,'' except [6] pursuant to a ''prescription issued by a licensed health professional authorized to prescribe drugs if the prescription was issued for a legitimate medical purpose.'' Ohio Rev. Code Ann. § 2925.11(A), (B)(1)(d) (West 2021). Ohio law further states that a '''[l]icensed health professional authorized to prescribe drugs' or 'prescriber' means an individual who is authorized by law to prescribe drugs or dangerous drugs . . . in the course of the individual's professional practice.'' *Id.* at § 4729.01(I). The definition further provides a limited list of authorized prescribers, the relevant provision of which is ''[a] physician authorized under Chapter 4731 of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.'' *Id.* at § 4729.01(I)(5). In addition, the Ohio Uniform Controlled Substances Act permits ''[a] licensed health professional authorized to prescribe drugs, if acting in the course of professional practice, in accordance with the laws regulating the professional's practice'' to prescribe or administer schedule II, III, IV, and V controlled substances to patients. *Id.* at § 3719.06(A)(1)(a)–(b).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Ohio. As already discussed, a physician is authorized by law to prescribe or administer drugs in Ohio only when authorized to practice medicine and surgery under Ohio law. Thus, because Respondent lacks authority to practice medicine in Ohio and, therefore, is not authorized to handle controlled substances in Ohio, Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FK6714504 issued to Austin J. Kosier, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Austin J. Kosier, M.D. to renew or modify this registration, as well as any other pending application of Austin J. Kosier, M.D., for additional registration in Ohio. This Order is effective March 2, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–01834 Filed 1–28–22; 8:45 am]

BILLING CODE 4410–09–P

date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

[6] Other irrelevant exceptions omitted.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–946]

Importer of Controlled Substances Application: Mylan Pharmaceuticals Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Mylan Pharmaceuticals Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 2, 2022. Such persons may also file a written request for a hearing on the application on or before March 2, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield,

Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 7, 2021, Mylan Pharmaceuticals Inc., 2898 Manufacturers Road, Greensboro, North Carolina 27406–4600, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import the above controlled substance as a Federal Drug Administration-approved drug product in finished dosage form for commercial distribution to its customers.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2022–01817 Filed 1–28–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 21–11]

Michael E. Smith, D.V.M.; Decision and Order

On December 3, 2020, a former Assistant Administrator, Diversion Control Division, of the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Michael E. Smith, D.V.M. (hereinafter, Respondent) of Zanesville, Ohio. Administrative Law Judge Exhibit (hereinafter, ALJX) 1 (OSC), at 1 and 5. The OSC proposed the denial of Respondent's application for DEA Certificate of Registration No. W20010614C (hereinafter, COR or registration) and the denial of any applications for any other DEA registrations pursuant to 21 U.S.C. 824(a)(2) and 824(a)(4) because Respondent was convicted of a felony related to controlled substances and because ''[Respondent's] registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).'' *Id.* at 1.

On January 1, 2021, the Respondent timely requested a hearing, which commenced (and ended) on April 19, 2021, at the DEA Hearing Facility in Arlington, Virginia with the parties, counsel, and witnesses participating via video teleconference (VTC). On June 30, 2021, Administrative Law Judge Paul E. Soeffing (hereinafter, the ALJ) issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD).

By letter dated August 5, 2021, the ALJ certified and transmitted the record to me for final Agency action. In the letter, the ALJ advised that the Respondent filed untimely exceptions to the Recommend Decision on July 26, 2021. The ALJ stated that the Respondent had received an extension of time to file his exceptions by 2:00 p.m. ET on July 26, but did not file them until 2:58 p.m. ET. The ALJ also advised that the Government filed its Response to the Respondent's Exceptions on August 5, 2021.

Having reviewed the entire record, I find Respondent's Exceptions without merit and I adopt the ALJ's rulings, findings of fact as modified, conclusions of law and recommended sanction with minor modifications, where noted herein.*[A] Although Respondent's Exceptions were untimely, in this case, I decided to nonetheless consider and address each of Respondent's Exceptions, and issue my final Order in this case following the Recommended Decision.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

Paul E. Soeffing

U.S. Administrative Law Judge

June 30, 2021

*[B] The issue in this case is whether the record as a whole establishes by a preponderance of the evidence that the Respondent's application for a DEA COR, Control No. W20010614C, should be denied, and any other pending applications for additional registrations should be denied, pursuant to 21 U.S.C. 824(a)(2) and (a)(4), because the Respondent has been convicted of a felony relating to controlled substances, and because his registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).

After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, I have set forth my recommended findings of fact and conclusions of law below.

I. Findings of Fact

A. Allegations

The Government alleges that the Respondent's application for a DEA COR, Control No. W20010614C, should be denied and any applications by the Respondent for any other DEA registrations should be denied, pursuant to 21 U.S.C. 824, because (1) Respondent has been convicted of a felony relating to controlled substances; and (2) that registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).

B. Stipulations

The Government and the Respondent agreed to fourteen stipulations, which I recommend be accepted as fact in these proceedings:

1. Respondent was previously registered with the DEA to handle controlled substances in Schedules II through V under DEA COR No. FS1126146 at 100 Sally Road, Zanesville, Ohio 43701.

2. Respondent surrendered DEA COR No. FS1126146 for cause on or about July 20, 2015, pursuant to his plea agreement in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.*

3. Respondent submitted an electronic application for a new DEA COR on or about February 3, 2020.

4. Government Exhibit No. 1 is a true and correct copy of Respondent's February 3, 2020 application for a DEA COR.

5. Government Exhibit No. 2 is a true and correct copy of the Certification of Registration History showing Respondent's answers to the liability questions from his February 3, 2020 application for a DEA COR.

6. Government Exhibit No. 3 is a true and correct copy of the docket sheet in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.*

7. Government Exhibit No. 4 is a true and correct copy of Respondent's signed plea agreement, dated July 20, 2015, in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.*

8. Government Exhibit No. 5 is a true and correct copy of the court's entry of Respondent's plea agreement, dated July 23,

*[A] I have made minor, nonsubstantive, grammatical changes to the RD and nonsubstantive conforming edits. Where I have made substantive changes, omitted language for brevity or relevance, or where I have added to or modified the Chief ALJ's opinion, I have noted the edits in brackets, and I have included specific descriptions of the modifications in brackets or in footnotes marked with an asterisk and a letter. Within those brackets and footnotes, the use of the personal pronoun ''I'' refers to myself—the Administrator.

*[B] I have omitted the RD's discussion of the procedural history to avoid repetition with my introduction.

2015, in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.*

9. Government Exhibit No. 6 is a true and correct copy of the court's entry of Respondent's sentence, dated October 7, 2015, in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.*

10. Government Exhibit No. 7 is a true and correct copy of the transcript of Respondent's plea hearing, dated July 20, 2015, in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.*

11. Government Exhibit No. 8 is a true and correct copy of the transcript of Respondent's sentencing hearing, dated October 5, 2015, in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.*

12. DEA lists Dilaudid (hydromorphone) as a Schedule II controlled substance under 21 CFR 1308.12(b)(1)(vii).

13. DEA lists oxycodone as a Schedule II controlled substance under 21 CFR 1308.12(b)(1)(xiii).

14. Dr. Smith currently holds an unrestricted license to practice veterinary medicine and surgery in the State of Ohio.

C. Government's Case-in-Chief

The Government presented its case in chief through the testimony of a single witness, Diversion Investigator (DI) K.P.

K.P. has worked for the DEA as a DI in Columbus, Ohio since May 2019. Tr. 14. She has been a DI since January 2019. Tr. 14–15. Her mission is to prevent, detect, and investigate diversion of controlled substances. Tr. 15. She conducts inspections, schedules investigations, and ensures registrants are in compliance with applicable laws. Tr. 15. If an applicant answers ''yes'' to a liability question [1] on the application, it will get flagged and assigned to a DI. Tr. 15–16. Once K.P. is assigned a new application for review, she will first read through the application and will then run a criminal history check. Tr. 16–17.

K.P. was assigned the Respondent's case because Respondent answered ''yes'' to three of the liability questions on the DEA Form 224, Application for Registration (''application'').[2] Tr. 17–19; Gov't Ex. 1 at 1. To the best of K.P.'s knowledge, the Respondent answered these questions correctly on his application. Tr. 38. After being assigned the case, K.P. called the Respondent. Tr. 17. She then reviewed the Ohio Veterinary Medical Licensing Board (''the Board'') action on his previous state license and realized he had a new Ohio state license. Tr. 18. She then ran his criminal history and submitted a request to Muskingum County for documents relating to the Respondent's criminal history. Tr. 18, 25–37; *See* Gov't Exs. 3–8. Throughout the investigation, K.P. spoke to the Respondent two or three times on the phone. Tr. 39. Otherwise, she was in contact with his counsel, Mr. I. Tr. 39. K.P. never met with the Respondent in person. Tr. 39.

In his answer to the first liability question, the Respondent stated that he pled guilty to ten counts of Illegal Processing of Drug Documents, had surrendered his vet license and his DEA registration, and served seventeen months of incarceration. Tr. 24; Gov't Ex. 2.[3] K.P. was concerned because the Respondent indicated he was addicted to opiates and had written prescriptions under his COR for dogs, but took them for his own personal use. Tr. 23–24; Gov't Ex. 2. K.P. asserted that the DEA's concern with granting the Respondent's application for registration is that the Respondent would not be able to responsibly handle a DEA registration because he has a proven history of misusing it. Tr. 40. The Respondent's guilty plea to ten counts of Illegal Processing of Drug Documents was significant to her because she believed it showed that the Respondent was not responsible with his registration. Tr. 24, 40.

K.P. did not believe that the Respondent had provided her with proof that he had been working on his addiction. Tr. 40. Although he provided her with certificates of the programs he completed, none were more recent than 2017. Tr. 40–41. She did not have an opinion on how often the Respondent should be attending a rehabilitation program or attending meetings. Tr. 41–42.

K.P.'s testimony was primarily focused on the non-controversial introduction of documentary evidence and her contact with this case.[4] Her testimony was generally consistent and genuine and there was no indication she harbors any animosity towards the Respondent. As a public servant, K.P. has no personal stake in the DEA's action on the Respondent's application for registration. I therefore find her testimony to be entirely credible and it will be afforded considerable weight.

D. Respondent's Case

The Respondent presented his case in chief through the testimony of four witnesses: himself and three character witnesses A.B., R.W., and G.G.

Respondent

The Respondent graduated from Ohio State University and obtained his degree in 1994. Tr. 44–45; Gov't Ex. 1 at 1.[5] He worked with his father in a private practice, where they saw over 10,000 clients, including over thirty-seven species of animals from seven counties. Tr. 45. He is prepared to handle situations in internal medicine, emergency medicine, preventive care, and surgical procedures. Tr. 46. The Respondent currently has a veterinary practice, Smith Veterinary Services, in Muskingum County, Zanesville, Ohio, which is mainly a rural area. Tr. 44–46.

Within a few years of graduating, the Respondent's veterinary license was disciplined for the first time. Tr. 46–47. One night, sometime in the 1990's, a client offered him cocaine, he took it, and ultimately became addicted to cocaine.[6] Tr. 47, 122. He was arrested with a possession charge and reprimanded by the Board with a two-year suspension of his license. Tr. 48, 110. When he was first arrested, he was put on probation, but he violated that probation and served a sentence. Tr. 128. He was incarcerated for eight months total for this drug conviction.[7] Tr. 129. The Board set conditions on the reinstatement of his license in a settlement agreement in 2000, including the requirement that he complete a rehabilitation program and demonstrate that he was capable of operating in a proper manner.[8] Tr. 48–49; 131–33.

[1] This includes whether an applicant had prior issues with controlled substances, convictions, or any disciplinary action on a state or federal controlled substance license. Tr. 16.

[2] The Respondent submitted this application in February 2020. Stip. 3; Tr. 19; Gov't Exs. 1, 2.

[3] The Government presented evidence indicating that the Respondent pled guilty in *State of Ohio* v. *Michael E. Smith*, No. CR2015–0052 to ten counts of ''Illegal Processing of Drug Documents,'' in violation of Ohio Revised Code (''ORC'') § 2925.23(B)(1), which is a fourth-degree felony. Gov't Ex. 4. The Respondent also pled guilty to ''Having a Weapon While Under Disability'' in violation of ORC § 2923.13(A)(3), a third-degree felony. *Id.*

[4] Although the Government called K.P. as a rebuttal witness to introduce into evidence additional documentary evidence, the tribunal sustained the Respondent's objection to proposed Government Exhibit 9 being admitted into evidence. Tr. 163–67.

[5] Although not specified in the testimony, this appears to be when the Respondent graduated from Veterinary school. *See* Gov't Ex. 1 at 1.

[6] When questioned by the tribunal as to the year he first started abusing drugs, the Respondent stated that he ''may have had casual use throughout my youth'' which would presumably predate this cocaine use after he became a licensed veterinarian and was ''well into [his] 30's.'' Tr. 119–20.

[7] Respondent's first drug conviction, for cocaine, was in 1997. Tr. 129; Gov't Ex. 7 at 14:21–22. In the sentencing transcript for the Respondent's 2015 conviction, his defense attorney indicates the Respondent served a six-month sentence for the 1997 conviction. Gov't Ex. 8 at 6:4–5.

[8] During the testimony, there was some confusion as the Respondent's Prehearing Statement indicated there was a settlement agreement with the Board in 2005. ALJ Ex. 8 at 2. The Respondent's counsel also referenced a 2005 settlement agreement with the Board, but the Respondent clarified that the settlement agreement was in 2000. Tr. 48. According to the Respondent and his counsel, the

Continued

When his license was reinstated, he went back to working with his father. Tr. 49. His father died in 2010, but he continued to work in the office with his half-sister, who was also a veterinarian. Tr. 50. They ultimately ''parted ways'' in the fall of 2011. Tr. 50–51. At this point, the Respondent had been sober for approximately thirteen years. Tr. 120.

In October of 2011, he learned that he had avascular necrosis of both of his hips, which he found to be quite painful. Tr. 51. He was prescribed opiates by the emergency room doctor, likely Percocet, after this diagnosis, and continued receiving opiate prescriptions after having hernias repaired in November 2011. Tr. 51, 52, 120. He had hip replacement surgery in January 2012. Tr. 52. He continued to receive opiate prescriptions from various doctors until a doctor indicated that he would no longer prescribe him opiates. Tr. 52–53. He then reached out to a surgeon who prescribed him opiates after the Respondent ''used an argument of professional courtesy,'' but this doctor ultimately stopped prescribing opiates to him. Tr. 53. The Respondent then started doing illegal activities [9] to acquire his own drugs for about three or four months. Tr. 53 (''went on for maybe three months''); Tr. 83 (''over a four-month period''). A pharmacist friend called and asked about one of the prescriptions the Respondent wrote and he lied and told the pharmacist that the prescription was ''okay.'' [10] Tr. 53. This incident prompted him to seek help. He started going to meetings and took part in a faith-based rehabilitative program, Alcohol Chemical Tobacco Symposium (''ACTS'') prior to his incarceration.[11] Tr. 53–55, 62; Resp't Ex. C.

The Respondent was ultimately served with a warrant in September 2012. Tr. 56. After receiving the warrant, he went to church, attended Alcoholics Anonymous (''AA'') and Narcotics Anonymous (''NA'') meetings, and continued to practice as a vet.[12] Tr. 57. Criminal charges were filed against him in 2015, and he was arrested. Tr. 58. The Respondent pleaded guilty to ten counts of Illegal Processing of Drug Documents. Tr. 58–59. The Respondent admitted that he pleaded guilty to ten counts of Illegal Processing of Drug Documents based on a scheme whereby he would write false prescriptions for dogs that he did not examine, and would either fill those prescriptions and take the pills for his own use or would sell the prescriptions to others.[13] Tr. 101–02. He also admitted that by issuing those prescriptions, in most cases, he did so without a legitimate medical purpose and outside the usual course of professional practice. Tr. 103.

He denied using marijuana or smoking crack in 2011 or 2012. Tr. 122. *But see* Gov't Ex. 8 at 21:1–11, 22:7–14 (During the 2015 sentencing hearing, the Respondent testified that prior to his arrest he was smoking marijuana almost daily and started smoking crack again in 2011). He testified that he did not recall making the statement to the trial judge in 2015 that he was smoking crack, although he may have used powdered cocaine in early 2012. Tr. 124. He also did not recall making the statement in 2015 to the trial judge that he was smoking marijuana, and he did not recall smoking marijuana in 2011 or 2012. Tr. 125. However, he later testified he probably last smoked marijuana during his opiate addiction in 2011 or 2012. Tr. 125–26. He also did not recall a period when he was smoking marijuana almost daily. Tr. 126–27. He stated that he did not ''recall all that was going on'' during the time of his opiate addiction and his ''mind was horribly confused . . . and everything is a daze.'' Tr. 126.

The Respondent was also given a twenty-four-month sentence for a gun violation.[14] Tr. 127; Gov't Ex. 6 at 2; Gov't Ex. 8 at 19–20. He served a seventeen-month prison sentence for his drug-related crimes from late 2015 until spring 2017, and received about thirty days off his sentence for good behavior. Tr. 59, 64. *But see* Tr. 127 (The Respondent testified that he served a concurrent twenty-four-month sentence for his gun-related crime with about thirty days off his sentence for good behavior.). While incarcerated, he surrendered his veterinary license to the Board. Tr. 63.

While he was incarcerated, he applied to the Seeking a New Direction (''SAND'') program, which had limited seating, attended NA and AA meetings weekly to bi-weekly, and chaired some NA meetings. Tr. 59–61, 103; Resp't Ex. B.[15] Also while incarcerated, he applied to and was accepted into the Kairos Inside Weekend Program, which is a faith-based organization where a group of men take part in ''a complete weekend of spirituality,'' learning to love themselves and forgive others. Tr. 60, 103; Resp't Ex. D.

After being released from jail, he thanked God, took care of his wife, found employment, and took part in the ACTS program. Tr. 62, 64; Resp't Ex. C. This program focused him on maintaining his sobriety. Tr. 96. He also got a job at Winland's Complete Landscaping as a laborer, then advanced to head mower and trained others. Tr. 64, 66–67. Despite pain from his hip, he never used opiates or other illegal substances while employed there, and ''will never touch another one.'' Tr. 65. Instead, he took over-the-counter Ibuprofen and Tylenol and was prescribed Meloxicam and Flexeril, a muscle relaxant. Tr. 65, 99.

Post-release, he attended AA and NA meetings. Tr. 65. He ''used to go a lot,'' but he has ''pulled back some'' and now goes when he feels ''a little stressed'' to hear other addicts, including ''ones that are newly trying to recover,'' so he can ''recall the pain, the discomfort, the dysfunction.'' Tr. 66.

When the Respondent applied for his veterinary license to be reinstated in Ohio, the Board initially denied his application. Tr. 68. The Board then held a hearing and decided ''the same day'' to reinstate his license. Tr. 69; Resp't Ex. A. His veterinary license was reactivated in January 2020. Tr. 67, 70, 87. Despite the fact that the Board's decision stated that it was issuing him a license ''with a reprimand letter,'' the Respondent asserts that he did not receive such a letter. Tr. 107, 109; Resp't Ex. A at 3. The Respondent further testified that there are no restrictions on his veterinary license and there was no discipline or reprimand. Tr. 69. The Board did not require any particular

2005 date listed in the Respondent's Prehearing Statement is a typographical error and the year should actually be 2000. Tr. 130–32.

[9] This appears to be a reference to the Respondent's criminal activity of writing prescriptions in the names of dogs that he or others would then fill so that the Respondent could use the drugs to satisfy his addiction.

[10] The Respondent later testified that this was a turning point for him where he realized that ''[n]ot only was I destroying myself, now I put him in a position of where he shouldn't have been and I came to the realization that what I was doing to myself, I may have been contributing this to happening to others as well.'' Tr. 97.

[11] The Respondent later testified that he took part in the program post-incarceration. Tr. 62. Furthermore, the certificate of completion for this ACTS program is dated August 16, 2017. Resp't Ex. C.

[12] The Respondent did not provide documentation of his attendance when he went to these meetings since he ''went on [his] own accord'' and ''the only time [he] signed was when [he] was incarcerated'' or ''back in the 90s when [the Courts] wanted [him] to have a paper signed.'' Tr. 57.

[13] The Respondent qualified his answer by saying ''[a] few of the prescriptions were actually for dogs that were damaged horribly.'' Tr. 102.

[14] The Respondent was a convicted felon in possession of a firearm, which he had used after his felony conviction. Gov't Ex. 8 at 19–20. At the hearing for the instant case, the Respondent admitted to having ''a deer shotgun and a .22 rifle here for protection for [his] office and family.'' Tr. 127.

[15] The Respondent testified that the Certificate of Completion for the Intensive Outpatient Program of Hocking County that was admitted into evidence as Respondent's Exhibit B is the same program as the SAND program. Tr. 60–61, 103.

rehabilitation or monitoring by the Board for his current license. Tr. 110–11. In its Finding and Order, the Board did suggest that the Respondent ''operate his practice under direct supervision by a licensed veterinarian.'' Tr. 107–08, 135–36; Gov't Ex. A at 3. The Respondent is not doing that. Tr. 107–08, 135. The Board's Finding and Order also suggested that he attend Ohio Physicians' Health Plan counseling for five years. Tr. 108, 134–35; Gov't Ex. A at 3. Respondent is also not doing this because when he previously looked into it—back in the 1990's—it was quite expensive and he would have to commute to Columbus, Ohio.[16] Tr. 108, 134–35. The Board has not checked in on the Respondent since reinstating his license. Tr. 69–70.

The Respondent built up his practice and set up an office in his house as a sole practitioner with his wife as his secretary and assistant. Tr. 70, 93–94, 106. He has seen approximately 1,000 patients since his license was reinstated. Tr. 70. The Respondent is specifically seeking the use of Schedule III, IV, and V drugs including Ketamine, which he would use as an anesthetic. Tr. 71–72, 90. He is also requesting Diazepam and Phenobarbital, which are used on animals having seizures. Tr. 73, 90. He is also seeking the use of testosterone and estrogen, which can be used on dogs with prostatitis. Tr. 74, 90. He is also seeking use of Nandrolene, an anabolic steroid, and Telazol, a short-acting narcotic. Tr. 75–76, 90. The Respondent would only administer these controlled substances, except for Phenobarbital, which he would prescribe to epileptic dogs. Tr. 91, 92. The Respondent is aware that Ketamine and Diazepam are controlled substances that are diverted. Tr. 94–95.

Every day, he prays, and he has learned many concepts and tools through NA and his rehabilitation programs. Tr. 79, 137–38. He has learned that addiction is ''a lifelong condition and it needs proper maintenance'' and that sobriety ''takes work, it takes maintenance.'' Tr. 80, 111. He would describe himself as ''a grateful recovered addict.'' Tr. 112. He also believes that addiction is ''part of [his] personality.'' Tr. 121. He testified that he appreciates that the Board reinstated his license and ''can guarantee [he] would never, ever, ever abuse that authority again.'' Tr. 81.[17]

Since his incarceration, the Respondent has not taken any classes or continuing education regarding his responsibilities and duties as someone with the authority to prescribe and administer controlled substances, but he did review regulations for the storage of controlled substances and record-keeping. Tr. 85, 116. The Respondent testified that he was ''not aware of any classes'' regarding responsibilities and duties of those with the authority to prescribe and administer controlled substances. Tr. 116. The last time the Respondent used an illegal controlled substance or any properly prescribed controlled substance was in 2012. Tr. 56, 96–98. He has been drug tested ''[m]any times'' since 2012 and has never had a positive result.[18] Tr. 56.

The Respondent stated that what is currently different as it relates to his prescribing or administering of controlled substances is the fact that he is no longer addicted to opiates. Tr. 111–12. He also does not continue to associate with any of the people he provided false prescriptions to in 2012. Tr. 112. The Respondent asserts that he did not provide drugs to his son (or any other relatives), either by prescribing or diverting them. Tr. 113, 115–16, 117–18. *But see* Gov't Ex. 8 at 16:17–18 (The Respondent stated that he ''became addicted [himself] and [his] son as well . . . .''); Gov't Ex. 8 at 18:15–19 (At the sentencing hearing, the trial judge stated ''you probably don't even know who all the victims are that got those drugs, do you?'' to which the Respondent replied ''One was my son, one was myself, I know that.'').

The Respondent believes a DEA COR would allow him to ''practice at a higher level'' and would provide for a ''better outcome or safety.'' Tr. 71, 76–77. The State of Ohio has never taken an action against his veterinary license due to the care he provided or failed to provide to an animal.[19] Tr. 77. The Respondent stated that he does not plan on writing prescriptions and trading them for drugs and he takes responsibility for his actions. Tr. 77, 137.

Regarding the Respondent's credibility, I note several areas of his testimony where there were inconsistencies or where his testimony was in direct opposition to previous testimony or established facts. First, the Respondent's testimony in this hearing that he never provided drugs to his son is in direct conflict with testimony he provided in his 2015 criminal proceedings as reflected in the sentencing transcript. Second, the Respondent's testimony in this hearing that he was not abusing other drugs, specifically crack and marijuana, at the time that he developed his addiction to opiates conflicts with testimony he provided, as reflected in the transcript, to the court during his 2015 sentencing. Third, the Respondent first testified that the Ohio Physicians' Health Plan counseling was too expensive for him to afford and also too far away for him to attend the in-person sessions. However, upon further examination by the tribunal, Respondent admitted he did not make any inquiries into the program after receiving the Board's Finding and Order and that his testimony was based on an inquiry he made back in the 1990's. Based on these inconsistencies in the Respondent's statements, and Respondent's uninformed (to be charitable) initial testimony regarding the Ohio Physicians' Health Plan counseling, I cannot fully credit the Respondent's testimony.

A.B.

A.B. has known the Respondent since 1995 and has taken her pets to him as her veterinarian since that time, except when he was not able to practice. Tr. 142–43. She is not a veterinarian and has never prescribed or administered controlled substances. Tr. 147–48. She knows that the Respondent was unable

[16] Upon further questioning by the tribunal, the Respondent admitted that he did not know if the Ohio Physicians' Health Plan counseling is currently an in-person program, nor did he know if financial assistance or a lower fee arrangement might be available to him. Tr. 134–35. The Respondent further admitted that ''I don't know what the program actually consists of or how they run it, at this time.'' Tr. 134. It therefore appears that the Respondent rejected out of hand any consideration of participating in the program based on his understanding of the program as it existed over twenty years ago, without making any inquiry as to how he might take part in or benefit from the program as it exists today. There did not seem to be any inquiry or investigation by the Respondent since the 1990's to justify his testimony that ''[i]t's very expensive'' and ''something [he] could not afford.'' Tr. 108.

[17] At the conclusion of his direct examination, the Respondent read a prepared statement to the tribunal. Tr. 81–86. He explained that he does not ''make light of the abuse of the trust given to my profession.'' Tr. 83. He admitted that he was convicted of the Illegal Processing of Drug Documents and has not lied or denied any of that. Tr. 83. He stated that he realized his actions harmed himself and potentially others and he regrets that. Tr. 83–84. He has also reviewed the standards for record-keeping for controlled substances, purchased key locks and a key lockbox, and will comply with all necessary regulations. Tr. 85, 116.

[18] The Respondent did not offer into evidence any documentation of any drug test results he may have had over the years. Nor did the Respondent testify regarding what drugs he was tested for or when he last submitted to a drug test.

[19] Although the Board may not have ever taken action against his license, this certainly does not mean that the Respondent has at all times provided proper care. The Respondent testified that one of the illegal prescriptions he wrote drew the attention of the filling pharmacist who questioned the legitimacy of the prescription. Tr. 53, 97. Though this prescription was diverted for illegal human use, the medical records of the animal patient would presumably falsely reflect that the animal had been prescribed the drug.

to practice because he lost his license due to ''some mistakes with drugs.'' Tr. 143. She has chronically ill animals—puppy mill survivors—that she takes to the Respondent for care because their severe illnesses require someone who will take the time to ''keep these dogs going.'' Tr. 143–45. The Respondent has always taken time to sit down and order lab tests. Tr. 144. She has never seen the Respondent appear to be under the influence of drugs or alcohol during any of her visits. Tr. 146–47. She trusts the Respondent. Tr. 147.

A.B. was called as a character witness,[20] and although the depth of her knowledge of the Respondent's suitability to act as a responsible DEA registrant is extremely limited, she presented testimony that was sufficiently cogent, detailed, plausible, and internally consistent to be considered generally creditable. Although A.B. has known the Respondent for over twenty-five years, her interactions with him have been limited to the times over the years when she has brought her animals to him for care. Nevertheless, I credit her testimony that the Respondent has rendered compassionate care to her animals and has never appeared to be under the influence of alcohol or drugs.

R.W.

The Respondent was employed by R.W.'s landscaping [21] company about three and a half years ago. Tr. 150. R.W. is not a veterinarian and has never prescribed or administered controlled substances. Tr. 153. Although the Respondent had felony convictions, R.W. needed employees and the Respondent was ''up front and honest'' with him about his situation, so R.W. gave him a chance. Tr. 150. The Respondent passed the initial drug test and never appeared to be under the influence of drugs or alcohol while he worked for R.W. Tr. 150–51. He was a hard worker and R.W. trusts him. Tr. 151. R.W. takes all of his pets to the Respondent for veterinary care. Tr. 151–52. The Respondent has never appeared to be under the influence of drugs or alcohol when R.W. brought his animals to the clinic. Tr. 152.

R.W. was called as a character witness [22] and, like the first character witness, although the depth of his knowledge of the Respondent's suitability to act as a responsible DEA registrant is extremely limited, he presented testimony that was sufficiently cogent, detailed, plausible, and internally consistent to be considered generally creditable. As a past employer, R.W. had more opportunities to observe the Respondent's condition on a day-to-day basis and he also had a stake in the Respondent remaining sober while employed. I therefore credit his testimony that the Respondent passed an initial drug test and maintained sobriety during the course of his employment.

G.G.

The Respondent and the Respondent's father had taken care of G.G.'s cats in 1990.[23] Tr. 156. G.G. ran an animal shelter, which he took over in 1992, until he retired in 2005. Tr. 156–57. G.G. does not keep in contact with anybody from the shelter. Tr. 159. The Respondent's father and the Respondent worked with this shelter, taking care of animals. Tr. 156. G.G. is not a veterinarian and he does not have a DEA COR. Tr. 160–61. G.G. believed that the Respondent was very knowledgeable in pet care and would explain to his clients how to care for their pets. Tr. 158. G.G. currently takes his dog to the Respondent. Tr. 158. Despite the fact that the Respondent is a convicted felon, it has never come up in conversation because he believes the Respondent's concern is what he can do for the pets. Tr. 158–59. G.G. has never seen the Respondent appear to be under the influence of drugs or alcohol. Tr. 159. While G.G. worked at the shelter, he never heard any complaints about the Respondent's care. Tr. 159–60.

G.G. was called as a character witness [24] and, like the other two character witnesses, although the depth of his knowledge of the Respondent's suitability to act as a responsible DEA registrant is extremely limited, he presented testimony that was sufficiently cogent, detailed, plausible, and internally consistent to be considered generally creditable. Because G.G. retired from the animal shelter in 2005, well before the Respondent's most recent drug violations, and because he has not kept in touch with people at the animal shelter, I find that the substance of his testimony is more relevant as a client who takes his dog to the Respondent for care. I therefore credit his testimony that the Respondent has rendered compassionate care to his dog and has never appeared to be under the influence of alcohol or drugs.

Other facts necessary for a disposition of this case are set forth in the balance of this Recommended Decision.

II. Discussion

The burden of proof at this administrative hearing is a preponderance-of-the-evidence standard. *Steadman* v. *SEC,* 450 U.S. 91, 100–01 (1981). The Administrator's factual findings will be sustained on review to the extent they are supported by ''substantial evidence.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). The Supreme Court has defined ''substantial evidence'' as such ''relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'' *Consolidated Edison Co.* v. *NLRB,* 305 U.S. 197, 229 (1938). While ''the possibility of drawing two inconsistent conclusions from the evidence'' does not limit the Administrator's ability to find facts on either side of the contested issues in the case, *Shatz* v. *U.S. Dep't of Justice,* 873 F.2d 1089, 1092 (8th Cir. 1989), all ''important aspect[s] of the problem,'' such as a respondent's defense or explanation that runs counter to the Government's evidence must be considered. *Wedgewood Vill. Pharmacy* v. *DEA,* 509 F.3d 541, 549 (D.C. Cir. 2007). The ultimate disposition of the case must ''be in accordance with the weight of the evidence, not simply supported by enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.'' *Steadman,* 450 U.S. at 99 (internal quotation marks omitted).

Regarding the exercise of discretionary authority, the courts have recognized that gross deviations from past agency precedent must be adequately supported, *Morall* v. *DEA,* 412 F.3d 165, 183 (D.C. Cir. 2005), but ''mere unevenness'' in application does not, standing alone, render a particular discretionary action unwarranted. *Chein* v. *DEA,* 533 F.3d 828, 835 (D.C. Cir. 2008) (citing *Butz* v. *Glover Livestock Comm'n Co.,* 411 U.S. 182, 188 (1973)). It is well-settled that because the Administrative Law Judge has had the opportunity to observe the demeanor and conduct of hearing witnesses, the factual findings set forth in this

[20] Tr. 140.

[21] Although R.W. did not testify as to the type of business he operates, he did describe the Respondent's responsibilities as ''mowing'' and being ''in charge of the mowing crew.'' Tr. 151. The Respondent also previously testified that he worked for W.'s Complete Landscaping, a landscaping service. Tr. 64.

[22] Tr. 140.

[23] The Respondent testified he did not graduate from veterinary school until 1994 and he then went into private practice with his father. Tr. 44–45. While G.G. may have been mistaken as to whether the Respondent had personally cared for his cats as early as 1990, the Respondent also testified that he had ''managed dogs and horses and cats'' since he was six, (Tr. 68), so it is plausible that the Respondent was assisting in his father's practice in 1990 in some capacity.

[24] Tr. 140.

Recommended Decision are entitled to significant deference, *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951), and that this Recommended Decision constitutes an important part of the record that must be considered in the Administrator's decision. *Morall,* 412 F.3d at 179. However, any recommendations set forth herein regarding the exercise of discretion are by no means binding on the Administrator and do not limit the exercise of that discretion. 5 U.S.C. 557(b); *River Forest Pharmacy, Inc.* v. *DEA,* 501 F.2d 1202, 1206 (7th Cir. 1974); Attorney General's Manual on the Administrative Procedure Act § 8 (1947).

In the adjudication of a denial of a DEA registration, the DEA has the burden of proving that the requirements for such registration are not satisfied. 21 CFR 1301.44(d). Where the Government has sustained its burden and made its *prima facie* case, a respondent must both accept responsibly for his actions and demonstrate that he will not engage in future misconduct. *Patrick W. Stodola, M.D.,* 74 FR 20,727, 20,734 (2009). Acceptance of responsibility and remedial measures are assessed in the context of the ''egregiousness of the violations and the [DEA's] interest in deterring similar misconduct by [the] Respondent in the future as well as on the part of others.'' *David A. Ruben, M.D.,* 78 FR 38,363, 38,364 (2013).

A. 21 U.S.C. 824(a)(2): Felony Related to Controlled Substances

The Government alleges that the Respondent's COR application should be denied because he has been convicted of a felony related to controlled substances, pursuant to 21 U.S.C. 824(a)(2). Under this provision, the Attorney General *may* deny,*[C] revoke, or suspend a registration issued under 21 U.S.C. 823 ''upon a finding that the registrant . . . has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance or a list I chemical.'' 21 U.S.C. 824(a)(2)(emphasis added). Under 21 U.S.C. 824(a)(2), a felony conviction related to controlled substances is a lawful basis to revoke a COR, but the question of whether the registration is revoked is a matter of discretion. *Alexander Drug Co., Inc.,* 66 FR 18,299, 18,302 (2001).

The Government alleges that on July 20, 2015, the Respondent pleaded guilty to ten counts of Illegal Processing of Drug Documents in violation of Ohio Rev. Code. Ann. § 2925.23(B)(1),[25] and that the Respondent was sentenced to seventeen months of imprisonment to be served concurrently with a twenty-four-month prison sentence for a weapons charge.*[D] ALJ Ex. 1 at 2 ¶ 7. The Government further alleges that these ten convictions were based on a scheme in which the Respondent prepared false prescriptions for opioid medications, including hydromorphone and oxycodone/acetaminophen, for canines that did not exist or that the Respondent did not examine, and that the Respondent would either fill these prescriptions for his personal use or sell the prescriptions to others in exchange for cash or other controlled substances. ALJ Ex. 1 at 2–3 ¶ 8.

The Government provided a copy of the Respondent's signed guilty plea in which the Respondent pleaded guilty to ten counts of Illegal Processing of Drug Documents and one count of Having a Weapon While Under Disability.[26] Gov't Ex. 4. The Respondent also admitted that he pleaded guilty to ten counts of Illegal Processing of Drug Documents in his Application for Registration, Form DEA 224 (''application''). Gov't Ex. 2 at 1–2. Specifically, in response to background question one on the application, which asks whether the applicant has ''ever been convicted of a crime in connection with controlled substance(s) under state or federal law,'' the Respondent responded ''Yes'' and indicated the following:

> Incident Date: 10/05/2015 Incident Location: MUSKINGUM COUNTY OHIO Incident Nature: IN 2012 I BECAME ADDICTED TO OPIATES AFTER 5 STRAIGHT MONS OF DR. PRESCRIBED OPIATES FOR 2 MAJOR SURGERIES. WHEN THE DRS. FINALLY STOPPED THEM I WROTE OPIATE PRESCRIPTIONS FOR DOGS AND TOOK SOME FOR MY OWN USE. I DID THIS OVER A THREE MONTH PERIOD UNTIL I CAME TO MY SENSES AND SOUGHT HELP FOR MY ADDICTION. Incident Result: IN 2015 AFTER BEING CHARGED I PLEAD GUILTY TO 10 COUNTS OF ILLEGAL PROCESSING OF DRUG DOCUMENTS AND SURRENDERED MY VET. LICENSE AND MY DEA REGISTRATION. I SERVED 17 MONS. INCARCERATED AND COMPLETED 2 REHABILITATION/RECOVERY PROGRAMS . . . .

Gov't Ex. 1 at 1–2 (emphasis in original).

The Respondent also testified at the April 19, 2021 hearing that he had pleaded guilty to ''10 counts . . . of illegal processing of drug documents'' and that he received a seventeen-month sentence for these charges and served all seventeen months, except ''possibly 30 days off the sentence for good behavior.'' Tr. 58–59, 101.

During cross-examination, the Government referenced ALJ Exhibit 1, the Order to Show Cause for the instant case. Tr. 100.[27] The Government read through Paragraphs 7 and 8, and the Respondent agreed he pleaded guilty to these ten counts of Illegal Processing of Drug Documents. Tr. 101. The Government also asked the Respondent whether these false prescriptions were based on a scheme whereby he would write false prescriptions for dogs the Respondent did not examine and would then fill those prescriptions for his own use or would sell the prescriptions to others. Tr. 102; ALJ Ex. 1 at 3 ¶ 11. The Respondent indicated that although a ''few of the prescriptions were actually for dogs that were damaged horribly,'' he ''did write prescriptions that should not have been written so [he] could acquire these drugs to feed [his] addiction. [He] fully admit[s] . . . freely admit[s] that.'' Tr. 102. The Respondent also testified that he knew ''some people did acquire'' these false prescriptions. Tr. 102. Although the Respondent did not testify at the April 19, 2021 hearing that the specific controlled substances included hydromorphone and oxycodone, the transcript from his guilty plea, which was stipulated to by the parties, indicates that this scheme indeed included prescriptions for hydromorphone/Dilaudid, and oxycodone/APAP, which are both Schedule II controlled substances. Gov't Ex. 7 at 14; *See* Stip. 10, 12, 13.

Therefore, through the Respondent's testimony, the exhibits, and the stipulations, there is no controversy that the Respondent has pleaded guilty to ten counts of Illegal Processing of Drug Documents in violation of Ohio Rev.

*[C] A provision of section 824 may be the basis for the denial of a practitioner registration application and allegations related to section 823 remain relevant to the adjudication of a practitioner registration application when a provision of section 824 is involved. *See Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,744–45.

[25] Ohio Rev. Code. Ann. § 2925.23(B)(1) states that ''[n]o person shall intentionally make, utter, or sell, or knowingly possess any of the following that is false or forged: (1) Prescription.''

*[D] Although discussed herein as background, I am not considering the weapons charge under 21 U.S.C. 824(a)(2).

[26] The Government provided a copy of the signed plea agreement from the Muskingum County Court of Common Pleas. Gov't Ex. 4. The parties stipulated that this document is a true and correct copy of Respondent's signed plea agreement, dated July 20, 2015, in Case CR2015–0052, *State of Ohio* v. *Michael E. Smith.* Stip. 7.

[27] The Government ''shared'' this document on the screen so the Respondent, who was attending the hearing from a different physical location from his counsel, (Tr. 6), and did not have copies of the ALJ exhibits, was able to follow along with this line of questioning. Tr. 100.

Code Ann. § 2925.23(B)(1), was sentenced to seventeen months imprisonment to be served concurrently with a twenty-four month prison sentence for a weapons charge, and that these counts were based on a scheme by which the Respondent prepared false prescriptions for canines that did not exist or that he did not examine, and that he either filled the prescriptions for his own use or sold the false prescriptions to others in exchange for cash or other controlled substances.

Therefore, the allegations set forth in the OSC Allegations 7 and 8 are *Sustained*.

B. 21 U.S.C. 823(f): Public Interest Determination

Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for a registration if persuaded that maintaining such registration would be inconsistent with the public interest. The following factors shall be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

''These factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003). Any one or a combination of factors may be relied upon, and when exercising authority as an impartial adjudicator, the Agency may properly give each factor whatever weight it deems appropriate in determining whether a registrant's registration should be revoked. *Id.; David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (1993); *see also Morall,* 412 F.3d at 173–74 (D.C. Cir. 2005); *Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422, 16,424 (1989).

Moreover, the Agency is ''not required to make findings as to all of the factors,'' *Hoxie,* 419 F.3d at 482; *see also Morall,* 412 F.3d at 173, and is not required to discuss consideration of each factor in equal detail, or even every factor in any detail. *Trawick* v. *DEA,* 861 F.2d 72, 76 (4th Cir. 1988) (holding that the Administrator's obligation to explain the decision rationale may be satisfied even if only minimal consideration is given to the relevant factors, and that remand is required only when it is unclear whether the relevant factors were considered at all). The balancing of the public interest factors ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest . . . .'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009).

Factors Two, Three, and Four

The Government contends that granting the Respondent's application for registration would be inconsistent with the public interest based on Factors Two, Three, and Four.[28] ALJ Ex. 1 at 3 ¶ 10. Under Factor Two, the DEA analyzes a registrant's ''experience in dispensing . . . controlled substances.'' 21 U.S.C. 823(f)(2). This analysis focuses on the registrant's acts that are inconsistent with the public interest, rather than on a registrant's neutral or positive acts and experience. *Kansky J. Delisma, M.D.,* 85 FR 23,845, 23,852 (2020) (citing *Randall L. Wolff, M.D.,* 77 FR 5106, 5121 n.25 (2012)). Likewise, under Factor Four, the DEA analyzes an applicant's compliance with Federal and state laws, with the analysis focusing on violations of state and Federal laws and regulations concerning controlled substances. 21 U.S.C. 823(f)(4); *Kansky J. Delisma, M.D.,* 85 FR 23,852 (citing *Volkman* v. *DEA,* 567 F.3d 215, 223–24 (6th Cir. 2009). Under Factor Three, the tribunal may consider a registrant's ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). A guilty plea may be considered under the third factor of the public interest standard. *Mark P. Koch, D.O.,* 79 FR 18,714, 18,734 n.121 (2014).

Regarding Factor Two, the Respondent has approximately seven years of experience[29] with dispensing controlled substances as a veterinarian. Gov't Ex. 2 at 1. In 2015, after pleading guilty to ten counts of Illegal Processing of Drug Documents, the Respondent surrendered his registration. As discussed *supra,* the Respondent admitted that he wrote false prescriptions ''that should not have been written so [he] could acquire these drugs to feed [his] addiction.'' Tr. 102. He also admitted that ''some people did acquire'' some of these false prescriptions. Tr. 102, 112. These prescriptions included hydromorphone/Dilaudid, a Schedule II controlled substance, and oxycodone/APAP, also a Schedule II controlled substance. Gov't Ex. 7 at 14; Stips. 12, 13.

As it relates to Factor Four, the record establishes multiple instances in which the Respondent failed to comply with applicable Federal and State laws. The Government alleges that the Respondent violated 21 U.S.C. 841(a), 842(a), and Ohio Admin. Code 4729:5–30.[30] ALJ Ex. 1 at 3 ¶ 11. The Controlled Substances Act's (''CSA'') general criminal provision is contained in 21 U.S.C. 841(a), and in relevant part states: ''[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled

[28] The record contains no recommendation from any state licensing board or professional disciplinary authority (Factor One), but, aside from cases establishing a complete lack of state authority, the presence or absence of such a recommendation has not historically been a case-dispositive issue under the Agency's precedent. *Stodola, M.D.,* 74 FR 20,730 n.16; *Krishna-Iyer,* 74 FR 461. Two different forms of recommendations have appeared in Agency decisions: (1) An explicit recommendation regarding the DEA's decision to issue or sanction a COR; and (2) the action of the relevant state authority regarding state licensure under its jurisdiction on the same matter that is the basis for the OSC. *Mark A. Wimbley,* 86 FR 20,713, 20,725 (2021); *see also, Jennifer L. St. Croix,* M.D., 86 FR 19,010, 19,022 (2021) (Agency affords minimal weight to a state board reprimand due to differences in evidence considered by the state in issuing its order.); *Jeanne E. Germeil, M.D.,* 85 FR 73,786, 73,799 (2020) (Agency recognizes that its prior final orders have considered this dichotomy of sources for Factor One consideration). In the instant case, the Board did reinstate the Respondent's veterinary license in a Finding and Order dated November 14, 2019, after he surrendered it in 2015. *See* Resp't Ex. A; ALJ Ex. 20 at 10 (''There is approval from the Ohio Veterinary Medical Board. They granted Dr. Smith an unrestricted veterinary license, knowing his history of drug use and addiction.''). The Respondent currently has an Ohio veterinary license. Therefore, although not determinative in this proceeding, Factor One tends to lean in favor of the Respondent. As the Government's allegations and evidence fit squarely within the parameters of Factors Two, Three, and Four and do not raise ''other conduct which may threaten the public health and safety,'' 21 U.S.C. 823(f)(5), Factor Five militates neither for nor against the sanction sought by the Government in this case.

[29] The Respondent's first and only DEA registration, COR No. FS1126146, was assigned to the Respondent on October 22, 2008, and was surrendered for cause on July 27, 2015. Gov't Ex. 2 at 1.

[30] While OSC Allegation 11 charges the Respondent with violating Ohio Admin. Code 4729:5–30, the Government did not present any evidence on this issue during the hearing and did not address the issue in its post-hearing brief. Therefore, the Government has apparently abandoned this particular portion of OSC Allegation 11. *See George Pursley, M.D.,* 85 FR 80,162, 80,181–82, 80,185 (2020) (finding the Government abandoned allegation by not addressing it within its post-hearing brief). I also take official notice that this particular administrative code section was rescinded, effective March 15, 2021. Ohio Admin. Code 4729:5–30 (LexisNexis 2021).

substance.'' 21 U.S.C. 841(a)(1). ''Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA'' to prevent abuse and diversion of controlled substances. *Gonzales* v. *Raich,* 545 U.S. 1, 13 (2005). DEA regulations require that for a prescription for a controlled substance to be effective it must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice. 21 CFR 1306.04(a).

Under the CSA, a veterinarian falls within the definition of a practitioner, and upon obtaining a registration, a veterinarian has legal authority to prescribe, administer or distribute a controlled substance to an ''ultimate user,'' who is a person who has lawfully obtained a controlled substance ''for an animal owned by him or a member of his household.'' *Daniel Koller, D.V.M.,* 71 FR 66,975, 66,981 (2006) (citing 21 U.S.C. 802(21), (27)).

As discussed *supra,* the Government referenced ALJ Exhibit 1 and read through OSC Allegations 10 and 11. Tr. 101–03. The Respondent indicated that he understood the allegations and that he was guilty of the alleged conduct. Tr. 101–03.

Regarding Factor Three, as discussed at length throughout this Recommended Decision, the Respondent's guilty plea, which may be considered under the third factor of the public interest standard,[31] included ten counts of Illegal Processing of Drug Documents, which related to a scheme by which the Respondent would write fraudulent prescriptions which he would either fill himself, taking the pills for his own use, or would sell to others. Tr. 101–02. The Respondent began doing these ''illegal activities'' to acquire drugs for himself after he was unable to obtain further valid opioid prescriptions from other practitioners. Tr. 53, 83.

Therefore, OSC Allegation 10 is *Sustained* and OSC Allegation 11 is *Sustained in Part* to the extent that the Respondent unlawfully issued prescriptions for controlled substances in violation of 21 U.S.C. 841(a) and 842(a), specifically, by issuing fraudulent prescriptions and then converting those prescriptions to his own use or selling them, and that the Respondent issued prescriptions for controlled substances outside the usual course of professional practice and not for a legitimate medical purpose, (21 CFR 1306.04(a)). OSC Allegation 11 is *Not Sustained in Part* to the extent that the Respondent violated Ohio Admin. Code 4729:5–30.

As it relates to the Respondent's experience in dispensing controlled substances, the Respondent's compliance with applicable State and Federal laws relating to controlled substances, and the Respondent's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances, Factors Two, Three, and Four militate strongly in favor of the Government's position that granting the Respondent a DEA registration is inconsistent with the public interest.

Based upon my review of the allegations by the Government, it is necessary to determine if it has met its *prima facie* burden of proving the requirements for a sanction pursuant to 21 U.S.C. 824(a).

It is clear from the stipulations, the Government's evidence, and the Respondent's position in this matter that there is no controversy between the parties that the Respondent was convicted of the underlying criminal charges. The Government's evidence clearly demonstrates the necessary elements of proof under 21 U.S.C. 824 and I find that the Government has established a *prima facie* case for denial of the Respondent's application for registration.

III. Sanction

A. Acceptance of Responsibility and Rehabilitative Measures

With the Government's *prima facie* burden having been met, an unequivocal acceptance of responsibility stands as a condition precedent for the Respondent to prevail. *Jones Total Health Care Pharmacy, L.L.C. & SND Health Care, L.L.C.,* 81 FR 79,188, 79,201 (2016). This feature of the Agency's interpretation of its statutory mandate on the exercise of its discretionary function under the CSA has been sustained on review. *MacKay* v. *DEA,* 664 F.3d 808, 819–20 (10th Cir. 2011). Accordingly, the Respondent must ''present[ ] sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.'' *Medicine Shoppe-Jonesborough,* 73 FR 363, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23,848, 23,853 (2007)). As past performance is the best predictor of future performance, the DEA has repeatedly held that where an applicant has committed acts inconsistent with the public interest, the applicant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct. *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995).

Although the Respondent ''freely admit[s] [he] did wrong,'' his language was conditional, and as opposed to taking unequivocal responsibility, the record is replete with examples of the Respondent placing the blame of his addiction on others, including a former client and his doctors. Tr. 112. For example, when he discussed using cocaine a few years after graduating from veterinary school, he prefaced this by explaining that a lot his previous friends from high school ''were using illicit drugs including cocaine'' and that he did not ''know much about'' cocaine until he ''had a client one night offer'' him some. Tr. 47. When the Respondent was prescribed opiates in October 2011 and ultimately became addicted to them, he blamed a string of doctors who treated him for various ailments. He testified that he was ''not aware of the force of opiate addiction'' (Tr. 121) and that he ''had no idea what it was like until I found out myself.'' Tr. 84. He explained that he ''trusted the doctors to help'' him, (Tr. 121), and ''maybe [he] should have told the doctors, please don't give me these opiates.'' Tr. 122. With this detached approach, the Respondent appears to have abdicated his responsibility to participate in the proper management of his pain by accounting for his history of drug addiction. Even in his application, which is the subject of these proceedings, he stated that he ''BECAME ADDICTED TO OPIATES AFTER 5 STRAIGHT MONS OF DR. PRESCRIBED OPIATES FOR 2 MAJOR SURGERIES. WHEN THE DRS. FINALLY STOPPED THEM I WROTE OPIATE PRESCRIPTIONS FOR DOGS AND TOOK SOME FOR MY OWN USE.'' Gov't Ex. 2 at 1 (emphasis in original). Essentially, the Respondent, despite his status as a medical professional and onetime DEA registrant, claimed ignorance of the potential for addiction of cocaine and opiates and instead blamed others for his addiction.

When the Respondent was cross-examined by Government counsel regarding the ten prescriptions he wrote for which he was convicted of Illegal Processing of Drug Documents, the Respondent expressed ambivalence stating that a ''few of the prescriptions were actually for dogs that were damaged horribly.'' Tr. 102. During this same line of questioning regarding the ten prescriptions for which he was convicted, when asked if he issued the prescriptions ''without a legitimate medical purpose and outside the usual

[31] *Koch,* 79 FR 18,734 n.121.

course of professional practice,'' the Respondent would only allow that ''[i]n *most* cases that is exactly correct.'' Tr. 103 (emphasis added). The Respondent's answers to these pointed questions about the ten distinct prescriptions for which he was convicted do not exhibit an unequivocal acceptance of responsibility.

He also appears to have regret mostly for what his actions caused to his own life and it is evident the Respondent does not fully comprehend the repercussions of his actions and the effects it had on the community at large. During his testimony, he stated that his ''actions had harmed [himself] and *potentially* others.'' [32] Tr. 83–84; 102 (emphasis added). He also discussed the fact that he went through bankruptcy proceedings and ''lost everything that [he] ever worked for.'' Tr. 108. When questioned regarding the other people who obtained false prescriptions through him, the Respondent was only able to ''mainly recall two people [whose] prescriptions were improper,'' one of which he ''found out later . . . was a very big drug dealer in this area.'' Tr. 112–13. The Respondent's failure to fully grasp how his diversion adversely impacted his community is a failure to accept full responsibility for his actions.

Therefore, I do not find that the Respondent has demonstrated an ''unequivocal acceptance of responsibility'' for his actions. *Jones Total Health Care Pharmacy, L.L.C.,* 81 FR 79,201–02. Due to the fact that this is the Respondent's second episode of addiction and the fact that he used his DEA registration to divert controlled substances for a period spanning several months, I do not have confidence in the Respondent's statement that he ''can guarantee [he] would never, ever, ever abuse that authority again.'' Tr. 81.[33]

B. Egregiousness, Deterrence, and Lack of Candor

While a registrant must accept responsibility and demonstrate that he will not engage in future misconduct in order to establish that his continued registration is consistent with the public interest, DEA has repeatedly held these are not the only factors that are relevant in determining the appropriate sanction. *See, e.g., Joseph Gaudio,* 74 FR 10,083, 10,094 (2009); *Southwood Pharm., Inc.,* 72 FR 36,487, 36,502–04 (2007). The egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19,386, 19,387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30,630, 30,644 n.45 (2008).

Further, in determining whether and to what extent imposing a sanction is appropriate, besides the egregiousness of the offenses established by the Government's evidence, consideration must also be given to the Agency's interest in both specific and general deterrence. *Ruben, M.D.,* 78 FR 38,385. Here, the egregiousness of the offense favors denial of the application. The Respondent was convicted of ten counts of Illegal Processing of Drug Documents. These ten illegal prescriptions were for Schedule II controlled substances: Eight were for hydromorphone/Dilaudid and two were for oxycodone/APAP. Gov't Ex. 7 at 14. The Respondent admitted that he diverted to numerous people, a few of whom he could recall and two of whom he specifically identified at the hearing. Tr. 112–13. The Respondent described one of these individuals as someone that he ''found out later . . . was a very big drug dealer.'' Tr. 112–13.

Considerations of specific and general deterrence in this case militate in favor of denial of the application.[34] As to specific deterrence, this is not the Respondent's first bout with drug addiction, having suffered from cocaine addiction in the 1990's and having served a term of incarceration for possession of that drug.[35] Thus, the Respondent has acknowledged his past history of drug addiction, even going so far as to state he believes his ability to become ''highly addicted'' is ''part of [his] personality.'' Tr. 121. Thus, the interests of specific deterrence, even standing alone, motivate powerfully in favor of the denial of the Respondent's application.

The interests of general deterrence compel a like result. As the regulator in this field, the Agency bears the responsibility to deter similar misconduct on the part of others for the protection of the public at large. *Ruben,* 78 FR 38,385. Where the record demonstrates that the Government has borne its burden and established that the Respondent was convicted of a felony related to controlled substances and abused his prescriptive privileges to actively divert controlled substances to himself and others by writing prescriptions in the names of purported

[32] It is startling that the Respondent couched his diversion of Schedule II controlled substances as ''potentially'' harming others when he also testified that he was diverting to a ''very big drug dealer,'' thereby implicitly acknowledging the widespread effect of his diversion. Tr. 112–13. Additionally, when testifying that, were he to obtain a new DEA registration, he would not divert drugs from his practice to his son, he also testified that he was ''almost thankful'' his son is ''in jail right now so I don't read in the morning paper that he's dead.'' Tr. 118. Thus, while the Respondent is intimately familiar with his own struggles with drug addiction and that of his son, the fact that he couches his own diversion as having ''potentially'' harmed others leads this tribunal to conclude that he has not yet come to terms with his own role in this country's opioid crisis.

[33] Where a registrant has not accepted responsibility, it is not necessary to consider evidence of the registrant's remedial measures. *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5498 n.33 (2019) (citing *Jones Total Health Care Pharmacy, L.L.C. & SND Health Care, L.L.C.,* 81 FR 79,202–03 (2016)). [In this case, even if Respondent had accepted responsibility, his remedial measures were inadequate.] Although the Respondent stated he believes he is fully rehabilitated, the tribunal is not entirely convinced the Respondent is taking the necessary measures to maintain his sobriety long term. He attended a few programs while incarcerated and on an outpatient basis after his release from jail. Although he stated that he attends NA meetings, by his own admission, he only does so when he ''feel[s] maybe a little stressed.'' Tr. 66. Furthermore, although he has ''reviewed the standards for record keeping,'' ''purchased keyed locks, key lockbox,'' and ''will acquire controlled substance logbooks and keep meticulous records,'' he has not taken any classes that relate to prescribing controlled substances. Tr. 85, 94. Finally, the Respondent does not appear to have seriously considered the Board's suggestions, when he was relicensed, that he attend counseling and practice under the supervision of another veterinarian. *See supra* at 9 n.19. Although the Respondent asserts that he ''learned through education about addiction that it is a lifelong condition,'' he does not appear to have in place an adequate support system (such as participating in the Ohio Physicians' Health Plan counseling) or an oversight structure (such as operating his practice under direct supervision by a licensed veterinarian) such that the tribunal has confidence he can be entrusted with a registration. Tr. 80.

[34] I note that the Respondent did not include his 1997 conviction related to cocaine possession or his two-year veterinary license suspension in the late 1990's in his liability question responses. Gov't Ex. 2 at 1–2. However, because the Government did not make any allegations regarding a material falsification of the Respondent's application and also did not specifically rely on these events for denial of the instant application, I have not considered the previous conviction and license discipline except as historical information to put the Respondent's 2015 conviction and loss of his veterinary license into the proper context given his past experience. Presumably, the Agency was aware of these incidents when it granted the Respondent's previous application for registration in 2008—which the Respondent surrendered for cause in 2015. Gov't Ex. 2 at 1.

[35] In the Respondent's mind, his cocaine addiction in the 1990's and his opiate addiction years later are unconnected and he implies he could not have foreseen his later addiction to opiates because he was ''never addicted to opiates'' and ''didn't go looking for a new addiction.'' Tr. 121. The Respondent also took issue with the tribunal's characterization of his opiate addiction as ''a relapse.'' Tr. 122. The Respondent made similar statements to the judge at his criminal sentencing in 2015 when the judge stated he was concerned because the Respondent had a drug addiction earlier in life and the Respondent replied ''I never had a (sic) opiate problem.'' Gov't Ex. 8 at 16–17. The judge in the criminal proceeding did not appear to accept this rationale, stating ''[y]ou had an addictive problem'' and ''[y]ou know how addictive opiates are. And you're an addict. Were and are.'' Gov't Ex. 8 at 17.

animal patients, the unmistakable message to the regulated community would be that such conduct can be overlooked after a period of non-registration. Although the Respondent surrendered for cause his previous DEA registration in 2015,[36] he was not eligible to reapply for a new registration until January 2020, when he reacquired his state veterinary license. The following month, he submitted his application for a new DEA registration.[37] At this time, the Respondent has been without a DEA registration for nearly six years. I find that this is not an insignificant period of time. However, based on the egregiousness of the Respondent's behavior discussed above, I find that the interests of general deterrence support the denial sought by the Government.

Another factor that weighs significantly in favor of the denial sanction sought by the Government is lack of candor. In making the public interest determination, ''this Agency places great weight on [a respondent's] candor, both during an investigation and in [a] subsequent proceeding.'' *Fred Samimi, M.D.,* 79 FR 18,698, 18,713 (2014) (quoting *Robert F. Hunt, D.O.,* 75 FR 49,995, 50,004 (2010)).

Although the Agency did not make any allegations regarding a lack of candor by the Respondent during the investigation, in making my credibility determination, as discussed above, I found discrepancies between the Respondent's prior testimony to the court at his sentencing hearing and statements made by the Respondent in this proceeding. During the instant proceeding, the Respondent downplayed the scope and extent of his drug use, contradicting statements he made at his sentencing hearing that he was doing crack around the same time he became addicted to opiates and disavowing his previously acknowledged ''almost daily'' use of marijuana by stating he was not using marijuana because he ''was after something for [his] pain, not marijuana.'' Tr. 126. Other statements at the hearing that his son was not the recipient of any of his diverted drugs again conflict with testimony he gave at his sentencing hearing that his son received drugs that he diverted from his false prescribing. Finally, I find that the Respondent's initial testimony that he was not participating in the Ohio Physicians' Health Plan counseling, due to its cost, exhibits a lack of candor where the basis for his statement regarding cost was from when he previously considered the program in the 1990's relating to his cocaine addiction. I find that the Respondent's statement that the program was too expensive for him to participate in demonstrated a lack of candor, inasmuch as he later admitted he had no idea how the program is run today and that he had not explored options regarding financial assistance or other accommodations regarding cost. Hence, the Respondent's lack of candor undermines the confidence that the Agency can have in the Respondent's ability to be a responsible DEA registrant.

For the above reasons, I find that the Respondent's misconduct is egregious and that deterrence considerations and the Respondent's lack of candor weigh in favor of revocation.

Considering the entire record before me, the conduct of the hearing, and observation of the testimony of the witnesses presented, I find that the Government has met its burden of proof and has established a *prima facie* case for denial of the Respondent's application for registration. Furthermore, I find that the Respondent has failed to meet his burden to overcome the Government's case. While the Respondent is to be commended for rebuilding his veterinary practice and while the testimony of his three character witnesses leads me to conclude that the Respondent is a caring and capable veterinarian, *[E] I cannot overlook the egregiousness of his offenses, his failure to unequivocally accept responsibility, and the need for specific and general deterrence in this case, each of which, even standing alone, provides a compelling reason for denial of the application.

Therefore, I recommend that the Respondent's application for a DEA registration, Control No. W20010614C, be *Denied* and any pending applications for other DEA registrations likewise be *Denied*.

Dated: June 30, 2021

Paul E. Soeffing

PAUL E. SOEFFING
U.S. Administrative Law Judge

Respondent's Exceptions

On July 26, 2021, Respondent filed his Exceptions to the Recommended Decision. DEA regulations require that Exceptions ''include a statement of supporting reasons for such exceptions, together with evidence of record (including specific and complete citations of the pages of the transcript and exhibits) and citations of the authorities relied upon.'' 21 CFR 1316.66. For the most part, Respondent's Exceptions not only fail to comply with this regulatory requirement, but also lack evidentiary support in the Administrative Record. Additionally, some of Respondent's Exceptions repeat arguments that were already raised throughout the proceedings and were adequately addressed in the adopted Recommended Decision. Therefore, I reject Respondent's Exceptions and adopt the Recommended Decision of the ALJ as amended above.

Exception 1

In his first Exception, Respondent argues that the ALJ failed to properly consider Factor One in the public interest analysis under 21 U.S.C. 823(f)(1). Respondent's Exceptions, at 1. Respondent argues that ''by granting [Respondent] a license to practice medicine and surgery in the State of Ohio after he surrendered it due to the criminal matter, the Ohio Veterinary Medical Licensing Board has given their stamp of approval for [Respondent] to

[36] Gov't Ex. 2 at 1.

[37] The Respondent's COR application was submitted on February 3, 2020. Gov't Ex. 2 at 1.

[E] *See Raymond A. Carlson,* 53 FR 7425 (1988) (finding that none of the character ''witnesses was in a position to make an adequate assessment of [r]espondent's ability to properly handle controlled substances.'').

use [sic] controlled substances in Ohio'' and that ''the Tribunal should have taken this into consideration.'' *Id.*

In determining the public interest under Factor One, the ''recommendation of the appropriate State licensing board or professional disciplinary authority . . . shall be considered.'' 21 U.S.C. 823(f)(1). ''Two forms of recommendations appear in Agency decisions: (1) A recommendation to DEA directly from a state licensing board or professional disciplinary authority (hereinafter, appropriate state entity), which explicitly addresses the granting or retention of a DEA COR; and (2) the appropriate state entity's action regarding the licensure under its jurisdiction on the same matter that is the basis for the DEA OSC.'' *John O. Dimowo, M.D.,* 85 FR 15,800, 15,809 (2020); see also *Vincent J. Scolaro, D.O.,* 67 FR 42,060, 42,065 (2002) (''While the State Board did not affirmatively state that the Respondent could apply for a DEA registration, [the ALJ] found that the State Board by implication acquiesced to the Respondent's application because the State Board has given state authority to the Respondent to prescribe controlled substances.''). It is the Administrator who makes a determination of whether granting a registration is in the public interest as defined by the CSA, and the Administrator's purview is focused on entrusting Respondent with a controlled substances registration. *See Ajay S. Ahuja, M.D.,* 84 FR 5479, 5490 (2019).

In Respondent's case, contrary to Respondent's Exception, the ALJ did consider in his Factor One analysis that the Board was aware of Respondent's history of drug use and addiction and nonetheless reinstated Respondent's Ohio veterinary license without restriction. RD, at 19 n.31. As such, the ALJ found that Factor One leaned in favor of Respondent. *Id.*

Ultimately, the ALJ found, and I agree, that Factors Two, Three, and Four militate strongly in favor of the Government's position that granting the Respondent a DEA registration is inconsistent with the public interest. Accordingly, I find Respondent's assertion that the ALJ did not take the unrestricted reinstatement of Respondent's veterinary license into consideration in the Factor One analysis to lack merit.

Exception 2

In his second Exception, Respondent argues that the ALJ improperly interpreted Respondent's nervous demeanor as a lack of remorse or a ''conditional remorse,'' citing the ALJ's analysis of Respondent's acceptance of responsibility. Respondent's Exceptions, at 1–2; *see* RD, at 23–25. However, in his analysis regarding Respondent's acceptance of responsibility, the ALJ made no reference whatsoever to Respondent's demeanor or nervousness. RD, at 23–25. Instead, the ALJ found that Respondent had not demonstrated an unequivocal acceptance of responsibility because Respondent's testimony itself demonstrated that he was ambivalent regarding the extent of his wrongdoing, consistently placed the blame of his addiction on others, and was primarily regretful for how his misconduct had affected his own life rather than the community at large. *Id.* Accordingly, I find Respondent's argument that the ALJ improperly interpreted Respondent's demeanor in the analysis of Respondent's acceptance of responsibility to lack merit. I credit Respondent's honest acknowledgment of his nerves during the proceeding. Tr. 81.

In spite of Respondent's commendable sobriety thus far, I have reason to doubt his claim that he would always be a compliant registrant. *See George R. Smith, M.D.,* 78 FR 44,972, 44,980 (2013). Particularly, I remain concerned that if he relapsed, which the record has demonstrated previously occurred, while entrusted with a controlled substances registration, he could harm himself and others too quickly for detection by this Agency or his monitoring. *See Robert Wayne Locklear, M.D.,* 86 FR 33,745. Ensuring that a registrant is trustworthy to comply with all relevant aspects of the CSA without constant oversight is crucial to the Agency's ability to complete its mission of preventing diversion within such a large regulated population. *Jeffrey Stein, M.D.,* 84 FR 46,974.

Exception 3

In his third Exception, Respondent argues that ''[t]he Tribunal gave too much weight to the DI [K.P.]'s opinions about [Respondent's] work on his addiction.'' Respondent's Exceptions, at 2. Respondent also argues that ''[t]here was no reason to include this as part of the Government's case'' and that ''there was no reason for the Tribunal to challenge [Respondent] about the Ohio Physicians' Health Plan.'' *Id.* However, where the Government has met its *prima facie* burden of showing that a ground for revocation exists, the burden shifts to the Respondent to show why he can be entrusted with a registration. *See Jeffrey Stein, M.D.,* 84 FR 46,968, 46,972 (2019). As such, because the Respondent presented evidence of his remedial measures in order to meet this burden, it was entirely relevant to the adjudication of this matter and appropriate for the Government to present its own evidence pertaining to Respondent's remedial measures, as well as for the ALJ to question Respondent regarding these remedial measures.

Moreover, in his third Exception, Respondent again argues the significance of the Board reinstating his license without restriction. Respondent's Exceptions, at 2. As already discussed *supra,* the ALJ adequately addressed this point in his public interest Factor One analysis. Accordingly, I find the claims made in Respondent's third Exception to lack merit.

Exception 4

In his fourth Exception, Respondent argues that rather than an unrestricted DEA registration, he should instead be granted a limited DEA registration ''to utilize a limited number of [S]chedule III or lower substances.'' Respondent's Exceptions, at 2. However, Respondent does not provide adequate substantiation as to why I should accept this proposal, nor is there sufficient evidence in the Administrative Record to support it. Moreover, Respondent has not adequately demonstrated that he can be entrusted with a controlled substance registration at any schedule. *See Larry C. Daniels, M.D.,* 86 FR 61,630, 61,664 n.30 (2021). Accordingly, I find Respondent's argument that he should be granted a limited DEA registration to lack merit.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I hereby deny the pending application for a Certificate of Registration, Control Number W20010614C, submitted by Michael E. Smith, D.V.M., as well as any other pending application of Michael E. Smith, D.V.M., for additional registration in Ohio. This Order is effective March 2, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–01840 Filed 1–28–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–933]

Bulk Manufacturer of Controlled Substances Application: Navinta LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Navinta LLC, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 1, 2022. Such persons may also file a written request for a hearing on the application on or before April 1, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on October 18, 2021, Navinta LLC, 1499 Lower Ferry Road, Ewing, New Jersey 08618–1414, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Levomethorphan	9210	II
Levorphanol	9220	II
Noroxymorphone	9739	II
Fentanyl	9801	II

The company plans to bulk manufacture active pharmaceutical ingredients (API) quantities of the listed controlled subsances for validation purpose and the Food and Drug Adminstration approval. No other activities for these drug codes are authorized for this registration.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2022–01815 Filed 1–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[Docket No. CRT 142]

Notice of Report on Lawful Uses of Race or Sex in Federal Contracting Programs

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces the availability on the Department of Justice's website of an updated report regarding the legal and evidentiary frameworks that justify the continued use of race or sex, in appropriate circumstances, by federal agencies to remedy the current and lingering effects of past discrimination in federal contracting programs.

FOR FURTHER INFORMATION CONTACT: Andrew Braniff, Deputy Section Chief, Employment Litigation Section, Civil Rights Division, Department of Justice, (202) 514–3831, *EMP.Lit@crt.usdoj.gov.* If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: A substantial body of evidence, both quantitative and qualitative, demonstrates the continued pervasiveness of discriminatory barriers that impede the full and fair participation of businesses owned by women and people of color in government contracting. The nature and breadth of the evidence discussed in the report updates and expands on prior reports—in 1996 and 2010—and supports the compelling interest in the continued use of federal programs that contain remedial measures to eliminate discriminatory barriers to contracting opportunities for businesses owned by women and people of color. *See Adarand* v. *Constructors, Inc. v. Pena,* 515 U.S. 200 (1995).

Section I of the report provides an overview of the legal landscape surrounding constitutional challenges to the use of race and sex in contracting programs that are subject to strict and intermediate scrutiny, including a discussion of some recent cases challenging various federal and state contracting programs. Section II reviews a substantial body of statistical evidence published in the last decade, which demonstrates the existence of significant disparities in the amount of public contracting dollars going to businesses owned by women and people of color as compared to their availability for such contracts. Section III explores the various ways that discriminatory barriers can limit access to contracting markets, resulting in the statistical disparities identified in Section II. These include race and sex discrimination by procurement agencies and prime contractors, whether overt or subtle; exclusion from business networks crucial to making the connections necessary to learn about and compete effectively for contracting opportunities; and discrimination by bonding companies and suppliers. Section IV discusses stark disparities in the formation and success of businesses owned by women and people of color as compared to other businesses. Section V addresses discriminatory barriers that impose significant burdens on businesses owned by women and people of color—affecting both their ability to access capital to form and grow businesses in the first instance as well as their ability to compete effectively for contracts. Finally, Section VI addresses how the economic downturn that began in 2020 as a result of the COVID–19 pandemic has disproportionately affected businesses owned by women and people of color.

Evidence discussed in the report is listed in the three appendices. Appendix A identifies congressional hearings from 2010 to 2021 that address challenges facing business owned by women and people of color. Appendix B identifies dozens of disparity studies published between 2010 and 2021. Appendix C identifies additional studies and documentation pertaining to the issues discussed in the report.

The report is available on the Department of Justice's website at: *https://www.justice.gov/crt/page/file/1463921/download.*

Dated: January 20, 2022.

Johnathan Smith,

Deputy Assistant Attorney General, Civil Rights Division.

[FR Doc. 2022–01478 Filed 1–28–22; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2021–0010]

Federal Advisory Council on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of Comment Period.

SUMMARY: The Secretary of Labor (Secretary) invites interested parties to submit nominations for individuals to

serve on the Federal Advisory Council on Occupational Safety and Health (FACOSH). OSHA is extending the deadline for nominations to serve on FACOSH from January 31, 2022 to March 31, 2022.

DATES: Nominations for individuals to serve on the Council must be submitted electronically by March 31, 2022.

ADDRESSES: People interested in being nominated for the Council are encouraged to review the **Federal Register** notice on nominations for membership published on October 22, 2021 (86 FR 58693), and submit the requested information by March 31, 2022. Nominations may be submitted, including attachments, by the following method:

Electronically: You may submit nominations, including attachments, electronically into Docket No. OSHA–2021–0010 at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for submissions.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the 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 for this **Federal Register** notice (OSHA–2021–0010). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General information: Mr. Francis Yebesi, Director, OSHA Office of Federal Agency Programs; telephone (202) 693–2122; email *ofap@dol.gov.*

Copies of this **Federal Register** *document:* Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information are also available on the OSHA web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: On September 30, 2021, President Joseph Biden signed Executive Order (E.O.) 14048 continuing or reestablishing certain federal advisory committees, including FACOSH, until September 30, 2023 (86 FR 55465 (10/05/2021)). In response, the Secretary reestablished FACOSH and the Department of Labor (DOL) filed the FACOSH charter on October 14, 2021. FACOSH will terminate on September 30, 2023, unless continued by the President. The FACOSH charter is available to read or download at *https://www.osha.gov.* In addition, the Secretary invites interested persons to submit nominations for membership on FACOSH. FACOSH is authorized to advise the Secretary on all matters relating to the occupational safety and health of federal employees (5 U.S.C. 7902; 29 U.S.C. 668, Executive Order 12196, as amended). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce, and how to encourage the establishment and maintenance of effective occupational safety and health programs in each federal agency.

Notice of solicitation for nominations to serve on FACOSH was also published on October 22, 2021. The deadline for submission of nominations was 30 days from the date of publication, or November 22, 2021. On November 17, 2021 the Secretary extended the deadline for nominations to January 31, 2022 (86 FR 67977, November 30, 2022). The Secretary now extends the deadline for nomination to March 31, 2022.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice pursuant to 5 U.S.C. 7902; 5 U.S.C. App. 2; 29 U.S.C. 668; E.O. 12196 (45 FR 12629 (2/27/1980)), as amended; 41 CFR part 102–3; and Secretary of Labor's Order 08–2020 (85 FR 58393).

Signed at Washington, DC, on January 24, 2022.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–01924 Filed 1–28–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

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

ACTION: Notice of meeting.

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 Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

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 Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meeting is:

American Rescue Plan (ARP) Orgs Deadline Extension Panel (review of applications): This meeting will be closed.

Date and time: February 16, 2022, 1:00 p.m. to 3:00 p.m.

Dated: January 26, 2022.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2022–01930 Filed 1–28–22; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting for the Proposal Review Panel for Materials Research; Correction

ACTION: Notice; correction.

SUMMARY: The National Science Foundation (NSF) published a document in the **Federal Register** of January 21, 2022, concerning a Part-open, 1-day, virtual site visit meeting for the Proposal Review Panel for Materials Research. The virtual site visit date will be corrected from April 27, 2022 to May 27, 2022.

FOR FURTHER INFORMATION CONTACT: Please contact Crystal Robinson *crrobins@nsf.gov* or 703–292–8687.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** published January 21, 2022, in FR Doc. 2022–01100 (Filed 1–20–22; 8:45 a.m.), on page 3369, first column, Date and Time Section, please change the meeting date to May 27, 2022.

Dated: January 26, 2022.

Crystal Robinson,

Committee Management Officer, National Science Foundation.

[FR Doc. 2022–01910 Filed 1–28–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request OMB's approval to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare a submission requesting OMB clearance for this collection for no longer than three years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of this collection of information by April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Ave., Rm. W 18253, Alexandria, VA 22314; telephone: (703) 292–7556; email: *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title of Collection: Grantee Reporting Requirements for the Research Experiences for Undergraduates (REU) Program.

OMB Approval Number: 3145–0224.

Expiration Date: July 31, 2022.

Overview of information collection:

NSF's Research Experiences for Undergraduates (REU) program funds REU Site grants and REU Supplements to organizations to provide authentic research experiences and related training for postsecondary students in STEM fields.

All NSF Principal Investigators in all programs are required to submit annual and final project reports through the NSF Project Reports System in *Research.gov.* The REU Program Module is a component of the NSF Project Reports System that is designed to gather basic information about the pool of student applicants and participants in REU Site and REU Supplement projects. The information allows NSF to assess the demand and allocate resources for REU student positions within each discipline, to analyze the types of academic institutions and the educational levels represented by the participants, and to identify the participants for inclusion in periodic program evaluations.

NSF is committed to providing stakeholders with information regarding the expenditure of taxpayer funds on its investments in human capital, including activities such as REU Sites and REU Supplements. If NSF could not collect information about the students who participate in undergraduate research experiences, NSF would have no other means to consistently document the number and diversity of the participants or to identify the participants for inclusion in efforts that gauge the quality of programmatic activities and the long-term effects of the activities on the students. Without the REU Program Module, NSF also would not have information about the competitiveness of the REU opportunities, which informs the management of the program's budget.

Consultation With Other Agencies and the Public

This information collection is specific to a subset of NSF grantees. NSF has not consulted with other agencies but has gathered information from its grantee community through attendance at PI conferences. A request for public comments will be solicited through announcement of data collection in the **Federal Register**.

Background

All NSF Principal Investigators are required to use the project reporting functionality in *Research.gov* to report on progress, accomplishments, participants, and activities annually and at the conclusion of their project. Information from annual and final reports provides yearly updates on project inputs, activities, and outcomes for use by NSF program officers in monitoring projects and for agency reporting purposes.

If project participants include undergraduate students supported by a Research Experiences for Undergraduates (REU) Sites grant or by an REU Supplement, then the Principal Investigator is required to complete the REU Program Module in addition to the questions in NSF's standard report template.

Respondents: Individuals (Principal Investigators).

Number of Principal Investigator Respondents: 3,900 annually.

Burden on the Public: 650 total hours.

Dated: January 25, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–01863 Filed 1–28–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to modify a General Privacy Act System of Records to support the implementation of a suite of cloud-based workplace productivity software.

DATES: These revisions will become effective without further notice on March 2, 2022, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). Arrangements to view copies of any written comments received, to facilitate public inspection, will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

I. Background

The Postal Service is constantly seeking methods to improve employee productivity and efficiency. To that end, the Postal Service will implement a suite of cloud-based workplace productivity applications. These applications will expand employee access to various programs, allowing more employees to utilize resources to increase productivity and team collaboration.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing to modify USPS System of Records (SOR) 550.100 Commercial Information Technology Resources- Applications to support the implementation of a suite of cloud-based workplace productivity software. This system will be modified in conjunction with USPS 550.000 Commercial Information Technology Resources- Infrastructure and USPS 550.200 Commercial Information Technology Resources- Administrative to reflect the full scope of application implementation. Revisions to these SORs will be submitted independent of this notice. More information on accompanying changes can be found within those SORs.

This system specifically reflects data elements created through normal use and interactions in a software application. Revisions to the existing SOR to support this implementation are documented as additions to existing categories of records *Collaboration application records* beginning with ''Total Number Of Video Conferences,'' *Communication Application Records* beginning with ''Chat User Action,'' and *Limited Use Application records* beginning with ''Users Allowed To Access Application '', as well as the creation of three new categories of records: *Cloud-based storage records, Email Application records,* and *Web Browser Records.* Accompanying the addition of these new categories of records are policies and practices for the retrieval of these records and policies and practices for retention and disposal of these records.

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. The notice for USPS 550.100 Commercial Information Technology Resources- Applications, provided below in its entirety, is as follows:

SYSTEM NAME AND NUMBER:

550.100 Commercial Information Technology Resources- Applications

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S):

For records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To provide event registration services to USPS customers, contractors, and other third parties.

2. To allow task allocation and tracking among team members.

3. To allow users to communicate by telephone, instant-messaging, and email through local machine and web-based applications on desktop and mobile operating systems.

4. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.

5. To provide for the creation and storage of media files, including video recordings, audio recordings, desktop recording, and web-based meeting recordings.

6. To provide a collaborative platform for viewing video and audio recordings.

7. To create limited use applications using standard database formats.

8. To review distance driven by approved individuals for accurate logging and compensation.

9. To develop, maintain, and share computer code.

10. To comply with Security Executive Agent Directive (SEAD) 3 requirements for self-reporting of unofficial foreign travel pertaining to covered individuals who have access to classified information or who hold a sensitive position.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals with authorized access to USPS computers, information resources, and facilities, including employees, contractors, business partners, suppliers, and third parties.

2. Individuals participating in web-based meetings, web-based video conferencing, web-based communication applications, and web-based collaboration applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Third-party Information records:* Records relating to non-Postal, third-party individuals utilizing an information system, application, or piece of software, including: Third-Party Name, Third Party Date Request, Third Party Free Text, Guest User Information.

2. *Collaboration application records:* Records relating to web-conferencing and web-collaboration applications, including; Collaborative Group Names, Collaborative Group IDs, Action Name, Number Of Actions Sent, Number Of Action Responses, Employee Phone Number, Collaborative Group Chat History, Profile Information, Collaborative Group Membership, Contacts, Project Owner, Project Creator, Event Start Time, Event Status, Event Organizer, Event Presenter, Event Producer, Event Production Type, Event Recording Setting, Total Number Of Event Media Viewings, Number Of Active Users, Number Of Active Users In Collaborative Groups, Number Of

Active Collaborative Group Communication Channels, Number Of Messages Sent, Number Of Calls Participated In, Last Activity Date Of A User, Number Of Guest Users In A Collaborative Group, Event Name, Event Description, Event Start Date, Event End Date, Video Platform Group Name, Video Platform Group Email Alias, Video Platform Group Description, Video Platform Group Classification, Video Platform Group Access Level, Video Platform Channel Name, Video Platform Channel Description, Video Platform Channel Access, Video Platform Live Event Recording, Total Number Of Video Conferences, Add Room Member To Collaborative Group, Attachment Downloaded From Collaborative Group, Attachment Uploaded From Collaborative Group, Direct Message Started From Collaborative Group, Invite Sent From Collaborative Group, Message Edited From Collaborative Group, Message Posted In Collaborative Group, Remove Room Member From Collaborative Group, Room Created In Collaborative Group, Add Service Account Permission To Enterprise Collaborative Group, Remove Service Account Permission To Enterprise Collaborative Group, Added User To Enterprise Collaborative Group, Added User Role To Enterprise Collaborative Group, Removed User From Enterprise Collaborative Group, Request To Join Enterprise Collaborative Group, Approve Join Request From Enterprise Collaborative Group, Reject Join Request From Enterprise Collaborative Group, Invite User To Enterprise Collaborative Group, Accept Invitation For Enterprise Collaborative Group, Reject Invitation For Enterprise Collaborative Group, Revoke Invitation For Enterprise Collaborative Group, Join Enterprise Collaborative Group, Ban User Including With Moderation In Enterprise Collaborative Group, Unban User From Enterprise Collaborative Group, Add All Users In Domain For Enterprise Collaborative Group, Create Group In Enterprise Collaborative Group, Delete Group In Enterprise Collaborative Group, Create Namespace In Enterprise Collaborative Group, Delete Namespace In Enterprise Collaborative Group, Change Info Setting In Enterprise Collaborative Group, Add Info Setting In Enterprise Collaborative Group, Remove Info Setting In Enterprise Collaborative Group, Add Member Role In Enterprise Collaborative Group, Remove User Role In Enterprise Collaborative Group, Membership Expiration Added In Enterprise Collaborative Group, Membership Expiration Removed In Enterprise Collaborative Group, Membership Expiration Updated In Enterprise Collaborative Group, ACL Permission Changed In Collaborative Group, Collaborative Group Invitation Accepted, Join Request Approved, User Joined Collaborative Group, User Requested To Join Collaborative Group, Collaborative Group Basic Setting Changed, Collaborative Group Created, Collaborative Group Deleted, Collaborative Group Identity Setting Changed, Collaborative Group Info Setting Added, Collaborative Group Info Setting Changed, Collaborative Group Info Setting Removed, Collaborative Group New Member Restriction Changed, Collaborative Group Post Reply Settings Changed, Collaborative Group Spam Moderation Settings Changed, Collaborative Group Topic Setting Changed, Collaborative Group Message Moderated, User Posts Will Always Be Posted, User Added To Collaborative Group, User Banned From Collaborative Group, User Invitation Revoked From A Collaborative Group, User Invited To Collaborative Group, User Join Request Rejected From A Collaborative Group, User Reinvited To Collaborative Group, User Removed From Collaborative Group, Call Event Abuse Report Submitted, Call Event Endpoint Left, Call Event Livestream Watched, Individual Form Response, Form Respondent Email Address, Whiteboard Software Updated, Whiteboard Reboot Requested, Whiteboard Export Requested, Attachment Deleted, Attachment Uploaded, Note Content Edited, Note Created, Note Deleted, Note Permissions Edited.

3. *Communication Application Records:* Enterprise Social Network User Name, Enterprise Social Network User State, Enterprise Social Network User State Change Date, Enterprise Social Network User Last Activity Date, Number Of Messages Posted By An Enterprise Social Network User In Specified Time Period, Number Of Messages Viewed By An Enterprise Social Network User, Number Of Liked Messages By An Enterprise Social Network User, Products Assigned To A Enterprise Social Network User, Home Network Information, External Network Information, External Network Name, External Network Description, External Network Image, Network Creation Date, Network Usage Policy, External Network User Name, External Network User Email Address, External Group Name, Number Of Users On A Network, Network ID, Live Event Video Links, Files Added Or Modified In Enterprise Social Network, Message ID, Thread ID, Message Privacy Status, Full Body Of Message, Chat User Action, Chat Room Member Added, Chat Attachment Downloaded, Chat Attachment Uploaded, Chat Room Blocked, Chat User Blocked, Chat Direct Message Started, Chat Invitation Accepted, Chat Invitation Declined, Chat Invitation Sent, Chat Message Edited, Chat Message Posted, Chat Room Member Removed, Chat Room Created.

4. *Multimedia records:* Records relating to media associated with or originating from an information system, including; Video Platform User ID, Video Name, Videos Uploaded By User, Videos Accessed By User, Channels Created By User, User Group Membership, Comments Left By User On Videos, Screen Recordings, Video Transcript, Deep Search Captions, Video Metadata, Audio Metadata, Phone Number, Time Phone Call Started, User Name, Call Type, Phone Number Called To, Phone Number Called From, Called To Location, Called From Location, Telephone Minutes Used, Telephone Minutes Available, Charges For Use Of Telephone Services, Currency Of Charged Telephone Services, Call Duration, Call ID, Conference ID, Phone Number Type, Blocked Phone Numbers, Blocking Action, Reason For Blocking Action, Blocked Phone Number Display Name, Date And Time Of Blocking, Call Start Time, User Display Name, SIP Address, Caller Number, Called To Number, Call Type, Call Invite Time, Call Failure Time, Call End Time, Call Duration, Number Type, Media Bypass, SBC FQDN, Data Center Media Path, Data Center Signaling Path, Event Type, Final SIP, Final Vendor Subcode, Final SIP Phrase, Unique Customer Support ID.

5. *Limited Use Application records:* Records relating to applications with a specific, limited use, including; Application Authoring Application Name, Application Authoring Application Author, Voice Search Text Strings, Miles Driven, Mileage Rates, Country Currency, Destination, Destination Classification, Car Make, Car Model, Working Hours, Total Number Of Monthly Drives, Total Number Of Monthly Miles, Total Number Of Personal Drives, Total Number Of Personal Drives, Users Allowed To Access Application, Application Authoring Application Security Settings, Total Number Of Cloud-Based Searches Performed, Total Number Of Cloud-Based Search Queries From Web Browsers, Total Number Of Cloud-Based Search Queries From Android Operating Systems, Total Number Of Cloud-Based Search Queries From iOS Operating Systems, Data

Visualization Report Email Delivery Added, Data Visualization Asset Created, Data Visualization Data Exported, Data Visualization Asset Deleted, Data Visualization Report Downloaded, Data Visualization Asset Edited, Data Visualization Asset Restored, Data Visualization Report Email Delivery Stopped, Data Visualization Asset Trashed, Data Visualization Report Email Delivery Updated, Data Visualization Asset Viewed, Data Visualization Link Sharing Access Type Changed, Data Visualization Link Sharing Visibility Changed, Data Visualization User Sharing Permissions Changed.

6. *Development Records:* Records relating to applications used for the creation, sharing, or modification of software code, including: Data Repository User ID, Data Repository Password, Data Repository User Address, Data Repository Payment Information, Data Repository User First Name, Data Repository User Last Name, Data Repository Profile Picture, Data Repository Profile Biography, Data Repository Profile Location, Data Repository User Company, Data Repository User Preferences, Data Repository User Preference Analytics, Data Repository Transaction Date, Data Repository Transaction Time, Data Repository Transaction Amount Charged, Data Repository Webpages Viewed, Data Repository Referring Website, Data Repository Date Of Webpage Request, Data Repository Time Of Webpage Request, Data Repository User Commits, Data Repository User Commit Comment Body Text, Data Repository Pull Request Comment Body Text, Data Repository Issue Comment Body Text, Data Repository User Comment Body Text, Data Repository User Authentication, Language Of Device Accessing Data Repository, Operating System Of Device Accessing Data Repository, Application Version Of Device Accessing Data Repository, Device Type Of Device Accessing Data Repository, Device ID Of Device Accessing Data Repository, Device Model Of Device Accessing Data Repository, Device Manufacturer Of Device Accessing Data Repository, Browser Version Of Device Accessing Data Repository, Client Application Information Of Device Accessing Data Repository, Data Repository User Usage Information, Data Repository Transactional Information, Data Repository API Notification Status, Data Repository API Issue Status, Data Repository API Pull Status, Data Repository API Commit Status, Data Repository API Review Status, Data Repository API Label, Data Repository API User Account Signin Status, Data Repository API Schedule Status, Data Repository API Schedule List.

7. *Unofficial Foreign Travel Monitoring:* Records relating to covered individuals for the administration of the SEAD 3 program, including: Title, Name Of Traveler, Information Type: Pre-Travel And Post-Travel, Start Date Of Travel, End Date Of Travel, Carrier Of Transportation, Countries You Are Visiting, Passport Number, Passport Expiration Date, Names And Association Of Foreign National Travel Companions, Planned Foreign Contacts, Emergency Contact Name, Emergency Contact Phone Number, Emergency Contact Relationship, Post-Travel Questions Relating To Activity, Events, And Interactions.

8. *Cloud-based storage records:* Records relating to activity within cloud-based storage systems, including: Number Of Files Made Publicly Available, Number Of Files Made Available With A Link, Number Of Files Shared With Domain Users, Number Of Files Shared With Domain Users Through Link, Number Of Files Shared With Users Outside Domain, Number Of Files Shared With User Or Group In Domain, Number Of Files Not Shared At All, Number Of Spreadsheet Documents Added, Number Of Text Documents Added, Number Of Presentation Documents, Number Of Form Documents Added, Number Of Other Files Added, Number Of Files Edited, Number Of Files Viewed, Number Of Files Added, Total Cloud Storage Space Used, Last Time Storage Accessed By User, Item Added To Folder, Item Approval Cancelled, Comment Added On Approval Of Item, Due Date Time Change Requested, Item Approval Requested, Reviewer Change Requested For Item Approval, Item Approval Reviewed, Document Copy Created, Document Created, Document Deleted, Document Downloaded, Document Shared As Email Attachment, Document Edited, Label Applied, Label Value Changed, Label Removed, Item Locked, Item Moved, Item Previewed, Item Printed, Item Removed From Folder, Item Renamed, Item Restored, Item Trashed, Item Unlocked, Item Uploaded, Item Viewed, Security Update Applied To File, Security Update Applied To All Files In Folder, Publish Status Changed, Editor Settings Changed, Link Sharing Access Type Changed, Link Sharing Access Changed From Parent Folder, Link Sharing Visibility Changed, Link Sharing Visibility Changed From Parent Folder, Security Update Removed From File, Membership Role Changed, Shared Storage Settings Changed, Spreadsheet Range Enabled, User Sharing Permissions Changed, User Sharing Permissions Changed From Parent Folder, User Storage Updated, File Viewed, File Renamed, File Created, File Edited, File Previewed, File Printed, File Updated, File Deleted, File Uploaded, File Downloaded, File Shared.

9. *Email Application records:* Records relating to regular use of email applications, including: Email Body Text, Email Metadata, Total Number Of Emails Sent, Total Number Of Emails Received, Total Number Of Emails Sent And Received, Last Time User Accessed Email Client Through A Post Office Protocol (POP) Mail Server, Last Time User Accessed Email Client Through An Internet Message Access Protocol (IMAP) Mail Server, Last Time User Accessed Through Web-Based Server, Total Email Client Storage Space Used, Calendar Access Level(S) Changed, Calendar Country Changed, Calendar Created, Calendar Deleted, Calendar Description Changed, Calendar Location Changed, Calendar Timezone Changed, Calendar Title Changed, Calendar Notification Triggered, Calendar Subscription Added, Calendar Subscription Deleted, Calendar Event Created, Calendar Event Deleted, Calendar Event Guest Added, Calendar Event Guest Auto-Response, Calendar Event Guest Removed, Calendar Event Guest Response Changed, Calendar Event Modified, Calendar Event Removed From Trash, Calendar Event Restored, Calendar Event Start Time Changed, Calendar Event Title Modified, Successful Availability Lookup Of A Calendar Between Email Clients, Successful Availability Lookup Of Email Client Resource, Successful Email Client Resource List Lookup, Unsuccessful Availability Lookup Of A Calendar On Email Client, Unsuccessful Availability Lookup Of Email Client Resource, Unsuccessful Email Client Resource List Lookup.

10. *Web Browser Records:* Records relating to activity within a web browser, including: Web Browser Password Changed, Web Browser Password Reused, Malware Detected in Transferred Content for User, Sensitive Data Detected In Transferred Content, Unsafe Website Visit Detected For User.

RECORD SOURCE CATEGORIES:

Employees; contractors; customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

(a) To appropriate agencies, entities, and persons when (1) the Postal Service suspects or has confirmed that there has been a breach of the system of records; (2) the Postal Service has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Postal Service (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Postal Service's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

1. Records relating to third-parties are retrievable by name and email address.
2. Records relating to collaboration are retrievable by name, email address, and user ID.
3. Records relating to communication are retrievable by name, email address, and user ID.
4. Records pertaining to multimedia are retrievable by user name and media title.
5. Records relating to application development are retrievable by user ID and application name.
6. Records relating to limited use applications are retrievable by name, email address, and user ID.
7. Records relating to Unofficial Foreign Travel Monitoring for covered individuals are retrievable by name.
8. Records relating to Cloud-based storage are retrievable by name, email address, and user ID.
9. Records relating to Email Applications are retrievable by name, email address, and user ID.
10. Records relating to Web Browsers are retrievable by name, email address, and user ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records relating to third-parties are retained for twenty-four months.
2. Records relating to collaboration are retained for twenty-four months.
3. Records relating to communication are retained for twenty-four months.
4. Multimedia recordings are retained for twenty-four months.
5. Records relating to application development are retained for twenty-four months.
6. Records relating to limited use applications are retained for twenty-four months.
7. Records relating to Unofficial Foreign Travel Monitoring for covered individuals are retained for twenty-five years.
8. Records relating to Cloud-based storage are retained for twenty-four months.
9. Records relating to Email Applications are retained for twenty-four months.
10. Records relating to Web Browsers are retained for twenty-four months.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Computer access is limited to authorized personnel with a current security clearance, and physical access is limited to authorized personnel who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by encryption, mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Information Officer and Executive Vice President and include their name and address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

May 11, 2021; 86 FR 25899.

* * * * *

Joshua J. Hofer,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–01063 Filed 1–28–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to modify a General Privacy Act System of Records to support the implementation of a suite of cloud-based workplace productivity software.

DATES: These revisions will become effective without further notice on March 2, 2022, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). Arrangements to view copies of any written comments received, to facilitate public inspection, will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

I. Background

The Postal Service is constantly seeking methods to improve employee productivity and efficiency. To that end, the Postal Service will implement a suite of cloud-based workplace productivity applications. These applications will expand employee access to various programs, allowing more employees to utilize resources to increase productivity and team collaboration.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing to modify USPS System of Records (SOR) 550.000 Commercial Information

Technology Resources—Infrastructure to support the implementation of a suite of cloud-based workplace productivity software. This system will be modified in conjunction with USPS 550.100 Commercial Information Technology Resources—Applications and USPS 550.200 Commercial Information Technology Resources—Administrative to reflect the full scope of application implementation. Revisions to these SORs will be submitted independent of this notice. More information on accompanying changes can be found within those SORs.

This system specifically reflects data elements collected, gathered, or used to provide application access generally. Revisions to the existing SOR to support this implementation are documented as additions to existing categories of records *Information System Account Access records* beginning with ''Last Sign-In Time'' and *Security Analytics records* beginning with ''Login IP Address.''

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. The notice for USPS 550.000 Commercial Information Technology Resources—Infrastructure, provided below in its entirety, is as follows:

SYSTEM NAME AND NUMBER:

550.000 Commercial Information Technology Resources-Infrastructure.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S):

For records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To provide USPS employees, contractors, and other authorized individuals with hierarchical access to and accounts for commercial information technology resources administered by the Postal Service and based on least privileged access.

2. To facilitate a cohesive software experience and simplify ease of use by sharing user and application data across participating IT programs.

3. To authenticate user identity for the purpose of accessing USPS information systems.

4. To assess user attributes and assign related access privileges.

5. To authenticate suppliers and contractors and facilitate further access to downstream Postal Service information systems.

6. To provide active and passive monitoring of information systems, applications, software, devices, and users for information security risks.

7. To review information systems, applications, software, devices, and users to ensure compliance with USPS regulations.

8. To facilitate and support cybersecurity investigations of detected or reported information security incidents.

9. To administer programs, processes, and procedures to assess information security risks and to detect information security threats and vulnerabilities.

10. To provide tools and analytics for USPS employees and contractors to measure work productivity and improve efficiency.

11. To improve manager-subordinate relationships within their formal reporting structure through data-based insights generated from their own email and related electronic communications with subordinates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals with authorized access to USPS computers, information resources, and facilities, including employees, contractors, business partners, suppliers, and third parties.

2. Individuals participating in web-based meetings, web-based video conferencing, web-based communication applications, and web-based collaboration applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Information System Account Access records:* Records relating to the access or use of an information system, application, or piece of software, including; Name, User ID, Email Address, User Type, User Role, Job Title, Department, Manager, Company, Street Address, State Or Province, Country Or Region, Work Phone Number(S), Employee Identification Number (EIN), Advanced Computing Environment (ACE) ID, License Information, Action Initiated, Datetime, User Principle Name, Usage Location, Alternate Email Address, Proxy Address, Age Group, IP Address, MAC Address, Password, Multi-Factor Authentication Credentials, Security Questions, Security Answers, Passcode, Geolocation Data, User Profile Picture, Picture Metadata, Information Technology Account Administration User Configuration Status, Supplier Credentials, Supplier Company Codes, Conditional Access Attributes, Last Sign-In Time, User Account Status, User Admin Status, Password Length Compliance, Password Strength, Number Of Installed External Apps, Less Secure Apps Access, Admin-Defined Name, Profile Name Status, Photo Storage Space Used, Total Storage Space Used, Storage Usage Percentage, Total Emails Sent, Total Emails Received, Total Emails Sent And Received, Email Server Last Usage Time, Device Application Change, Device Privilege Changed, Device Policy Changed, Device Action Reported, Device Compliance Status, Device Operating System Updated, Device Ownership Updated, Device Settings Changed, Device Status Changed Through Apple Device Enrollment, Device Account Synced, Device Risk Signal Updated, Device Work Profile Submitted.

2. *Security Analytics records:* Records relating to the gathering, analysis, review, monitoring, and investigation of information system security risks, including; User Investigation Priority Score, User Identity Risk Level, User Lateral Movement Paths, User Devices Numbers, User Account Numbers, User Resources Numbers, User Locations Numbers, User Matches Files Numbers, User Locations, Apps Used By User, User Groups, User Last Seen Date, User Affiliation, User Domain, App Instance, Organizational Groups, User Account Status, Activity ID, Activity Objects, Activity Type, Administrative Activity, Alert ID, Applied Action, Activity Date, Device Tag, Activity Files And Folders, Impersonated Activities, App Instance Activity, App Location Activity, Activity Matched Policy, Activity Registered ISP, Activity Source, Activity User, Activity User Agent, Activity User Agent Tag, Application Risk Score, Application Activity, User Software Deactivation, User Software Installation, User Software Removal, Last Date Of Software Execution, internet Application Transaction Counts, Data Volume Upload, Data Volume Download, Data Sensitivity Classification, internet Protocol, internet

Port, And internet Access History, Login IP Address, Login Type, Login Failed, Login Successful, Number Of Times A User Was Suspended, Number Of Times A User Was Suspended Due To Spam Relay, Number Of Times A User Was Suspended Due To Spam, Number Of Times A User Was Suspended Due To Suspicious Activity, Device Name, Device Operating System, Days Since First Sync, Days Since Last Sync, Device Status, Device Type, Device Model, Device Account Registration Changed, Device Action Event, Device Compliance Status, Device Compromise Status, Device Ownership Change, Device Operating System Updated, Device Settings Changed, Device Failed Screen Unlock Attempts, Device Status Changed On Apple Portal, Device User Signed Out, Device Suspicious Activity Detected, Device Work Profile Supported, Two-Factor Authentication Disabled, Two-Factor Authentication Enrolled, Account Password Changed, Account Recovery Email Changed, Account Recovery Phone Number Changed, Account Recovery Secret Question Changed, Account Recovery Secret Answer Changed, Account Password Leak Suspected, Account Suspicious Login Blocked, Account Suspicious Login From Less Secure App Blocked, Suspicious Programmatic Login Blocked, User Suspended, User Suspended (Spam Through Relay), User Suspended (Spam), User Suspended (Suspicious Activity), Account Enrolled In Advanced Protection, Account Unenrolled In Advanced Protection, Account Targeted By Government-Backed Attack, Out Of Domain Email Forwarding Enabled, Login Challenge Question Presented, Login Verification Presented, Log Out, Secure Shell Public Key Added, Secure Shell Public Key Deleted, Secure Shell Public Key Retrieved, Secure Shell Public Key Updated, Login Profile Retrieved, POSIX Account Deleted, Application Method Called, Application Access Authorized, Application Access Revoked, Device Compromised, Failed Password Attempts On User Device, Device Property Changed.

3. *Productivity Analytics records:* Records relating to the gathering, analysis, review, and investigation of information system utilization, including; Calendar Appointments, Email Read Rate, Email Response Rate, Operating System Activity History, Email Timestamp, Statements Made In Email Body, Email Sender, Email Recipient, Email Subject Line, Calendar Event Type, Calendar Event Status, Calendar Event Category, Calendar Event Subject, Calendar Event Duration, Calendar Event Attendees, Meeting Organizer, Meeting Invitees, Meeting Subject Line, Meeting Scheduled Time, Meeting Attendee Status, Meeting Scheduled Location, Web Call Organizer, Web Call Invitees, Web Call Scheduled Time, Web Call Joined Time, Web Call Duration, Web Call Status, Web Call Join Status, Number Of Collaborative Audio Calls Made, Number Of Collaborative Video Calls Made, Chat Initiator, Chat Recipient, Chat IM Sent Time, Number Of Cloud-Based Personal Storage Documents Worked On, Number Of Cloud-Based Enterprise Storage Documents Worked On, Device Name.

RECORD SOURCE CATEGORIES:

Employees; contractors; customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

(a) To appropriate agencies, entities, and persons when (1) the Postal Service suspects or has confirmed that there has been a breach of the system of records; (2) the Postal Service has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Postal Service (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Postal Service's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

1. Records relating to information system access are retrievable by name, email address, username, geolocation data, and ACE ID.

2. Records relating to security analysis are retrievable by name, unique user ID, email address, geolocation data, IP address and computer name.

3. Records relating to productivity are retrievable by name, email address, and ACE ID.

4. Records relating to third-parties are retrievable by name, email address, user name, and IP address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records relating to information system access are retained twenty-four months after last access.

2. Records relating to security analysis are retained for twenty-four months.

3. Records relating to productivity are retained for twenty-four months.

4. Records relating to third-parties are retained for twenty-four months.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Computer access is limited to authorized personnel with a current security clearance, and physical access is limited to authorized personnel who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by encryption, mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Information Officer and Executive Vice President and include their name and address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

May 10th, 2021; 86 FR 24907.

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Joshua J. Hofer,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–01062 Filed 1–28–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to modify a General Privacy Act System of Records to support the implementation of a suite of cloud-based workplace productivity software.

DATES: These revisions will become effective without further notice on March 2, 2022, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). Arrangements to view copies of any written comments received, to facilitate public inspection, will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

I. Background

The Postal Service is constantly seeking methods to improve employee productivity and efficiency. To that end, the Postal Service will implement a suite of cloud-based workplace productivity applications. These applications will expand employee access to various programs, allowing more employees to utilize resources to increase productivity and team collaboration.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing to modify USPS System of Records (SOR) 550.200 Commercial Information Technology Resources—Administrative to support the implementation of a suite of cloud-based workplace productivity software. This system will be modified in conjunction with USPS 550.000 Commercial Information Technology Resources—Infrastructure and USPS 550.100 Commercial Information Technology Resources—Applications to reflect the full scope of application implementation. Revisions to these SORs will be submitted independent of this notice. More information on accompanying changes can be found within those SORs.

This system specifically reflects data elements created from a user or application's interactions with other applications. Revisions to the existing SOR to support this implementation are documented as additions to existing category of records *Video Platform Activities* beginning with ''Video Platform Event Date,'' and further as new categories of records 80 through 102.

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. The notice for 550.200 Commercial Information Technology Resources—Administrative, provided below in its entirety, is as follows:

SYSTEM NAME AND NUMBER:

550.200 Commercial Information Technology Resources—Administrative.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S):

For records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To provide active and passive monitoring and review of information system applications and user activities.

2. To generate logs and reports of information system application and user activities.

3. To provide a means of auditing commercial information system activities across applications and users.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals with authorized access to USPS computers, information resources, and facilities, including employees, contractors, business partners, suppliers, and third parties.

2. Individuals participating in web-based meetings, web-based video conferencing, web-based communication applications, and web-based collaboration applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *General Audit Log activities:* DateTime, IP Address, User Activity, User Item Accessed, Activity Detail, Object ID, Record Type, Client IP Address, CorrelationID, CreationTime, EventData, EventSource, ItemType, OrganizationID, UserAgent, USerKEy, UserType, Version, Workload.

2. *File and page activities:* Accessed file, Change retention label for a file, Deleted file marked as a record, Checked in file, Changed record status to locked, Changed record status to unlocked, Checked out file, Copied file, Discarded file checkout, Deleted file, Deleted file from recycle bin, Deleted file from second-stage recycle bin, Detected document sensitivity mismatch, Detected malware in file, Deleted file marked as a record, Downloaded file, Modified file, Moved file, Recycled all minor versions of file, Recycled all versions of file, Recycled version of file, Renamed file, Restored file, Uploaded file, Viewed page, View signaled by client, Performed search query.

3. *Folder activities:* Copied folder, Created folder, Deleted folder, Deleted folder from recycle bin, Deleted folder from second-stage recycle bin, Modified folder, Moved folder, Renamed folder, Restored folder.

4. *Cloud-based Enterprise Storage activities:* Created list, Created list column, Created list content type, Created list item, Created site column, Created site content type, Deleted list, Deleted list column, Deleted list content type, Deleted list item, Deleted site column, Deleted site content type, Recycled list item, Restored list, Restored list item, Updated list, Updated list column, Updated list content type, Updated list item, Updated site column, Updated site content type.

5. *Sharing and access request activities:* Added permission level to

site collection, Accepted access request, Accepted sharing invitation, Blocked sharing invitation, Created access request, Created a company shareable link, Created an anonymous link, Created secure link, Deleted secure link, Created sharing invitation, Denied access request, Removed a company shareable link, Removed an anonymous link, Shared filer, folder, or site, Unshared file folder or site, Updated access request, Updated an anonymous link, Updated sharing invitation, Used a company shareable link, Used an anonymous link, Used secure link, User added to secure link, User removed from secure link, Withdrew sharing invitation.

6. *Synchronization activities:* Allowed computer to sync files, Blocked computer from syncing files, Downloaded files to computer, Downloaded file changes to computer, Uploaded files to document library, Uploaded file changes to document library.

7. *Site permissions activities:* Added site collection admin, Added user of group to Cloud-based Enterprise Storage group, Broke permission level inheritance, Broke sharing inheritance, Created group, Deleted group, Modified access request setting, Modified ''Members Can Share'' setting, Modified permission level on site collection, Modified site permissions, Removed site collection admin, Removed permission level from site collection, Removed user or group from Cloud-based Enterprise Storage group, Requested site admin permissions, Restored sharing inheritance, Updated group.

8. *Site administration activities:* Added allowed data location, Added exempt user agent, Added geo location admin, Allowed user to create groups, Cancelled site geo move, Changed a sharing policy, Changed deice access policy, Changed exempt user agents, Changed network access policy, Completed site geo move, Created Sent To connection, Created site collection, Deleted orphaned hub site, Deleted Sent To connection, Deleted site, Enabled document preview, Enabled legacy workflow, Enabled Office on Demand, Enabled result source for People Searched, Enabled RSS feeds, Failed site swap, Joined site to hub site, Registered hub site, Removed allowed data location, Removed geo location admin, Renamed site, Scheduled site rename, Scheduled site swap, Scheduled site geo move, Set host site, Set storage quota for geo location, Swapped site, Unjoined site from hub site, Unregistered hub site.

9. *Cloud-based Email Server mailbox activities:* Created mailbox item, Copied messages to another folder, User signed in to mailbox, Accessed mailbox items, Sent message using Send On Behalf permissions, Purged messages from mailbox, Moved messages to Deleted Items folder, Moved messages to another folder, Sent message using Send As permissions, Sent message, Updated message, Deleted messages from Deleted Items folder, New-Inbox Rule Create-Inbox Rule from email web application, Set-Inbox Rule Modify inbox rule from email web application, Update inbox rules from email web application, Added delegate mailbox permissions, Removed delegate mailbox permissions, Added permissions to folder, Modified permissions of folder, Removed permissions from folder, Added or removed user with delegate access to calendar folder, Labeled message as a record.

10. *Retention policy and retention level activities:* Created retention label, Created retention policy, Configured settings for a retention policy, Deleted retention label, Deleted retention policy, Deleted settings from a retention policy, Updated retention label, Updated retention policy, Updated settings for a retention policy, Enabled regulatory record option for retention labels.

11. *User administration activities:* Added user, Deleted user, Set license properties, Reset user password, Changed user password, Changed user license, Updated user, Set property that forces user to change password.

12. *Enterprise User Administration group administration activities:* Added group, Updated group, Deleted group, Added member to group, Removed member from group.

13. *Application administration activities:* Added service principal, Removed a service principal from the directory, Set delegation entry, Removed credentials from a service principal, Added delegation entry, Added credentials to a service principal, Removed delegation entry.

14. *Role administration activities:* Added member to Role, Removed a user from a directory role, Set company contact information.

15. *Directory administration activities:* Added a partner to the directory, Removed a partner from the directory, Added domain to company, Removed domain from company, Updated domain, Set domain authentication, Verified domain, Updated the federation settings for a domain, Verified email verified domain, Turned on Enterprise Information Technology Account Administration sync, Set password policy, Set company information.

16. *eDiscovery activities:* Created content search, Deleted content search, Changed content search, Started content search, Stopped content search, Started export of content search, Started export report, Previewed results of content search, Purged results of content search, Started analysis of content search, Removed export of content search, Removed preview results of content search, Removed purse action performed on content search, Removed analysis of content search, Removed search report, Content search preview item listed, Content search preview item viewed, Content search preview item downloaded, Downloaded export of content search, Created search permissions filter, Deleted search permissions filter, Changed search permissions filter, Created hold in eDiscovery case, Deleted hold in eDiscovery case, Changed hold in eDiscovery case, Created eDiscovery case, Deleted hold in eDiscovery case, Changed hold in eDiscovery case, Created eDiscovery case, Deleted eDiscovery data, Changed hold in eDiscovery case, Added member to eDiscovery case, Removed member from eDiscovery case, Changed eDiscovery case membership, Created eDiscovery administrator, Deleted eDiscovery administrator, Changed eDiscovery administrator membership, Remediation action created, Item deleted using Remediation, Created workingset search, Updated workingset search, Deleted workingset search, Previewed workingset search, Document viewed, Document annotated, Document downloaded, Tag created, Tag edited, Tag deleted, Tag files, Tag job, Created review set, Added Cloud-based productivity software data, Added non-office data, Added data to another workingset, Added remediated data, Run algo job, Run export job, Run burn job, Run error remediation job, Run load comparison job, Updated case settings.

17. *eDiscovery system command activities:* Created content search, Deleted content search, Changed content search, Started content search, Stopped content search, created content search action, Deleted content search action, Created search permissions filter, Deleted search permissions filter, Changed search permissions filter, Created hold in eDiscovery case, Deleted hold in eDiscovery case, Changed hold in eDiscovery case, Created search query for eDiscovery case hold, Deleted search query for eDiscovery case hold, Changed search query for eDiscovery case hold, Created eDiscovery case, Deleted eDiscovery case, Changed eDiscovery case, Added member to eDiscovery case, Removed member from eDiscovery case, Changed

eDiscovery case membership, Created eDiscovery administrator, Deleted eDiscovery administrator, Changed eDiscovery administrator membership.

18. *Data Analysis application activities:* Viewed program dashboard, Created program dashboard, Edited program dashboard, Deleted program dashboard, Shared program dashboard, Printed program dashboard, Copied program dashboard, Viewed program tile, Exported program tile data, Viewed program report, Deleted program report, Printed program report page, Created program report, Edited program report, Copied program report, Exported program artifact to another file format, Export program activity events, Updated program workspace access, Restored program workspace, Updated program workspace, Viewed program metadata, Created program dataset, Deleted program dataset, Created program group, Deleted program group, Added program group members, Retrieved program groups, Retrieved program dashboard, Retrieved data sources from program dataset, Retrieved upstream data flows from program dataflow, Retrieved data sources from program dataflow, Removed program group members, Retrieved links between datasets and dataflows, Created organizational program content pack, Created program app, Installed program app, Updated program app, Updated organization's program settings, Started program trial, Started program extended trial, Analyzed program dataset, Created program gateway, Deleted program gateway, Added data source to program gateway, Removed data source from program gateway, Changed program gateway admins, Changed program gateway data source users, Set scheduled refresh on program dataset, Unpublished program app, Deleted organizational program content pack, Renamed program dashboard, Edited program dataset, Updated capacity display name, Changed capacity state, Updated capacity admin, Changed capacity user assignment, Migrated workspace to a capacity, Removed workspace from a capacity, Retrieved program workspaces, Shared program report, Generated program Embed Token, Discover program dataset data sources, Updated program dataset data sources, Requested program dataset refresh, Binded program dataset to gateway, Changed program dataset data sources, Requested program dataset refresh, Binded program dataset to gateway, Changed program dataset connections, Took over program dataset, Updated program gateway data source credentials, Imported file to program, Updated program dataset parameters, Generated program dataflow SAS token, Created program dataflow, Updated program dataflow, Deleted program dataflow, Viewed program dataflow, Exported program dataflow, Set scheduled refresh on program dataflow, Requested program dataflow refresh, Received program dataflow secret from Key Vault, Attached dataflow storage account, Migrated dataflow storage location, Updated dataflow storage assignment permissions, Set dataflow storage location for workspace, Took ownership of program dataflow, Canceled program dataflow refresh, Created program email subscription, Updated program email subscription, Deleted program email subscription, Created program folder, Deleted program folder, Updated program folder, Added program folder access, Deleted program folder access, Updated program folder access, Posted program comment, Deleted program comment, Analyzed program report, Viewed program usage metrics, Edited program dataset endorsement, Edited program dataflow endorsement, Edited program report endorsement, Edited program app endorsement, Retrieved list of modified workspaces in program tenant, Sent a scan request in program tenant, Retrieve scan result in program tenant, Inserted snapshot for user in program tenant, Updated snapshot for user in program tenant, Deleted snapshot for user in program tenant, Inserted snapshot for user in program tenant, Updated snapshot for user in program tenant, Deleted snapshot for user in program tenant, Retrieved snapshots for user in program tenant, Edited program certification permission, Took over a program data source, Updated capacity custom settings, Created workspace for program template app, Deleted workspace for program template app, Updated settings for program template app, Updated testing permissions for program template app, Created program template app, Deleted program template app, Promoted program template app, Installed program template app, Updated parameters for installed program template app, Created install ticker for installing program template app, Updated an organizational custom visual, Created an organizational custom visual, Deleted an organizational custom visual, Custom visual requested Enterprise Information Technology Account Administration access token, Customer visual requested Cloud-based productivity software access token, Connected to program dataset from external app, Created program dataset from external app, Deleted program dataset from external app, Edited program dataset from external app, Requested program dataset refresh from external app, Requested SAS token for program storage, Requested account key for program storage, Assigned a workspace to a deployment pipeline, Removed a workspace from a deployment pipeline, Deleted deployment pipeline, Created deployment pipeline, Deployed to a pipeline stage, Updated deployment pipeline configuration, Updated deployment pipeline access, Added external resource, Added link to external resource, Deleted link to external resource, Updated featured tables, Applied sensitivity label to program artifact, Changed sensitivity label for program artifact, Deleted sensitivity label from program artifact.

19. *Productivity Analysis activities:* Updated privacy setting, Updated data access setting, Uploaded organization data, Created meeting exclusion, Updated preferred meeting exclusion, Execute query, Canceled query, Deleted result, Downloaded report, Accessed Odata link, Viewed query visualization, Viewed explore, Created partition, Updated partition, Deleted partition, User logged in, User logged out.

20. *Briefing email activities:* Updated user privacy settings, Updated organization privacy settings.

21. *Cloud-based Collaboration Application activities:* Created team, Deleted team, Added channel, Deleted channel, Changed organization setting, Changed team setting, Changed channel setting, User signed in to Cloud-based Collaboration Application, Added members, Changed role of members, Removed members, Added bot to team, Removed bot from team, Added tab, Removed tab, Updated tab, Added connector, Removed connector, Updated connector, Downloaded analytics report, Upgraded Cloud-based Collaboration Application device, Blocked Cloud-based Collaboration Application device, Unblocked Cloud-based Collaboration Application device, Changed configuration of Cloud-based Collaboration Application device, Enrolled Cloud-based Collaboration Application device, Installed app, Upgraded app, Uninstalled app, Published app, Updated app, Deleted app, Deleted all organization apps, Performed action on card, Added scheduling group, Edited scheduling group, Deleted scheduling group, Added shift, Edited shift, Deleted shift, Added time off, Edited time off, Deleted time off, Added open shift, Edited open shift, Deleted open shift, Shared schedule, Clocked in using Time clock, Clocked out using Time clock, Started break

using Time clock, Ended break using Time clock, Added Time clock entry, Edited Time clock entry, Deleted Time clock entry, Added shift request, Responded to shift request, Canceled shift request, Changed schedule setting, Added workforce integration, Accepted off shift message.

22. *Cloud-based Collaboration Application approvals activities:* Created new approval request, Viewed approval request details, Approved approval request, Rejected approval request, Canceled approval request, Shared approval request, File attached to approval request, Reassigned approval request, Added e-signature to approval request.

23. *Enterprise Social Network activities:* Changed data retention policy, Changed network configuration, Changed network profile settings, Changed private content mode, Changed security configuration, Created file, Created group, Deleted group, Deleted message, Downloaded file, Exported data, Shared file, Suspended network user, Suspended user, Updated file description, Updated file name, Viewed file.

24. *Enterprise Customer Relationship Management activities:* Accessed out-of-box entity (deprecated), Accessed custom entity (deprecated), Accessed admin entity (deprecated), Performed bulk actions (deprecated), All Enterprise Customer Relationship Management activities, Accessed Enterprise Customer Relationship Management admin center (deprecated), Accessed internal management tool (deprecated), Signed in or out (deprecated), Activated process or plug-in (deprecated).

25. *Information Systems Infrastructure Automation activities:* Created flow, Edited flow, Deleted flow, Edited flow permissions, Deleted flow permissions, Started a Flow paid trial, Renewed a Flow paid trial.

26. *Application authoring program activities:* Created app, Edited app, Deleted app, Launched app, Published app, Marked app as Hero, Marked app as Featured, Edited app permission, Restored app version.

27. *Enterprise Automation DLP activities:* Created DLP Policy, Updated DLP Policy, Deleted DLP Policy.

28. *Video platform activities:* Created video, Edited video, Deleted video, Uploaded video, Downloaded video, Edited video permission, Viewed video, Shared video, Liked video, Unliked video, Commented on video, Deleted video comment, Uploaded video text track, Deleted video text track, Uploaded video thumbnail, Deleted video thumbnail, Replaced video permissions and channel links, Marked video public, Marked video private, Created Video platform group, Edited Video platform group, Deleted Video platform group, Edited Video platform group memberships, Created Video platform channel, Edited Video platform channel, Deleted a Video platform channel, Replaced Video platform channel thumbnails, Edited Video platform user settings, Edited tenant settings, Edited global role members, Deleted Video platform user, Deleted Video platform user's data report, Edited Video platform user, Exported Video platform user's data report, Downloaded Video platform user's data report, Video Platform Event Date, Video Platform Event Name, Video Platform Event Description, Video Platform Meeting Code, Video Platform Participant Identifiers.

29. *Content explorer activities:* Accessed item.

30. *Quarantine activities:* Previewed Quarantine message, Deleted Quarantine message, Released Quarantine message, Exported Quarantine message, Viewed Quarantine Message's header.

31. *Customer Key Service Encryption activities:* Fallback to Availability Key

32. *Form application activities:* Created form, Edited form, Moved form, Deleted form, Viewed form, Previewed form, Exported form, Allowed share form for copy, Added form co-author, Removed form co-author, Viewed response page, Created response, Updated response, Deleted all responses, Deleted response, Viewed responses, Viewed response, Created summary link, Deleted summary link, Updated from phishing status, Updated user phishing status, Sent premium form product invitation, Updated form setting, Updated user setting, Listed forms.

33. *Sensitivity label activities:* Applied sensitivity label to site, Removed sensitivity label from site, Applied sensitivity label to file, Changed sensitivity label applied to file, Removed sensitivity label from file.

34. *Local machine communications platform system command activities:* Set tenant federation.

35. *Search activities:* Performed email search, Performed Cloud-based Enterprise Storage search.

36. *Security analytics activities:* Attempted to compromise accounts.

37. *Device activities:* Printed file, Deleted file, Renamed file, Created file, Modified file, Read file, Captured screen, Copied file to removable media, Copied file to network share, Copied file to clipboard, Uploaded file to cloud, File accessed by an unallowed application.

38. *Information barrier activities:* Removed segment from site, Changed segment of site, Applied segment to site.

39. *On-premises DLP scanning activities:* Matched DLP rule, Enforced DLP rule.

40. *Individual Productivity Analytics activities:* Updated user settings, Updated organization settings.

41. *Exact Data Match (EDM) activities:* Created EDM schema, Modified EDM schema, Removed EDM scheme, Completed EDM data upload, Failed EDM data upload.

42. *Enterprise Information System Information Protection activities:* Accessed file, Discovered file, Applied sensitivity label, Updated sensitivity label, Removed sensitivity label, Removed file, Applied protection, Changed protection, Removed protection, Received AIP heartbeat.

43. *Data Repository Team Discussion Post Actions:* Team Discussion Post Updated, Team Discussion Post Destroyed.

44. *Data Repository Team Discussion Post Reply Actions:* Team Discussion Post Reply Updated, Team Discussion Post Reply Destroyed.

45. *Data Repository Enterprise Actions:* Self-Hosted Runner Removed, Self-Hosted Runner Registered, Self-Hosted Runner Group Created, Self-Hosted Runner Group Removed, Self-Hosted Runner Removed From Group, Self-Hosted Runner Added To Group, Self-Hosted Runner Group Member List Updated, Self-Hosted Runner Group Configuration Changed, Self-Hosted Runner Updated.

46. *Data Repository Hook Actions:* Hook Created, Hook Configuration Changed, Hook Destroyed, Hook Events Altered.

47. *Data Repository Integration Installation Request Actions:* Integration Installation Request Created, Integration Installation Request Closed.

48. *Data Repository Issue Action:* Issue Destroyed.

49. *Data Repository Org Actions:* Secret Action Created, Member Creation Disabled, Two Factor Authentication Requirement Disabled, Member Creation Enabled, Two Factor Authentication Enabled, Member Invited, Self-Hosted Runner Registered, Secret Action Removed, Member Removed, Outside Collaborator Removed, Self-Hosted Runner Removed, Self-Hosted Runner Group Created, Self-Hosted Runner Group Removed, Self-Hosted Runner Group Updated, Secret Action Updated, Repository Default Branch Named Updated, Default Repository Permission Updated, Member Role Updated, Member Repository Creation Permission Updated.

50. *Data Repository Organization Label Actions:* Default Label Created, Default Label Updated, Default Label Destroyed.

51. *Data Repository Oauth Application Actions:* Oauth Application Created, Oauth Application Destroyed, Oauth Application Secret Restet, Oauth Application Token Revoked, Oauth Application Transferred.

52. *Data Repository Profile Picture Actions:* Organization Profile Picture Updated.

53. *Data Repository Project Actions:* Project Board Created, Project Board Linked, Project Board Renamed, Project Board Updated, Project Board Deleted, Project Board Unlinked, Project Board Permissions Updated, Project Board Team Permissions Updated, Project Board User Permission Updated.

54. *Data Repository Protected Branch Actions:* Branch Protection Enabled, Branch Protection Destroyed, Branch Protection Enforced For Administrators, Branch Enforcement Of Required Code Owner Enforced, Stale Pull Request Dismissal Enforced, Branch Commit Signing Updated, Pull Request Review Updated, Required Status Check Updated, Requirement For Branch To Be Up To Date Before Merging Changed, Branch Update Attempt Rejected, Branch Protection Requirement Overridden, Force Push Enabled, Force Push Disabled, Branch Deletion Enabled, Branch Deletion Disabled, Linear Commit History Enabled, Linear Commit History Disabled.

55. *Data Repository Repo Actions:* User Visibility Changed, Actions Enabled For Repository, Collaboration Member Added, Topic Added To Repository, Repository Archived, Anonymous Git Read Access Disabled, Anonymous Git Read Access Enabled, Anonymous Git Read Access Setting Locked, Anonymous Git Read Access Setting Unlocked, New Repository Created, Secret Created For Repository, Repository Deleted, Repository Enabled, Secret Removed, User Removed, Self-Hosted Runner Registered, Topic Removed From Repository, Repository Renamed, Self-Hosted Runner Updated, Repository Transferred, Repository Transfer Started, Repository Unarchived, Secret Action Updated.

56. *Data Repository Dependency Graph Actions:* Dependency Graph Disabled, Dependency Graph Disabled For New Repository, Dependency Graph Enabled, Dependency Graph Enabled For New Repository.

57. *Data Repository Secret Scanning Actions:* Secret Scanning Disabled For Individual Repository, Secret Scanning Disabled For All Repositories, Secret Scanning Disabled For New Repositories, Secret Scanning Enabled For Individual Repository, Secret Scanning Enabled For All Repositories, Secret Scanning Enabled For New Repositories.

58. *Data Repository Vulnerability Alert Actions:* Vulnerable Dependency Alert Created, Vulnerable Dependency Alert Dismissed, Vulnerable Dependency Alert Resolved.

59. *Data Repository Team Actions:* Member Added To Team, Repository Added To Team, Team Parent Changed, Team Privacy Level Changed, Team Created, Member Demoted In Team, Team Destroyed, Member Promoted In Team, Member Removed From Team, Repository Removed From Team.

60. *Data Repository Team Discussion Actions:* Team Discussion Disabled, Team Discussion Enabled.

61. *Data Repository Workflow Actions:* Workflow Run Cancelled, Workflow Run Completed, Workflow Run Created, Workflow Run Deleted, Workflow Run Rerun, Workflow Job Prepared.

62. *Data Repository Account Actions:* Billing Plan Change, Plan Change, Pending Plan Change, Pending Subscription Change.

63. *Data Repository Advisory Credit Actions:* Accept Credit, Create Credit, Decline Credit, Destroy Credit.

64. *Data Repository Billing Actions:* Change Billing Type, Change Email.

65. *Data Repository Bot Alerts Actions:* Disable Bot, Enable Bot.

66. *Data Repository Bot Alerts for New Repository Actions:* Disable Alerts, Enable Alerts.

67. *Data Repository Bot Security Alerts for Update Actions:* Disable Security Update Alerts, Enable Security Update Alerts.

68. *Data Repository Bot Security Alerts for New Repository Actions:* Disable New Repository Security Alerts, Enable New Repository Security Alerts.

69. *Data Repository Environment Actions:* Create Actions Secret, Delete, Remove Actions Secret, Update Actions Secret.

70. *Data Repository Git Actions:* Clone, Fetch, Push.

71. *Data Repository Marketplace Agreement Signature Actions:* Create.

72. *Data Repository Marketplace Listing Actions:* Approve, Create, Delist, Redraft, Reject.

73. *Data Repository Members Can Create Pages Actions:* Enable, Disable.

74. *Data Repository Organization Credential Authorization Actions:* Security Assertion Markup Language Single-Sign On Authorized, Security Assertion Markup Language Single-Sign On Deauthorized, Authorized Credentials Revoked.

75. *Data Repository Package Actions:* Package Version Published, Package Version Deleted, Package Deleted, Package Version Restored, Package Restored.

76. *Data Repository Payment Method Actions:* Payment Method Cleared, Payment Method Created, Payment Method Updated.

77. *Data Repository Advisory Actions:* Security Advisory Closed, Common Vulnerabilities And Exposures Advisory Requested, Data Repository Security Advisory Made Public, Data Repository Security Advisory Withdrawn, Security Advisory Opened, Security Advisory Published, Security Advisory Reopened, Security Advisory Updated.

78. *Data Repository Content Analysis:* Data Use Settings Enabled, Data Use Settings Disabled.

79. *Data Repository Sponsors Actions:* Repo Funding Link Button Toggle, Repo Funding Links File Action, Sponsor Sponsorship Cancelled, Sponsor Sponsorship Created, Sponsor Sponsorship Preference Changed, Sponsor Sponsorship Tier Changed, Sponsored Developer Approved, Sponsored Developer Created, Sponsored Developer Profile Updated, Sponsored Developer Request Submitted For Approval, Sponsored Developer Tier Description Updated, Sponsored Developer Newsletter Sent, Sponsored Developer Invited From Waitlist, Sponsored Developer Joined From Waitlist.

80. *Administrator audit log events:* Admin privileges grant, Group events, Marketplace login audit change, Auto provisioning automatically disabled.

81. *Group enterprise audit log events:* Add service account permission, Remove service account permission, Add user, Add user role, Remove user, Request to join, Approve join request, Reject join request, Invite user, Accept invitation, Reject invitation, Revoke invitation, Join, Ban user including with moderation, Unban user, Add all users in domain, Create group, Delete group, Create namespace, Delete namespace, Change info setting, Add info setting, Remove info setting, Add member role, Remove user role, Membership expiration added, Membership expiration removed, Membership expiration updated.

82. *Software vendor employee interaction events:* Event date, Software product name, Software vendor employee email, Software vendor employee home office location, Software vendor employee access justification, Justification tickets, Log ID, Software product resource accessed name.

83. *Login events:* Two-step verification enabled, Two-step verification disabled, Account password change, Account recovery email change, Account recovery phone change, Account recovery secret question change, Account recovery secret answer change, Advanced Protection enroll, Advanced Protection unenroll, Failed login, Government-backed attack attempt, Leaked password detected, Login challenged, Login verification, Logout, Out of domain email forwarding enabled, Successful login, Suspicious Login, Suspicious login blocked, Suspicious login from less secure app blocked, Suspicious programmatic login locked, User suspended, User suspended through spam relay, User suspended through spam, User suspended through suspicious activity.

84. *OAuth Token audit log events:* OAuth event description, OAuth event name, OAuth user, OAuth application name, OAuth client ID, OAuth scope, OAuth event data, OAuth logged activity IP address.

85. *Rules audit log events:* Rule event name, Rule event description, Rule triggering user, Rule name, Rule type, Rule resource name, Resource ID, Resource title, Resource type, Resource owner, Recipients, Data source, Actor IP address, Rule severity, Scan type, Matched trigger, Matched detectors, Triggered actions, Suppressed actions, Date, Device ID, Device type.

86. *SAML audit log events:* SAML event description, SAML Event name, SAML triggering user, SAML application name, SAML user organization name, Initiated by, Failure type, Response status, Second level status, SAML logged activity IP address, SAML event date.

87. *Calendar application audit log events:* Activity name, Activity description, Calendar user, Calendar ID, Event title, Event ID, API kind, User agent, Recipient email, Message ID, Remote Exchange Web Server URL, Error code, Requested window start, Requested window end, Date, Calendar logged activity IP address.

88. *Context-Aware Access audit log events:* Event name, Context-Aware access user, Context-Aware access logged activity IP address, Device ID, Access level applied, Context-Aware access event date.

89. *Web browser audit log events:* Web browser event name, Web browser event date, Web browser event reason, Device name, Device user, Web browser profile user name, URL generating event, Operating System of Web Browser, Web browser triggered rule reason, Web browser event result, Web browser content name, Web browser content size, Web browser content hash, Web browser content type, Web browser trigger type, Web browser trigger user, Web browser user agent, Web browser client type.

90. *Data Visualization audit log events:* Asset name, Event description, User, Event name, Date, Asset type, Owner, Asset ID, IP address, Connector type, visibility, Prior visibility.

91. *Devices audit log events:* Device ID, Event description, Date, Event name, User, Device type, Application hash, Serial number, Device model, OS version, Policy name, Policy status code, Windows OS edition, Account registration change, Device action event, Device application change, Device compliance status, Device compromise, Device OS update, Device ownership, Device settings change, Device status changed on Apple portal, Device sync, Failed screen unlock attempts, Sign out user, Suspicious activity, Work profile support.

92. *Cloud-based web storage application audit log events:* Cloud-based web storage application event name, Cloud-based web storage application event description, Cloud-based web storage application item type, Cloud-based web storage application item ID, Cloud-based web storage application item visibility, Cloud-based web storage application item prior visibility, Cloud-based web storage application user, Cloud-based web storage application visitor Boolean value, Cloud-based web storage application file owner, Cloud-based web storage application event date, Cloud-based web storage application event IP address.

93. *Groups audit log events:* Groups event name, Groups event description, Groups event user, Groups event date.

94. *Chat audit log events:* Chat event name, Chat event description, Chat event user, Chat event date.

95. *Whiteboard application audit log events:* Whiteboard application ID Whiteboard application event description, Whiteboard application event name, Whiteboard application event user, Whiteboard application gevent date.

96. *Note application audit log events:* Note application event name, Note application event description, Note application event user, Note application event note owner, Note application event date, Note application note URI, Note application attachment URI.

97. *Password vault audit log events:* Password vault actor, Password vault event timestamp, Password vault event name, Password vault application username, Password vault application installation name, Password vault application credential name, Password vault API client version.

98. *Takeout audit log events:* Takeout event description, Takeout products requested, Takeout Job ID, Takeout event date, Takeout event IP address.

99. *User accounts audit log events:* User account event description, User account event date, User account event IP address, two-step verification disable, two-step verification enroll, Account password change, Account recovery email change, Account recovery phone change, Account recovery secret question change, Account recovery secret answer change.

100. *Voice audit log events:* Voice event name, Voice event description, Voice event date, Voice event user, Voice receiving phone number, Voice placing phone number, Voice call duration, Voice group message status, Voice call cost, Auto Attendant couldn't route to voicemail recipient, Auto attendant deleted, Auto attendant failed to transfer to a user, Auto attendant published, Auto attendant received a voicemail, Auto attendant voicemail failed to deliver, Auto attendant voicemail failed to forward.

101. *User setting changes:* 2-Step Verification Scratch Codes Of User Deleted, New 2-Step Verification Scratch Codes Generated For User, 3-Legged Oauth Device Tokens Revoked, 3-Legged Oauth Token Revoked, Add Recovery Email For User, Add Recovery Phone For User, Admin Privileges Granted For User, Admin Privileges Revoked For User, Application Specific Password Revoked For User, Automatic Contact Sharing Changed For User, Bulk Upload Notification, User Invite Cancelled, Custom Attribute Changed, External Id Changed, Gender Changed, Ims Changed, IP Whitelisted, Keywords Changed, User Location Changed, User Organization Changed, User Phone Numbers Changed, User Recovery Email Changed, User Recovery Phone Changed, User Relation Changed, User Address Changed, User Email Monitor Created, Data Transfer Requested For User, Delegated Admin Privileges Granted, Account Information Dump Deleted, Email Monitor Deleted, Mailbox Dump Deleted, Profile Photo Deleted, First Name Changed, Gmail Account Reset, Last Name Changed, Mail Routing Destination Created, Mail Routing Destination Deleted, Nickname Created, Nickname Deleted, Password Changed, Password Change Required On Next Login, Recovery Email Removed, Recovery Phone Removed, Account Information Requested, Mailbox Dump Requested, User Invite Resent, Cookies Reset For User And Forced Relogin, Security Key Registered

For User, Security Key Revoked, User Invite Sent, Temporary Password Viewed, 2-Step Verification Turned Off, User Session Unblocked, Profile Photo Updated, User Advanced Protection Unenroll, User Archived, User Birthdate Changed, User Created, User Deleted, User Downgraded From Social Media Application, User Enrolled In 2-Step Verification, User List Downloaded, User Org Unit Changed, User Put In 2-Step Verification Grace Period, User Renamed, User Strong Auth Unenrolled, User Suspended, User Unarchived, User Undeleted, User Unsuspended, User Upgraded To Social Media Application.

102. *Application Authoring application audit log elements:* App synced, App edited, App added, App deleted, App invocation added, App invocation edited, App invocation deleted, App invocation action performed, App read call made, App bot invocation.

RECORD SOURCE CATEGORIES:

Employees; contractors; customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

(a) To appropriate agencies, entities, and persons when (1) the Postal Service suspects or has confirmed that there has been a breach of the system of records; (2) the Postal Service has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Postal Service (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Postal Service's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records relating to system administration are retrievable by user ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records relating to system administration are retained for twenty-four months.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Computer access is limited to authorized personnel with a current security clearance, and physical access is limited to authorized personnel who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by encryption, mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Information Officer and Executive Vice President and include their name and address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

May 10th, 2021; 86 FR 24902.

* * * * *

Joshua J. Hofer,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–01064 Filed 1–28–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94050; File No. SR–NYSEARCA–2022–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Non-Substantive Conforming Changes to Rules 10.9120 and 10.9560

January 25, 2022.

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 10, 2022, NYSE Arca, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes non-substantive conforming changes to Rules 10.9120 and 10.9560 of the Exchange's disciplinary rules. 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 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 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 non-substantive conforming changes to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Rules 10.9120 (Definitions) and 10.9560 (Expedited Suspension Proceeding) of the Exchange's disciplinary rules.

In 2019, the Exchange adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of its affiliate NYSE American LLC and the Financial Industry Regulatory Authority (''FINRA'').[4] Rule 10.9120 defines certain terms used in the Exchange's disciplinary rules, including ''Department of Market Regulation'' in paragraph (i) and ''Enforcement'' in paragraph (m). The definition of Enforcement in Rule 10.9120(m) includes the Department of Market Regulation of FINRA as defined in Rule 10.9120(i).

In 2018, FINRA created a unified enforcement function and eliminated the separate enforcement function in the Department of Market Regulation.[5] In order to reflect FINRA's revised organizational structure, the Exchange accordingly proposes to delete the definition of Department of Market Regulation in Rule 10.9120(i) and mark paragraph (i) ''Reserved'' in order to maintain the Rule's sequencing. In addition, the Exchange proposes to delete Department of Market Regulation of FINRA from the definition of Enforcement in Rule 10.9120(m). As proposed, Rule 10.9120(m) would provide that the term ''Enforcement'' refers to (A) any department reporting to the Chief Regulatory Officer (defined as ''CRO'') of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 10.9000 Series, imposing sanctions on an ETP Holder, OTP Holder, OTP Firm or covered person and (B) the Department of Enforcement of FINRA.

Rule 10.9560 sets forth procedures for issuing suspension orders to immediately prohibit persons from conducting, or providing access to the Exchange to conduct, disruptive quoting and trading activity. Rule 10.9560(c)(1) & (2), (d)(1) and (e) use the term ''Chief Hearing Officer.'' Rule 10.9120(c) defines ''Chief Hearing Officer'' as the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee. Rule 10.9120(r) defines ''Hearing Officer,'' on the other hand, as a FINRA employee who is an attorney appointed by the Chief Hearing Officer to adjudicate and fulfill various adjudicative responsibilities and duties as described in, among other rules, the Rule 10.9550 Series regarding expedited proceedings. Since Rule 10.9560(c)(1) & (2), (d)(1) and (e) govern various aspects of the adjudicative process for expedited hearings—Rule 10.9560(c) governs hearings, Rule 10.9560(d) governs issuance of suspension orders by the hearing panel, and Rule 10.9560(e) governs hearing panel reviews—the references to Chief Hearing Officer in each of these subsections is incorrect. The correct reference should be ''Hearing Officer'' consistent with the rules adopted by the Exchange's other affiliates, which use ''Hearing Officer'' in their version of Rule 10.9560.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] 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.

In particular, the Exchange believes that the proposed non-substantive conforming changes would 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 because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with making non-substantive conforming changes to the Exchange 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

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 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[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–

[4] *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15).

[5] *See* ''FINRA Announces Enforcement Structure, Senior Leadership Team,'' July 26, 2018, available at *https://www.finra.org/media-center/news-releases/2018/finra-announces-enforcement-structure-senior-leadership-team.*

[6] *See* NYSE Rule 9560(c)(1) & (2), (d)(1) & (e); NYSE National Rule 10.9560(c)(1) & (2), (d)(1) & (e).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

NYSEARCA–2022–01 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–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEARCA–2022–01 and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01849 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 3, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 27, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–02063 Filed 1–27–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94047; File No. SR–NYSE–2022–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Non-Substantive Conforming Changes to Rule 9120

January 25, 2022.

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 10, 2022, New York Stock Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes non-substantive conforming changes to Rule 9120 of the Exchange's disciplinary rules. 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 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 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 non-substantive conforming changes to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

9120 (Definitions) of the Exchange's disciplinary rules.

In 2013, the Exchange adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority (''FINRA'').[4] Rule 9120 defines certain terms used in the Exchange's disciplinary rules, including ''Department of Market Regulation'' in paragraph (i) and ''Enforcement'' in paragraph (m). The definition of Enforcement in Rule 9120(m) includes the Department of Market Regulation of FINRA as defined in Rule 9120(i).

In 2018, FINRA created a unified enforcement function and eliminated the separate enforcement function in the Department of Market Regulation.[5] In order to reflect FINRA's revised organizational structure, the Exchange accordingly proposes to delete the definition of Department of Market Regulation in Rule 9120(i) and mark paragraph (i) ''Reserved'' in order to maintain the Rule's sequencing. In addition, the Exchange proposes to delete Department of Market Regulation of FINRA from the definition of Enforcement in Rule 9120(m). As proposed, Rule 9120(m) would provide that the term ''Enforcement'' refers to (A) any department reporting to the Chief Regulatory Officer (defined as ''CRO'') of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 9000 Series, imposing sanctions on a member organization or covered person and (B) the Department of Enforcement of FINRA.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] 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.

In particular, the Exchange believes that the proposed non-substantive conforming changes would 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 because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with making non-substantive conforming changes to the Exchange 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

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 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[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–02 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–NYSE–2022–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are

[4] *See* Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02).

[5] *See* ''FINRA Announces Enforcement Structure, Senior Leadership Team,'' July 26, 2018, available at *https://www.finra.org/media-center/news-releases/2018/finra-announces-enforcement-structure-senior-leadership-team.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–02 and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01842 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94054; File No. SR–NYSEArca–2021–53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts)

January 25, 2022.

On July 23, 2021, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Teucrium Bitcoin Futures Fund under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on August 11, 2021.[3]

On September 15, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On November 8, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7]

Section 19(b)(2) of the Act [8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on August 11, 2021.[9] The 180th day after publication of the proposed rule change is February 7, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates April 8, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2021–53).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01854 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94061; File No. SR–FINRA–2021–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend Rule 2165 (Financial Exploitation of Specified Adults)

January 25, 2022.

I. Introduction

On June 9, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 2165 (Financial Exploitation of Specified Adults) to: (1) Permit member firms to place a temporary hold on a securities transaction, subject to the same terms and restrictions applicable to a temporary hold on disbursements of funds or securities (''disbursements''), where there is a reasonable belief of financial exploitation of a ''specified adult'' as defined in the rule; [3] (2) permit member firms to extend a temporary hold, whether on a disbursement or a transaction, for an additional 30 business days, if the member firm has reported the matter to a state regulator or agency of competent jurisdiction, or a court of competent jurisdiction (hereinafter collectively referred to as a ''State Authority''); and, (3) require member firms to retain records of the reason and support for any extension of any temporary hold, including information regarding any communications with, or by, a State Authority.

The proposed rule change was published for comment in the **Federal Register** on June 28, 2021.[4] On July 20, 2021, FINRA consented to extend until September 24, 2021, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On August 23, 2021,

[10] 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. 92573 (Aug. 5, 2021), 86 FR 44062. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2021-53/srnysearca202153.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92999, 86 FR 52539 (Sept. 21, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93534, 86 FR 63082 (Nov. 15, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 9 and accompanying text.

[4] *See* Exchange Act Release No. 92225 (June 22, 2021), 86 FR 34084 (June 28, 2021) (File No. SR–FINRA–2021–016) (''Notice'').

[5] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Division

FINRA responded to the comment letters received in response to the Notice.[6] On September 22, 2021, the Commission filed an Order Instituting Proceedings (''OIP'') to determine whether to approve or disapprove the proposed rule change.[7] On November 2, 2021, FINRA responded to the comment letters received in response to the OIP.[8] On December 6, 2021, FINRA consented to extend until February 23, 2022 the time period in which the Commission must approve or disapprove the proposed rule change.[9] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

FINRA's proposed rule change would amend Rule 2165, which currently permits a member firm to place a temporary hold on a disbursement from the account of a ''specified adult'' customer for up to 25 business days if the criteria of the rule are satisfied. A ''specified adult'' is someone either age 65 and older, or age 18 and older if the member firm reasonably believes that a mental or physical impairment has rendered the person incapable of protecting their own interests.[10] According to FINRA, temporary holds on disbursements have played a significant role in providing member firms with a way to respond promptly to suspicions of customer financial exploitation before a customer experiences potentially significant losses.[11]

A member firm's ability to place a temporary hold on disbursements is subject to a number of conditions that are designed to help prevent misapplication of the rule.[12] The safeguards include requiring that member firms provide notification of both the hold, and the reason for the hold, to all parties authorized to transact business on the customer's account, including the customer and any trusted contact person of the customer, no later than two business days after the day on which the firm first placed the hold.[13] In addition, after placing the hold the member firm must immediately initiate an internal review of the facts and circumstances that caused the firm to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.[14] Furthermore, the general supervisory and recordkeeping requirements of certain FINRA Rules [15] require a member firm relying on Rule 2165 to establish and maintain written supervisory procedures that are reasonably designed to achieve compliance with the rule, including, but not limited to, procedures related to the identification, escalation, and reporting of matters related to the financial exploitation of specified adults.[16] With respect to associated persons who may be handling the customer's account, Rule 2165 also requires that any request for a hold be escalated to a supervisor, compliance department or legal department rather than allowing the associated person to independently place a hold.[17] In addition, a member firm relying on the rule is required to develop and document training policies or programs reasonably designed to ensure that such associated persons comply with the requirements of the rule,[18] as well as retain records related to compliance with the rule, which must be made readily available to FINRA upon request.[19] With respect to the specific disbursements on which a hold may be placed, temporary holds pursuant to Rule 2165 may only be placed where the member has a reasonable belief of customer financial exploitation—for example, a customer payment related to a commonly known scam, such as a lottery scam.[20] Each of these safeguards incorporated into Rule 2165 would apply equally to the proposed rule change permitting temporary holds on securities transactions.[21]

In August 2019, FINRA commenced a retrospective review to assess the effectiveness and efficiency of its rules and administrative processes designed to protect senior investors from financial exploitation, including Rule 2165.[22] FINRA stated that information gathered during the review supported the need for firms to have additional time to resolve matters arising from suspected financial exploitation, as well as extending the rule to allow firms to place securities transaction holds.[23]

The proposed rule change would expand upon Rule 2165 in both scope and temporal reach by: (1) Expanding the scope of Rule 2165(b)(1) by permitting member firms to place a temporary hold on a securities transaction, in addition to the already-permitted hold on disbursements, where the conditions of the rule, including the member's reasonable belief of customer financial exploitation, are met; [24] (2) permitting member firms to extend the maximum time period for any temporary hold initiated pursuant to Rule 2165(b)(1) for an additional 30 business days, beyond the current maximum of 25 business days, if the firm has reported the matter to a State

of Trading and Markets, Commission, dated July 20, 2021, *available at https://www.finra.org/sites/default/files/2021-07/SR-FINRA-2021-016-Extension1.pdf.*

[6] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated August 23, 2021 (''FINRA Response Letter 1''), *available at https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-9160159-247786.pdf.*

[7] *See* Exchange Act Release No. 93103 (September 22, 2021) 86 FR 53696 (September 28, 2021) (File No. SR–FINRA–2021–016) (''OIP'').

[8] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 2, 2021 (''FINRA Response Letter 2''), *available at https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-9363745-261806.pdf.*

[9] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Division of Trading and Markets, Commission, dated December 6, 2021, *available at https://www.finra.org/sites/default/files/2021-12/sr-finra-2021-016-extension2.pdf.*

[10] *See* Rule 2165(a)(1). Supplementary Material .03 to Rule 2165 provides that a member firm's reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect their own interests may be based on the facts and circumstances observed in the member firm's business relationship with the person. *See* Notice at 34086 n.17.

[11] *See* Notice at 34086. For example, according to FINRA member firms have placed temporary holds to prevent senior investors from losing: (1) $200,000 (representing approximately two-thirds of the investor's account) related to a Central Intelligence Agency lawsuit scam; (2) $10,000 in a lottery scam; (3) $60,000 in a romance scam; and (4) $50,000 to financial exploitation by a brother-in-law. *Id.*

[12] *See* Notice at 34086.

[13] *See* Rule 2165(b)(1)(B).

[14] *See* Rule 2165(b)(1)(C).

[15] *See* Rules 3110, 3120, 3130, 3150, and the Rule 4510 Series.

[16] *See* Rule 2165(c)(1).

[17] *See* Rule 2165(c)(2).

[18] *See* Supplementary Material .02 to Rule 2165.

[19] *See* Rule 2165(d).

[20] *See* Notice at 34086.

[21] *See* Notice at 34088.

[22] According to FINRA, the retrospective review process had two phases: (1) The assessment phase and (2) the action phase. FINRA stated that during the assessment phase, it first sought comment via *Regulatory Notice* 19–27 (August 2019) on several questions with respect to addressing financial exploitation and other circumstances of financial vulnerability for senior investors. The assessment phase of this review included discussions during member exams in 2019 that focused on Rule 2165, as well as a survey of FINRA members on these issues. In addition, FINRA obtained input from several advisory committees comprising member firms of different sizes and business models, investor protection advocates, member firms, and trade associations. FINRA stated that it also obtained the perspective of its operating departments that help administer Rule 2165, and considered examination observations and findings involving senior issues. Finally, FINRA stated that it also developed an anonymous survey that was distributed to all member firms in the first quarter of 2020. *See* Notice at 34085.

[23] *See* Notice at 34087.

[24] *See* proposed Rule 2165(b).

Authority; [25] and (3) requiring member firms to retain records of the reason and support for any extension of a temporary hold, including information regarding any communications with, or by, a State Authority.[26] According to FINRA, the proposed rule change is designed to protect investors and the public interest by strengthening the tools available to FINRA's member firms to combat the financial exploitation of vulnerable investors, which presents the potential for significant and longstanding harm to those investors.[27]

B. Proposed Rule Change

1. Proposed Temporary Hold on Securities Transactions in the Account of a Specified Adult (Proposed Rule 2165(b))

Rule 2165 currently permits member firms to place temporary holds on disbursements of funds or securities when the firm has a reasonable belief that the customer is being financially exploited.[28] Although this serves to stop funds or securities from leaving a customer's account, FINRA indicated that a hold on disbursements may be insufficient to protect certain investors from financial exploitation with respect to their securities transactions.[29] Specifically, FINRA believes that even if a temporary hold is placed on the resulting disbursement out of a customer's account, the execution of the transaction may still subject the customer to significant, negative financial consequences.[30]

Accordingly, FINRA is proposing to amend Rule 2165 to permit firms to place a temporary hold on securities transactions when the firm has a reasonable belief that the customer is being financially exploited.[31] In accordance with the rule's current safe harbors for holds on disbursements,[32] the proposed rule change would permit, but not require, firms to place a hold on transactions in these circumstances. FINRA believes that the safeguards in Rule 2165 [33] would help prevent misapplication of the rule with respect to temporary holds on disbursements, and would apply equally to temporary holds on transactions.[34]

2. Proposed 30-Day Extension of the Temporary Hold Period (Proposed Rule 2165(b)(4))

Rule 2165 currently allows a member firm to place a temporary disbursement hold on a specified adult customer's account for up to 15 business days if the specified conditions required by the rule are satisfied, unless otherwise terminated or extended by a State Authority.[35] The member firm may extend that hold for an additional 10 business days, for a maximum of 25 business days total, if the member firm's internal review of the facts and circumstances supports its reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted, unless otherwise terminated or extended by a State Authority.[36]

FINRA stated that although some matters can be quickly resolved after placing a temporary hold (*e.g.,* by explaining to the customer that the activity and requested disbursement fit a commonly-known scam), other matters are more complex and may require additional time.[37] For example, a more complex matter like suspected financial exploitation of an elderly customer by a family member or caregiver may entail investigations by state regulators or agencies, or legal actions in a court, and thus may require additional time for firms to resolve since both the firm and the other parties investigating the matter need time to gather and share information.[38] In particular, FINRA stated that the average duration of an investigation for matters reported to the federal National Adult Maltreatment Reporting System (NAMRS) is 52.6 days.[39]

Accordingly, FINRA is proposing to amend Rule 2165 to permit firms to extend any temporary hold (of a securities transaction or disbursement) under the rule for an additional 30 business days provided that: (1) The member firm's internal review of the facts and circumstances supports the firm's reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted, and (2) the member firm has reported or provided notification of its reasonable belief to a State Authority.[40] Thus, firms would be able to extend a transaction or disbursement hold up to a maximum of 55 business days only in instances where they have externally reported the suspicious conduct.

3. Proposed Addition To Record Retention (Proposed Rule 2165(d))

Rule 2165(d) currently requires member firms to retain records related to compliance with the rule, which must be readily available to FINRA upon request. To evidence compliance with Rule 2165 in placing or extending a temporary hold (of a securities transaction or disbursement), FINRA is proposing to amend Rule 2165(d) to require that a member firm retain records of the reason and support for any extension of a temporary hold, including information regarding any communications with, or by, a State Authority.[41]

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's responses to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[42] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[43] which requires, among other things, that FINRA rules be designed to prevent

[25] *See* proposed Rule 2165(b)(4).

[26] *See* proposed Rule 2165(d).

[27] *See* Notice at 34087.

[28] *See* Rule 2165(b).

[29] For example, FINRA stated that Rule 2165 currently would not apply to a customer's order to sell his shares of a stock. However, FINRA elaborated that if a customer requested that the proceeds of a sale of shares of a stock be disbursed out of his or her account at the member firm, then the rule could apply to the disbursement of the proceeds where the customer is a ''specified adult'' and there is reasonable belief of financial exploitation. *See* Notice at 34087 at n.33.

[30] *See* Notice at 34087. For example, according to FINRA such customers may be subject to adverse tax consequences, early withdrawal penalties (such as surrender charges), or the inability to regain access to a sold investment that was subsequently closed to new investors. *Id.*

[31] *See* proposed Rule 2165(b).

[32] FINRA stated that Rule 2165 provides member firms and their associated persons with a safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 11870 (Customer Account Transfer Contracts) when member firms exercise discretion in placing temporary holds on disbursements of funds or securities from the accounts of specified adults consistent with the requirements of Rule 2165. *See* Notice at 34086.

[33] *See supra* notes 11–20 and accompanying language.

[34] *See* Notice at 34086.

[35] *See* Rule 2165(b)(2).

[36] *See* Rule 2165(b)(3).

[37] *See* Notice at 34088, 34092.

[38] *See id.*

[39] *Id.*

[40] *See* proposed Rule 2165(b)(4). FINRA stated that the 30-business-day-hold period in proposed Rule 2165(b)(4) would be in addition to the 15-business-day-hold period in Rule 2165(b)(2) and the 10-business-day-hold period in Rule 2165(b)(3). *See* Notice at 34087 n.31.

[41] *See* proposed Rule 2165(d)(6).

[42] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78o–3(b)(6).

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

A. Temporary Holds on Securities Transactions in the Account of a Specified Adult (Proposed Rule 2165(b))

The proposed rule change would amend Rule 2165 to permit firms to place a temporary hold on securities transactions when the firm has a reasonable belief that the customer is being financially exploited.

All commenters generally supported this aspect of the proposal.[44] For example, commenters asserted that extending Rule 2165 to cover securities transactions would provide additional tools that firms could use to protect senior investors from financial exploitation and its detrimental consequences.[45] One of these commenters further stated that the proposed rule change would ''provide more clarity on the manner in which member firms can attempt to combat financial exploitation with respect to direct held securities products, such as variable annuities, that are not usually held in a brokerage account that has a disbursement [feature].'' [46] Another commenter stated that expanding the rule to include temporary holds on transactions would allow member firms to protect their customers to a greater degree, noting that customers may be financially exploited with regard to transactions just as they are with disbursements, and additionally member firms are in the best position to identify common characteristics of scams and exploitation and to recognize red flags in individual customers' accounts.[47] This commenter further stated that ''[c]onsistent with this state law trend, FINRA's proposal to now include temporary holds on securities transactions within 2165 will help protect against financial exploitation relating to purchases or sales, and thus protect senior investors from significant harm.'' [48]

One commenter suggested that notwithstanding its general support for the proposed rule change as drafted, ''more may be done to further protect senior investors'' and requested that ''FINRA further consider making the Rule proscriptive rather than permissive.'' [49] In particular, this commenter stated that ''small and mid-sized firms have declined to utilize the safe harbor offered by Rule 2165 because of concerns associated with litigation risks,'' [50] and that investors ''would benefit from a uniform national standard of mandated reporting where financial exploitation is suspected, even if placing a hold is not mandated.'' [51]

In response, FINRA stated that permitting a member firm to use discretion in placing a temporary hold would allow for the judicious use of temporary holds to protect customers from financial exploitation.[52] FINRA stated that some states mandate reporting of suspected financial exploitation by financial institutions, including broker-dealers, within a specified period of time, and FINRA expects member firms to comply with all applicable state requirements, including reporting requirements.[53] FINRA further stated that where state reporting is not required, mandatory reporting of every temporary hold pursuant to Rule 2165 could lead to an inefficient or ineffective use of time and resources for state regulators and agencies, particularly where firms were able to quickly resolve matters by engaging a customer's trusted contact person or using other tools.[54] For these reasons, FINRA declined amending the proposed rule change.

Permitting firms to impose a temporary hold on transactions where appropriate, in addition to the authority firms already have to impose temporary holds on disbursements, would provide an additional measure of protection to customers from the harmful impact of exploitative transactions, such as adverse tax consequences, early withdrawal penalties, or investing in securities that do not align with their investor profiles. A temporary hold on disbursements may not be sufficient to prevent or redress customer harm from financial exploitation in certain instances, such as financial exploitation involving the purchase and sale of securities. Therefore, authorizing firms to place temporary holds on securities transactions represents an important mechanism to help firms prevent harmful financial consequences that could result from a customer being subject to an exploitative securities transaction. Moreover, FINRA's approach, which balances the importance of reporting against the risk of an inefficient or ineffective use of time and resources for state regulators and agencies, is reasonable. In addition, the Commission expects firms to comply with applicable state laws mandating that firms report suspected financial exploitation. For these reasons, the Commission finds the proposed rule change is consistent with the protection of investors and in the public interest.

B. Proposed 30-Day Extension of the Temporary Hold Period (Proposed Rule 2165(b)(4))

The proposed rule change would permit firms to extend the temporary hold on disbursements or transactions authorized by this rule for an additional 30 business days where the member firm has reported or provided notification of the member's reasonable belief of financial exploitation of a specified adult to a State Authority.

Several commenters suggested that more time is needed for the investigation of senior financial exploitation cases.[55] One commenter stated that compared to the average 52.6 day duration of an investigation for all cases reported to NAMRS, ''financial exploitation investigations are often more complicated and time consuming'' and thus the commenter recommended that the 30-business-day extension be treated only as a starting point, which could be revisited as more data become available.[56] Another commenter stated that data show ''there will still be a sizeable percentage of cases of potential financial exploitation that are not resolved in a timely manner, even with the 30-business day extension . . . so firms will still be in the unenviable position of determining whether to engage in the disbursement, or execute the securities transaction, prior to their

[44] *See* letter to Vanessa Countryman, Secretary, Commission, from William A. Jacobson, Esq., Clinical Professor of Law and Director of Cornell Securities Law Clinic, Cornell University Law School, dated October 13, 2021 (''Cornell Clinic Letter''); letter to Vanessa Countryman, Secretary, Commission, from William Benson, National Policy Adviser, and Kendra Kuehn, National Policy Analyst, National Adult Protective Services Association (''NAPSA''), dated July 29, 2021 (''NAPSA Letter''); letter to Vanessa Countryman, Secretary, Commission, from Lisa Bleier and Marin Gibson, Securities Industry and Financial Markets Association (''SIFMA''), dated July 28, 2021 (''SIFMA Letter''); letter to Vanessa Countryman, Secretary, Commission, from Christine Lazaro, Director of the Securities Arbitration Clinic and, Professor of Clinical Legal Education, St. John's University (the ''St. John's Clinic''), dated July 19, 2021 (''St. John's Clinic Letter''); letter to Vanessa Countryman, Secretary, Commission, from Eversheds Sutherland (US) LLP on behalf of the Committee of Annuity Insurers (''CAI''), dated July 19, 2021 (''CAI Letter''); letter to Vanessa Countryman, Secretary, Commission, from Ron Long, Head of Aging Client Services, Wells Fargo (''Wells Fargo''), dated July 15, 2021 (''Wells Fargo Letter'').

[45] *See* CAI Letter at 2; NAPSA Letter at 1.

[46] CAI Letter at 2.

[47] *See* Cornell Clinic Letter at 2–3.

[48] *Id.* at 1.

[49] St. John's Clinic Letter at 2.

[50] *Id.*

[51] *Id.*

[52] *See* FINRA Response Letter 1 at 4.

[53] *Id.*

[54] *Id.*

[55] *See* CAI Letter; NAPSA Letter; SIFMA Letter.

[56] *See* NAPSA Letter at 1.

ability to conclude the investigation and ensure that the customer has not been exploited.'' [57] In addition, a commenter stated that because ''[s]tate laws do not conform to the additional 30-business days granted under'' the proposed rule change ''firms will be forced to continue to wade through a patchwork of requirements.'' [58] Therefore, this commenter recommended that FINRA work with state agencies and the courts to foster consistency with respect to the permitted timeframe, as well as review the timeline again in the future to assess its efficacy.[59]

In response, FINRA stated that the proposed rule change strikes a reasonable balance between giving member firms adequate time to investigate and contact the relevant parties, as well as to seek input from a State Authority if needed, while prohibiting an open-ended hold period.[60] FINRA emphasized that Rule 2165 already permits a temporary hold to be terminated or extended by a State Authority.[61] Furthermore, FINRA stated that it has met, and will continue to meet, with adult protective services (''APS'') staff in multiple states and NAPSA to increase the coordination of senior investor protection efforts and highlight Rule 2165's provision that APS has the ability to direct a member firm to terminate or extend a temporary hold authorized by the Rule.[62] In addition, FINRA asserted that if the proposed hold period does not provide member firms with adequate time for investigation, FINRA may consider extending the temporary hold period in future rulemaking.[63]

Another commenter opposed the proposed extension of the temporary hold period because the basis for whether to exercise the 10-business-day extension currently permitted by the rule [64] and the proposed 30-business-day extension [65] would use different standards.[66] The commenter recommended that FINRA amend the proposed rule change to require that the basis for exercising both extensions require that an internal investigation support a reasonable belief in financial exploitation (the current standard for the 10-business-day extension).[67] The commenter also suggested that FINRA consolidate the two extensions into a single 40-business-day extension.[68]

In response, FINRA stated that, as with the 10-business-day extension currently provided under Rule 2165(b)(3), the 30-business-day extension would require that the member firm's internal review of the facts and circumstances support a reasonable belief of the existence of, or potential for, financial exploitation necessitating the temporary hold.[69] However, the additional 30-business-day extension also would require the firm to report or notify a State Authority.[70] The additional 30 business days would provide firms with additional time to resolve complex matters, often involving investigations by state regulators or agencies or legal actions in a court.[71] FINRA stated that it does not support consolidating the two extensions of the temporary hold into a single 40-business day extension because doing so would not differentiate between matters of varying complexity.[72] FINRA stated that the proposed rule change strikes a reasonable balance in giving member firms adequate time to investigate and contact the relevant parties, as well as seek input from a state regulator or agency or a court if needed.[73]

The commenter also opposed the proposed 30-business-day extension because ''a non-overridable limit on customers' ability to transact and disburse, even though temporary, unduly limits the customers autonomy, which does not strike the right balance of interests under the Exchange Act.'' [74] Accordingly, the commenter recommended that FINRA provide a mechanism for customers to override the temporary hold in limited circumstances, since customers may be aware of the risks and choose to proceed nonetheless.[75]

In response, FINRA stated that customers are given opportunities to help resolve any circumstance giving rise to a temporary hold. For instance, FINRA stated that unless a member firm reasonably believes that doing so would cause further harm to a specified adult, FINRA encourages the firm to attempt to resolve the matter with a customer before placing a temporary hold.[76] In addition, FINRA stated that Rule 2165(b)(1)(B)(i) requires that, not later than two days after placing a temporary hold, the firm notify all persons authorized to transact business on the account, including the customer.[77] FINRA stated, however, that allowing a customer to ''override a temporary hold when the member firm has a reasonable belief that the customer is being financially exploited would give a powerful tool to the person exploiting the customer and deprive the member firm of a tool to address the exploitation.'' [78] For example, the exploiter could direct the customer to override the hold so that the exploiter could access the customer's funds.[79] For these reasons, FINRA declined amending the proposed rule change.

Providing firms with the ability to extend the temporary hold period from a maximum of 25 business days to 55 business days reasonably aligns with FINRA's stated purpose of providing firms with additional time to resolve financial exploitation matters where circumstances warrant. FINRA has found that the average duration of an investigation for matters reported to NAMRS is 52.6 days, and the proposed rule change would extend the potential maximum duration of the hold to 55 business days—a sum that is more in line with the average amount of time needed to conduct an investigation. As FINRA noted, firms as well as the government or law enforcement entities that investigate suspected financial exploitation often need additional time to collect and share information in order to bring the investigation to resolution.[80] But if a State Authority determines that additional time is needed the proposed rule change permits it to further extend the temporary hold. Moreover, it is reasonable to condition a firm's ability to extend the temporary hold for an additional 30 business days on the firm reporting the matter to a State Authority, given that the extension is a serious step for both the firm and affected customer. These additional requirements, combined with the existing safeguards incorporated into Rule 2165, should provide firms with an effective mechanism to obtain additional time that may be necessary to resolve suspected financial exploitation of specified adults.

Furthermore, allowing a customer to override a temporary hold when the firm has a reasonable belief that the customer is being financially exploited

[57] CAI Letter at 2–3.
[58] *Id.* at 2.
[59] *Id.* at 3.
[60] *See* FINRA Response Letter 1 at 3.
[61] *Id.*
[62] *Id.*
[63] *See* FINRA Response Letter 1 at 3–4.
[64] *See* Rule 2165(b)(3).
[65] *See* Proposed Rule 2165(b)(4).
[66] *See* Cornell Clinic Letter at 3.
[67] *Id.*
[68] *Id.*
[69] *See* FINRA Response Letter 2 at 2–3.
[70] *See id.* at 2.
[71] *See id.* at 3.
[72] *See id.*
[73] *Id.*
[74] Cornell Clinic Letter at 3.
[75] *See id.*
[76] *See* FINRA Response Letter 2 at 3.
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *See supra* notes 21 and 37–39 and accompanying text.

could potentially serve to aid the person who is exploiting the customer, while also potentially diminishing the effectiveness of the firm's means to address the exploitation. At the same time, a maximum hold time of no more than 55 business days, combined with other safeguards, would provide a reasonable upper limit on holds that serves to protect customers from being subject to unduly lengthy or even indefinite holds on transactions or disbursements. For these reasons, the Commission finds that the proposed 30-day extension of the temporary hold period is consistent with the protection of investors and in the public interests.

C. Record Retention (Rule 2165(d))

The proposed rule change would also extend Rule 2165's record retention obligation to temporary hold extensions by requiring firms to retain records of the reason and support for any extension of a temporary hold, including information regarding any communications with, or by, a State Authority—so that firms have a means to demonstrate compliance with the rule upon request by FINRA.

One commenter stated that retaining records that justify a reasonable belief of financial exploitation would help ''justify the imposition of a protective temporary hold, justify limiting a customer's autonomy, justify the member firm's decision-making process, and ensure member firms do not feel free to impose unnecessary holds.'' [81] For these reasons, the commenter stated that the proposed record retention requirement would benefit member firms, customers and the public.[82]

FINRA's determination to require firms to maintain records evidencing those communications so that they can demonstrate compliance with the rule upon FINRA's request, as set forth in the proposed rule change, is reasonable. For these reasons, the Commission finds FINRA's proposed rule change is consistent with the protection of investors and in the public interest.

D. Additional Issues Raised by Commenters

1. Cognitive Decline or Diminished Capacity

One commenter recommended that FINRA consider extending the Rule 2165 safe harbor to apply where there is a reasonable belief that the investor has an impairment that renders the individual unable to protect his or her own interests, irrespective of whether there is evidence the customer may be the victim of financial exploitation by a third party.[83]

In response, FINRA stated that it did not extend Rule 2165 to situations where a member firm has a reasonable belief that the customer has cognitive decline or diminished capacity, but there is no evidence of financial exploitation because such an extension would give member firms too much discretion or would unfairly impede customer autonomy.[84] FINRA also stated that member firms are not well-positioned to determine if a customer is suffering from cognitive decline or diminished capacity.[85] However, FINRA reminded firms of the guidance it provided in this area in *Regulatory Notice* 20–34 to assist member firms and investors address issues related to cognitive decline and diminished capacity.[86]

The Commission finds that expanding the proposed rule change to capture investors with cognitive decline or diminished capacity where there is no evidence of financial exploitation is beyond the scope of this proposed rule change.

2. Investment Companies

One commenter recommended that the temporary hold rules apply to investment companies, such as mutual funds, noting that because these companies are often the custodian of the actual assets, ''there is nothing to be done to hold the actual assets if the client goes to them directly and circumvents the broker-dealer.'' [87]

In response, FINRA stated that the Commission, not FINRA, has jurisdiction over investment companies and their transfer agents and, in fact, has already addressed the commenter's concern.[88] Furthermore, FINRA stated that based on discussions with SEC staff regarding Section 22(e) of the Investment Company Act of 1940, FINRA does not believe that a broker-dealer's delay of a redemption of mutual fund shares pursuant to its customer's mutual fund redemption request, or of a disbursement of mutual fund redemption proceeds to its customer, in reliance on Rule 2165 as amended by the Proposal and based on a reasonable belief of financial exploitation of the customer would be imputed to the mutual fund, including where the broker-dealer is the fund's principal underwriter.[89]

In general, FINRA rules apply to all members and persons associated with a member. The term ''member'' means any registered broker-dealer whose regular course of business consists in actually transacting securities business that is admitted to membership in FINRA.[90] Therefore, the commenter's recommendation is beyond the scope of this proposed rule change.

In sum, for the above reasons, the Commission finds that the proposed rule change would strengthen the tools available to FINRA's member firms to combat the financial exploitation of vulnerable investors. In addition, the Commission finds that conditioning the ability to extend the temporary hold by requiring firms to report the matter to a specified external authority, as well as requiring firms to maintain records evidencing those communications, would aid in preventing misapplication of the rule, and complement the existing safeguards already present in Rule 2165. Accordingly, the Commission finds that the proposed rule change would facilitate a greater measure of protection for investors by providing firms with additional means to prevent customer harm by imposing temporary holds on securities transactions where appropriate, and also by providing firms with additional time to resolve financial exploitation matters through extending the duration of a temporary hold when necessary. For these reasons, the Commission finds FINRA's proposed rule change is designed to protect investors and the public interest.

[81] Cornell Clinic Letter at 4.

[82] *See id.*

[83] *See* Wells Letter at 2.

[84] *See* FINRA Response Letter 1 at 5.

[85] *Id.*

[86] *See* FINRA Response Letter 1 at 5.

[87] NAPSA Letter at 1.

[88] *See* FINRA Response Letter 1 at 2. FINRA stated that Division of Investment Management staff issued a no-action letter in 2018 to the Investment Company Institute permitting mutual fund transfer agents to protect specified adult shareholders from financial exploitation to the same extent that broker-dealers may do so currently under FINRA Rule 2165. Specifically, the no-action letter stated that the staff would not recommend enforcement action if, consistent with the conditions in the letter, a transfer agent, acting on behalf of a mutual fund, temporarily delayed for more than seven days the disbursement of redemption proceeds from the mutual fund account of a specified adult held directly with the transfer agent based on a reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. *See also* Investment Company Institute, SEC No-Action Letter (June 1, 2018).

[89] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 24, 2022, *available at https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-20112614-265430.pdf. See also* Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR–FINRA–2016–039, Securities Exchange Act Release No. 79964 (February 3, 2017), 82 FR 10059, 10066 (February 9, 2017).

[90] *See* FINRA Rule 0160(d)(10) and Article III, Section 1(a) of the FINRA Bylaws.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act [91] that the proposed rule change (SR–FINRA–2021–016) be, and hereby is, approved.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01843 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

[91] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Thursday, February 10, 2022, via videoconference.

PLACE: The meeting will be conducted by remote means (videoconference) and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTER TO BE CONSIDERED: The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 27, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–02030 Filed 1–27–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94055; File No. SR–CboeBZX–2021–051]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 25, 2022.

On July 20, 2021, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on August 6, 2021.[3]

On September 15, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On November 2, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On December 9, 2021, the Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change as originally filed. On December 17, 2021, the Commission published notice of Amendment No. 1 to the proposed rule change.[8]

Section 19(b)(2) of the Act [9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on August 6, 2021.[10] The 180th day after publication of the proposed rule change is February 2, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change, as modified by Amendment No. 1, for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the issues raised in the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates April 3, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–CboeBZX–2021–051).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01845 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92543 (Aug. 2, 2021), 86 FR 43289. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2021-051/srcboebzx2021051.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92989, 86 FR 52530 (Sept. 21, 2021). The Commission designated November 4, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93510, 86 FR 61820 (Nov. 8, 2021).

[8] *See* Securities Exchange Act Release No. 93822, 86 FR 73360 (Dec. 27, 2021).

[9] 15 U.S.C. 78s(b)(2).

[10] *See supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94052; File No. SR–NYSENAT–2022–01]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Non-Substantive Conforming Changes to Rule 10.9120

January 25, 2022.

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 10, 2022, NYSE National, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes non-substantive conforming changes to Rule 10.9120 of the Exchange's disciplinary rules. 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 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 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 non-substantive conforming changes to Rule 10.9120 (Definitions) of the Exchange's disciplinary rules.

In 2018, the Exchange adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of its affiliate NYSE American LLC and the Financial Industry Regulatory Authority (''FINRA'').[4] Rule 10.9120 defines certain terms used in the Exchange's disciplinary rules, including ''Department of Market Regulation'' in paragraph (i) and ''Enforcement'' in paragraph (m). The definition of Enforcement in Rule 10.9120(m) includes the Department of Market Regulation of FINRA as defined in Rule 10.9120(i).

In 2018, FINRA created a unified enforcement function and eliminated the separate enforcement function in the Department of Market Regulation.[5] In order to reflect FINRA's revised organizational structure, the Exchange accordingly proposes to delete the definition of Department of Market Regulation in Rule 10.9120(i) and mark paragraph (i) ''Reserved'' in order to maintain the Rule's sequencing. In addition, the Exchange proposes to delete Department of Market Regulation of FINRA from the definition of Enforcement in Rule 10.9120(m). As proposed, Rule 10.9120(m) would provide that the term ''Enforcement'' refers to (A) any department reporting to the Chief Regulatory Officer (defined as ''CRO'') of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 10.9000 Series, imposing sanctions on an ETP Holder or Associated Person and (B) the Department of Enforcement of FINRA.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] 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.

In particular, the Exchange believes that the proposed non-substantive conforming changes would 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 because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with making non-substantive conforming changes to the Exchange 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

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 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 [8] and Rule 19b–4(f)(6) thereunder.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENat–2018–02).

[5] *See* ''FINRA Announces Enforcement Structure, Senior Leadership Team,'' July 26, 2018, available at *https://www.finra.org/media-center/news-releases/2018/finra-announces-enforcement-structure-senior-leadership-team.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–1090.4(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

Continued

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSENAT–2022–01 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–NYSENAT–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2022–01 and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01853 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94053; File No. SR–NYSE–2022–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rules 5P, 5.2(j)(8)(e), 8P, and 98

January 25, 2022.

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 14, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 5P, 5.2(j)(8)(e), 8P, and 98 to permit the listing and trading of certain Exchange Traded Products that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 5P, 8P, 5.2(j)(8)(e) and 98 to permit the listing of certain Exchange Traded Products (''ETPs'')[4] that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange (an ''NYSE Component Security'' or, collectively, ''NYSE Component Securities''). The amendments would also permit the trading of those ETPs on the NYSE Trading Floor (''Trading Floor'' or ''Floor'').[5]

Currently, Exchange rules do not permit the listing of an ETP that has underlying NYSE Component Securities. The proposed changes would permit the listing of ETPs that satisfy the composition and concentration requirements for equity-based products set forth in the listing criteria of (1) current Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(6) (Equity Index-Linked Securities), 8.100 (Portfolio

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 1.1(l) defines ''Exchange Traded Product'' as a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Act. ETPs include, for example, securities listed and traded on the Exchange pursuant to the following Exchange rules: Rule 5.2(j)(3) (Investment Company Units); Rule 5.2(j)(5) (Equity Gold Shares); Rule 5.2(j)(6)(Equity Index-Linked Securities); Rule 8.100 (Portfolio Depositary Receipts); Rule 8.200 (Trust Issued Receipts) (''TIR'')); Rule 8.201 (Commodity-Based Trust Shares); Rule 8.202 (Currency Trust Shares); Rule 8.203 (Commodity Index Trust Shares); Rule 8.204 (Commodity Futures Trust Shares); Rule 8.600 (Managed Fund Shares); and Rule 8.700 (Managed Trust Securities).

[5] The term ''Trading Floor'' is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Buttonwood Room.''

Depositary Receipts), 8.600 (Managed Fund Shares), and (2) Rule 5.2(j)(8) as proposed to be amended to include requirements to ensure diversification, non-concentration, liquidity and capitalization.

Accordingly, these ETPs would not be covered by the restrictions associated with the listing of ETPs that have an NYSE Component Security.

Background

Current Listing Rules

Currently, the Exchange trades securities, including ETPs, on its Pillar trading platform on an unlisted trading privileges (''UTP'') basis, subject to Pillar Platform Rules 1P—13P.[6] ETPs traded on a UTP basis on the Exchange are not assigned to a Designated Market Maker (''DMM'') and are available for Floor brokers to trade in Floor-based crossing transactions.[7] The Exchange does not have any restrictions on which ETPs may trade on a UTP basis on the Exchange.

The Exchange's rules permit it to list ETPs under Rules 5P and 8P. Specifically, Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange Traded Products) provide for the listing of certain ETPs on the Exchange that (1) meet the applicable requirements set forth in those rules, and (2) do not hold NYSE Component Securities.[8] ETPs listed under Rules 5P and 8P are ''Tape A'' listings and are traded pursuant to the rules applicable to NYSE-listed securities. Accordingly, once an ETP is listed, it is assigned to a DMM pursuant to Rule 103B and the assigned DMM has obligations vis-à-vis such securities as specified in Rule 104, including facilitating the opening, reopening, and closing of, and trading in, such securities.[9]

The Exchange recently adopted a new Rule 5.2(j)(8)[10] establishing generic listing standards allowing the Exchange to list and trade Exchange-Traded Fund Shares.[11]

Relevant Commission Precedent

While the trading of an equity security and its related derivative product at the same physical location (''side-by-side trading'')[12] and the practice of the same person or firm making markets in an equity security and its related option (''integrated market making''[13]) has generally not been permitted, the Commission has approved integrated market making and side-by-side trading for ''broad-based'' exchange traded funds (''ETF'') and Trust-Issued Receipts (''TIR'') and related options.[14] The test for whether a product is ''broad-based,'' and therefore not readily susceptible to manipulation, is whether the individual components of the ETP are sufficiently liquid and well-capitalized and the product is not over-concentrated.[15] When these criteria are met, and the product can therefore can be considered ''broad-based,'' the Commission has explicitly permitted integrated market making and side-by-side trading in both the ETP and related options, with no additional requirement for information barriers or physical or organizational separation.

In making a determination of whether an ETP is broad-based, the Commission has relied on an exchange's listing standards. For instance, in permitting integrated market making and side-by-side trading for two types of ETPs and their related options, the Commission looked to the then-American Stock Exchange LLC's listing standards that, as described below, are very similar to the Exchange's current listing standards.[16]

In particular, the Commission observed that the ETPs at issue, an ETF and a TIR, were securities based on ''groups of stocks'' whose prices were based on the prices of their component securities. As such, the Commission was of the view that a market participant's ability to manipulate the price of the ETPs or the related options would be ''limited.''[17] Moreover, the Commission noted that the listing standards required (1) each product to have a minimum of 13 securities in the underlying portfolio, (2) that the most heavily weighted component securities could not exceed 25% of the weight of the portfolio, and (3) that the five most heavily weighted component securities could not exceed 65% of the weight of the portfolio. As the Commission concluded,

> [b]y limiting the proposal to broad-based ETFs and TIRs, concerns regarding informational advantages about individual securities are lessened.[18]

Finally, the Commission noted that the capitalization and liquidity requirements imposed by the listing standards—for example, the component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market

[6] ''UTP Security'' is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. *See* Rule 1.1.

[7] *See* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13568 (March 29, 2018) (SR–NYSE–2017–36) (approving Exchange rules to trade securities on a UTP basis on the Pillar trading platform).

[8] ETPs listed under NYSE Rules 8.601 (Active Proxy Portfolio Shares) and 8.900 (Managed Portfolio Shares) are not subject to the prohibition in the preamble to Rule 8P. *See* Securities Exchange Act Release No. 90091 (October 5, 2020), 85 FR 64194, 64211 (October 9, 2020) (SR–NYSE–2020–77) (Notice); Securities Exchange Act Release No. 90526 (November 27, 2020), 85 FR 78157 (December 3, 2020) (SR–NYSE–2020–77) (Notice of Deemed Approval).

[9] *See* Securities Exchange Act Release No. 87056 (September 23, 2019), 84 FR 51205 (September 27, 2019) (SR–NYSE–2019–34) (order approving amendments to Rule 104 to specify DMM requirements for ETPs listed on the Exchange pursuant to Rules 5P and 8P).

[10] *See* Securities Exchange Act Release No. 91029 (February 1, 2021), 86 FR 8420 (February 5, 2021) (SR–NYSE–2020–86) (approval order).

[11] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (ETFs) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release'').

[12] ''Side-by-side trading'' refers to the trading of an equity security and its related derivative product at the same physical location, though ''not necessarily by the same specialist or specialist firm.'' *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233 (July 23, 2002) (SR–Amex–2002–21) (''Release No. 46213'') (order approving side-by-side trading and integrated market making of broad index-based ETFs and related options); *see also* Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567, 8568 n. 7 (February 25, 2002) (SR–NYSE–2001–43) (''Release No. 45454'') (order approving approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the NYSE specialist is registered on the Exchange).

[13] ''Integrated market making'' refers to the practice of the same person or firm making markets in an equity security and its related option. *See* Release No. 45454, 67 FR at 8568 n. 7.

[14] *See* Release No. 46213, 67 FR at 48232 (approving side-by-side trading and integrated market making for certain ETFs and TIRs and related options); *see also* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–Amex–2010–31) (''Release No. 62479'') (order approving side-by-side trading and integrated market making in the QQQ ETF and certain of its component securities where the QQQs met the composition and concentration measures to be classified as a broad-based ETF).

[15] *See* Release No. 62479, 75 FR at 41272. The Commission has expressed its belief ''that, when the securities underlying an ETF consist of a number of liquid and well-capitalized stocks, the likelihood that a market participant will be able to manipulate the price of the ETF is reduced.'' *See id. See generally* Securities Exchange Act Release Nos. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR–ISE–2007–60) (order approving generic listing standards for ETFs based on both U.S. and international indices, noting they are ''sufficiently broad-based in scope to minimize potential manipulation.''); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (same); 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR–Amex–2006–78) (same); 57365 (February 21, 2008), 73 FR 10839 (February 28, 2008) (SR–CBOE–2007–109) (order approving generic listing standards for ETFs based on international indices, noting they are ''sufficiently broad-based in scope to minimize potential manipulation.''); 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR–Phlx–2007–20) (same); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101) (same); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–Nasdaq–2006–50) (same).

[16] The American Stock Exchange LLC is now NYSE American, LLC.

[17] Release No. 46213, 67 FR at 48235.

[18] *Id.*

value of at least $75 million and the component securities representing 90% of the weight of the portfolio each must have a minimum trading volume during each of the last six month of at least 250,000 shares—''should reduce the likelihood that any market participant has an unfair information advantage about the ETF, TIR, its related options, or its component securities, or that a market participant would not be able to manipulate the prices of the ETFs, TIRs, or their related options.'' [19]

Proposed Rule Change

The Exchange proposes to list and trade certain ETPs that include one or more underlying NYSE Component Securities. Because listed securities are assigned to DMMs, trading is on the Floor of the Exchange and thus a listed ETP with an underlying NYSE Component Security could be assigned to a DMM that is also assigned one or more NYSE Component Securities forming part of the underlying ETP index or portfolio. The Exchange believes that it would be consistent with the Exchange Act and with prior Commission actions with respect to both integrated market making and side-by-side trading for the Exchange to list an ETP that also includes NYSE Component Securities based on the broad-based listing criteria contained in the relevant listing rules.

Current Generic Listing Standards

The Exchange believes that certain of its existing listing rules, together with proposed additional criteria for ETPs that meet the criteria for listing under Rule 5.2(j)(8), incorporate salient composition and concentration criteria designed to ensure that listed ETPs with an NYSE Component Security would be sufficiently broad-based to address potential manipulation concerns. Specifically, the Exchange believes that ETPs with underlying NYSE Component Securities that would qualify for listing under the current criteria in Rules 5.2(j)(3), Supplementary Material .01(a); 5.2(j)(6)(B)(I); 8.100, Supplementary Material .01(a)(A); and 8.600, Supplementary Material .01(a), would satisfy the type of broad-based listing criteria previously identified by the Commission to address potential manipulation concerns. The Exchange believes that such ETPs could accordingly list and trade on the Exchange with no additional requirement for information barriers or physical or organizational separation based on the broad-based nature of the current listing criteria.

The current listing standards for these Rules incorporate composition and concentration criteria that includes market cap, volume, weighting and minimum number of components requirements. For instance, the generic listing requirements for Equity Index-Linked Securities Listing Standards (''ETN'') under Rule 5.2(j)(6)(B)(I) require that, among other things,

- each underlying index have at least ten (10) component securities; [20] that each component security (excluding Derivative Securities Products and Index-Linked Securities) have a minimum market value of at least $75 million; [21]
- component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the weight of the index (excluding Derivative Securities Products and Index-Linked Securities) each have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; [22] and
- no underlying component security (excluding Derivative Securities Products and Index-Linked Securities) represent more than 25% of the dollar weight of the index, and, to the extent applicable, the five highest dollar weighted component securities in the index (excluding Derivative Securities Products and Index-Linked Securities) do not in the aggregate account for more than 50% of the dollar weight of the index (60% for an index consisting of fewer than 25 component securities).[23]

The generic listing standards for equities-based Investment Company Units under Rule 5.2(j)(3), equities-based Portfolio Depositary Receipts under Rule 8.600, and equities-based Managed Fund Shares under Rule 8.601 contain comparable requirements.[24]

By virtue of the composition and concentration requirements in the Exchange's generic listing standards for equities-based products relating to market cap, trading volume, and diversity requirements, among others, that the underlying components must meet to list on the Exchange, the generic listing standards are, among other things,

- intended to reduce the potential for manipulation by assuring that the ETP is sufficiently broad-based, and that the components of an index or portfolio underlying an ETP are adequately capitalized, sufficiently liquid, and that no one stock dominates the index.[25]

The Exchange believes that ETPs meeting these existing listing criteria would be sufficiently broad-based to allow integrated market making and side-by-side trading in both the ETP and the NYSE Component Securities without more, and therefore should be excluded from the preambles to Rules 5P and 8P.

Proposed Broad-Based Generic Listing Standards for Exchange Traded Fund Shares

The Exchange further believes that Exchange Traded Fund Shares eligible to list under Rule 5.2(j)(8) that have underlying NYSE Component Securities should be eligible to list and trade on the Exchange if such Exchange Traded Fund Shares meet similar broad-based requirements as those specified in Rules 5.2(j)(3), 5.2(j)(6), 8.100, and 8.600 described above. To allow for listing of Exchange Traded Fund Shares with NYSE Component Securities, the Exchange proposes to add a new subsection e.1.B. to Rule 5.2(j)(8) to provide for additional listing requirements for such Exchange Traded Fund Shares. As with the ETPs discussed above, Exchange-Traded Fund Shares with NYSE Component Securities meeting the proposed composition and concentration measures proposed in Rule 5.2(j)(8)(e)(1)(B) would be permitted to list with no additional requirement for information barriers or physical or organizational separation, and would be excluded from the preamble to Rule 5P.

As proposed, Rule 5.2(j)(8)(e)(1)(B) would provide that if a portfolio of a series of Exchange-Traded Fund Shares has NYSE Component Securities, the

[19] *Id.*

[20] *See* NYSE Rule 5.2(j)(6)(B)(I)(1)(a). The rule provides that there shall be no minimum of component securities if one or more issues of Derivative Securities Products (*i.e.,* Investment Company Units (as described in Rule 5.2(j)(3)) and securities described in Section 2 of Rule 8P) or Index-Linked Securities (as described in Rule 5.2(j)(6)), constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities.

[21] *See* NYSE Rule 5.2(j)(6)(B)(I)(1)(b)(i). For each of the lowest dollar weighted component securities in the index that in the aggregate account for no more than 10% of the dollar weight of the index (excluding Derivative Securities Products and Index-Linked Securities), the rule provides that the market value can be at least $50 million.

[22] *See* NYSE Rule 5.2(j)(6)(B)(I)(1)(b)(ii).

[23] *See* NYSE Rule 5.2(j)(6)(B)(I)(1)(b)(iii).

[24] *See* Rule 5.2(j)(3), Supp. Material .01(a)(A); Rule 8.100, Supp. Material .01(a)(A)(1)–(3) & Rule 8.600, Supp. Material .01 (a)(1)(A)–(C).

[25] *See* Securities Exchange Act Release No. 80189 (March 9, 2017), 82 FR 13889, 13892 (March 15, 2017) (SR–NYSEArca–2017–01) (order approving amendment of NYSE Arca Rule 5 and 8 Series to add specific continued listing standards for ETPs and to specify the delisting procedures for these products). *See generally id.* n. 28 & authorities cited therein.

component securities of the equity portion of such portfolio or index must satisfy specified requirements upon initial listing and on a continuing basis that would be designed to ensure that broad-based Exchange Traded Fund Shares with underlying NYSE Component Securities would be listed and traded on the Exchange.

First, proposed Rule 5.2(j)(8)(e)(1)(B)(1) would provide that the portfolio or index must include a minimum of 13 equity component securities. This proposed requirement is substantively the same as listing rules for ETPs that similarly require a minimum of 13 equity component securities. For example, as set forth in Supplementary Material .01 of Rule 5.2(j)(3), the index components for investment company units (''Units'') consisting solely of US Component Stocks [26] or US Component Stocks and cash—*i.e.,* where the equity portion of the portfolio does not include Non-US Component Stocks [27]—must include a minimum of 13 component stocks.[28] In addition, actively managed funds under Rule 8.600 and Rule 8.100 (Portfolio Depositary Receipts) also require a minimum of 13 component securities if the equity portion of the portfolio does not include Non-U.S. Component Stocks.[29] The Exchange believes that the proposed 13 equity component requirement for a series of Exchange Traded Fund Shares with an NYSE Component Securities would similarly ensure significant portfolio breadth such that the potential for manipulation or coordinated trading is significantly attenuated.

Second, proposed Rule 5.2(j)(8)(e)(1)(B)(2) provides that no one single component security may exceed 30% of the equity weight of the portfolio or index. Third, proposed Rule 5.2(j)(8)(e)(1)(B)(3) would provide that the five most heavily weighted component securities may not exceed 65% of the equity weight of the portfolio or index. Both of these proposed requirements are substantively identical to current generic listing requirements for Investment Company Units under Supplementary Material .01 of Rule 5.2(j)(3), which provides that the most heavily weighted component stock (excluding Investment Company Units and securities defined in Section 2 of Rule 8P) cannot exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Units and securities defined in Section 2 of Rule 8P) cannot exceed 65% of the equity weight of the portfolio.[30] Portfolio Depositary Receipts and Managed Fund Shares have similar requirements.[31]

Fourth, proposed Rule 5.2(j)(8)(e)(1)(B)(4) provides that component securities that in the aggregate account for at least 90% of the equity weight of the portfolio or index each must have a minimum market value of at least $75 million. The proposed requirements are substantively identical to the current generic listing requirements for Units under Supplementary Material .01 of Rule 5.2(j)(3), which provides that component stocks in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum market value of at least $75 million.[32]

Finally, proposed Rule 5.2(j)(8)(e)(1)(B)(5) would provide that component securities that in the aggregate account for at least 70% of the equity weight of the index or portfolio each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months. The proposed requirement is also substantively identical to Supplementary Material .01 of Rule 5.2(j)(3), which provides that component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the US Component Stocks portion of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months.[33]

The Exchange believes that these proposed additional initial and continued listed requirements for a series of Exchange Traded Fund Shares with one or more NYSE Component Securities mirror existing generic listing standards for equities-based products and are consistent with the listing requirements described above that the Commission determined were sufficiently broad-based to address potential manipulation concerns. Accordingly, the Exchange believes that the proposed requirements would ensure that a portfolio of a series of Exchange Traded Fund Shares listed under Rule 5.2(j)(8) with one or more NYSE Component Securities would not be unduly concentrated.

The Exchange believes that requiring Exchange Traded Fund Shares with underlying NYSE Component Securities to meet enhanced criteria is designed to ensure that the Exchange Traded Fund Shares listed on the Exchange would be broad-based and would mitigate potential issues raised by the trading of Exchange Traded Fund Shares on the same physical trading floor as one or more component securities.

Proposed Changes to Rules 5P and 8P

To effect the above-described changes, the Exchange proposes to amend the preambles following both Rule 5P and Rule 8P.

For Rule 5P, the Exchange proposes to add ''Listed and'' before ''Traded'' in the heading. The Exchange also proposes to add the defined term ''NYSE Component Securities,'' which would mean the existing Rule 5P definition of ''any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock on the Exchange.'' The Exchange further proposes to amend Rule 5P to exclude from the listing prohibition an Exchange Traded Product listed under NYSE Rules 5.2(j)(3), Supplementary Material .01(a); 5.2(j)(6)(B)(I); or 5.2(j)(8)(e)(1)(B). Finally, for the avoidance of doubt, the Exchange proposes to add text to the heading of Rule 5P providing that the Exchange may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of an ETP that does not otherwise meet the above standards.

[26] The term ''US Component Stock'' means an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934. *See* Rule 5.2(j)(3).

[27] The term ''Non-US Component Stock'' means an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). *See* Rule 5.2(j)(3).

[28] *See* Rule 5.2(j)(3), Supp. Material .01(a)(A)(4). There is no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts (as defined in Section 2 of Rule 8P) constitute, at least in part, components underlying a series of Managed Fund Units, or (b) one or more series of such ETPs account for 100% of the US Component Stocks portion of the weight of the index or portfolio. *See id.*

[29] *See* Rule 8.100, Supp. Material .01(a)(A)(4) & Rule 8.600, Supp. Material .01(a)(1)(D).

[30] *See* Rule 8.100, (a)(A)(3).

[31] *See* Rule 8.100, Supp. Material .01(a)(A)(1)–(3) & Rule 8.600, Supp. Material .01 (a)(1)(A)–(C).

[32] *See* Rule 5.2(j)(3), Supp. Material .01(a)(A)(1).

[33] *See* Rule 5.2(j)(3), Supp. Material .01(a)(A)(2).

The Exchange similarly proposes to amend the heading of Rule 8P to add ''Listing and'' before ''Trading.'' The Exchange also proposes to replace the text ''component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange'' with the proposed newly defined term of ''NYSE Component Securities.'' Use of this new defined term would not make any substantive changes to the Rule and is designed to streamline the rule text. Finally, the Exchange would amend Rule 8P to add language similar to that proposed for Rule 5P that would exclude from the listing prohibition an Exchange Traded Product listed under Rules 8.100, Supplementary Material .01(a)(A) or 8.600, Supplementary Material .01(a).

Proposed Changes to Rule 98

Rule 98 governs the operation of DMM units and imposes certain restrictions on DMM trading. With respect to integrated market making, the Commission has approved changes to Rule 98 that permit a DMM unit to engage in integrated market making with off-Floor market making units in related products.[34] Rule 98(c)(6) prohibits DMM units from operating as a specialist or market maker on the Exchange in related products, unless specifically permitted in Exchange rules. Rule 98(b)(7) defines ''related products'' as ''any derivative instrument that is related to a DMM security.'' [35] Accordingly, consistent with the proposal, the Exchange proposes to amend Rule 98(b)(7) to specifically exclude from the definition of ''related products'' the ETPs that are excluded from the listing prohibition set forth in the preamble to Rule 5P or to Rule 8P.

With the proposed changes above, the Exchange would be able to list ETPs that include NYSE Component Securities and are listed under Rules 5.2(j)(3), Supplementary Material .01(a); 5.2(j)(6)(B)(I); 5.2(j)(8)(e)(1)(B); 8.100, Supplementary Material .01(a)(A); or 8.600 Supplementary Material .01(a). The proposed change would also provide that ETPs listed under these rules would be excluded from the Rule 98 definition of ''related products.'' In addition, this proposed change would clarify that ETPs listed under Rules 8.601 (Active Proxy Portfolio Shares) and 8.900 (Managed Portfolio Shares), which are currently excluded from the preamble to Rule 8P, would also be excluded from the Rule 98 definition of ''related products.'' [36]

As discussed above, for each of the ETPs proposed to be excluded from the definition of ''related security,'' integrated market making and side-by-side trading in both the ETP and any underlying NYSE Component Securities would be appropriate with no additional requirement for information barriers or physical or organizational separation.

In addition to the reasons why specific products present a reduced risk of manipulation, the Exchange believes that there are significant safeguards in place to prohibit the misuse of material nonpublic information by a member organization that operates a DMM unit. Specifically, Rule 98 contains narrowly tailored restrictions to address that DMMs while on the Floor may have access to certain Floor-based non-public information and requires DMM units to maintain procedures and controls to prevent the misuse of material, non-public information that are effective and appropriate for that member organization.

Specifically, under Rule 98(c)(2), a member organization seeking approval to operate a DMM unit pursuant to Rule 98 must maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, (1) to prevent the misuse of material, non-public information by such member organizations or persons associated with such member organization, and (2) to ensure compliance with applicable federal laws and regulations and with Exchange rules.[37] Further, Rule 98(c)(3)(A) provides that a member organization shall protect against the misuse of Floor-based non-public order information and that only the Trading Floor-based employees of the DMM unit and individuals responsible for the direct supervision of the DMM unit's Floor-based operations may have access (as permitted pursuant to Rule 104) to Floor-based non-public order information. Rule 98(c)(3)(B) specifies the restrictions applicable to employees of the DMM unit while on the Trading Floor.

Rule 98(c)(3)(C) also provides that a Floor-based employee of a DMM unit who moves to a location off the trading floor of the Exchange, or any person who provides risk management oversight or supervision of the Floor-based operations of the DMM unit and becomes aware of Floor-based non-public order information, shall not (1) make such information available to customers, (2) make such information available to individuals or systems responsible for making trading decisions in DMM securities in away markets or related products, or (3) use any such information in connection with making trading decisions in DMM securities in away markets or related products. The rule covers an individual that leaves the Floor, as well as a manager providing oversight or supervision of the Floor-based operations of the DMM unit. Submission and approval of a DMM unit's written policies and procedures addressing the requirements of Rule 98 is a prerequisite to operating a DMM unit on the Floor. The Exchange notes that all member organizations currently operating DMM units already have in place written policies and procedures to comply with Rule 98.

The significant safeguards must be viewed in the context of the evolution of equities markets away from manual executions toward an electronic market that automates executions and in many cases hard codes the rule requirements into the execution logic. Over the years the Exchange has enhanced the transparency of its marketplace and significantly reduced the amount of material, non-public information available to DMMs. For instance, the Exchange disseminates Closing Auction Imbalance Information beginning 10 minutes before the scheduled end of Core Trading Hours, which provides updated imbalance information and indicative closing prices. Moreover, the Commission recently approved a rule filing to make permanent a rule change that Floor brokers would no longer be permitted to represent verbal interest intended for the Closing Auction, as defined in Rule 7.35, and require all Floor brokers to enter orders for the

[34] *See* Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR–NYSE–2008–45) (order approving amendments to Rule 98 that permit specialist firms to integrate with off-Trading Floor trading desks that trade in ''related products,'' as that term is defined in Rule 98).

[35] Under Rule 98(b)(7), derivative instruments include options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or ''any other instrument that is exercisable into or whose price is based upon or derived from a security traded at the Exchange.''

[36] *See* note 7, *supra.*

[37] Rule 98(c)(2) provides examples of conduct that would constitute the misuse of material, non-public information, including, but not limited to: (1) Trading in any securities issued by a corporation, or in any related product, while in possession of material-non-public information concerning the issuer; or (2) trading in a security or related product, while in possession of material non-public information concerning imminent transactions in the security or related product; or (3) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related product for the purpose of facilitating the possible misuse of such material, non-public information. *See* Rule 98(c)(2)(A)–(C).

Closing Auction electronically during Core Trading Hours.[38] This proposed change permanently eliminated one of the few remaining pieces of information available only to Floor-based DMMs. Moreover, since Floor broker verbal interest had to be entered manually by the DMM, this rule change also eliminated one of the only significant remaining manual trading opportunities for DMMs. DMMs continue to have benefits in connection with their unique role. For example, at the point of sale, DMMs have access to aggregated buying and selling interest that is eligible to participate in the Closing Auction.[39] However, pursuant to current Rule 104(h)(ii), a DMM may not use any information provided by Exchange systems in a manner that would violate Exchange rules or federal securities laws or regulations. In addition, pursuant to current Rule 104(h)(iii), Floor brokers may request that a DMM provide them with the information that is available to the DMM at the post, including such aggregated buying and selling interest for the Closing Auction.

Finally, trading on the Exchange is subject to a comprehensive regulatory program that includes a suite of surveillances that review trading by DMMs and other market participants on the Floor, including surveillances designed to monitor for trading ahead and manipulative activity. To assist Exchange surveillance of DMM trading activity, a member organization operating a DMM unit must daily provide the Exchange with net position information in DMM securities by the DMM unit and any independent trading unit of which it is part for such times and in the manner prescribed by the Exchange pursuant to Rule 98(c)(5). In addition, routine examinations are conducted consistent with the current exam-based regulatory program associated with Rule 98 that reviews member organizations operating DMM units for compliance with the above-described policies and procedures to protect against the misuse of material nonpublic information. Based on the foregoing, and because the Exchange believes that DMM market-making activity is not materially different from market-making on other exchanges, the Exchange believes that these existing programs are reasonably designed to address any concerns that may be raised by the trading of the specified listed ETPs that have underlying NYSE Component Securities.

For all of the reasons stated above, the proposal is therefore consistent with the requirements of the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[40] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[41] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that listing and trading ETPs that have underlying NYSE Component Securities and that also meet the composition and concentration requirements set forth in the listing criteria of Rules 5.2(j)(3), Supplementary Material .01(a); 5.2(j)(6)(B)(I); 8.100, Supplementary Material .01(a)(A); and 8.600, Supplementary Material .01(a) as well as those proposed under Rule 5.2(j)(8)(e)(1)(B), would remove impediments to and perfect the mechanism of a free and open market and a national market system by facilitating the of listing and trading a broader range of ETPs consistent with the Exchange's current structure to trade listed securities. The Exchange believes that permitting the ETPs with underlying NYSE Component Securities that meet the criteria of the specified listing rules (including as amended) would meet the type of listing criteria previously identified by the Commission as sufficiently broad-based and well-diversified to protect against potential manipulation. The Exchange believes that these safeguards would continue to serve to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest from concerns that may be associated with integrated market making and any possible misuse of non-public information. Accordingly, the Exchange believes that integrated market making and side-by-side trading in both the listed ETP and underlying listed NMS stock components is appropriate with no additional requirement for information barriers or physical or organizational separation.

The Exchange believes that the proposed changes to Rule 98 to exclude any ETPs listed on the Exchange from the definition of ''related products'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would facilitate the assignment of listed ETPs, which would include ETPs with underlying NYSE Component Securities that meet the specified listing rules in Rules 5P and 8P, to DMMs and permit DMMs to trade such listed ETPs consistent with existing Rules governing DMM trading, including, for example, Rule 104.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[42] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing of additional ETPs on the Exchange by allowing such securities to trade no differently than other securities listed on the Exchange, including assigning such securities to a DMM, which would enable the Exchange to further compete with unaffiliated exchange competitors that also list and trade ETPs. The proposed rule changes would also provide issuers with greater choice in potential listing venues for their ETP products to include an exchange model that includes a DMM assigned to their security and related benefits to an issuer as a result of the Exchange's high-touch trading model. The Exchange accordingly believes that the proposed change would promote competition by facilitating the listing and trading of a broader range of ETPs on the Exchange.

[38] *See* Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40885 (July 29, 2021) (SR–NYSE–2020–95) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and To Make Related Changes to Rules 7.32, 7.35C, 46B, and 47).

[39] DMM unit algorithms, however, are not provided aggregated buying and selling interest for the Closing Auction until after the end of Core Trading Hours.

[40] 15 U.S.C. 78f(b).

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2022–04 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–NYSE–2022–04. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–04 and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01851 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94048; File No. SR–NYSEAMER–2022–01]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Non-Substantive Conforming Changes to Rule 9120 and Rule 9560

January 25, 2022.

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 10, 2022, NYSE American LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes non-substantive conforming changes to Rule 9120 and Rule 9560. 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 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 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 non-substantive conforming changes to Rule 9120 (Definitions) and Rule 9560 (Expedited Suspension Proceeding) of the Exchange's disciplinary rules.

In 2016, the Exchange adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of its affiliate New York Stock Exchange LLC and the Financial Industry Regulatory Authority (''FINRA'').[4] Rule 9120 defines certain terms used in the Exchange's disciplinary rules, including ''Department of Market Regulation'' in paragraph (i) and ''Enforcement'' in paragraph (m). The definition of Enforcement in Rule 9120(m) includes the Department of Market Regulation of FINRA as defined in Rule 9120(i).

In 2018, FINRA created a unified enforcement function and eliminated the separate enforcement function in the Department of Market Regulation.[5] In order to reflect FINRA's revised organizational structure, the Exchange accordingly proposes to delete the definition of Department of Market Regulation in Rule 9120(i) and mark paragraph (i) ''Reserved'' in order to maintain the Rule's sequencing. In addition, the Exchange proposes to delete Department of Market Regulation

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30).

[5] *See* ''FINRA Announces Enforcement Structure, Senior Leadership Team,'' July 26, 2018, available at *https://www.finra.org/media-center/news-releases/2018/finra-announces-enforcement-structure-senior-leadership-team.*

of FINRA from the definition of Enforcement in Rule 9120(m). As proposed, Rule 9120(m) would provide that the term ''Enforcement'' refers to (A) any department reporting to the Chief Regulatory Officer (defined as ''CRO'') of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 9000 Series, imposing sanctions on a member organization or covered person and (B) the Department of Enforcement of FINRA.

Rule 9560 sets forth procedures for issuing suspension orders to immediately prohibit persons from conducting, or providing access to the Exchange to conduct, disruptive quoting and trading activity. Rule 9560(c)(1) & (2), (d)(1) and (e) use the term ''Chairman of the Hearing Panel.'' This term is not defined in the disciplinary rules or used in Rule 476, the Exchange's legacy disciplinary rules. The references to Chairman of the Hearing Panel in Rule 9560(c)(1) & (2), (d)(1) and (e) are incorrect and should be replaced with ''Hearing Officer,'' defined in Rule 9120(r) as a FINRA employee who is an attorney appointed by the Chief Hearing Officer to adjudicate and fulfill various adjudicative responsibilities and duties as described in, among other rules, the Rule 9550 Series regarding expedited proceedings. The use of ''Hearing Officer'' would be consistent with the rules adopted by the Exchange's other affiliates, which use ''Hearing Officer'' in their version of Rule 9560.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] 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.

In particular, the Exchange believes that the proposed non-substantive conforming changes would 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 because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with making non-substantive conforming changes to the Exchange 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

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 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[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAMER–2022–01 and

[6] *See* NYSE Rule 9560(c)(1) & (2), (d)(1) & (e); NYSE National Rule 10.9560(c)(1) & (2), (d)(1) & (e).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01846 Filed 1–28–22; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2021–0032]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the States, including tribal agencies and United States (U.S.) territories. The purpose of the matching program is to set forth the terms and conditions governing disclosures of records, information, or data (collectively referred to herein as ''data'') made by SSA to various State agencies and departments, tribal agencies, and U.S. territories (collectively referred to as ''State Agencies'') that administer federally funded benefit programs, including those under various provisions of the Social Security Act (Act), as well as the state-funded state supplementary payment programs under Title XVI of the Act.

DATES: The deadline to submit comments on the proposed matching program is March 2, 2022. The matching program will be applicable on July 1, 2022, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0032 so that we may associate your comments with the correct regulation. *Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2021–0032 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Melissa Feldhan, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 965–1416, or send an email to *Melissa.Feldhan@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and the States, State Agencies, tribal agencies, and U.S. territories.

Authority for Conducting the Matching Program: The legal authorities for SSA to disclose data and the States' authority to collect, maintain, and use data protected under SSA's systems of records (SOR) for the specified purposes are:

- Sections 453, 1106(b), and 1137 of the Act (42 U.S.C. 653, 1306(b), and 1320b–7) (income and eligibility verification data);
- 26 U.S.C. 6103(l)(7) and (8) (Federal tax information);
- Sections 202(x)(3)(B)(iv) and 1611(e)(1)(I)(iii) of the Act (42 U.S.C. 402(x)(3)(B)(iv) and 1382(e)(1)(I)(iii)) (prisoner data);
- Section 205(r)(3) of the Act (42 U.S.C. 405(r)(3)) and the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 7213(a)(2) (death data);
- Sections 402, 412, 421, and 435 of Public Law 104–193 (8 U.S.C. 1612, 1622, 1631, and 1645) (quarters of coverage data);
- Section 1902(ee) of the Act (42 U.S.C. 1396a(ee)); Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3 (citizenship data); and
- Routine use exception to the Privacy Act, 5 U.S.C. 552a(b)(3) (data necessary to administer other programs compatible with SSA programs).

Purpose(s): The purpose of the matching program is to set forth the terms and conditions governing disclosures of data made by SSA to various State agencies that administer federally funded benefit programs, including those under various provisions of the Act, such as section 1137 of the Act (42 U.S.C. 1320b–7), as well as the state-funded state supplementary payment programs under Title XVI of the Act. The terms and conditions of the matching agreements ensure that SSA's disclosures and the State Agencies' use of such disclosed data is, in accordance with the requirements of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act, 5 U.S.C. 552a.

Under section 1137 of the Act, States are required to use an income and eligibility verification system to administer specified federally funded benefit programs, including the state-funded state supplementary payment programs under Title XVI of the Act. To assist the State Agencies in determining entitlement to and eligibility for benefits under those programs, as well as other federally funded benefit programs, SSA verifies the Social Security number (SSN) and discloses certain data about applicants (and in limited circumstances, members of an applicant's household) for state-administered benefits from its Privacy Act SORs.

SSA has separate agreements with the State Agencies, which describe the information SSA will disclose for specified federally funded benefit programs.

Categories of Individuals: The individuals whose information is involved in this matching program are those who apply for federally funded, state-administered benefits, as well as current beneficiaries, recipients, and annuitants under the programs covered by the Agreement.

[11] 17 CFR 200.30–3(a)(12).

Categories of Records: The maximum number of records involved in this matching activity is the number of records maintained in SSA's SORs. Data elements disclosed in the matching governed by the Agreement are Personally Identifiable Information from SSA's specified SORs, including names, SSNs, addresses, amounts, and other information related to SSA's benefits and earnings information. Specific listings of data elements are available at: *http://www.ssa.gov/dataexchange/.*

System(s) of Records: SSA's SORs used for purposes of the subject data exchanges include:

- 60–0058—Master Files of SSN Holders and SSN Applications;
- 60–0059—Earnings Recording and Self-Employment Income System;
- 60–0090—Master Beneficiary Record;
- 60–0103—Supplemental Security Income Record (SSR) and Special Veterans Benefits (SVB);
- 60–0269—Prisoner Update Processing System (PUPS); and
- 60–0321—Medicare Database (MDB) File.

States will ensure that the Federal tax information contained in SOR 60–0059 (Earnings Recording and Self-Employment Income System) will only be used in accordance with 26 U.S.C. 6103.

[FR Doc. 2022–01847 Filed 1–28–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11638]

Notice of Determinations; Culturally Significant Object Being Imported for Conservation, Scientific Research, and Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object, entitled ''Hercules and Omphale'' by Artemisia Gentileschi, being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary conservation, scientific research, and exhibition or display at The J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary conservation, scientific research, and exhibition or display within the United States as aforementioned are in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, 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), E.O. 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.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–01862 Filed 1–28–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11641]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Jurassic Oceans: Monsters of the Deep'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Jurassic Oceans: Monsters of the Deep'' at the Field Museum of Natural History, Chicago, Illinois 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: Chi D. Tran, Program Administrator, 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), E.O. 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.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–01861 Filed 1–28–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0079; Notice 1]

Maserati North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Maserati North America, Inc., (MNA), has determined that certain model year (MY) 2014–2021 Maserati Ghibli, Quattroporte, and Levante motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* MNA filed a noncompliance report dated August 5, 2021. MNA subsequently petitioned NHTSA on August 30, 2021, and amended its petition on January 13, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of MNA's petition.

DATES: Send comments on or before March 2, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

MNA has determined that certain MY 2014–2021 Maserati Levante, Ghibli, and Quattroporte motor vehicles do not fully comply with paragraph S4.5.1(b)(3) of FMVSS No. 208, *Occupant Crash Protection* (49 CFR 571.208).

MNA filed a noncompliance report dated August 5, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* MNA subsequently petitioned NHTSA on August 30, 2021, and amended its petition on January 13, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of the MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved

Approximately 78,588 MY 2017–2021 Maserati Levante, manufactured between May 20, 2016 and July 13, 2021, and MY 2014–2021 Maserati Ghibli and Quattroporte motor vehicles, manufactured between April 30, 2013, and July 13, 2021, are potentially involved.

III. Noncompliance

MNA explains that the subject vehicles are equipped with air bag warning labels that are affixed to the headliner, rather than either side of the sun visor, as required by S4.5.1(b) (3) of FMVSS No. 208.

IV. Rule Requirements

Paragraph S4.5.1(b)(3) of FMVSS No. 208, includes the requirements relevant to this petition. Vehicles certified to meet the requirements specified in S19, S21, or S23 on or after September 1, 2003 shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint.

V. Summary of MNA's Petition

The following views and arguments presented in this section, ''V. Summary of MNA's Petition,'' are the views and arguments provided by MNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. MNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, MNA submits the following reasoning:

MNA says that the sun visor is affixed with an airbag alert label that informs ''passengers to flip the sun visor to the down position'' to view the warning label. MNA also says that the although the airbag warning label is affixed to the headliner, the label is clearly visible when the sun visor is in the down position. In its petition, MNA provides computer-aided design (CAD) illustrations of the airbag alert label and noncompliant airbag warning label.

MNA states its belief that although the airbag warning label is not positioned on the sun visor, in combination with the airbag alert label, the airbag warning label is displayed as intended by FMVSS No. 208. In support of this argument, MNA cites a 2016 Notice of Proposed Rulemaking (NPRM) on Vehicle Defect Reporting Requirements [1] in which MNA says NHTSA assessed ''the suitability of the headliner for safety warning labels in Section IV, alternatives considered and proposed for the label, and finds the headliner to be an effective location for a safety warning label.'' MNA cites NHTSA as stating ''[t]he agency also recognizes that the headliner above the sun visor may have similar benefits to the visor without some of the disadvantages of the visor.'' as an effective location for safety warning labels.'' MNA further states that NHTSA has found the headliner to be of similar benefit as the sun visor for the placement of the air bag warning label. *Id.*

MNA says it ''is not aware of any crashes, injuries, or customer complaints associated with this condition'' and that production is being updated to correct the noncompliance in future vehicles.

MNA concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers

[1] *See* 81 FR 85478 (November 28, 2016).

of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after MNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–01828 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0040; Notice 1]

Toyota Motor North America, Inc., Receipt of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petitions.

SUMMARY: Toyota Motor North America, Inc. (TMNA) on behalf of Toyota Motor Corporation (TMC) (collectively referred to as ''Toyota'') has determined that certain replacement seat belt assemblies manufactured by Marutaka, Tokai Rika Japan, Autoliv, NSK, Joyson Safety Systems Acquisition, TRQSS, Key Safety Restraint Systems, Inc., Tokai Rika Czech, BMW Group Headquarters, Subaru Corporation, and Mazda North America Operations, and sold to Toyota dealerships as replacement equipment do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. Toyota filed three noncompliance reports, two dated April 20, 2021, and the other dated May 4, 2021. Toyota subsequently submitted two petitions to NHTSA both dated May 14, 2021, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. This notice announces receipt of Toyota's petitions.

DATES: Send comments on or before March 2, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/*. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decisions will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0661.

SUPPLEMENTARY INFORMATION:

I. Overview

Toyota has determined that certain replacement seat belt assemblies manufactured by Marutaka, Tokai Rika Japan, Autoliv, NSK, Joyson Safety Systems Acquisition, TRQSS, Key Safety Restraint Systems, Inc., Tokai Rika Czech, BMW Group Headquarters, Subaru Corporation, and Mazda North America Operations, and sold to Toyota dealerships as replacement equipment do not fully comply with the requirements of paragraph S4.1(k) and (l) of FMVSS No. 209, *Seat Belt Assemblies* (49 CFR 571.209). Toyota filed three noncompliance reports, two dated April 20, 2021, and the other dated May 4, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Toyota subsequently submitted two petitions to NHTSA both dated May 14, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Toyota's petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Equipment Involved

Potentially involved seat belt assemblies are as follows:

1. Approximately 33,000 replacement seat belt assemblies manufactured by Marutaka and Tokai Rika Japan between November 1, 1995, and February 28, 2021;

2. approximately 1,400,000 replacement seat belt assemblies manufactured by Marutaka, Tokai Rika Japan, Autoliv, NSK, Joyson Safety Systems Acquisition, TRQSS, Key Safety Restraint Systems, Inc., and Tokai Rika Czech between October 1, 1994, and February 28, 2021; and

3. approximately 6,160 replacement seat belt assemblies manufactured by BMW Group Headquarters, Subaru Corporation, Mazda North America Operations between March 1, 2012, and April 30, 2021.

III. Noncompliance

Toyota explains that the noncompliance involves replacement seat belt assemblies manufactured by Marutaka, Tokai Rika Japan, Autoliv, NSK, Joyson Safety Systems

Acquisition, TRQSS, Key Safety Restraint Systems, Inc., Tokai Rika Czech, BMW Group Headquarters, Subaru Corporation, and Mazda North America Operations, and sourced to Toyota dealerships for use or subsequent resale to dealership customers as replacement equipment do not fully comply with all applicable requirements specified in paragraph S4.1(k) and (l) of FMVSS No. 209.

Specifically, the items of noncompliant equipment involved are:

(1) Certain replacement seat belt assemblies, manufactured by Marutaka and Tokai Rika Japan, were packaged with an instruction sheet that was missing the following required statement: ''This seat belt assembly is for use only in [insert specific seating position(s), *e.g.,* ''front right''] in [insert specific vehicle make(s) and model(s)],'' or packaged with an instruction sheet that specified the wrong seating position;

(2) certain replacement seat belt assemblies, manufactured by Marutaka, Tokai Rika Japan, Autoliv, NSK, Joyson Safety Systems Acquisition, TRQSS, Key Safety Restraint Systems, Inc., and Tokai Rika Czech, were packaged with an instruction sheet that was missing the aforementioned seating position(s) statement; and

(3) certain replacement seat belt assemblies, manufactured by BMW Group Headquarters, Subaru Corporation, and Mazda North America Operations, were packaged with an instruction sheet that was also missing the required seating position(s) statement, or packaged without the required usage and maintenance instructions.

IV. Rule Requirements

Paragraphs S4.1(k) and (l) of FMVSS No. 209 include the requirements relevant to this petition. Paragraph S4.1(k) requires that a seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), *e.g.,* ''front right''] in [insert specific vehicle make(s) and model(s)].

Paragraph S4.1(l) requires that a seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components.

V. Summary of Toyota's Petition

The following views and arguments presented in this section, ''V. Summary of Toyota's Petition,'' are the views and arguments provided by Toyota. They have not been evaluated by the Agency and do not reflect the views of the Agency. Toyota described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Toyota submitted the following reasoning:

1. The subject seat belt assemblies were sold only by Toyota dealerships. Due to the dealerships' replacement parts ordering system and the parts packaging, improper replacement seat belt assembly selection would not likely occur.

Toyota states that it is unlikely that the subject replacement seat belt assemblies would be selected for an incorrect model and seating position as a result of this issue. The subject assemblies were only sold by Toyota dealerships. The parts ordering system clearly indicates the part and enables identification of the appropriate model vehicle and seating position for which the assembly is intended to be installed. When selecting a replacement part, the dealerships can search by Vehicle Identification Number, part number, and vehicle model. They can also see a diagram of the part location via the Electronic Parts Catalog. In addition, the part can be identified by the label on the packaging and the old part can be compared to the new part. The label on the packaging in which the replacement seat belt is packaged specifies the part number and part description.

Toyota says that because of the Toyota dealerships' robust part ordering system and the additional label on the packaging, it is unlikely that an incorrect seat belt would be provided or used as a replacement part. The missing instruction sheet, missing seating position, or incorrect seat position on the instruction sheet has no effect on a dealership's ability to provide the correct replacement part ordered or on the installer's ability to correctly identify the appropriate replacement part.

2. The improper installation of the seat belt assembly is unlikely. Dealership technicians and third-party installers can access Toyota's electronic repair manual and other aftermarket manuals and the subject assemblies themselves have characteristics that discourage incorrect installation.

Toyota contends that it is unlikely that an improper installation of a replacement seat belt would occur as a result of a missing instruction sheet or an instruction sheet that does not indicate the specific seating position information.

First, after identifying that the part does not have an installation instruction sheet, does not specify the specific seating position, or specifies the wrong seating position for which the part was purchased, the installer could return the part to the dealer, request the installation instruction from the dealer, or consult other sources of installation instructions that are readily available. Technicians at Toyota dealerships have access to Toyota's electronic repair manual. Third-party installers have access to various aftermarket repair manuals and can obtain access to Toyota's electronic repair manual. The installer can also request a copy of the installation instructions from Toyota, and the instructions would be provided free of charge.

Second, the subject assemblies themselves have characteristics that discourage incorrect installation. These characteristics include the appearance being visually different, an inability to connect the wire harness, the warning indicator becoming illuminated, or the seat belt being unable to buckle. Because the subject seat belts are not universal type seat belts, they are intended to be used to replace specific seat belts in specific seating positions. It is unlikely that these replacement assemblies would be installed incorrectly.

Third, the torque value for structurally mounting the seat belt assemblies is a standard value and is correct regardless of which instruction sheet is used (42Nm). Because these torque values are common, even if the technician uses the torque values from the incorrect installation instruction sheet, the torque value will still be correct.

For these reasons, Toyota believes it is unlikely that the subject seat belt assemblies would be improperly installed.

Toyota notes that the investigation leading to the submission of the part 573 reports subject of this petition was prompted by a report from a dealer technician who found a seat belt assembly with an incorrect instruction sheet. While records covering the entire scope of the seat belt assemblies

involved are not available, Toyota believes this to be the only report of an instruction sheet concern. This further tends to confirm that improper installation of a seat belt assembly is unlikely as a result of the missing installation information, and dealer technicians or third-party installers are able to easily obtain the installation information, if needed, from the other sources noted above free of charge.

3. The replacement seat belt assemblies are intended to replace the original equipment seat belts. The owner's manual for each vehicle contains the seat belt usage and maintenance instructions.

Toyota states that it is unlikely that improper use or maintenance of a replacement seat belt would occur because of the missing usage and maintenance instructions. The affected seat belt assemblies are designed to replace the originally equipped seat belts in specific Toyota vehicles. All of the vehicle models for which these replacement seat assemblies were designed were originally equipped with an owner's manual that contains usage and maintenance instructions for these seat belt assemblies. Thus, the vehicle owner has access to the usage and maintenance instructions and would not need to refer to the instruction sheet for this information. In addition, the seat belts packaged with sheets that are only missing the specific seating position information have the correct usage and maintenance instructions.

4. The seat belts comply with all other requirements of FMVSS No. 209.

Toyota says the lack of information on the instruction sheets has no bearing on the materials or performance of the replacement seat belt assembly itself. Thus, the assemblies continue to meet the other performance requirements specified in FMVSS No. 209. There is no impact to performance, functionality, or occupant safety.

5. In similar situations, NHTSA has granted petitions for inconsequential noncompliance relating to the subject requirement of FMVSS No. 209.

Toyota states that NHTSA has previously granted at least seven similar inconsequentiality petitions for noncompliances that it contends are similar to the subject noncompliance. These include: FCA US LLC (84 FR 20948, May 3, 2019); Mitsubishi Motors North America, Inc., (77 FR 24762, April 25, 2012); Bentley Motors, Inc. (76 FR 58343, September 20, 2011); Hyundai Motor Company (74 FR 9125, March 2, 2009); Ford Motor Company, (73 FR 11462, March 3, 2008); Mazda North American Operations (73 FR 11464, March 3, 2008); and Subaru of America, Inc. (65 FR 67471, November 9, 2000).

In these cases, Toyota argues, NHTSA determined that the noncompliance was inconsequential to motor vehicle safety for reasons that included the following: (1) The dealer ordering system would make it unlikely that an inappropriate seat belt assembly would be sold for a specific seating position; (2) installers would be able to locate installation instructions from other sources; (3) the usage and maintenance instructions are available in the vehicles owner's manual; and (4) the seat belts are intended to be replacement parts for original equipment designed for specific seating positions. These reasons also apply to the subject Toyota replacement seat belt assemblies.

Toyota's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

Toyota concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the equipment that Toyota no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant replacement seat belt assemblies under their control after Toyota notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–01827 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On January 20, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. VOLOSHYN, Oleh (a.k.a. VOLOSHYN, Oleg), 131 Antonovicha, Kyiv 03150, Ukraine; DOB 07 Apr 1981; POB Ukraine; nationality Ukraine; Gender Male; Passport ET870130 (Ukraine) expires 10 Apr 2022; National ID No. 2968200719 (Ukraine); Personal ID Card 1981040705733 (Ukraine) expires 06 Apr 2028 (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(vii) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249 (E.O. 14024) for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to E.O. 14024.

2. SIVKOVICH, Vladimir Leonidovich (Cyrillic: СИВКОВИЧ, Владимир Леонидович) (a.k.a. SIVKOVYCH, Volodymyr), Ukraine; DOB 17 Sep 1960; POB Ostraya Mogila Village, Stravishchesnkiy Rayon, Kiyevskaya Oblast, Ukraine; nationality Ukraine; citizen Ukraine; Gender Male; Passport DP002778 (Ukraine) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to E.O. 14024.

3. OLIYNYK, Volodymyr Mykolayovych (Cyrillic: ОЛЕЙНИК, Володимир Миколаевич) (a.k.a. OLEINIK, Vladimir Nikolayevich (Cyrillic: ОЛЕЙНИК, Владимир Николаевич); a.k.a. OLIINYK, Volodymyr), Moscow, Russia; Yalta, Crimea, Ukraine; DOB 16 Apr 1957; POB Ukraine; nationality Ukraine; Website www.oleinik.win; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to E.O. 14024.

4. KOZAK, Taras Romanovych, Ukraine; DOB 06 Apr 1972; POB Lviv, Ukraine; nationality Ukraine; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(ii)(B) of E.O. 14024 for being responsible for or complicit in, or for having directly or indirectly engaged or attempted to engage in, interference in a United States or other foreign government election, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

Dated: January 20, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–01931 Filed 1–28–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 8569

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8569, Geographic Availability Statement.

DATES: Written comments should be received on or before April 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Geographic Availability Statement.

OMB Number: 1545–0973.

Form Number: 8569.

Abstract: This form is used to collect information from applicants for the Senior Executive Service Candidate Development Program and other executive positions. The form states an applicant's minimum area of availability and is used for future job placement.

Current Actions: There is no change to existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 84.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–01908 Filed 1–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Relief for Service in Combat Zone and for Presidentially Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Relief for Service in Combat Zone and for Presidentially Declared Disaster.

DATES: Written comments should be received on or before April 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in you comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Relief for Service in Combat Zone and for Presidentially Declared Disaster.

OMB Number: 1545–2286.

Regulation Project Number: TD 8911, TD 9443, Form 15109.

Abstract: This collection covers the final rules to the Regulations on Procedure and Administration (26 CFR part 301) under section 7508 of the Internal Revenue Code (Code), relating to postponement of certain acts by reason of service in a combat zone, and section 7508A, relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster. Section 7508A was added to the Code by section 911 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)), effective for any period for performing an act that had not expired before August 5, 1997. Form 15109 was created to help taxpayers, including Civilian taxpayers working

with U.S. Armed Forces, qualifying for such combat zone relief, provide the IRS with the appropriates dates.

Current Actions: There is no change to existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 6,600.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–01905 Filed 1–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments for Notice 2007–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Notice 2007–52, Qualifying Advanced Coal Project Program.

DATES: Written comments should be received on or before April 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in you comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Qualifying Advanced Coal Project Program.

OMB Number: 1545–2003.

Regulation Project Number: Notice 2007–52.

Abstract: This notice establishes the qualifying advanced coal project program under § 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 45.

Estimated Time per Respondent: 110 hours.

Estimated Total Annual Burden Hours: 4,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–01906 Filed 1–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Reporting Requirements for Widely Held Fixed Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden,

invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning reporting requirements for widely held fixed investment trusts.

DATES: Written comments should be received on or before April 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Widely Held Fixed Investment Trusts.

OMB Number: 1545–1540.

Regulation Project Number: TD 9308.

Abstract: Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

Current Actions: There is no change to the regulation or burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,400 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–01879 Filed 1–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Application for Determination for Terminating Plan, and Distributable Benefits From Employee Pension Benefit Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning guidance on the application for determination for terminating plan, and distributable benefits from employee pension benefit plans.

DATES: Written comments should be received on or before April 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Determination for Terminating Plan, and Distributable Benefits from Employee Pension Benefit Plans.

OMB Number: 1545–0202.

Form Numbers: 5310 and 6088.

Abstract: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. Form 5310 is used to request an IRS determination letter about the plan's qualification status (qualified or non-qualified) under Internal Revenue Code sections 401(a) or 403(a) of a pension. Form 6088 is used by the IRS to analyst an application for a determination letter on the qualification of the plan upon termination.

Current Actions: There is no change to the existing form or burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,244.

Estimated Time per Respondent: 66 hours, 6 minutes.

Estimated Total Annual Burden Hours: 82,231 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–01841 Filed 1–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–ESA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 5498–ESA, Coverdell ESA Contribution Information.

DATES: Written comments should be received on or before April 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in you comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at (202) 317 6009, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Coverdell ESA Contribution Information.

OMB Number: 1545–1815.

Form Number: 5498–ESA.

Abstract: Form 5498–ESA is used by trustees or issuers of Coverdell Education Savings accounts to report contributions and rollovers to these accounts to beneficiaries.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization.

Estimated Number of Responses: 298,500.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 35,820.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–01907 Filed 1–28–22; 8:45 am]

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Part II

Regulatory Information Service Center

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2021

REGULATORY INFORMATION SERVICE CENTER

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2021

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.

SUMMARY: Publication of the Fall 2021 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) and reaffirmed in E.O. 13563, ''Improving Regulation and Regulatory Review,'' (76 FR 3821). 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 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 Unified Agenda and Regulatory Plan can be found online at *www.reginfo.gov* and a reduced print version can be found in the **Federal Register**. Information regarding obtaining printed copies can also be found on the *Reginfo.gov* website (or below, VI. How Can Users Get Copies of the Plan and the Agenda?).

The Fall 2021 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.

The complete Fall 2021 Unified Agenda contains the Regulatory Plans of 27 Federal agencies and 67 Federal agency regulatory agendas.

ADDRESSES: Regulatory Information Service Center (MR), 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 (MR), 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 the 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, (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 30 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 to 1995. The complete online edition of the Unified Agenda includes regulatory agendas from 65 Federal agencies. Agencies of the United States Congress are not included.

The Fall 2021 Unified Agenda publication appearing in the **Federal Register** consists of 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. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete agenda information for those entries appears, in a uniform format, in the online Unified Agenda at *www.reginfo.gov.*

The following agencies have no entries 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 Justice*
Department of Housing and Urban Development*
Department of State*
Department of Veterans Affairs*

Other Executive Agencies

Agency for International Development
Architectural and Transportation Barriers Compliance Board
Commission on Civil Rights
Corporation for National and Community Service
Council on Environmental Quality
Court Services and Offender Supervision Agency for the District of Columbia
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 National Drug Control Policy
Office of Personnel Management*
Peace Corps
Pension Benefit Guaranty Corporation*
Railroad Retirement Board*
Social Security Administration*
Tennessee Valley Authority
U.S. Agency for Global Media

Independent Agencies

Commodity Futures Trading Commission
Council of the Inspectors General on Integrity and Efficiency
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 Labor Relations Board
National Transportation Safety Board
Postal Regulatory Commission
Council of the Inspectors General on Integrity and Efficiency
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 Trade Commission*
National Credit Union Administration
National Indian Gaming Commission*
National Labor Relations Board
National Transportation Safety Board
Postal Regulatory Commission

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 (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 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 Regulatory Plan and Unified Agenda do 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), 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 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.

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.

6. 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

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more 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. The definition of an ''economically significant'' rule is similar but not identical to the definition of a ''major'' rule under 5 U.S.C. 801 (Pub. L. 104–121). (See below.)

(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 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 fall 2021.

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.

Pub. L.—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 Plan and the Agenda?

Copies of the **Federal Register** issue containing the printed edition of The Regulatory Plan and 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.*

Dated: December 7, 2021.

Boris Arratia,

Director.

Introduction to the Fall 2021 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.'' The requirements of Executive Order 12866 were reaffirmed in Executive Order 13563, issued in 2011.

We are now providing the first Regulatory Plan of the Biden-Harris Administration for public scrutiny and review. The regulatory plans and agendas submitted by agencies and included here offer blueprints for how the Administration plans to continue delivering on the President's agenda as we build back better. This agenda is fully consistent with the priorities outlined by the President as reflected in his executive orders and our previous regulatory agenda. We are proud to shine a light on the regulatory agenda as a way to share with the public how the themes of equity, prosperity and public health cut across everything we do to improve the lives of the American people.

These new plans build on significant progress the Administration has already made advancing our priorities and proving that our Government can deliver results—from confronting the pandemic, to creating a stronger and fairer economy, to addressing climate change and advancing equity. For example, since releasing the spring regulatory agenda, we have proposed or finalized regulatory protections to:

- *Protect the Public from COVID*—The Centers for Disease Control and Prevention (CDC) issued orders requiring all people to wear face masks while on public transportation and in transportation hubs. In addition, CDC issued Global Testing Orders for all international air travelers, strengthening protocols to protect travelers and the health and safety of American communities.
- *Combat Housing Discrimination.* Following President Biden's Presidential Memorandum directing his Administration to address racial discrimination in the housing market, the Department of Housing and Urban Development (HUD) published an interim final rule requiring HUD funding recipients to affirmatively further fair housing, including by completing an assessment of fair housing issues, identifying fair housing priorities and goals, and then committing to meaningful actions to meet those goals and remedy identified issues.
- *Tackle the Climate Crisis.* The Environmental Protection Agency (EPA) took an important step forward to advance President Biden's commitment to action on climate change and protect people's health by proposing comprehensive new protections to sharply reduce pollution from the oil and natural gas industry—including, for the first time, reductions from existing sources nationwide. The proposed new Clean Air Act rule would lead to significant, cost-effective reductions in methane emissions and other health-harming air pollutants that endanger nearby communities.
- *Improve Pipeline Safety and Environmental Standards.* In a major step to enhance and modernize pipeline safety and environmental standards, the Department of Transportation issued a final rule that—for the first time—applies federal pipeline safety regulations to tens of thousands of miles of unregulated gas gathering pipelines. This rule will improve safety, reduce greenhouse gas emissions, and result in more jobs for pipeline workers that are needed to help upgrade the safety and operations of these lines.

In addition to these significant actions, the Administration has also made key progress advancing another core objective: Effectively implementing the American Rescue Plan (ARP). Since the ARP went into effect in March, the Administration has promulgated 17 proposed and 32 final rules to get much needed relief to the communities across the countries efficiently and equitably. For example:

- *The Department of Education* established requirements to ensure that state and local educational agencies consult members of the public in determining how to use school emergency relief funds, and develop plans for a safe return to in-person instruction.
- *The Department of Housing and Urban Development* finalized a rule so the agency could require that operators of project-based rental assistance housing (such as Section 8) notify tenants of the availability of emergency rent relief, and give tenants time to secure that relief.
- *The Small Business Administration* finalized a rule to deliver much needed support to small business by streamlining forgiveness of small loans under the Paycheck Protection Program (a program extended by the ARP Act).

In this agenda, we are adding important new measures under

consideration to advance additional Administration priorities, including:

• *Uncovering Hidden Airline Service Fees.* The Department of Transportation plans to better protect consumers and improve competition by ensuring that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees'' at the time of ticket purchase. The Department also plans to examine whether fees for certain ancillary services should be disclosed at the first point in a search process where a fare is listed.

• *Stopping Super-Pollutants.* The EPA is considering restricting—fully, partially, or on a graduated schedule—the use of Hydrofluorocarbons (HFCs) in sectors or subsectors including the refrigeration, air conditioning, aerosol, and foam sectors. HFCs are potent greenhouse gases found in a range of appliances and substances, including refrigerators, air conditioners and foams, and have an impact on warming our climate that is hundreds to thousands of times greater than the same amount of carbon dioxide.

• *Transitioning Toward Zero-Emission Technologies.* The EPA plans to strengthen greenhouse gas emission standards for light- and heavy-duty vehicles, with an eye towards encouraging automakers to transition to zero-emission technologies. If implemented, the new standards would save consumers money, cut pollution, boost public health, advance environmental justice, and tackle the climate crisis.

• *Lowering Mental Health and Substance Use Treatment Costs.* The Department of Labor, Department of Health and Human Services, and Department of Treasury are considering changes to clarify health insurance plans' and issuers' obligations to cover mental health and substance use treatment in light of new legislative enactments and experience implementing the MHPAEA law since the last relevant rulemaking in 2014.

• *Increasing Access for People With Disabilities.* As part of the Administration's commitment to equity, the Department of Justice is exploring a new rule to ensure that individuals with disabilities can use sidewalks and other pedestrian facilities.

Between this regulatory agenda and the next in spring 2022, agencies will also be developing plans for implementing the Infrastructure Investment and Jobs Act (IIJA), historic legislation to rebuild crumbling infrastructure, create good paying jobs, and grow our economy. These plans will provide greater detail on how agencies will administer new IIJA programs in a manner that delivers meaningful results to all Americans, strengthens American manufacturing, and advances climate resilience. These plans will provide an opportunity for the public to be partners in the implementation of the IIJA—and all government programs. Public engagement in IIJA implementation can only make it better and more responsive to what our families and communities most need.

DEPARTMENT OF AGRICULTURE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
1	Poultry Grower Ranking Systems (AMS–FTPP–21–0044)	0581–AE03	Proposed Rule Stage.
2	Clarification of Scope of the Packers and Stockyards Act (AMS–FTPP–21–0046)	0581–AE04	Proposed Rule Stage.
3	Unfair Practices in Violation of the Packers and Stockyards Act (AMS–FTPP–21–0045).	0581–AE05	Proposed Rule Stage.
4	Organic Livestock and Poultry Standards	0581–AE06	Proposed Rule Stage.
5	Establishing AWA Standards for Birds	0579–AE61	Proposed Rule Stage.
6	Voluntary Labeling of Meat Products With ''Product of USA'' and Similar Statements.	0583–AD87	Proposed Rule Stage.
7	Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed.	0583–AD56	Final Rule Stage.
8	Prior Label Approval System: Expansion of Generic Label Approval	0583–AD78	Final Rule Stage.

DEPARTMENT OF COMMERCE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
9	Request for Comments Concerning the Imposition of Export Controls on Certain Brain-Computer Interface (BCI) Emerging Technology.	0694–AI41	Prerule Stage.
10	Foundational Technologies: Proposed Controls; Request for Comments	0694–AH80	Proposed Rule Stage.
11	Removal of Certain General Approved Exclusions (GAEs) Under the Section 232 Steel and Aluminum Tariff Exclusions Process.	0694–AH55	Final Rule Stage.
12	Information Security Controls: Cybersecurity Items	0694–AH56	Final Rule Stage.
13	Authorization of Certain ''Items'' to Entities on the Entity List in the Context of Specific Standards Activities.	0694–AI06	Final Rule Stage.
14	Commerce Control List: Expansion of Controls on Certain Biological Equipment ''Software''.	0694–AI08	Final Rule Stage.
15	Changes To Implement Provisions of the Trademark Modernization Act of 2020 ..	0651–AD55	Final Rule Stage.

DEPARTMENT OF DEFENSE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
16	Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities.	0790–AK86	Proposed Rule Stage.
17	Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DoD.	0790–AJ04	Final Rule Stage.

DEPARTMENT OF DEFENSE—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
18	Federal Voting Assistance Program	0790–AK90	Final Rule Stage.
19	Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043).	0750–AK84	Proposed Rule Stage.
20	Reauthorization and Improvement of Mentor-Protege Program (DFARS Case 2020–D009).	0750–AK96	Proposed Rule Stage.
21	Maximizing the Use of American-Made Goods (DFARS Case 2019–D045)	0750–AK85	Final Rule Stage.
22	Policy and Procedures for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408.	0710–AB22	Proposed Rule Stage.
23	Credit Assistance for Water Resources Infrastructure Projects	0710–AB31	Proposed Rule Stage.
24	Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision	0710–AB34	Proposed Rule Stage.
25	Revised Definition of ''Waters of the United States''—Rule 1	0710–AB40	Proposed Rule Stage.
26	Revised Definition of ''Waters of the United States''—Rule 2 (Reg Plan Seq No. XX).	0710–AB47	Proposed Rule Stage.
27	TRICARE Coverage and Payment for Certain Services in Response to the COVID–19 Pandemic.	0720–AB81	Final Rule Stage.
28	TRICARE Coverage of Certain Medical Benefits in Response to the COVID–19 Pandemic.	0720–AB82	Final Rule Stage.
29	TRICARE Coverage of National Institute of Allergy and Infectious Disease Coronavirus Disease 2019 Clinical Trials.	0720–AB83	Final Rule Stage.
30	Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic ..	0720–AB85	Final Rule Stage.

DEPARTMENT OF EDUCATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
31	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.	1870–AA16	Proposed Rule Stage.
32	Family Educational Rights and Privacy Act	1875–AA15	Proposed Rule Stage.
33	Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10).	1840–AD55	Prerule Stage.
34	Borrower Defense	1840–AD53	Proposed Rule Stage.
35	Pell Grants for Prison Education Programs	1840–AD54	Proposed Rule Stage.
36	Gainful Employment	1840–AD57	Proposed Rule Stage.
37	Improving Student Loan Cancellation Authorities	1840–AD59	Proposed Rule Stage.
38	Income Contingent Repayment	1840–AD69	Proposed Rule Stage.
39	Public Service Loan Forgiveness	1840–AD70	Proposed Rule Stage.

DEPARTMENT OF ENERGY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
40	Energy Conservation Standards for Commercial Water Heating-Equipment	1904–AD34	Proposed Rule Stage.
41	Backstop Requirement for General Service Lamps	1904–AF09	Proposed Rule Stage.
42	Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings Baseline Standards Update.	1904–AE44	Final Rule Stage.
43	Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment.	1904–AF13	Final Rule Stage.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
44	Amendments to Civil Monetary Penalty Law Regarding Grants, Contracts, and Information Blocking.	0936–AA09	Final Rule Stage.
45	Rulemaking on Discrimination on the Basis of Disability in Critical Health and Human Services Programs or Activities.	0945–AA15	Proposed Rule Stage.
46	Confidentiality of Substance Use Disorder Patient Records	0945–AA16	Proposed Rule Stage.
47	Nondiscrimination in Health Programs and Activities	0945–AA17	Proposed Rule Stage.
48	ONC Health IT Certification Program Updates, Health Information Network Attestation Process for the Trusted Exchange Framework and Common Agreement, and Enhancements to Support Information Sharing.	0955–AA03	Proposed Rule Stage.
49	Treatment of Opioid Use Disorder With Buprenorphine Utilizing Telehealth	0930–AA38	Proposed Rule Stage.
50	Treatment of Opioid use Disorder With Extended Take Home Doses of Methadone.	0930–AA39	Proposed Rule Stage.

DEPARTMENT OF HEALTH AND HUMAN SERVICES—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
51	Requirement for Proof of Vaccination or Other Proof of Immunity Against Quarantinable Communicable Diseases.	0920–AA80	Final Rule Stage.
52	Nonprescription Drug Product With an Additional Condition for Nonprescription Use.	0910–AH62	Proposed Rule Stage.
53	Nutrient Content Claims, Definition of Term: Healthy	0910–AI13	Proposed Rule Stage.
54	Biologics Regulation Modernization	0910–AI14	Proposed Rule Stage.
55	Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids and Aligning Other Regulations.	0910–AI21	Proposed Rule Stage.
56	Tobacco Product Standard for Characterizing Flavors in Cigars	0910–AI28	Proposed Rule Stage.
57	Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies.	0910–AI57	Proposed Rule Stage.
58	Tobacco Product Standard for Menthol in Cigarettes	0910–AI60	Proposed Rule Stage.
59	340B Drug Pricing Program; Administrative Dispute Resolution	0906–AB28	Proposed Rule Stage.
60	Catastrophic Health Emergency Fund (CHEF)	0917–AA10	Proposed Rule Stage.
61	Acquisition Regulations; Buy Indian Act; Procedures for Contracting	0917–AA18	Final Rule Stage.
62	Streamlining the Medicaid and Chip Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS–2421).	0938–AU00	Proposed Rule Stage.
63	Provider Nondiscrimination Requirements for Group Health Plans and Health Insurance Issuers in the Group and Individual Markets (CMS–9910).	0938–AU64	Proposed Rule Stage.
64	Assuring Access to Medicaid Services (CMS–2442)	0938–AU68	Proposed Rule Stage.
65	Implementing Certain Provisions of the Consolidated Appropriations Act and Other Revisions to Medicare Enrollment and Eligibility Rules (CMS–4199).	0938–AU85	Proposed Rule Stage.
66	Requirements for Rural Emergency Hospitals (CMS–3419)	0938–AU92	Proposed Rule Stage.
67	Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 (CMS–9902).	0938–AU93	Proposed Rule Stage.
68	Coverage of Certain Preventive Services (CMS–9903)	0938–AU94	Proposed Rule Stage.
69	Omnibus COVID–19 Health Care Staff Vaccination (CMS–3415)	0938–AU75	Final Rule Stage.
70	Native Hawaiian Revolving Loan Fund Eligibility Requirements	0970–AC84	Proposed Rule Stage.
71	Paternity Establishment Percentage Performance Relief	0970–AC86	Proposed Rule Stage.
72	ANA Non-federal Share Emergency Waivers	0970–AC88	Proposed Rule Stage.
73	Foster Care Legal Representation	0970–AC89	Proposed Rule Stage.
74	Separate Licensing Standards for Relative or Kinship Foster Family Homes	0970–AC91	Proposed Rule Stage.
75	National Institute for Disability, Independent Living, and Rehabilitation Research Notice of Proposed Rulemaking.	0985–AA16	Proposed Rule Stage

DEPARTMENT OF HOMELAND SECURITY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
76	Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review.	1615–AC42	Proposed Rule Stage.
77	Deferred Action for Childhood Arrivals	1615–AC64	Proposed Rule Stage.
78	Asylum and Withholding Definitions	1615–AC65	Proposed Rule Stage.
79	Rescission of ''Asylum Application, Interview, & Employment Authorization'' Rule and Change to ''Removal of 30 Day Processing Provision for Asylum Applicant Related Form I–765 Employment Authorization''.	1615–AC66	Proposed Rule Stage.
80	U.S. Citizenship and Immigration Services Fee Schedule	1615–AC68	Proposed Rule Stage.
81	Bars to Asylum Eligibility and Procedures	1615–AC69	Proposed Rule Stage.
82	Inadmissibility on Public Charge Grounds	1615–AC74	Proposed Rule Stage.
83	Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and Cat Protection Claims by Asylum Officers.	1615–AC67	Final Rule Stage.
84	Electronic Chart and Navigation Equipment Carriage Requirements	1625–AC74	Prerule Stage.
85	Shipping Safety Fairways Along the Atlantic Coast	1625–AC57	Proposed Rule Stage.
86	MARPOL Annex VI; Prevention of Air Pollution from Ships	1625–AC78	Proposed Rule Stage.
87	Advance Passenger Information System: Electronic Validation of Travel Documents.	1651–AB43	Proposed Rule Stage.
88	Automation of CBP Form I–418 for Vessels	1651–AB18	Final Rule Stage.
89	Vetting of Certain Surface Transportation Employees	1652–AA69	Proposed Rule Stage.
90	Indirect Air Carrier Security	1652–AA72	Proposed Rule Stage.
91	Flight Training Security	1652–AA35	Final Rule Stage.
92	Surface Transportation Cybersecurity Measures	1652–AA74	Long-Term Actions.
93	Fee Adjustment for U.S. Immigration and Customs Enforcement Form I–246, Application for a Stay of Deportation or Removal.	1653–AA82	Proposed Rule Stage.
94	RFI 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	Prerule Stage.
95	National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form.	1660–AB06	Proposed Rule Stage.

DEPARTMENT OF HOMELAND SECURITY—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
96	Amendment to the Public Assistance Program's Simplified Procedures Large Project Threshold.	1660–AB10	Final Rule Stage.
97	Individual Assistance Program Equity	1660–AB07	Long-Term Actions.
98	Ammonium Nitrate Security Program	1670–AA00	Proposed Rule Stage.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
99	Increased 40-year Term for Loan Modifications (FR–6263)	2502–AJ59	Proposed Rule Stage.
100	Affirmatively Furthering Fair Housing (FR–6250)	2529–AB05	Proposed Rule Stage.

DEPARTMENT OF JUSTICE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
101	Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture.	1190–AA76	Prerule Stage.
102	Implementation of the ADA Amendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973).	1190–AA73	Proposed Rule Stage.
103	Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way.	1190–AA77	Proposed Rule Stage.
104	Definition of ''Frame or Receiver'' and Identification of Firearms	1140–AA54	Final Rule Stage.
105	Factoring Criteria for Firearms With an Attached Stabilizing Brace	1140–AA55	Final Rule Stage.
106	Bars to Asylum Eligibility and Procedures	1125–AB12	Proposed Rule Stage.
107	Asylum and Withholding Definitions	1125–AB13	Proposed Rule Stage.
108	Procedures for Asylum and Withholding of Removal	1125–AB15	Proposed Rule Stage.
109	Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure.	1125–AB18	Proposed Rule Stage.
110	Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances.	1125–AA83	Final Rule Stage.
111	Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers.	1125–AB20	Final Rule Stage.

DEPARTMENT OF LABOR

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
112	Proposal to Rescind Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption.	1250–AA09	Proposed Rule Stage.
113	Modification of Procedures to Resolve Potential Employment Discrimination	1250–AA14	Proposed Rule Stage.
114	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.	1235–AA39	Proposed Rule Stage.
115	Modernizing the Davis-Bacon and Related Acts Regulations	1235–AA40	Proposed Rule Stage.
116	Tip Regulations Under the Fair Labor Standards Act (FLSA)	1235–AA21	Final Rule Stage.
117	E.O. 14026, Increasing the Minimum Wage for Federal Contractors	1235–AA41	Final Rule Stage.
118	Wagner-Peyser Act Staffing	1205–AC02	Proposed Rule Stage.
119	Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations.	1205–AC06	Proposed Rule Stage.
120	Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.	1210–AC03	Proposed Rule Stage.
121	Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021.	1210–AC11	Proposed Rule Stage.
122	Requirements Related to Surprise Billing, Part 1	1210–AB99	Final Rule Stage.
123	Requirements Related to Surprise Billing, Part 2	1210–AC00	Final Rule Stage.
124	Respirable Crystalline Silica	1219–AB36	Proposed Rule Stage.
125	Safety Program for Surface Mobile Equipment	1219–AB91	Proposed Rule Stage.
126	Prevention of Workplace Violence in Health Care and Social Assistance	1218–AD08	Prerule Stage.
127	Heat Illness Prevention in Outdoor and Indoor Work Settings	1218–AD39	Prerule Stage.
128	Infectious Diseases	1218–AC46	Proposed Rule Stage.

DEPARTMENT OF TRANSPORTATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
129	Processing Buy America and Buy American Waivers Based on Nonavailability	2105–AE79	Proposed Rule Stage.
130	Accessible Lavatories on Single-Aisle Aircraft: Part II	2105–AE89	Proposed Rule Stage.
131	Enhancing Transparency of Airline Ancillary Service Fees	2105–AF10	Proposed Rule Stage.
132	Registration and Marking Requirements for Small Unmanned Aircraft	2120–AK82	Final Rule Stage.
133	Greenhouse Gas Emissions Measure	2125–AF99	Proposed Rule Stage.
134	Manual on Uniform Traffic Control Devices for Streets and Highways	2125–AF85	Final Rule Stage.
135	Heavy Vehicle Automatic Emergency Braking	2127–AM36	Proposed Rule Stage.
136	Light Vehicle Automatic Emergency Braking (AEB) with Pedestrian AEB	2127–AM37	Proposed Rule Stage.
137	Corporate Average Fuel Economy (CAFE) Preemption	2127–AM33	Final Rule Stage.
138	Passenger Car and Light Truck Corporate Average Fuel Economy Standards	2127–AM34	Final Rule Stage.
139	Train Crew Staffing	2130–AC88	Proposed Rule Stage.
140	Pipeline Safety: Class Location Requirements	2137–AF29	Long-Term Actions.

DEPARTMENT OF VETERANS AFFAIRS

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
141	Modifying Copayments for Veterans at High Risk for Suicide	2900–AQ30	Proposed Rule Stage.
142	VA Pilot Program on Graduate Medical Education and Residency	2900–AR01	Proposed Rule Stage.
143	Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program	2900–AR16	Final Rule Stage.

ENVIRONMENTAL PROTECTION AGENCY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
144	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.	2060–AU37	Proposed Rule Stage.
145	Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards.	2060–AU41	Proposed Rule Stage.
146	Amendments to the NSPS for GHG Emissions From New, Modified, Reconstructed Stationary Sources: EGUs.	2060–AV09	Proposed Rule Stage.
147	Emission Guidelines for Greenhouse Gas Emissions from Fossil Fuel-Fired Existing Electric Generating Units.	2060–AV10	Proposed Rule Stage.
148	Renewable Fuel Standard (RFS) Program: RFS Annual Rules	2060–AV11	Proposed Rule Stage.
149	NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units-Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding.	2060–AV12	Proposed Rule Stage.
150	Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.	2060–AV16	Proposed Rule Stage.
151	Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.	2060–AV20	Proposed Rule Stage.
152	Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act.	2060–AV46	Proposed Rule Stage.
153	Review of the National Ambient Air Quality Standards for Particulate Matter	2060–AV52	Proposed Rule Stage.
154	Pesticides; Modification to the Minimum Risk Pesticide Listing Program and Other Exemptions Under FIFRA Section 25(b).	2070–AK55	Proposed Rule Stage.
155	Cyclic Aliphatic Bromide Cluster (HBCD); Rulemaking Under TSCA Section 6(a)	2070–AK71	Proposed Rule Stage.
156	Asbestos (Part 1: Chrysotile Asbestos); Rulemaking under TSCA Section 6(a)	2070–AK86	Proposed Rule Stage.
157	Designating PFOA and PFOS as CERCLA Hazardous Substances	2050–AH09	Proposed Rule Stage.
158	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments.	2050–AH14	Proposed Rule Stage.
159	Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Retrospection.	2050–AH22	Proposed Rule Stage.
160	Federal Baseline Water Quality Standards for Indian Reservations	2040–AF62	Proposed Rule Stage.
161	Clean Water Act Section 401: Water Quality Certification	2040–AG12	Proposed Rule Stage.
162	Revised Definition of ‘‘Waters of the United States’’—Rule 1	2040–AG13	Proposed Rule Stage.
163	Revised Definition of ‘‘Waters of the United States’’—Rule 2	2040–AG19	Proposed Rule Stage.
164	Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards.	2060–AV13	Final Rule Stage.
165	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program.	2050–AH07	Final Rule Stage.
166	Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Implementation of Closure.	2050–AH18	Final Rule Stage.
167	Cybersecurity in Public Water Systems	2040–AG20	Final Rule Stage.
168	National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions.	2040–AG16	Long-Term Actions.

ENVIRONMENTAL PROTECTION AGENCY—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
169	Per- and polyfluoroalkyl Substances (PFAS): Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) National Primary Drinking Water Regulation Rulemaking.	2040–AG18	Long-Term Actions.

PENSION BENEFIT GUARANTY CORPORATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
170	Special Financial Assistance by PBGC	1212–AB53	Final Rule Stage.

SMALL BUSINESS ADMINISTRATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
171	Service-Disabled Veteran-Owned Small Business Certification	3245–AH69	Prerule Stage.

SOCIAL SECURITY ADMINISTRATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
172	Omitting Food From In-Kind Support and Maintenance Calculations	0960–AI60	Proposed Rule Stage
173	$20 Tolerance Rule to Establish That the Individual Meets the Pro-Rata Share of Household Expenses When Living in the Household of Another.	0960–AI68	Proposed Rule Stage.
174	Inquiry About SSI Eligibility at Application Filing Date Which Will Remove the Requirement for a Signed Written Statement and Will Expand Protective Filing.	0960–AI69	Proposed Rule Stage.

NUCLEAR REGULATORY COMMISSION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
175	Cyber Security at Fuel Cycle Facilities [NRC–2015–0179]	3150–AJ64	Proposed Rule Stage.
176	Alternative Physical Security Requirements for Advanced Reactors [NRC–2017–0227].	3150–AK19	Proposed Rule Stage.
177	Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC–2020–0031]	3150–AK44	Proposed Rule Stage.
178	Advanced Nuclear Reactor Generic Environmental Impact Statement [NRC–2020–0101].	3150–AK55	Proposed Rule Stage.
179	Emergency Preparedness Requirements for Small Modular Reactors and Other New Technologies [NRC–2015–0225].	3150–AJ68	Final Rule Stage.
180	NuScale Small Modular Reactor Design Certification [NRC–2017–0029]	3150–AJ98	Final Rule Stage.
181	American Society of Mechanical Engineers 2019–2020 Code Editions [NRC–2018–0290].	3150–AK22	Final Rule Stage.

BILLING CODE 6820–27–P

The U.S. Department of Agriculture's (USDA) fall 2021 Regulatory Agenda and Plan prioritizes initiatives fostering 21st century innovation, job creation, economic and market opportunity in rural America, particularly among historically underserved people and communities, and a safe end to the pandemic. USDA will continue to leverage existing programs in response to unforeseen events and national emergencies affecting the American farm economy, schools, individual households, and our National Forests. All USDA 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.

In 2021, the USDA:

Agricultural Marketing Service (AMS) implemented a *Dairy Donation Program* to reimburse dairy organization for donated dairy products to non-profit organizations for distribution to recipient individuals and families. The new program was brought about by the 2020 COVID–19 pandemic which disrupted dairy supply chains and displaced significant volumes of milk normally used in food service channels. This led to milk being dumped or fed to animals across the United States. The new program is intended to encourage the donation of dairy products and to prevent and minimize food waste. Farm Service Agency (FSA) implemented a new *Heirs' Property Relending Program* authorized by changes that the Agriculture Improvement Act of 2018 (2018 Farm Bill) made to the Consolidated Farm and Rural Development Act. The relending program provides revolving loan funds to eligible intermediary lenders to resolve ownership and succession on farmland with multiple owners. The lenders give loans to qualified individuals to resolve these ownership issues. The intermediary lenders consolidate and coordinate the ownerships of the land-ownership interests.

Outlined below are some of our most important upcoming regulatory actions. These include efforts to restore and expand economic opportunity amid a safe end to the pandemic; address the climate change emergency; 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 upcoming regulatory actions.

Restore and Expand Economic Opportunity Amid a Safe End to the Pandemic

Pandemic Assistance Programs

USDA will provide additional direct financial assistance to producers of agricultural commodities who suffered eligible revenue losses in calendar year 2020 during the COVID–19 pandemic; this will expand on the assistance USDA provided last year. Payments will be made using funds under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; Pub. L. 116–136). The rule will also implement the expanded Pandemic Cover Crop Program (PCCP) to help agricultural producers impacted by the effects of the COVID–19 outbreak. Given cover crop cultivation requires sustained, long-term investments to improve soil health and gain other agronomic benefits, the economic challenges due to the pandemic made maintaining cover cropping systems financially challenging for many producers. In addition, the rule will also update the regulations for the Emergency Conservation Program (ECP); the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP); and the Livestock Forage Disaster Program (LFP); Livestock Indemnity Program (LIP); and payment eligibility provisions. For more information about this rule, see RIN 0503–AA75.

Address the Climate Change Emergency

Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska: USDA proposes to repeal a final rule promulgated in 2020 that exempted 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. This proposal is consistent with President Biden's Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,* directing action to address Federal regulations issued during the previous four years that may conflict with protecting the environment and to immediately commence work to confront the climate crisis. For more information about this rule, see RIN 0596–AD51.

Support Agricultural Markets That Are Free, Open and Promote Competition

On July 9, 2021, President Biden signed Executive Order 14036 to address the growing concerns over competition and concentration in the U.S. economy, including the agriculture sector. The order includes 72 initiatives by more than a dozen federal agencies including USDA to promptly tackle some of the most pressing competition problems across the economy. Specifically, the White House fact sheet looks to ''empower family farmers and increase their incomes by strengthening the Department of Agriculture's tools to stop the abusive practices of some meat processors.'' One of USDA's initiatives is this area will be to revitalize, through the following rulemakings, the Packers and Stockyards Act to fight unfair practices and rebuild a competitive marketplace:

Poultry Grower Ranking Systems: The proposal would address the use of poultry grower ranking systems as a method of payment and settlement grouping for poultry growers under contract in poultry growing arrangements with live poultry dealers. The proposal would establish certain requirements with which a live poultry dealer must comply if a poultry grower ranking system is utilized to determine grower payment. A live poultry dealer's failure to comply would be deemed an unfair, unjustly discriminatory, and deceptive practice according to factors outlined in the proposed rule. For more information about this rule, see RIN 0581–AE03.

Clarification of Scope of 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. The proposal would make clear that it is not necessary to demonstrate harm or likely harm to competition to establish a violation of either section 202(a) or (b) of the Act. For more information about this rule, see RIN 0581–AE04.

Unfair Practices in Violation of the Packers and Stockyards Act: The proposal supplements recent updates to the regulations issued under the Act that provided criteria for the Secretary to consider when determining whether certain conduct or actions by packers, swine contractors, or live poultry dealers is unduly or unreasonably preferential or advantageous. The proposal clarifies the conduct USDA considers unfair, unjustly discriminatory, or deceptive and a violation of the Act, regardless of whether such action harms or is likely to harm competition. The proposal also clarifies the criteria and types of conduct considered unduly preferential, advantageous, prejudicial, or disadvantageous and violations of the Act. For more information about this rule, see RIN 0581–AE05.

Ensuring That America's Food Supply Is Safe and Nutritious

USDA's Food Safety and Inspection Service (FSIS) continues to ensure that meat, poultry, and egg products are properly marked, labeled, and packaged, and prohibits the distribution in-commerce of meat, poultry, and egg products that are adulterated or misbranded. Consistent with the President's priorities of advancing the country's economic recovery and promoting economic resilience, FSIS is proposing several rules to improve regulatory certainty, which assure consumers that meat, poultry, and egg products are safe and truthfully labeled and fosters fair competition among the regulated industry. In a similar vein, AMS has prepared proposed standards for organic livestock and poultry production.

Voluntary Labeling of Meat Products With ''Product of USA'' and Similar Statements: In accordance with Executive Order 14036, Promoting Competition in the American Economy, FSIS will propose to address concerns that the voluntary ''Product of USA'' label claim may confuse consumers about the origin of FSIS regulated products. FSIS intends to clarify the voluntary claim so that it is more meaningful to consumers and ensures a fair and competitive marketplace for American farmers and ranchers. For more information about this rule, see RIN 0583–AD87.

Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed; Prior Label Approval System: Expansion of Generic Label Approval: FSIS plans to finalize two rules, one to update nutrition labeling for meat and poultry products and another to expand the categories of meat and poultry product labels deemed generically approved that may be used

in commerce without prior FSIS review and approval. The rule expanding the categories of generically approved labels would reduce labeling costs for meat and poultry establishments, including small and very small establishments. Both rules will provide additional certainty about what is required for meat and poultry labeling while ensuring that consumers have access to the information they need about the food they buy. For more information about these rules, see RINs 0583–AD56 and 0583–AD78.

National Organic Program; Organic Livestock and Poultry Standards: The proposal would establish standards that support additional practice standards for organic livestock and poultry production. This proposed 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.

Animal Welfare Protections

Standards for the Humane Handling, Care, Treatment and Transportation of Birds Not Bred for Use in Research under the Animal Welfare Act: The proposal would establish standards for humane handling, care, treatment, and transportation of birds not bred for use in research when those birds are engaged in any activity covered under the Animal Welfare Act. For more information about this rule, see RIN 0579–AE61.

USDA—AGRICULTURAL MARKETING SERVICE (AMS)

Proposed Rule Stage

1. Poultry Grower Ranking Systems (AMS–FTPP–21–0044)

Priority: Other Significant.
Legal Authority: 7 U.S.C. 181 to 229c
CFR Citation: 9 CFR 201.
Legal Deadline: None.

Abstract: The U.S. Department of Agriculture's Agricultural Marketing Service proposes to amend the regulations issued under the Packers and Stockyards Act (P&S Act) to address the use of poultry grower ranking systems as a method of payment and settlement grouping for poultry growers under contract in poultry growing arrangements with live poultry dealers. The proposed regulation would establish certain requirements with which a live poultry dealer must comply if a poultry grower ranking system is utilized to determine grower payment. A live poultry dealer's failure to comply would be deemed an unfair, unjustly discriminatory, and deceptive practice.

Statement of Need: Although poultry grower ranking systems may promote healthy competition among growers and the use of improved technologies, differences in size and imbalances of power between parties in contractual poultry growing arrangements can have detrimental effects on one of the contracting parties and may result in marketplace inefficiencies. An often-cited concern is the live poultry dealer's full control over inputs, *e.g.,* chick, feed, medication, etc., to the poultry growing process. Industry members have asked the Agricultural Marketing Service (AMS) to address such imbalances by specifying the conduct that would be considered violative of the Packers and Stockyards Act (Act).

Summary of Legal Basis: The Agricultural Marketing Service (AMS) is delegated authority by the Secretary of Agriculture to enforce the P&S Act. AMS has received numerous complaints regarding the imbalance of power in poultry growing agreements, wherein one side controls all of the inputs, then arbitrarily ranks grower performance against other growers to determine pay.

Alternatives: AMS considered finalizing a 2016 proposed rule that would have identified criteria for determining whether a live poultry dealer's use of a grower ranking system for payment purposes might be unlawful under the Packers and Stockyards Act.

Anticipated Cost and Benefits: USDA estimates the first-year costs associated with this proposed rule to be $17.37 million. Subsequent year costs are expected to be significantly less than first-year costs, resulting in a ten-year total cost of $34.64 million. USDA expects the primary benefit of the regulation will be the increased ability to protect poultry growers from unfair practices associated with the use of poultry grower ranking systems. At the same time, the rule is expected to improve efficiencies through the use of new technologies and to reduce market failures among poultry growers.

Risks: Extended litigation over legal challenges from the industry could result in the rule being struck down by the courts, hindering the agency's ability to enforce the Act for years.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

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–AE03

USDA—AMS

2. Clarification of Scope of the Packers and Stockyards Act (AMS–FTPP–21–0046)

Priority: Other Significant.
Legal Authority: 7 U.S.C. 181 to 229c
CFR Citation: 9 CFR 201.
Legal Deadline: None.

Abstract: USDA proposes to revise the regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C. 181 229c) to provide clarity regarding conduct that may violate the Act. This action is intended to support market growth, assure fair trade practices and competition, and protect livestock and poultry growers and producers. The proposed rule addresses long-standing issues related to competitiveness and whether all allegations of violations of the Act must be accompanied by a showing of harm or likely harm to competition.

Statement of Need: Revisions to regulations pertaining to the Packers and Stockyards Act (Act) that would 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. Such revisions reflect the Department of Agriculture's (USDA) longstanding position in this regard and complement two concurrent rules related to poultry grower ranking systems and conduct that constitutes unfair trade practices under the Act.

Summary of Legal Basis: 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, not challenging standing court decisions. 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	01/00/22	

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

3. Unfair Practices in Violation of the Packers and Stockyards Act (AMS–FTPP–21–0045)

Priority: Other Significant.

Legal Authority: 7 U.S.C. 181 to 229c

CFR Citation: 9 CFR 201.

Legal Deadline: None.

Abstract: USDA proposes to 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 preferential or advantageous. The proposed supplemental amendments would clarify the conduct the Department considers unfair, unjustly discriminatory, or deceptive and a violation of sections 202(a) and (b) of the Act. USDA 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.

Statement of Need: Revisions to regulations pertaining to the Packers and Stockyards Act (Act) would 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 proposed rule would also clarify 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 unfair 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 proposed rule to be $27.19 million, with significantly decreased costs each year thereafter, resulting in a ten-year total cost of $54.21 million. AMS expects this proposed rule to benefit all segments of the industry, providing greater clarity about what would be considered violations of the Act. AMS expects this proposed 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	01/00/22	

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—AMS

4. • Organic Livestock and Poultry Standards

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 7 U.S.C. 6501–7 U.S.C. 6524

CFR Citation: 7 CFR 205

Legal Deadline: None.

Abstract: This action would establish additional practice standards l for organic livestock and poultry production. This action would add provisions to the USDA organic regulations to address and clarify that livestock and poultry living conditions (for example, outdoor access, housing environment, and stocking densities), health care practices (for example, physical alterations, administering medical treatment, and euthanasia), and animal handling and transport to and during slaughter are part of the organic certification.

Statement of Need: The Organic Livestock and Poultry Standards (OLPS) proposed rule is needed to clarify the USDA organic standards for livestock and poultry living conditions and health practices. The current regulations for livestock production provide general requirements but some of these provisions are ambiguous and have led to inconsistent divergent practices, particularly in the organic poultry sector. This rule responds to nine recommendations from the National Organic Standards Board and findings from a USDA Office of Inspector General (OIG) report. (See USDA, Office of the Inspector General. March 2010. Audit Report 01601–03–Hy, Oversight of the National Organic Program. Available at: *http://www.usda.gov/oig/rptsauditsams.htm.*) This proposed rule includes provisions to support the expression of natural behaviors and the welfare of organic livestock and poultry.

Summary of Legal Basis: OLPS is authorized by the Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. 65016524. OFPA authorizes the USDA to establish national standards governing the marketing of certain agricultural products as organically produced products to assure consumers that organically produced products meet a consistent standard and to facilitate interstate commerce in fresh and processed food that is organically produced.

Alternatives: AMS considered several alternatives and presents these in the proposed rule. AMS presents two compliance date alternatives in the proposed rule that would affect the costs and benefits of the rule. Additionally, AMS discusses alternatives to specific policies included in the proposed rule, including alternative indoor and outdoor space requirements, and non-regulatory alternatives, including consumer education or no rule.

Anticipated Cost and Benefits: AMS estimates an annual cost of approximately $4 million annually for layer operations and an associated benefit of approximately $14 million annually. Additionally, AMS estimates an annual cost to broiler producers of approximately $12 million annually and an associated benefit of nearly $100 million annually. The costs of the rule would primarily affect USDA-certified organic operations that produce livestock and poultry. Qualitatively, AMS also anticipates the rule will establish a clear standard protecting the value of the USDA organic seal to consumers, provide a consistent, level playing field for organic livestock producers, and facilitate enforcement of organic livestock and poultry standards.

Risks: A final rule that is very similar to this proposed rule was published on January 19, 2017. That rule was subsequently withdrawn and never became effective. The USDA continues to face two legal challenges related to the withdrawal of the rule. Publishing a new proposed rule will indicate that the USDA is taking steps to advance the regulations. This could be viewed favorably by some, although others would prefer reinstating the January 2017 rule without the associated steps required to finalize a new rule.

The final rule published in January 2017 elicited mixed responses and was opposed by a multitude of producer groups, representing both organic and non-organic producers. Publication of this proposed rule is likely to produce similar responses. Additionally, USDA argued in its withdrawal of the rule that USDA had no authority under the Organic Foods Production Act to promulgate the rule, so there is legal risk in reversing direction and publishing a similar rule.

Finally, AMS plans to seek comment on providing an extended compliance date (15 years) for poultry operations that do not provide birds with access to soil or vegetation in outdoor spaces (*i.e.,* porch systems). AMS's presentation of this option is likely to invoke strong opinions among some stakeholders.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Erin Healy, Director, Standards Division, National Organic Program, Department of Agriculture, Agricultural Marketing Service, Washington, DC 20024, *Phone:* 202 617–4942, *Email: erin.healy@usda.gov.*

Related RIN: Related to 0581–AD44, Related to 0581–AD74, Related to 0581–AD75.

RIN: 0581–AE06

USDA—ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)

Proposed Rule Stage

5. Establishing AWA Standards for Birds

Priority: Other Significant.

Legal Authority: 7 U.S.C. 2131 to 2159

CFR Citation: 9 CFR 1 to 3.

Legal Deadline: NPRM, Judicial, February 2022.

Mandated by the U.S. District Court for the District of Columbia in a May 26, 2020 Stay (Case # 1:18–cv–01138–TNM).

Abstract: This rulemaking would extend APHIS enforcement of the Animal Welfare Act (AWA) to birds, other than birds bred for use in research. This would help ensure the humane care and treatment of such birds.

Statement of Need: Although the AWA authorizes the regulation of birds not bred for use in research, APHIS has not to this date promulgated regulations and standards for the humane care and treatment of such birds.

Summary of Legal Basis: 7 U.S.C. 2131 to 2159; 7 CFR 2.22, 2.80, and 371.7.

Alternatives: N/A.

Anticipated Cost and Benefits: Undetermined.

Risks: Failure to issue the rule would not comport with the Court's order in the Stay, and could place at risk the humane care and treatment of birds, other than birds bred for use in research.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Additional Information: Additional information about APHIS and its programs is available on the internet at *http://www.aphis.usda.gov.*

Agency Contact: Lance Bassage, DVM, Director, National Policy Staff, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 84, Riverdale, MD 20737, *Phone:* 518 218–7551, *Email: lance.h.bassage@usda.gov.*

RIN: 0579–AE61

USDA—FOOD SAFETY AND INSPECTION SERVICE (FSIS)

Proposed Rule Stage

6. Voluntary Labeling of Meat Products With ''Product of USA'' and Similar Statements

Priority: Other Significant.
Legal Authority: 21 U.S.C. 601, *et seq.*
CFR Citation: 9 CFR 317.8.
Legal Deadline: None.
Abstract: The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to define the conditions under which the labeling of meat product labels can bear voluntary statements indicating that the product is of United States (U.S.) origin, such as Product of USA, or Made in the USA.

Statement of Need: In 2018 and 2019, FSIS received two petitions requesting that it change its policy regarding the labeling of meat products to indicate U.S. origin. After considering the petitions and the public comments submitted in response to them, FSIS concluded that adherence to the current labeling policy guidance may be causing confusion in the marketplace with respect to certain imported meat and that the current labeling policy may no longer meet consumer expectations of what the Product of USA claim signifies. The Agency wants to ensure that any changes to its current policy are accomplished by an open and transparent process. Therefore, FSIS decided that, instead of changing the Policy Book entry, it would initiate rulemaking to define the conditions under which the labeling of meat products would be permitted to bear voluntary statements indicating that the product is of U.S. origin.

Summary of Legal Basis: The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*).

Alternatives: FSIS has considered the current labeling guidance and the alternatives proposed in the two petitions: (1) To amend the FSIS Policy Book to state that meat products may be labeled as Product of USA only if significant ingredients having a bearing on consumer preference such as meat, vegetables, fruits, dairy products, etc., are of domestic origin and; (2) to amend the FSIS Policy Book to provide that any beef product labeled as Made in the USA, Product of the USA, USA Beef or in any other manner that suggests that the origin is the United States, be derived from cattle that have been born, raised, and slaughtered in the United States. FSIS will now be conducting a comprehensive review of origin labeling claims for meat and conducting a consumer perception survey pursuant to developing the proposed regulations.

Anticipated Cost and Benefits: Establishments may incur costs associated with voluntarily changing their labels as a result of any revised Product of USA labeling claim definition. This proposed rule is expected to benefit consumers by providing them more specific information on what Product of USA means for single-ingredient beef and pork products.
Risks: N/A.
Timetable:

Action	Date	FR Cite
NPRM	10/00/22	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: Businesses.
Government Levels Affected: None.
Agency Contact: Matthew Michael, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, Office of Policy and Program Development, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–0345, *Fax:* 202 690–0486, *Email: matthew.michael@usda.gov.*
RIN: 0583–AD87

USDA—FSIS

Final Rule Stage

7. Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed

Priority: Other Significant.
Legal Authority: 21 U.S.C. 601 *et seq.,* Federal Meat Inspection Act; 21 U.S.C. 451 *et seq.,* Poultry Products Inspection Act
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. The final rule will: (1) Update the list of nutrients that are required or permitted to be declared; (2) provide updated Daily Reference Values (DRV) and Reference Daily Intake (RDI) values that are based on current dietary recommendations from consensus reports; and (3) amend the requirements for foods represented or purported to be specifically for children under the age of four years and pregnant and lactating women and establish nutrient reference values specifically for these population subgroups. FSIS is also revising the format and appearance of the Nutrition Facts Panel; amending the definition of a single-serving container; requiring dual-column labeling for certain containers; and updating and modifying several reference amounts customarily consumed (RACCs or reference amounts). FSIS is also consolidating the nutrition labeling regulations for meat and poultry products into a new Code of Federal Regulations (CFR) part.

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 will propose to amend 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 to consumers and will improve efficiency in the marketplace.

Summary of Legal Basis: The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*).

Alternatives: FSIS is considering different alternatives for the compliance period of the final rule.

Anticipated Cost and Benefits: These proposed regulations are expected to benefit consumers by increasing and improving dietary information available in the market. An estimate of the monetary benefits from these market improvements can be obtained by calculating the medical cost savings generated by linking information use to improved consumer diets. In addition, FSIS believes that the public would be

better served by having the regulations governing nutrition labeling consolidated in one part of title 9. Rather than searching through two separate parts of title 9, CFR parts 317 and 381, to find the nutrition labeling regulations, interested parties would only have to survey one, part 413, to be able to apply nutrition panels to their meat and poultry products. Firms would 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	06/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Matthew Michael, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, Office of Policy and Program Development, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–0345, *Fax:* 202 690–0486, *Email: matthew.michael@usda.gov.*

RIN: 0583–AD56

USDA—FSIS

8. Prior Label Approval System: Expansion of Generic Label Approval

Priority: Other Significant.

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.*

CFR Citation: 9 CFR 412.2 (a) (1); 9 CFR 317.7; 9 CFR 381.128; 9 CFR 412.2 (b).

Legal Deadline: None.

Abstract: The Food Safety and Inspection Service (FSIS) is amending its labeling regulations to expand the categories of meat and poultry product labels that it will deem generically approved and thus not required to be submitted to FSIS. These reforms will reduce the regulatory burden on producers seeking to bring products to market, as well as the Agency costs expended to evaluate the labels.

Statement of Need: This action is needed to reduce the regulatory burden on producers seeking to bring products to market, as well as the Agency costs expended to evaluate the labels. Based on FSIS experience evaluating the labels in question and the ability of inspection personnel to verify labeling in the field, FSIS anticipates this action will have no impact on food safety or the accuracy of meat and poultry product labeling.

Summary of Legal Basis: The Acts direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that these products are safe, wholesome, not adulterated, and properly marked, labeled, and packaged. Section 7(d) of the Federal Meat Inspection Act (21 U.S.C. 607(d)) states: No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted. The Poultry Products Inspection Act contains similar language in section 21 U.S.C. 457(c).

Alternatives: FSIS considered three alternatives to the proposed rule: Taking no action, adopting the current proposal except with continued evaluation of labels that would otherwise be generically approved, and allowing all labels to be generically approved.

Anticipated Cost and Benefits: There are no additional costs to industry, or the Agency associated with this rule. FSIS will continue to verify that product labels, including those that are generically approved, are truthful and not misleading and otherwise comply with FSIS's requirements.

This rule is expected to reduce the number of labels industry is required to submit to FSIS for evaluation by approximately 35 percent. Establishments will realize a cost savings because they will no longer need to incur costs for submitting certain types of labels to FSIS for evaluation (*e.g.,* preparing a printer's proof). In addition, streamlining the evaluation process for specific types of labels would allow a faster introduction of products into the marketplace by reducing wait times for label approvals.

FSIS will also benefit from a reduction in the number of labels submitted to it for review. FSIS will be able to reallocate staff hours from evaluating labels towards the development of labeling policy.

Timetable:

Action	Date	FR Cite
NPRM	09/14/20	85 FR 56538
NPRM Comment Period End.	11/13/20	
Final Rule	04/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Matthew Michael, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, Office of Policy and Program Development, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–0345, *Fax:* 202 690–0486, *Email: matthew.michael@usda.gov.*

RIN: 0583–AD78

BILLING CODE 3410–90–P

DEPARTMENT OF COMMERCE

Statement of Regulatory and Deregulatory 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 creating 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 minority businesses and small manufacturers;

- 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.

Responding to the Administration's Regulatory Philosophy and Principles

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 most important significant pre-regulatory or regulatory actions for FY 2022.

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 is mandated to make it operational, and NOAA seeks to be the authoritative provider of climate products and services. By providing Federal, State, and local government partners, the private sector, and the public with actionable environmental information, NOAA can facilitate decisions 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 increasing sea level risk, flooding, and heavy precipitation.

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, with respect to the nation's fisheries, NOAA looks simultaneously to optimize productivity and ensure sustainability in order to boost long-term economic growth and competitiveness in this vital sector of the U.S. economy. Similarly, national marine sanctuaries both protect important natural resources and also 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.

Much of NOAA's rulemaking is conducted 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 2022 under Magnuson-Stevens Act authority, of which roughly 20 are expected to be significant rulemakings, as defined in Executive Order 12866. With certain exceptions, rulemakings under Magnuson-Stevens are usually initiated by the actions of eight regional Fishery Management Councils (FMCs or Councils). 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. FMPs address a variety of issues, including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. After considering the FMCs' 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 the 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 the 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 2022, 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 and that are included in the Unified Agenda, there are five, 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*): 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 by preventing the products of illegal fishing from landing and entering into commerce. The High Seas Driftnet Fishing Moratorium Act (Fishing Moratorium Act) implemented provisions of the PSMA, and NOAA issued regulations under the Fishing Moratorium Act in 2011 and 2013. Since then, the provisions of the Fishing Moratorium Act have been amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114–81) and the Ensuring Access to Pacific Fisheries Act (Pub. L. 114–327). This proposed rule would implement amendments made by these later two laws. NMFS will also propose changes to the definition of IUU fishing for the purposes of identifying and certifying nations.

2. *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (0648–BI88):* Regulatory modifications are needed to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a primary cause of the species' decline and greatly 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 population estimate of only 368 individuals as of 2019. Vessel strikes are one of 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. Entanglement in fishing gear is the other primary cause of mortality and serious injury, which is being addressed by separate regulatory actions.

3. *Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Endangered and Threatened Species and Designation of Critical Habitat (0648–BJ44):* This action responds to 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 the associated Fact Sheet (List of Agency Actions for Review). This is a joint rulemaking by NMFS and the FWS (the Services) to rescind the regulatory definition of the term ''habitat.'' This previously undefined term was defined by regulation for the first time in 2020 for the purpose of designating critical habitat under the ESA. Pursuant to Executive Order 13990, the Services also considered the alternatives of retaining the existing habitat definition or revising the habitat definition and will be considering any alternatives provided during the public comment period on the proposed rule.

4. *Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat (0648–BK47):* This action responds to 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 the associated Fact Sheet (List of Agency Actions for Review). This is a joint rulemaking by the Services to revise joint regulations issued in 2019 implementing section 4 of the ESA. Specifically addressed in this action are joint regulations that address the classification of species as threatened or endangered and the criteria and process for designating critical habitat for listed species. Pursuant to Executive Order 13990, the Services reviewed the specific regulatory provisions that had been revised in the 2019 final rule. Following a review of the 2019 rule, the Services are proposing to revise a portion of these regulations but are also soliciting public comments on all aspects of the 2019 rule before issuing a final rule.

5. *Endangered and Threatened Wildlife and Plants; Revision of*

Regulations for Interagency Cooperation (0648–BK48): This action responds to 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 the associated Fact Sheet (List of Agency Actions for Review). This is a joint rulemaking by the Services to revise joint regulations implementing section 7 of the ESA, which requires Federal agencies to consult with the Services whenever any action the agency undertakes, funds, or authorizes may affect endangered or threatened species or their critical habitat, to ensure that the action does not jeopardize listed species or adversely modify critical habitat. In 2019, the Services revised various aspects of the regulations governing the consultation process under ESA Section 7 including, significantly, how the Services define the ''effects of the action,'' which has importance for determining the scope of consultation. Pursuant to Executive Order 13990, the Services reviewed the specific regulatory provisions that had been revised in the 2019 final rule. Following this review of the 2019 rule, the Services are proposing to revise a portion of these regulations, including ''effects of the action,'' but are also soliciting public comments on all aspects of the 2019 rule before issuing a final rule. In addition to revising provisions from the 2019 rule, the Services are proposing to clarify the responsibilities of a Federal agency and the Services regarding the requirement to reinitiate consultation.

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.

The USPTO's Regulatory Plan Actions

1. *Final Rule: Changes to Implement Provisions of the Trademark Modernization Act of 2020 (0651–AD55):* The USPTO amends the rules of practice in trademark cases to implement provisions of the Trademark Modernization Act of 2020. This rule establishes ex parte expungement and reexamination proceedings for cancellation of a registration when the required use in commerce of the registered mark has not been made; provides for a new nonuse ground for cancellation before the Trademark Trial and Appeal Board; establishes flexible USPTO action response periods; and amends the existing letter-of-protest rule to indicate that letter-of-protest determinations are final and non-reviewable. The rule also sets fees for petitions requesting institution of ex parte expungement and reexamination proceedings, and for requests to extend USPTO action response deadlines.

The two new ex parte proceedings created by this rulemaking—one for expungement and one for reexamination—are intended to help ensure the accuracy of the trademark register by providing a new mechanism for removing a registered mark from the trademark register or cancelling the registration as to certain goods and/or services, when the registrant has not used the mark in commerce. The proposed changes will give U.S. businesses new tools to clear away unused registered trademarks from the federal trademark register and will give the USPTO the ability to move applications through the system more efficiently.

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.

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 (CCL), 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 2022, BIS plans to publish a number of proposed and final rules amending the EAR. These rules will cover a range of issues, including emerging and foundational technology, country specific policies, CCL revisions based on decisions by the four multilateral export control regimes (Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, and Wassenaar Arrangement), and implementation of any interagency agreed transfers from the United States Munitions List to the CCL.

BIS's Regulatory Plan Actions

1. *Authorization of Certain ''Items'' to Entities on the Entity List in the Context of Specific Standards Activities (0694–AI06):* BIS is amending the EAR to clarify its applicability to releases of technology for standards setting or development to support U.S. participation in standards efforts.

2. *Commerce Control List: Implementation of Controls on ''Software'' Designed for Certain Automated Nucleic Acid Assemblers and Synthesizers (0694–AI08):* BIS is publishing this final rule to amend the CCL by adding a new Export Control Classification Number (ECCN) 2D352 to control software that is designed for automated nucleic acid assemblers and synthesizers controlled under ECCN 2B352.j and capable of designing and building functional genetic elements from digital sequence data. These amendments to the CCL are based upon a finding, consistent with the emerging and foundational technologies interagency process set forth in section 1758 of the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4817), that such software is capable of being utilized in the production of pathogens and toxins and, consequently, the absence of export controls on such software could be exploited for biological weapons purposes.

3. *Information Security Controls: Cybersecurity Items (0694–AH56):* In 2013, the Wassenaar Arrangement (WA), a multilateral export control regime in which the United States participates, added cybersecurity items to the WA List, including a definition for ''intrusion software.'' In 2015, public comments on a BIS proposed implementation rule revealed serious issues concerning scope and implementation regarding these controls. Based on these comments, as well as substantial commentary from Congress, the private sector, academia, civil society, and others on the potential unintended consequences of the 2013 controls, the U.S. government returned to the WA to renegotiate the controls. This interim final rule outlines the progress the United States has made in this area, revises implementation, and requests from the public information about the impact of these revised controls on U.S. industry and the cybersecurity community. These items warrant controls because these tools could be used for surveillance, espionage, or other actions that disrupt, deny or degrade the network or devices on it.

4. *Imposition of Export Controls on Certain Brain-Computer Interface (BCI) Emerging Technology (0694–AI41):* Section 1758 of ECRA, as codified under 50 U.S.C. 4817, authorizes BIS to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies. Pursuant to ECRA, BIS has identified Brain Computer Interface technology as part of a representative list of technology categories for which BIS will seek public comment to determine whether this is an emerging technology that is important to U.S. national security and for which effective controls can be implemented. In this Advance Notice of Proposed Rulemaking, BIS is seeking comments specifically concerning whether this technology could provide the United States, or any of its adversaries, with a qualitative military or intelligence advantage. In addition, BIS is seeking public comments on how to ensure that the scope of any controls that may be imposed on this technology in the future would be effective and appropriate with respect to their potential impact on legitimate commercial or scientific applications.

5. *Foundational Technologies: Proposed Controls (0694–AH80):* BIS is considering expanding controls on certain foundational technologies. Foundational technologies may be items that are currently subject to control for military end use or military end user reasons. Additionally, foundational technologies may be additional items, for which an export license is generally not required (except for certain countries), that also warrant review to determine if they are foundational technologies essential to the national security. For example, such controls may be reviewed if the items are being utilized or are required for innovation in developing conventional weapons or enabling foreign intelligence collection activities or weapons of mass destruction applications. In an effort to address this concern, this proposed rule would amend the CCL by adding controls on certain aircraft reciprocating or rotary engines and powdered metals and alloys. This rule requests public comments to ensure that the scope of these proposed controls will be effective and appropriate, including with respect to their potential impact on legitimate commercial or scientific applications.

6. *Removal of Certain General Approved Exclusions (GAEs) Under the Section 232 Steel and Aluminum Tariff Exclusions Process (0694–AH55):* On December 14, 2020, BIS published an interim final rule (the December 14 rule) that revised aspects of the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel discussed in three previous Commerce interim final rules implementing the exclusion process authorized by the President under section 232 of the Trade Expansion Act of 1962, as amended (232), as well as a May 26, 2020, notice of inquiry. The December 14 rule added 123 General Approved Exclusions (GAEs) to the regulations. The addition of GAEs was an important step in improving the efficiency and effectiveness of the 232 exclusions process for certain Harmonized Tariff Schedule of the United States (HTSUS) codes for steel and aluminum that had not received objections. Commerce determined it could authorize imports under GAEs for these specified HTSUS codes for all importers instead of requiring each importer to submit an exclusion request. Subsequently, based on Commerce's review of the public comments received in response to the December 14 rule and additional analysis conducted by Commerce of 232 exclusion request submissions, Commerce determined that a subset of the GAEs added in the December 14 rule did not meet the criteria for inclusion as a GAE and should therefore be removed. Commerce is removing these GAEs in this interim final rule to ensure that only those GAEs that meet the stated criteria from the December 14 rule will continue to be included as eligible GAEs. Lastly, this interim final rule makes two conforming changes to the GAE list for a recent change to one HTSUS classification and adds a footnote to both GAE supplements to address future changes to the HTSUS.

DOC—BUREAU OF INDUSTRY AND SECURITY (BIS)

Prerule Stage

9. Request for Comments Concerning the Imposition of Export Controls on Certain Brain–Computer Interface (BCI) Emerging Technology

Priority: Other Significant.

Legal Authority: 50 U.S.C. 4817(a)(2)(C)

CFR Citation: None.

Legal Deadline: None.

Abstract: Section 1758 of the Export Control Reform Act of 2018 (ECRA), as codified under 50 U.S.C. 4817, authorizes BIS to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies. Pursuant to ECRA, BIS has identified Brain Computer Interface (BCI) technology as part of a representative list of technology categories concerning which BIS, through an interagency process, seeks public comment to determine whether this technology represents an emerging technology that is important to U.S. national security and for which effective controls can be implemented. Specifically, BIS is seeking comments concerning whether this technology could provide the United States, or any of its adversaries, with a qualitative military or intelligence advantage. In addition, BIS is seeking public comments on how to ensure that the scope of any controls that may be imposed on this technology in the future would be effective and appropriate (with respect to their potential impact on legitimate commercial or scientific applications).

Statement of Need: The Bureau of Industry and Security (BIS) is publishing this ANPRM to obtain public comments on the potential uses of Brain-Computer Interface (BCI) technology, which includes, inter alia, neural-controlled interfaces, mind-machine interfaces, direct neural interfaces, and brain-machine interfaces. On November 19, 2018, BIS published an ANPRM (83 FR 58201) that identified BCI technology as part of a representative list of technology categories concerning which BIS, through an interagency process, sought public comments to determine whether there are specific emerging technologies that are essential to U.S. national security and for which effective controls can be implemented.

Additional input from the public is needed to assist in the interagency process of evaluating BCI technology as a potential emerging technology and to determine if there are specific BCI technologies for which export controls would be appropriate. The public's responses to the questions posed in this ANPRM will be considered during the aforementioned interagency process to evaluate BCI technology as a potential emerging technology and to ensure that the scope of any controls that may be imposed on this technology would be effective (in terms of protecting U.S. national security interests) and appropriate (with respect to minimizing their potential impact on legitimate commercial or scientific applications).

Summary of Legal Basis: Section 1758(a) of the Export Control Reform Act (ECRA) of 2018 (50 U.S.C. 4817(a)) outlines an interagency process for identifying emerging and foundational technologies. BCI technology has been identified as a technology for evaluation as a potential emerging technology, consistent with the interagency process described in section 1758 of ECRA. Consequently, BIS is publishing this ANPRM to obtain feedback from the public and U.S. industry concerning whether such technology could provide the United States, or any of its adversaries, with a qualitative military or intelligence advantage.

Alternatives: The Secretary of Commerce must establish appropriate controls on the export, reexport or transfer (in-country) of technology identified pursuant to the section 1758 process. In so doing, the Secretary must consider the potential end-uses and end-users of emerging and foundational technologies, and the countries to which exports from the United States are restricted (*e.g.,* embargoed countries). While the Secretary has discretion to set the level of export controls, at a minimum a license must be required for the export of such technologies to countries subject to a U.S. embargo, including those countries subject to an arms embargo.

If the interagency process results in a determination that certain BCI technology constitutes an emerging technology, for purposes of section 1758 of ECRA, then BIS is required, pursuant to ECRA to institute export controls on such technology. However, BIS does have some flexibility to ensure that the scope of any controls that may be imposed on this technology would be effective (in terms of protecting U.S. national security interests) and appropriate (with respect to minimizing their potential impact on legitimate commercial or scientific applications).

Anticipated Cost and Benefits: This ANPRM is being published by BIS to assist in evaluating, not only whether certain BCI technology is an emerging technology, but also to obtain information from the public to assist in evaluating how the implementation of export controls on such technology would impact U.S. industry, in terms of both its economic and technological competitiveness. In short, this ANPRM is intended to assist, as part of the aforementioned interagency process, in evaluating the anticipated costs and benefits of imposing export controls on certain BCI technology.

Risks: The risks of imposing export controls on certain BCI technology would be to hurt the economic and technological competitiveness of U.S. industry, which is one of the primary reasons that BIS is soliciting comments from the public in accordance with this ANPRM. There are also risks to U.S. national security and to U.S. industry should such technology fall into the hands of our adversaries.

Timetable:

Action	Date	FR Cite
ANPRM	10/26/21	86 FR 59070
ANPRM Comment Period End.	12/10/21	
NPRM	03/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230, *Phone:* 202 482–2440, *Fax:* 202 482–3355, *Email: willard.fisher@bis.doc.gov.*

RIN: 0694–AI41

DOC—BIS

Proposed Rule Stage

10. Foundational Technologies: Proposed Controls; Request for Comments

Priority: Other Significant.

Legal Authority: 50 U.S.C. 4801 to 4852

CFR Citation: 15 CFR 742; 15 CFR 774.

Legal Deadline: None.

Abstract: The Bureau of Industry and Security (BIS), the Department of Commerce, maintains controls on the export, reexport, and transfer (in-country) of dual-use and less sensitive military items through the Export Administration Regulations (EAR), including the Commerce Control List (CCL). Foundational technologies may be items that are currently subject to control for military end use or military

end user reasons. Additionally, foundational technologies may be additional items, for which an export license is not required (except for certain countries) that also warrant review to determine if they are foundational technologies essential to the national security. For example, such controls may be reviewed if the items are being utilized or required for innovation in developing conventional weapons or enabling foreign intelligence collection activities or weapons of mass destruction applications. In an effort to address this concern, this rule proposes to amend the CCL with identified foundational technologies. This rule requests public comments to ensure that the scope of these proposed controls will be effective and appropriate, including with respect to their potential impact on legitimate commercial or scientific applications.

Statement of Need: As part of the National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115–232), Congress enacted the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4817). Section 1758 of ECRA authorizes the Bureau of Industry and Security (BIS) to establish appropriate controls on the export, reexport, or transfer (in-country) of emerging and foundational technologies. With this proposed rule, BIS continues to identify technologies that may warrant more restrictive controls than they have at present and establishes a control framework applicable to certain unilaterally-controlled emerging and foundational technologies.

Summary of Legal Basis: There are a variety of legal authorities under which BIS operates. However, ECRA (50 U.S.C. 4817) provides the most substantive legal basis for BIS's actions under this proposed rule.

Alternatives: There are not alternatives to this rule. This rule serves as the first tranche of controls specifically outlining foundational technologies.

Anticipated Cost and Benefits: The anticipated costs and benefits of this proposed rule are not applicable.

Risks: There are no applicable risks to this proposed rule.

Timetable:

Action	Date	FR Cite
ANPRM	08/27/20	85 FR 52934
ANPRM Correction and Comment Extension.	10/09/20	85 FR 64078
ANPRM Comment Period End.	10/26/20	
ANPRM Correction and Comment Extension Period End.	11/09/20	
NPRM	08/00/22	

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: Logan D. Norton, Department of Commerce, Bureau of Industry and Security, 1401 Constitution Avenue, Washington, DC 20230, *Phone:* 202 812–1762, *Email: logan.norton@bis.doc.gov.*

RIN: 0694–AH80

DOC—BIS

Final Rule Stage

11. Removal of Certain General Approved Exclusions (GAEs) Under the Section 232 Steel and Aluminum Tariff Exclusions Process

Priority: Other Significant.

Legal Authority: 19 U.S.C. 1862

CFR Citation: 15 CFR 705.

Legal Deadline: None.

Abstract: On December 14, 2020, the Department of Commerce published an interim final rule (December 14 rule) that revised aspects of the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel. The December 14 rule added 123 General Approved Exclusions (GAEs) to the regulations. The addition of GAEs was an important step in improving the efficiency and effectiveness of the 232 exclusions process for certain Harmonized Tariff Schedule of the United States (HTSUS) codes for steel and aluminum that had not received objections. Subsequently, based on Commerce's review of the public comments received in response to the December 14 rule and additional analysis conducted by Commerce of 232 submissions, Commerce determined that a subset of the GAEs added in the December 14 rule did not meet the criteria for inclusion as a GAE and should therefore be removed. Commerce is removing these GAEs in today's interim final rule to ensure that only those GAEs that meet the stated criteria from the December 14 rule will continue to be included as eligible GAEs.

Statement of Need: On December 14, 2020, the Department of Commerce published an interim final rule (the December 14 rule) that revised aspects of the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel discussed in three previous Department of Commerce (Commerce) interim final rules implementing the exclusion process authorized by the President under section 232 of the Trade Expansion Act of 1962, as amended (232), as well as a May 26, 2020 notice of inquiry. The December 14 rule included adding 123 General Approved Exclusions (GAEs) to the regulations. The addition of GAEs was an important step in improving the efficiency and effectiveness of the 232 exclusions process. Commerce selected certain steel and aluminum articles under select Harmonized Tariff Schedule of the United States (HTSUS) codes as GAEs on the basis that exclusion requests submitted for the specified HTSUS codes had not received objections from domestic industry in the 232 exclusions process.

Commerce is publishing this interim final rule to remove a subset of General Approved Exclusions (GAEs) added in the December 14 rule after public comments on the December 14 rule and subsequent Commerce analysis of data in the 232 Exclusions Portal identified these HTSUS codes as not meeting the criteria for inclusion as a GAE. These cases include HTSUS codes with exclusion requests that recently received objections and/or denials in the 232 Exclusions Portal. Commerce is removing these GAEs in this interim final rule to ensure that only those GAEs that meet the stated criteria from the December 14 rule will continue to be included as eligible GAEs.

Summary of Legal Basis: The legal basis of this rule is section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979). This rule is also implementing the directive included in Proclamations 9704 and 9705 of March 8, 2018. As explained in the reports submitted by the Secretary to the President, steel and aluminum are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United States, and therefore the President is implementing these remedial actions (as described Proclamations 9704 and 9705 of March 8, 2018) to protect U.S. national security interests. That implementation includes the creation of an effective process by which affected domestic parties can obtain exclusion requests based upon specific national security

considerations. Commerce started this process with the publication of the March 19 rule and refined the process with the publication of the September 11, June 10, and December 14 rules and is continuing the process with the publication of today's interim final rule. The revisions to the exclusion request process are informed by the comments received in response to the December 14 rule and Commerce's experience with managing the 232 exclusions process.

Alternatives: Alternatives to doing this rule would include not publishing the rule. The public has the ability to apply for exclusion requests, so instead of creating GAEs, the public could be told to rely on the existing exclusions process. However, numerous commenters on the 232 interim final rules that have been published have emphasized the need for making improvements in the efficiency, transparency, and fairness of the 232 exclusion process and had suggested the creation of a GAE type of approval as part of the 232 exclusions process would benefit the program. Commenters on the December 14 rule identified certain GAE eligible items that they believed did not meet the stated criteria for what should be eligible for be authorized under a GAE. Commerce after reviewing those comments and conducting its own additional analysis agrees that certain items identified under the current GAEs no longer reflect the GAE criteria and therefore should be removed, so the alternative of not doing a rule or the option of removing the GAE approvals completely are not viable options for achieving the intended policy objectives that Commerce is trying to fulfill with having a more effective exclusion process.

Anticipated Cost and Benefits: For the anticipated costs, this rule is expected to increase the burden hours for one of the collections associated with this rule, OMB control number 0694–0139. This increase is expected because of the removal of certain GAEs for steel and GAEs for aluminum, which is expected to result in an increase of 1,100 exclusion request submissions per year. These removals are estimated to result in a twenty percent reduction in the burden and costs savings described in the December 14 rule. These GAE removals are expected to be an increase in 1,100 burden hours for a total cost increase of 162,800 dollars to the public. There is also expected to be an increase in 6,600 burden hours for a total cost increase of 257,000 dollars to the U.S. Government. As Commerce asserted in the December 14 rule that the steel and aluminum articles identified as being eligible for GAEs, including those being removed in today's rule, had not received any objections, the addition of those new GAEs was not estimated to result in a decrease in the number of objections, rebuttals, or surrebuttals received by BIS. As described elsewhere in this rule, the GAEs removed in today's interim final rule did receive objections and/or denials and therefore warrant removal at this time. Because the December 14 rule did not make any adjustments to the collections for objections, rebuttals, or surrebuttals, the removal of these GAEs is estimated to result in no change in the burden associated with the other three collections.

For the anticipated benefits, these changes will ensure the effectiveness of the GAEs under the 232 exclusions process. By ensuring that only those GAEs that meet the stated criteria for what should be considered a GAE, will help improve the effectiveness, fairness and transparency of the 232 exclusions process. Importers and other users of steel and aluminum in the U.S. and U.S. producers and steel and aluminum have comments in response to the various section 232 interim final rules published that creating an effective 232 exclusion process is key to reduce burdens on the public. The adoption of the GAEs was an important step in improving efficiency, but in order ensure U.S. national security interests are protected, only items that meet the GAE criteria should be eligible and any other item should be required to be included in the normal 232 exclusion process.

Risks: If this interim final rule were to be delayed, companies in the United States would be unable to immediately benefit from the improvements made to the GAE process and could face significant economic hardship, which could potentially create a detrimental effect on the general U.S. economy and national security. Comments received on the December 14 rule that were critical of the GAEs were clear that the removal of GAEs that consisted of HTSUS codes that received objections and/or denials under the 232 process was needed. Commenters noted that failure to provide this additional improvement could allow the floodgates to open for imports of those articles, and that the influx of such articles could undermine the efficiency of the 232 process. Commenters also noted that if this specific improvement is not made, significant economic consequences could occur. Given the imports of these articles have already been objected to and/or denied in exclusion requests under the 232 process for national security reasons, allowing these specific GAEs to exist could undermine other critical U.S. national security interests.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/18	83 FR 12106
Interim Final Rule Effective.	03/19/18	
Interim Final Rule Comment Period End.	05/18/18	
Interim Final Rule	09/11/18	83 FR 46026
Interim Final Rule Effective.	09/11/18	
Interim Final Rule Comment Period End.	11/13/18	
Interim Final Rule	06/10/19	84 FR 26751
Interim Final Rule Effective.	06/13/19	
Interim Final Rule Comment Period End.	08/09/19	
Interim Final Rule	12/14/20	85 FR 81060
Interim Final Rule Effective.	12/14/20	
Interim Final Rule Effective.	12/29/20	
Interim Final Rule	11/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Timothy Mooney, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230, *Phone:* 202 482–3371, *Fax:* 202 482–3355, *Email: timothy.mooney@bis.doc.gov.*

RIN: 0694–AH55

DOC—BIS

12. Information Security Controls: Cybersecurity Items

Priority: Other Significant.

Legal Authority: 10 U.S.C. 7420; 10 U.S.C. 7430(e); 15 U.S.C. 1824a; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; 30 U.S.C. 185(s); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 50 U.S.C. 1701 *et seq.;* 50 U.S.C. 4305; 50 U.S.C. 4601 *et seq.;* E.O. 12058; E.O. 12851; E.O. 12938; E.O. 13026; E.O. 13222; Pub. L. 108–11

CFR Citation: 15 CFR 740; 15 CFR 742; 15 CFR 772; 15 CFR 774.

Legal Deadline: None.

Abstract: In 2013, the Wassenaar Arrangement (WA) added cybersecurity items to the WA List, including a definition for ''intrusion software.'' On May 20, 2015, the Bureau of Industry and Security (BIS) published a proposed

rule describing how these new controls would fit into the Export Administration Regulations (EAR) and requested information from the public about the impact on U.S. industry. The public comments on the proposed rule revealed serious issues concerning scope and implementation regarding these controls. Based on these comments, as well as substantial commentary from Congress, the private sector, academia, civil society, and others on the potential unintended consequences of the 2013 controls, the U.S. government returned to the WA to renegotiate the controls. This interim final rule outlines the progress the United States has made in this area, revised Commerce Control List (CCL) implementation, and requests from the public information about the impact of these revised controls on U.S. industry and the cybersecurity community.

Statement of Need: In 2013, the Wassenaar Arrangement (WA) added cybersecurity items to the WA List, including a definition for intrusion software. On May 20, 2015, the Bureau of Industry and Security (BIS) published a proposed rule describing how these new controls would fit into the Export Administration Regulations (EAR) and requested information from the public about the impact on U.S. industry. The public comments on the proposed rule revealed serious issues concerning scope and implementation regarding these controls. Based on these comments, as well as substantial commentary from Congress, the private sector, academia, civil society, and others on the potential unintended consequences of the 2013 controls, the U.S. government returned to the WA to renegotiate the controls. This interim final rule outlines the progress the United States has made in this area, implements revised Commerce Control List (CCL) text, establishes a new License Exception Authorized Cybersecurity Exports (ACE) and requests from the public information about the impact of these revised controls on U.S. industry and the cybersecurity community.

Summary of Legal Basis: On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Alternatives: As noted above, BIS does not believe that the amendments in this rule, will have a significant economic impact on a substantial number of small entities. Nevertheless, consistent with 5 U.S.C. 603(c), BIS considered significant alternatives to these amendments to assess whether the alternatives would: (1) Accomplish the stated objectives of this rule (consistent with the requirements in ECRA); and (2) minimize any significant economic impact of this rule on small entities. BIS could have implemented a much broader control on software capable of cybersecurity controlled under ECCNs 4A005, 4D004, 4E001, 4E001, and 5A001 that would have captured a greater amount of such software and related technology. That in turn would have had a greater impact not only on small businesses, but also on research and development laboratories (both academic and corporate), which are involved in network security. BIS has determined that implementing focused controls on specific software and related technology (*i.e.,* the software controlled under new ECCN 4A005, 4D004, 4E001.a, 4E001.c, and 5A001.j and corresponding development technology in ECCN 5E001) is the least disruptive alternative for implementing export controls in a manner consistent with controlling technology that has been determined, through the interagency process authorized under ECRA, to be essential to U.S. national security. BIS is not implementing different compliance or reporting requirements for small entities. If a small business is subject to a compliance requirement for the export, reexport or transfer (in-country) of this software and related technology, then it would submit a license application using the same process as any other business (*i.e.,* electronically via SNAPR). The license application process is free of charge to all entities, including small businesses. In addition, as noted above, the resources and other compliance tools made available by BIS typically serve to lessen the impact of any EAR license requirements on small businesses.

Anticipated Cost and Benefits: For the existing ECCNs included in this rule (4D001, 4E001, 5A001, 5A004, 5D001, 5E001), the 2020 data from U.S. Customs and Border Protection's Automated Export System (AES) shows 980 shipments valued at $39,146,164. Of those shipments, 120 shipments valued at $1,864,699 went to Country Group D:1 or D:5 countries, which would make them ineligible for License Exception ACE. There were no shipments to Country Group E:1 or E:2. Under the provisions of this rule, the 120 shipments require a license application submission to BIS.

As there is no specific ECCN data in AES for the new export controls in new ECCNs 4A005 and 4D004 or new paragraph 4E001.c, BIS uses other data to estimate the number of shipments of these new ECCNs that will require a license. Bureau of Economic Analysis (BEA) data from 2019 show a total dollar value of $55,657 million for Telecom, Computer, and Information Technology Services exports. Multiplying this value by 12.1% (the percentage of all exports that are subject to an EAR license requirement as determined by using AES data) suggests that $6,734,497,000 of Telecom/Computer/IT exports are now subject to EAR license requirements. Based on AES data on the existing ECCNs affected by this rule, BIS estimates the average value of each shipment for the new ECCNs at about $40,000, and further estimates that 0.6% of all new ECCN shipments (1,010 shipments) are now eligible for License Exception ACE and 0.03% of all new ECCN shipments (50 shipments) require a license application submission. Therefore, the annual total estimated cost associated with the paperwork burden imposed by this rule (that is, the projected increase of license application submissions based on the additional shipments requiring a license) is estimated to be 170 new applications × 29.6 minutes = 5,032/60 min = 84 hours × $30 = $2,520.

There is no paperwork submission to BIS associated with using License Exception ACE, and therefore there is no increase to any paperwork burden or information collection cost associated with License Exception ACE requirements in this rule.

Benefit: Cybersecurity items in the wrong hands raise both national security and foreign policy concerns. The benefit of publishing these revisions and controlling cybersecurity items in the way contemplated by this rule is that national security and foreign policy concerns are addressed, in that these regulations assist in keeping such items out of the hands of those that would use them for nefarious end uses, while at the same time not disrupt legitimate cybersecurity exports.

Risks: The risks of publishing this rule is that it has unexpected consequences, which is why there is a 90 day delayed effective date and 45 day comment period that will allow the public to comment on the rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/21/21	86 FR 58205
Interim Final Rule Comment Period End.	12/06/21	
Interim Final Rule Effective.	01/19/22	

Action	Date	FR Cite
Next Action Undetermined.	02/00/22	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230, *Phone:* 202 482–2440, *Fax:* 202 482–3355, *Email: sharron.cook@bis.doc.gov*.
Related RIN: Related to 0694–AG49.
RIN: 0694–AH56

DOC—BIS

13. Authorization of Certain ''Items'' to Entities on the Entity List in the Context of Specific Standards Activities

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Legal Authority: 50 U.S.C. 4801 to 4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938
CFR Citation: 15 CFR 734.
Legal Deadline: None.
Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to clarify the applicability of the Export Administration Regulations (EAR) to releases of technology for standards setting or development in standards organizations.
Statement of Need: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to clarify the applicability of the Export Administration Regulations (EAR) to releases of technology for standards setting or development to support U.S. participation in standards efforts.
Summary of Legal Basis: There are a variety of legal authorities under which BIS operates. However, ECRA (50 U.S.C. 4817) provides the most substantive legal basis for BIS's actions under this rule.
Alternatives: There are not alternatives to this rule.
Anticipated Cost and Benefits: The anticipated costs and benefits of this proposed rule are not applicable.
Risks: There are no applicable risks to this rule.
Timetable:

Action	Date	FR Cite
Interim Final Rule	06/16/20	85 FR 36719
Interim Final Rule Effective.	06/18/20	
Interim Final Rule Comment Period End.	08/17/20	
Final Action	03/00/22	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
Agency Contact: Hillary Hess, Department of Commerce, Bureau of Industry and Security, 1401 Constitution Avenue, Washington, DC 20230, *Phone:* 202 482–4819, *Email: hillary.hess@bis.doc.gov*.
RIN: 0694–AI06

DOC—BIS

14. Commerce Control List: Expansion of Controls on Certain Biological Equipment ''Software''

Priority: Other Significant.
Legal Authority: 50 U.S.C. 4801 to 4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720
CFR Citation: 15 CFR 774.
Legal Deadline: None.
Abstract: BIS is publishing this final rule to amend the Commerce Control List (CCL) by adding a new Export Control Classification Number (ECCN) 2D352 to control ''software'' that is designed for automated nucleic acid assemblers and synthesizers controlled under ECCN 2B352 and is capable of designing and building functional genetic elements from digital sequence data. These proposed amendments to the CCL are based upon a finding, consistent with the emerging and foundational technologies interagency process set forth in section 1758 of ECRA (50 U.S.C. 4817), that such ''software'' is capable of being utilized in the production of pathogens and toxins and, consequently, the absence of export controls on such software could be exploited for biological weapons purposes. In addition, this rule amends ECCN 2E001 to indicate that this ECCN controls ''technology'' for the ''development'' of ''software'' described in the new ECCN 2D352.
Statement of Need: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the decision made at the Australia Group (AG) Virtual Implementation Meeting session held in May 2021, and later adopted pursuant to the AG's silence procedure. This decision updated the AG Common Control List for dual-use biological equipment by adding controls on nucleic acid assembler and synthesizer software that is capable of designing and building functional genetic elements from digital sequence data.

Prior to the addition of nucleic acid assembler/synthesizer software to the AG biological equipment list, BIS identified this software as a technology to be evaluated as an emerging technology, consistent with the interagency process described in section 1758 of the Export Control Reform Act of 2018 (ECRA) (codified at 50 U.S.C. 4817). This identification was based on a finding that this software is capable of being used to operate nucleic acid assemblers and synthesizers controlled under ECCN 2B352 for the purpose of generating pathogens and toxins without the need to acquire controlled genetic elements and organisms. Consequently, the absence of export controls on this software could be exploited for biological weapons purposes.

Summary of Legal Basis: Section 1758(a) of the Export Control Reform Act (ECRA) of 2018 (50 U.S.C. 4817(a)) outlines an interagency process for identifying emerging and foundational technologies. Nucleic acid synthesizer software has been identified as a technology for evaluation as a potential emerging technology, consistent with the interagency process described in section 1758 of ECRA. Consequently, BIS published a proposed rule on November 6, 2020 (85 FR 71012), to provide the public with notice and the opportunity to comment on adding a new ECCN 2D352 to control software for the operation of nucleic acid assemblers and synthesizers described in ECCN 2B352.j that is capable of designing and building functional genetic elements from digital sequence data. Subsequent to the publication of this proposed rule, the Australia Group (AG) added this software to their biological equipment Common Control List. This final rule amends the EAR to reflect the action taken by the AG.

Alternatives: The Secretary of Commerce must establish appropriate controls on the export, reexport or transfer (in-country) of technology identified pursuant to the Section 1758 process. In so doing, the Secretary must consider the potential end-uses and end-users of emerging and foundational technologies, and the countries to which exports from the United States are restricted (*e.g.,* embargoed countries). While the Secretary has discretion to set the level of export controls, at a minimum a license must be required for the export of such technologies to countries subject to a U.S. embargo,

including those countries subject to an arms embargo.

If the interagency process results in a determination that a certain technology constitutes an emerging technology, for purposes of section 1758 of ECRA, then BIS is required, pursuant to ECRA, to institute export controls on such technology. However, BIS does have some flexibility to ensure that the scope of any controls that may be imposed on this technology would be effective (in terms of protecting U.S. national security interests) and appropriate (with respect to minimizing their potential impact on legitimate commercial or scientific applications). In this particular instance, the controls on this technology will be multilateral, because they have been adopted by the Australia Group (AG) for inclusion in their biological equipment Common Control List.

Anticipated Cost and Benefits: The changes that would be made by this rule would only marginally affect the scope of the EAR controls on chemical weapons precursors, human and animal pathogens/toxins, and equipment capable of use in handling biological materials.

The number of additional license applications that would have to be submitted per year, as a result of the addition of ECCN 2D352 to the CCL, as described above, is not expected to exceed fifteen license applications. This total represents a relatively insignificant portion of the overall trade in such items and is well within the scope of the information collection approved by the Office of Management and Budget (OMB) under control number 06940088.

Risks: This software is capable of being used to operate nucleic acid assemblers and synthesizers controlled under ECCN 2B352 for the purpose of generating pathogens and toxins without the need to acquire controlled genetic elements and organisms. Consequently, the absence of export controls on this software could be exploited for biological weapons purposes.

Timetable:

Action	Date	FR Cite
NPRM	11/06/20	85 FR 71012
NPRM Comment Period End.	12/21/20	
Final Action	10/05/21	86 FR 54814
Final Action Effective.	10/05/21	
Next Action Undetermined.	03/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230, *Phone:* 202 482–2440, *Fax:* 202 482–3355, *Email: willard.fisher@bis.doc.gov.*

RIN: 0694–AI08

DOC—PATENT AND TRADEMARK OFFICE (PTO)

Final Rule Stage

15. Changes To Implement Provisions of the Trademark Modernization Act of 2020

Priority: Other Significant.

Legal Authority: 15 U.S.C. 1066; 15 U.S.C. 1067; 15 U.S.C. 1113; 15 U.S.C. 1123; 35 U.S.C. 2; Pub. L. 112–29; Pub. L. 116–260

CFR Citation: 37 CFR 2; 37 CFR 7.

Legal Deadline: Final, Statutory, December 27, 2021.

Abstract: The United States Patent and Trademark Office (USPTO or Office) amends the rules of practice in trademark cases to implement provisions of the Trademark Modernization Act of 2020. The rule establishes ex parte expungement and reexamination proceedings for cancellation of a registration when the required use in commerce of the registered mark has not been made; provides for a new nonuse ground for cancellation before the Trademark Trial and Appeal Board; establishes flexible Office action response periods; and amends the existing letter-of-protest rule to indicate that letter-of-protest determinations are final and non-reviewable. The USPTO also sets fees for petitions requesting institution of ex parte expungement and reexamination proceedings, and for requests to extend Office action response deadlines. Amendments are also for the rules concerning the suspension of USPTO proceedings and the rules governing attorney recognition in trademark matters. Finally, a new rule is to address procedures regarding court orders cancelling or affecting registrations.

Statement of Need: The purpose of this action is to amend the rules of practice in trademark cases to implement provisions of the Trademark Modernization Act of 2020. In addition, amendments are also proposed for the rules concerning suspension of USPTO proceedings and the rules governing attorney recognition in trademark matters, and a new rule is proposed to address procedures regarding court orders cancelling or affecting registrations.

Summary of Legal Basis: The Trademark Modernization Act of 2020 (TMA) was enacted on December 27, 2020. See Public Law 116260, Div. Q, Tit. II, Subtit. B, 221228 (Dec. 27, 2020). The TMA amends the Trademark Act of 1946 (the Act) to establish new ex parte expungement and reexamination proceedings to cancel, either in whole or in part, registered marks for which the required use in commerce was not made. Furthermore, the TMA amends 14 of the Act to allow a party to allege that a mark has never been used in commerce as a basis for cancellation before the Trademark Trial and Appeal Board (TTAB). The TMA also authorizes the USPTO to promulgate regulations to set flexible Office action response periods between 60 days and 6 months, with an option for applicants to extend the deadline up to a maximum of 6 months from the Office action issue date. In addition, the TMA includes statutory authority for the USPTO's letter-of-protest procedures, which allow third parties to submit evidence to the USPTO relevant to a trademark's registrability during the initial examination of the trademark application, and provides that the decision whether to include such evidence in the application record is final and non-reviewable. The TMA requires the USPTO to promulgate regulations to implement the provisions relating to the new ex parte expungement and reexamination proceedings, and the letter-of-protest procedures, within one year of the TMA's enactment. The USPTO also proposes under its authority under the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* to amend the rules regarding attorney recognition and correspondence, and to add a new rule formalizing the USPTO's longstanding procedures concerning action on court orders cancelling or affecting a registration under section 37 of the Act, 15 U.S.C. 1119.

Alternatives: The TMA mandates the framework for many of the procedures in this rulemaking, particularly in regard to the changes to the letter-of-protest procedures and most of the procedures for the new ex parte expungement and reexamination proceedings, except for those indicated below. Thus, the USPTO has little to no discretion in the rulemaking required to implement those procedures. For those provisions for which alternatives were possible because the TMA provided the Director discretion to implement regulations (*i.e.,* fees; limit on petitions requesting expungement or

reexamination; reasonable investigation and evidence; director-initiated proceedings; response time periods in new ex parte proceedings; flexible response periods; suspension of proceedings; and attorney recognition), a full discussion of alternatives is provided in the proposed rule.

Anticipated Cost and Benefits: The proposed regulations have qualitative benefits of ensuring a well-functioning trademark system where the trademark register accurately reflects trademarks that are currently in use.

Risks: The risk of taking no action is that USPTO would not comply with its statutory mandate under the TMA.

Timetable:

Action	Date	FR Cite
NPRM	05/18/21	86 FR 26862
NPRM Comment Period End.	07/19/21	
Final Action	11/00/21	
Final Action Effective.	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: None.

Agency Contact: Catherine Cain, Trademark Manual of Examining Procedure Editor, Department of Commerce, Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313, *Phone:* 571 272–8946, *Fax:* 751 273–8946, *Email: catherine.cain@uspto.gov.*

RIN: 0651–AD55

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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. In support of this mission, DoD adheres to a strategy where a more lethal force, strong alliances and partnerships, American technological innovation, and a culture of performance will generate a decisive and sustained United States military advantage. 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 Regulatory Plan and Agenda provide notice about the DoD's regulatory and deregulatory actions within the Executive Branch.

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.

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) 2022 and help support President Biden's regulatory priorities and the Secretary of Defense's top priorities, along with those of the National Defense Strategy, to defend the Nation. The DoD prioritization is focused on initiatives that:

- Promote the country's economic resilience, including addressing COVID-related issues.
- Support underserved communities and improve small business opportunities.
- Promote diversity, equity, inclusion, and accessibility in the Federal workforce.
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.
- Support the climate change emergency; and
- Promote Access to Voting.

Rules That Promote the Country's Economic Resilience

Pandemic

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 has 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 Coverages and Payment for Certain Services in Response to the COVID–19 Pandemic. RIN 0720–AB81*

DoD is finalizing an interim final rule that temporarily amended 32 CFR part 199 to revise: (1) 32 CFR part 199.4 to remove the restriction on audio-only telemedicine services; (2) 32 CFR part 199.6 to authorize reimbursement for interstate practice by TRICARE-authorized providers when such authority is consistent with State and Federal licensing requirements; and (3) 32 CFR part 199.17 to eliminate copayments for telemedicine services. These changes reduce the spread of COVID–19 among TRICARE beneficiaries by incentivizing use of telemedicine services, and aid providers in caring for TRICARE beneficiaries by temporarily waiving some licensure requirements. The final rule adopts this interim final rule as final with changes.

- *TRICARE Coverage of Certain Medical Benefits in Response to the COVID–19 Pandemic. RIN 0720–AB82*

DoD is finalizing an interim final rule that temporarily amended 32 CFR part 199 to revise certain elements of the TRICARE program under 32 CFR part 199 to: (1) Waive the three-day prior hospital qualifying stay requirement for coverage of skilled nursing facility care; (2) add coverage for treatment use of investigational drugs under expanded access authorized by the United States (U.S.) Food and Drug Administration (FDA) when for the treatment of coronavirus disease 2019 (COVID–19); (3) waive certain provisions for acute care hospitals that permitted authorization of temporary hospital facilities and freestanding ambulatory surgical centers providing inpatient and outpatient hospital services; and, consistent with similar changes under the Centers for Medicaid and Medicare Services; (4) revise diagnosis related group (DRG) reimbursement by temporarily reimbursing DRGs at a 20 percent higher rate for COVID–19

patients; and (5) waive certain requirements for long term care hospitals. The final action permanently adopts Medicare's New Technology Add-On Payments adjustment to DRGs for new medical services and technologies and adopted Medicare's Hospital Value Based Purchasing Program. The final rule adopts the interim final rule with changes, except for the note to section 199.4(g)(15)(i)(A), published at 85 FR 54923, September 3, 2020, which remains interim.

- *TRICARE Coverage of National Institute of Allergy and Infectious Disease—Coronavirus Disease 2019 Clinical Trials. RIN 0720–AB83*

This interim final rule temporarily amended section 199.4(e)(26) of 32 CFR 199 to revise certain elements of the TRICARE program to add coverage for National Institute of Allergy and Infectious Disease-sponsored clinical trials for the treatment or prevention of coronavirus disease 2019 (COVID–19).

Title 10, U.S.C. 1079(a)(12) authorizes, pursuant to an agreement with the Secretary of Health and Human Services (HHS) and under such regulations as the Secretary of Defense may prescribe, a waiver of the requirement that covered care be medically or psychologically necessary in connection with clinical trials sponsored by the NIH, provided the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments. On September 19, 2020, the DoD entered into an agreement with NIH to permit coverage of such trials. Based on an agreement with the National Cancer Institute (NCI) and 32 CFR 199.4(e)(26), TRICARE currently covers NCI sponsored clinical trials related to cancer prevention, screening, and early detection. The intent of these statutory and regulatory provisions is to expand TRICARE beneficiary access to new treatments and to contribute to the development of such treatments.

This rule, pursuant to the agreement with the NIH, temporarily amends the TRICARE regulation to authorize coverage of cost-sharing for medical care and testing of TRICARE-eligible patients who participate in Phase I, II, III, or IV clinical trials examining the treatment or prevention of COVID–19 that are sponsored by NIAID, enforcing the provisions within the agreement between DoD and NIH. Additionally, this change establishes requirements for TRICARE cost-sharing care related to NIAID-sponsored COVID–19 clinical trials; these new requirements mirror the existing requirements set forth in 32 CFR 199.4(e)(26)(ii)(B) for coverage of cancer clinical trials. This amendment supports statutory intent by encouraging participation of TRICARE beneficiaries in clinical trials studying the prevention or treatment of COVID–19 and contributing to the development of treatments, including vaccines, for COVID–19.

- *Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic. RIN 0720–AB85*

This interim final rule will temporarily amend the TRICARE regulation at 32 CFR part 199 by: (1) Adding freestanding End Stage Renal Disease facilities as a category of TRICARE-authorized institutional provider and modifying the reimbursement for such facilities; (2) adding coronavirus 2019 (COVID–19) Immunizers who are not otherwise an eligible TRICARE-authorized provider as providers eligible for reimbursement for COVID–19 vaccines and vaccine administration; (3) and adopting Medicare New COVID–19 Treatments Add-on Payments (NTCAPs).

Maximizing the Use of American-Made Goods (DFARS Case 2019–D045). RIN: 0750–AK85

This rule supports Executive Order 14005, ''Ensuring the Future is Made in All of America by All of America's Workers,'' January 25, 2021, that builds upon a previous Executive Order 13881, Maximizing Use of American-Made Goods, Products, and Materials,'' July 15, 2019. The rule implements Executive Order 13881 which requires an amendment to the FAR to provide that materials shall be considered of foreign origin if: (a) For iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products; or (b) for all other end products, the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the products used in such end products. The FAR changes were accomplished under FAR Case 2019–016, published in the **Federal Register** at 86 FR 6180.

In addition, the Executive Order 13881 provides that in determining price reasonableness, the evaluation factors of 20 percent (for other than small businesses), or 30 percent (for small businesses) shall be applied to offers of materials of foreign origin. The DFARS currently applies a 50 percent factor and requires no additional revisions. This DFARS rule makes conforming changes as a result of implementation of the Executive Order in the FAR.

Rules That Support Underserved Communities and Improve Small Business Opportunities

Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' January 20, 2021

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 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.

Reauthorization and Improvement of Mentor-Protégé Program (DFARS Case 2020–D009). RIN: 0750–AK96

This rule implements section 872 of the National Defense Authorization Act for Fiscal Year 2020. Section 872 reauthorizes and modifies the DoD Mentor-Protégé Program. The purpose of the Program is to provide incentives for DoD contractors to assist eligible small businesses (protégés) in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts. Under this program, protégés expand their footprint in the defense industrial base by partnering with larger companies (mentors). As a result of this rule, the date by which new mentor-protégé agreements may be submitted and approved is extended to September 30, 2024. In addition, mentors incurring costs prior to September 30, 2026, may

be eligible for certain credits and reimbursements. Per the statute, this rule also establishes additional performance goals and outcome-based metrics to measure progress in meeting those goals.

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 are particularly relevant in light of Executive Order 14035, ''Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.

Rules That Support National Security Efforts

Department of Defense (DoD)—Defense Industrial Base (DIB) Cybersecurity (CS) Activities. RIN: 0790–AK86

This rule will amend the DoD—Defense Industrial Base (DIB) Cybersecurity (CS) activities regulation. It will allow a broader community of defense contractors access to relevant cyber threat information that is critical in defending unclassified networks and information systems and protecting DoD warfighting capabilities. These amendments seek to address the increasing cyber threat targeting all defense contractors including those in the vulnerable supply chain by expanding eligibility to defense contractors that process, store, develop, or transmit DoD Controlled Unclassified Information (CUI). These steps align with the Administration's efforts to provide defense contractors with critical and real-time cybersecurity resources needed to safeguard DoD CUI.

Rules That Support the Climate Change Emergency

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. 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.

Credit Assistance for Water Resources Infrastructure Projects. RIN: 0710–AB31

The USACE proposes to implement a new credit 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 2021. WIFIA authorizes the USACE 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 USACE' 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 would be evaluated and selected by the Secretary of the Army (the Secretary), based on the requirements and the criteria described in this rule.

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, including by broadening the project purposes for which the USACE could reduce the non-Federal cost-share on this basis.

Revised Definition of ''Waters of the United States''—Rule 1. RIN: 0710–AB40

In April 2020, the EPA, and the Department of the Army (''the agencies'') published the Navigable Waters Protection Rule (NWPR) that revised the previously codified definition of ''waters of the United States'' (85 FR 22250, April 21, 2020). The agencies are now initiating this new rulemaking process that restores the regulations (51 FR 41206) in place prior to the 2015 ''Clean Water Rule: Definition of 'Waters of the United States' '' (80 FR 37054, June 29, 2015), updated to be consistent with relevant Supreme Court decisions. The agencies intend to consider further revisions in a second rule in light of additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

Revised Definition of ''Waters of the United States''—Rule 2. RIN: 0710–AB47

The Department of the Army and the Environmental Protection Agency intend to pursue a second rule defining ''Waters of the United States'' to consider further revisions to the agencies' first rule (RIN 0710–AB40) which proposes to restore the regulations in place prior to the 2015 ''Clean Water Rule: Definition of 'Waters

of the United States' '' (80 FR 37054, June 29, 2015), updated to be consistent with relevant Supreme Court Decisions. This second rule proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

Rules Promoting Access to Voting

Federal Voting Assistant Program (FVAP). RIN: 0790–AK90

DOD is finalizing an interim final rule for its Federal Voting Assistance Program (FVAP). The FVAP assists overseas service members and other overseas citizens with exercising their voting rights by serving as a critical resource to successfully register to vote. On March 7, 2021, the White House released Executive Order 14019 on Promoting Access to Voting. The purpose of the Executive Order is to protect and promote the exercise of the right to vote, eliminate discrimination and other barriers to voting, expand access to voter registration and accurate election information, and ensure registering to vote and the act of voting be made simple and easy for all those eligible to do so. To accomplish this purpose, with this final rule DoD is doing the following:

- Maximizing voter awareness of Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) eligibility and resources by providing better coordination with the Federal Government's voting assistance services to improve voter accessibility and communication.
- Requiring DoD components to establish component-wide programs to communicate and disseminate voting information, with the goal of improving communication and clarity for the impacted population.
- Requiring federal agencies to enter into memorandums of understanding (MOU) with the DoD to provide accurate, nonpartisan voting information and assistance to ensure military and overseas voters understand their voting rights, how to register and apply for an absentee ballot, and how to return their absentee ballot successfully.
- Promoting opportunities to register to vote and participate in elections to include civilians working for the Department who vote locally.
- Distributing voter information and use of *vote.gov* in conjunction with *fvap.gov* website and current communications to support a comprehensive approach to voter awareness.
- Creating innovative solutions to reduce barriers and increase voter awareness of their status in the Uniformed and Overseas Citizens Absentee Voting Act absentee voting process, including increased visibility of overseas ballots.
- Developing materials to support absentee voting by military and overseas U.S. citizens with limited English proficiency.

Federal Register Requests for Information (RFIs)

In support of Executive Orders 14017, ''America's Supply Chains,'' 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, and 14036, Promoting Competition in the American Economy,'' DoD published a RFI on September 8, 2021, titled ''Notice of Request for Comments on Barriers Facing Small Businesses in Contracting with the Department of Defense.'' The participation of dynamic, resilient, and innovative small businesses in the defense industrial base is critical to the United States' efforts to maintain its technological superiority, military readiness, and warfighting advantage. In furtherance of its efforts to maximize opportunities for small businesses to contribute to national security, the DoD sought public input on the barriers that small businesses face in working with the DoD.

Additionally, in support of Executive Order 14017, ''America's Supply Chains,'' DoD published an RFI on September 28, 2021, titled ''Federal Register Notice of Request for Written Comments in Support of the Department of Defense's One-Year Response to Executive Order 14017, ''America's Supply Chains.'' The Executive Order directs six Federal agencies to conduct a review of their respective industrial bases, with the objective to use this assessment to secure and strengthen America's supply chains. One of these directives is for the Secretary of Defense, in consultation with the heads of appropriate agencies, to submit a report on supply chains for the defense industrial base, including key vulnerabilities and potential courses of action to strengthen the defense industrial base. The effort will build on the Executive Order. report, Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States (released October 2018) and the Annual Industrial Capabilities Report, which is mandated by the Congress.

DOD—OFFICE OF THE SECRETARY (OS)

Proposed Rule Stage

16. Department of Defense (DOD)—Defense Industrial Base (DIB) Cybersecurity (CS) Activities

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 is currently only permitted to provide cyber threat information to cleared defense contractors, per the Program eligibility requirements within 32 CFR part 236. However, this proposed revision to the Federal rule would allow all defense contractors who process, store, develop, or transit DoD CUI to be eligible to participate and begin receiving critical cyber threat information. Expanding participation in the DIB CS Program is part of DoD's comprehensive approach to collaborate with the DIB to counter cyber threats through information sharing between the Government and DIB participants. The expanded eligibility criteria will allow a broader community of defense contractors to participate in the DIB CS Program, in alignment with the National Defense Strategy.

Statement of Need: Unauthorized access and compromise of DoD unclassified information and operations poses an imminent threat to U.S. national security and economic security interests. Defense contractors with this information 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. 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 the cyber threat. To participate in the DIB CS Program, DoD contractors must have or obtain a DoD-approved, medium assurance certificate to enable access to a secure DoD unclassified web portal. Cost of the DoD-approved medium assurance certificate is approximately $175 for each individual identified by the DoD contractor. See *https://public.cyber.mil/eca/* for more information about DoD-approved certificates.

Contractors are encouraged to voluntarily report information to promote sharing of cyber threat indicators that they believe are valuable in alerting the Government and others, as appropriate, in order to better counter cyber threat actor activity. This cyber information may be of interest to the DIB and DoD for situational awareness and does not include mandatory cyber incident reporting included under DFARS 252.204–7012.

The costs are under review.

Risks: Cyber threats to DIB unclassified information systems represent an unacceptable risk of compromise of DoD information and mission and pose an imminent threat to U.S. national security and economic security interests. This threat is particularly acute for those small and medium size companies with less mature cybersecurity capabilities. The combination of mandatory cyber activities under DFARS 252.204–7012, combined with the voluntary participation in the DIB CS Program, will enhance and supplement DoD contractors capabilities to safeguard DoD information that resides on, or transits, DoD contractors unclassified network or information systems. 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	06/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Agency Contact: Kevin Dulany, Director, Cybersecurity Policy and Partnerships CIO, Department of Defense, Office of the Secretary, 4800 Mark Center, Alexandria, VA 22311, *Phone:* 571 372–4699, *Email: kevin.m.dulany.civ@mail.mil.*

RIN: 0790–AK86

DOD—OS

Final Rule Stage

17. Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DOD

Priority: Other Significant.

Legal Authority: Pub. L. 100–259; Pub. L. 102–569; 29 U.S.C. 791 to 794d; 42 U.S.C. ch. 51 and 126; E.O. 12250

CFR Citation: 32 CFR 56.

Legal Deadline: None.

Abstract: The Department of Defense (DoD) is amending its regulation prohibiting unlawful discrimination on the basis of disability in programs or activities receiving Federal financial assistance from, or conducted by, DoD. These revisions will update and clarify the obligations that section 504 of the Rehabilitation Act of 1973, as amended, imposes on recipients of Federal financial assistance and DoD Components, and the obligations that the Architectural Barriers Act imposes on DoD Components. The updates will also clarify the procedures for resolving complaints regarding information and communication technology accessible to and usable by individuals with disabilities in accordance with section 508 of the Rehabilitation Act, as amended. This rule promotes the Biden Administration's priorities on diversity, equity, and inclusion.

Statement of Need: Finalization of this Department-wide rule will clarify the longstanding policy of the Department. It does not change 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 is particularly relevant in light of Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.*

Summary of Legal Basis: This rule is proposed 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. Title 28, Code of Federal Regulations, part 41 implementing Executive Order 12250, which assigns the DOJ responsibility to coordinate implementation of section 504 of the Rehabilitation Act.

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: Because OMB originally determined this rule to not be a significant regulatory action, a cost and benefit analysis has not yet been completed.

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	06/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: The full title of the rule is ''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, and Procedures for Resolving Complaints.'' That title is too long to include above, so I am including it here.

DoD Instruction 1020.dd (''Unlawful Discrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance from, or Conducted by, the DoD'') will be codified as a rule under 32 CFR part 56. The rule was originally reported as being codified under 32 CFR part 195.

Agency Contact: Randy Cooper, Director, Department of Defense Disability EEO Policy and Compliance, Department of Defense, Office of the Secretary, 4000 Defense Pentagon, Room 5D641, Washington, DC 20301–4000, *Phone:* 703 571–9327, *Email: randy.d.cooper3.civ@mail.mil.*

RIN: 0790–AJ04

DOD—OS

18. Federal Voting Assistance Program

Priority: Other Significant.

Legal Authority: E.O. 12642; 10 U.S.C. 1566a; 52 U.S.C. 20506; 52 U.S.C. ch. 203

CFR Citation: 32 CFR 233.

Legal Deadline: None.

Abstract: The FVAP assists overseas service members and other overseas citizens with exercising their voting rights by serving as a critical resource to successfully register to vote. It requires Federal agencies to enter into Memorandums of Understanding with the DoD to provide accurate, nonpartisan voting information and assistance to ensure military and overseas voters understand their voting rights, how to register and apply for an absentee ballot, and how to return their absentee ballot successfully.

Statement of Need: This rule establishes policy and assigns responsibilities for the Federal Voting Assistance Program (FVAP). It establishes policy and assigns responsibilities for the development and implementation of installation voter assistance (IVA) offices as voter registration agencies. This part establishes policy to develop and implement, jointly with States, procedures for persons to apply to register to vote at recruitment offices of the Military Services.

Summary of Legal Basis: This rule is proposed under the authorities of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. chapter 203, on behalf of the Secretary of Defense, as the Presidential designee under 53 U.S.C. 20301(a). See Executive Order No. 12642, Designation of Secretary of Defense as Presidential Designee, 53 FR 21975 (June 8, 1988) and Executive Order 14019, Promoting Access to Voting.

Alternatives: No Action—If DoD took no action, decreases in successful voting by voters covered by the Uniformed and Overseas Citizens Absentee Voting Act could occur.

Voters who received assistance from FVAP or Voting Assistance Officers were significantly more likely to submit a ballot than if they did not receive that assistance a consistent finding across the last four General Elections. The impacted public, without coordinated FVAP voter assistance, could experience confusion with the voting registration process, and may endure inefficient FVAP assistance leading up to, and on Election Day. With no purposeful effort to streamline these regulations, there is a dire possibility that absentee voter ballots will not be sent and received in time to be counted. DoD, as the presidential designee agency, pursuant to Executive Order 12642, shoulders the responsibility and desire to resolve known issues, better communicate with the public, and provide a seamless and uniform voting assistance framework for the public populations overseas.

Anticipated Cost and Benefits: This amendment of the current policies seeks to establish uniform framework within DoD on how to interact and disseminate communications with the impacted public populations overseas. The changes outlined in this rule improve the transparency and effectiveness of communication to the general public, absent overseas voters, Service member spouse and dependents, and eligible voters who seek to register to vote on Military Service installations. This includes maximizing awareness of voter UOCAVA eligibility, and providing resources to the impacted public populations. These changes will maximize voting assistance effectiveness and outcomes, address known concerns impacting the public, ahead of upcoming election cycles.

While the Department estimates that the public will not incur any costs as a result of this rule, the public may receive better voter assistance since DoD will improve the Government's coordination to provide voter assistance to absent uniformed service voters and overseas voters and support the government's efforts to implement a comprehensive program to cover all executive branch agencies and overseas citizens more broadly.

Risks: This rule seeks to increase the likelihood of voters protected under UOCAVA and military voting assistance laws to receive and return absentee ballots. It enables FVAP to provide assistance and information to military and overseas American voters in an effective manner based on surveys, research and historical after action reports.

Should FVAP become unable to foster voter awareness through the States and voter assistance programs, the Department of Defense will become less effective to meet military and civilian voter assistance requirements, thus increasing the possible risk of absentee ballot rejections during federal election cycles. This may bring unwanted stakeholder and Congressional scrutiny. FVAP would cease to provide active engagement mechanisms to elicit input and offer recommendations to improve levels of voter success and effectiveness for State absentee balloting processes for absent overseas uniformed voters and citizens.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/20	85 FR 13045
Interim Final Rule Effective.	03/06/20	
Interim Final Rule Comment Period End.	04/06/20	
Final Action	11/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: David Beirne, Director, DODHRA FVAP, Department of Defense, Office of the Secretary, 48 Mark Center Drive, Alexandria, VA 22408, *Phone:* 571 372–0740, *Email: david.e.beirne.civ@mail.mil.*

RIN: 0790–AK90

DOD—DEFENSE ACQUISITION REGULATIONS COUNCIL (DARC)

Proposed Rule Stage

19. Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043)

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303

CFR Citation: 48 CFR 227; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is proposing 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) 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/STTR program. 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 R&D 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 an awardee'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	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Agency Contact: Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6100, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK84

DOD—DARC

20. Reauthorization and Improvement of Mentor-Protege Program (DFARS Case 2020–D009)

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303; Pub. L. 116–92, sec. 872

CFR Citation: 48 CFR, ch. 2, app. I.

Legal Deadline: None.

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 872 of the National Defense Authorization Act for Fiscal Year 2020, which reauthorizes and improves the DoD Mentor-Protege Program.

Statement of Need: This rule is necessary to amend the DFARS to implement the reauthorization of and amendments to the Mentor Protégé Program provided by section 872 of the National Defense authorization act (NDAA) of Fiscal Year (FY) 2020.

Summary of Legal Basis: The legal basis for this rule is section 872 of the NDAA for FY 2020 (Pub. L. 116–92).

Alternatives: There are no alternatives that would meet the requirements of the statute.

Anticipated Cost and Benefits: This rule is expected to be of significant benefit to small businesses accepted as protégés under the program, as well as the firms that mentor such small businesses, by bringing more small businesses into DoD's supply chain. DoD's Mentor-Protégé Program is the oldest continuously operating Federal mentor-protégé program in existence. DoD's Mentor-Protégé Program has successfully helped more than 190 small businesses fill unique niches and become part of the military's supply chain. Many mentors have made the Program an integral part of their sourcing plans. Protégés have used their involvement in the Program to develop technical capabilities. Successful mentor-protégé agreements provide a winning relationship for the protégé, the mentor, and DoD.

Risks: Failure to implement section 872 and extend DoD's Mentor-Protégé Program would significantly inhibit the Department's ability to provide incentives for DoD contractors to assist small businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Agency Contact: Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6100, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK96

DOD—DARC

Final Rule Stage

21. Maximizing the Use of American-Made Goods (DFARS Case 2019–D045)

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 to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Executive Order 13881, Maximizing Use of American-Made Goods, Products, and Materials. Executive Order 13881 requires an amendment to the Federal Acquisition Regulation (FAR) to provide that materials shall be considered of foreign origin if: (a) For iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products; or (b) for all other end products, the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the products used in such end products. The FAR changes were accomplished under FAR Case 2019–016, published in the **Federal Register** at 86 FR 6180. This DFARS rule will make conforming changes to the DFARS.

Statement of Need: This rule is needed to implement Executive Order 13881, Maximizing Use of American-Made Goods, Products, and Materials, dated July 15, 2019, which requires an amendment to the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) to provide that under the Buy American statute, materials shall be considered of foreign origin if—

(A) For iron and steel products, the cost of foreign iron and steel used in such iron and steel products constitutes 5 percent or more of the cost of all the product's domestic content; or

(B) For all other products, the cost of the foreign components used in such

products constitutes 45 percent or more of the cost of all the product's domestic content.

In addition, the Executive order provides that in determining price reasonableness, the evaluation factors of 20 percent (for other than small businesses), or 30 percent (for small businesses) shall be applied to offers of materials of foreign origin. The DFARS applies a 50 percent factor and requires no additional revisions. This rule makes conforming changes to the applicable clauses as a result of implementation of the Executive order requirements in the FAR.

Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and Executive Order 13881, Maximizing Use of American-Made Goods, Products, and Materials, dated July 15, 2019.

Alternatives: There are no alternatives that would meet the requirements of Executive Order 13881.

Anticipated Cost and Benefits: This rule increases the percentages for use in the domestic content test applied to offers of products and materials to determine domestic or foreign origin. The rule will strengthen domestic preferences under the Buy American statute and provide both large and small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit large and small U.S. manufacturers, including those of iron or steel.

Risks: N/A.

Timetable:

Action	Date	FR Cite
NPRM	08/30/21	86 FR 48370
NPRM Comment Period End.	10/29/21	
Final Action	02/00/22	

Regulatory Flexibility Analysis Required: No.

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: Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6100, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK85

DOD—U.S. ARMY CORPS OF ENGINEERS (COE)

Proposed Rule Stage

22. Policy and Procedures for Processing Requests To Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408

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.

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, there may be a need for others outside of the Corps to alter or occupy these projects and their 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 has legal authority over the section 408 program under 33 U.S.C. 408.

Alternatives: The preferred alternative would be 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 across the Corps program.

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 when evaluating requests for section 408 permissions. The Corps will comply with all statutory requirements when reviewing requests.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

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

23. Credit Assistance for Water Resources Infrastructure Projects

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) proposes to implement a new credit 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 would 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 USACE 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 USACE WIFIA program was authorized under Subtitle C of Title V of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), which authorizes USACE 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 USACE to charge fees to recover all or a portion of USACE's 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 USACE 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.

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 proposed rule would add 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 would 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.

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 loan program. The Corps will comply with all statutory requirements when reviewing requests.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

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

24. Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

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, including by broadening its applicability by including projects with other purposes (instead of just flood damage reduction) and by including the feasibility study of a project (instead of just design and construction).

Statement of Need: The Corps may conduct a rulemaking to propose amendments to the Corps' regulations at 33 CFR part 241 for Corps projects. The WRDA 2000 modified Section 103(m) to also include the following mission areas: 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 in addition to the already covered design and construction. This rule would provide a framework for deciding which projects are 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 would be 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 increase risk to public health, safety, or the environment because it outlines 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	03/00/22	

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

25. Revised Definition of ''Waters of the United States''—Rule 1

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 1344

CFR Citation: 33 CFR 328.

Legal Deadline: None.

Abstract: In April 2020, the EPA and the Department of the Army (''the agencies'') published the Navigable Waters Protection Rule (NWPR) that revised the previously codified definition of ''waters of the United States'' (85 FR 22250, April 21, 2020). The agencies are now initiating this new rulemaking process that restores the regulations (51 FR 41206) in place prior to the 2015 ''Clean Water Rule: Definition of 'Waters of the United States'' (80 FR 37054, June 29, 2015), updated to be consistent with relevant Supreme Court decisions. The agencies intend to consider further revisions in a second rule in light of additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

Statement of Need: In 2015, the Environmental Protection Agency and the Department of the Army (''the agencies'') published the ''Clean Water Rule: Definition of 'Waters of the United States (80 FR 37054, June 29, 2015).'' In April 2020, the agencies published the Navigable Waters Protection Rule (85 FR 22250, April 21, 2020). The agencies conducted a substantive re-evaluation of the definition of ''waters of the United States'' in accordance with the Executive Order 13990 and determined that they need to revise the definition to ensure the agencies listen to the science, protect the environment, ensure access to clean water, consider how climate change resiliency may be affected by the definition of waters of the United States, and to ensure environmental justice is prioritized in the rulemaking process.

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
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Federalism: Undetermined.

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RIN: 0710–AB40

DOD—COE

26. • Revised Definition of ''Waters of the United States''—Rule 2 (Reg Plan Seq No. XX)

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 1344

CFR Citation: 33 CFR 328.

Legal Deadline: None.

Abstract: The Department of the Army and the Environmental Protection Agency intend to pursue a second rule defining ''Waters of the United States'' to consider further revisions to the agencies' first rule (RIN 0710–AB40) which proposes to restore the regulations in place prior to the 2015 waters of the United States rule (51 FR 41206), updated to be consistent with relevant Supreme Court Decisions. This second rule proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

Statement of Need: In 2015, the Environmental Protection Agency and the Department of the Army (''the agencies'') published the ''Clean Water Rule: Definition of 'Waters of the United States (80 FR 37054, June 29, 2015).'' In April 2020, the agencies published the Navigable Waters Protection Rule (85 FR 22250, April 21, 2020). The agencies conducted a substantive re-evaluation of the definition of ''waters of the United States'' in accordance with the Executive Order 13990 and determined that they need to revise the definition to ensure the agencies listen to the science, protect the environment, ensure access to clean water, consider how climate change resiliency may be affected by the definition of waters of the United States, and to ensure environmental justice is prioritized in the rulemaking process.

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
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

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RIN: 0710–AB47

DOD—OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS (DODOASHA)

Final Rule Stage

27. Tricare Coverage and Payment for Certain Services in Response to the Covid–19 Pandemic

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 that temporarily amended 32 CFR part 199 to revise: (1) 32 CFR part 199.4 to remove the restriction on audio-only telemedicine services; (2) 32 CFR part 199.6 to authorize reimbursement for interstate practice by TRICARE-authorized providers when such authority is consistent with State and Federal licensing requirements; and (3) 32 CFR part 199.17 to eliminate copayments for telemedicine services. The changes in this rule are effective from the date published through the end of the coronavirus 2019 (COVID–19) pandemic. These changes reduce the spread of COVID–19 among TRICARE beneficiaries by incentivizing use of telemedicine services, and aid providers in caring for TRICARE beneficiaries by temporarily waiving some licensure requirements.

The final rule adopts this interim final rule as final with changes.

Statement of Need: Pursuant to the President's health emergency declaration and as a result of the worldwide coronavirus 2019 (COVID–19) pandemic, the Assistant Secretary of Defense for Health Affairs hereby modifies the following regulations, but in each case, only to the extent necessary, as determined by the Director, Defense Health Agency, to encourage social distancing and prevent the spread of COVID–19 by incentivizing the use of telehealth services, and to allow TRICARE-authorized providers to care for TRICARE beneficiaries wherever there is need as a result of the consequences of the COVID–19 pandemic.

The modifications to section 199.4(g)(52) in this interim final rule (IFR) will allow TRICARE beneficiaries to obtain telephonic office visits with TRICARE-authorized providers for medically necessary care and treatment and allow reimbursement to those providers during the COVID–19 pandemic. It provides an exception to the regulatory exclusion prohibiting audio-only telephone services.

The modifications to section 199.6(c)(2)(i) in this IFR will allow providers to be reimbursed for interstate practice, both in person and via telehealth, during the global pandemic so long as the provider meets the requirements for practicing in that State or under Federal law. It removes the requirement that the provider must be licensed in the State where practicing, even if that license is optional. For providers overseas, this will allow providers, both in person and via telehealth, to practice outside of the nation where licensed when permitted by the host nation.

The modifications to section 199.17(l)(3) will remove cost-shares and copayments for telehealth services for TRICARE Prime and Select beneficiaries utilizing telehealth services with an in-network, TRICARE-authorized provider during the global pandemic. It adds in-network telehealth services as a special cost-sharing rule to waive the beneficiary copay.

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) Only apply the regulatory modifications to COVID–19-related diagnoses. This was rejected because the effects of the COVID–19 pandemic are causing stress on the entire health care system. The regulatory modifications in this IFR will take the pressure off of the health care system by: (1) Covering telephone appointments with a TRICARE-authorized provider and thereby supporting social distancing recommendations; (2) covering TRICARE-authorized providers practicing across state lines, thereby increasing the overall access to medical care and treatment; and (3) waiving all copayments for in-network telehealth services, thereby removing the potential cost barrier to obtaining medical services remotely and inducing demand for these services, reducing potential person-to-person transmission of COVID–19 during medical appointments.

Anticipated Cost and Benefits: Health Care Costs Associated with Removing Copays for Telehealth.

There are three factors that would increase Department of Defense (DoD) health care costs due to this rule. First, the government would lose cost-sharing revenue paid by beneficiaries on the existing level of telehealth visits. Second, there would be induced demand costs, as removal of patient costs will increase patient demand for these services. Finally, there would be a substitution effect, as the COVID–19 pandemic and removal of telehealth cost-shares would encourage a shift from in-person visits, for which beneficiaries would pay a copay, to telehealth visits, which would be free to beneficiaries.

The below provides a summary of the combined government health care and administrative costs of the IFR.

SUMMARY OF GOVERNMENT COSTS OF THE PROPOSED COVID–19 TELEHEALTH IFR

Government Healthcare Cost (HC)	3-Month scenario	6-Month scenario	9-Month scenario
Loss of copays on existing telehealth	$156,949	$313,897	$470,846
Induced demand	117,772	235,544	353,316
Loss of copays on in-person shifting to Telehealth	26,673,895	48,611,002	65,459,795
Subtotal, Government HC cost	26,948,616	49,160,443	66,283,957
Start-up administrative cost	67,494	67,494	67,494
Total Government Cost increase	27,016,110	49,227,937	66,351,451

Beneficiary Cost Impact

There are two types of savings for beneficiaries estimated here. First, beneficiaries would avoid the cost-sharing they otherwise would have paid on existing telehealth visits and on in-person visits that would shift to telehealth. It is estimated the cost-sharing savings to beneficiaries would be: $26,830,844 for a three-month scenario; $48,924,899 for a six-month scenario; and $65,930,641 for a nine-

month scenario. Second, for the share of historical visits that is estimated would shift from in-person to telehealth, beneficiaries would avoid travel time and time spent in the provider's waiting room. Two parameters were considered in developing the estimate of the value of time saved for TRICARE beneficiaries: (1) The average amount of time saved per visit, and (2) a monetized estimate of the value of the time saved, based on the opportunity cost of that time. See the below table Estimated Value to Beneficiaries for the combined results of avoided cost-sharing and dollar value of saved time.

ESTIMATED VALUE TO BENEFICIARIES

	3-Month scenario	6-Month scenario	9-Month scenario
Avoided cost-sharing	$26,830,844	$48,924,899	$65,930,641
Dollar value of time saved	17,085,995	31,089,668	41,384,466
Total estimated value to beneficiaries	43,916,839	80,014,567	107,315,107

An important value to beneficiaries that is not feasible to estimate but worth noting is the possibility that shifting visits from in-person to telehealth might reduce the risk of COVID–19 exposure, with all the potential benefits that could accompany that reduced exposure risk. This reduced risk of COVID–19 exposure may also result in downstream reductions in cost to the TRICARE Program in avoided COVID–19 diagnostics and treatment.

Risks: None. This rule will promote the efficient functioning of the economy and markets by temporarily modifying regulations to ensure that actors in the health care market (primarily health care providers) will continue to be reimbursed despite disruption in the health care ecosystem by the COVID–19 pandemic. Reimbursing providers despite changing licensing requirements and in ways that recognize the critical role telehealth will play in the coming months ensures that TRICARE supports not just its beneficiaries, but the economy in general.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/12/20	85 FR 27921
Interim Final Rule Effective.	05/12/20	
Interim Final Rule Comment Period End.	06/11/20	
Final Action	02/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

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RIN: 0720–AB81

DOD—DODOASHA

28. Tricare Coverage of Certain Medical Benefits in Response to the Covid–19 Pandemic

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 that temporarily amended 32 CFR part 199 to revise certain elements of the TRICARE program under 32 CFR part 199 to: (1) Waive the three-day prior hospital qualifying stay requirement for coverage of skilled nursing facility care; (2) add coverage for treatment use of investigational drugs under expanded access authorized by the United States (U.S.) Food and Drug Administration (FDA) when for the treatment of coronavirus disease 2019 (COVID–19); (3) waive certain provisions for acute care hospitals that permitted authorization of temporary hospital facilities and freestanding ambulatory surgical centers providing inpatient and outpatient hospital services; and, consistent with similar changes under the Centers for Medicaid and Medicare Services; (4) revise diagnosis related group (DRG) reimbursement by temporarily reimbursing DRGs at a 20 percent higher rate for COVID–19 patients; and (5) waive certain requirements for long term care hospitals. The final action permanently adopts Medicare's New Technology Add-On Payments adjustment to DRGs for new medical services and technologies and adopted Medicare's Hospital Value Based Purchasing Program.

The final rule adopts the interim final rule with changes, except for the note to section 199.4(g)(15)(i)(A), published at 85 FR 54923, September 3, 2020, which remains interim.

Statement of Need: Pursuant to the President's emergency declaration and as a result of the worldwide coronavirus disease 2019 (COVID–19) pandemic, the Assistant Secretary of Defense for Health Affairs is temporarily modifying the following regulations, 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 diagnosis and treatment of COVID–19, and that TRICARE continues to reimburse like Medicare, to the extent practicable, as required by statute.

The modification to paragraph 199.4(b)(3)(xiv) waives the requirement for a minimum three-day prior hospital stay, not including leave day, for coverage of a skilled nursing facility admission. This provision reduces stress on acute care hospitals.

The modification to paragraph 199.4(g)(15) permits cost-sharing of investigational new drugs (INDs). This provision also increases access to emerging therapies.

The modification to paragraph 199.6(b)(4)(i) waives certain provisions for acute care hospitals that will permit authorization of temporary hospital facilities and freestanding ambulatory surgical centers. This provision supports increased access to acute care.

The modifications to paragraph 199.14(a)(1)(iii)(E) increase the diagnosis related group (DRG) amount by 20 percent for an individual diagnosed with COVID–19 and adopt Medicare's New Technology Add-On Payments (NTAPs) and Hospital Value-Based Purchasing (HVBP) Program. These provisions support the requirement that TRICARE reimburse like Medicare. The NTAPs and HVBP Program are adopted permanently.

The modification to paragraph 199.14(a)(9) waives site neutral payment provisions by reimbursing all long-term care hospitals (LTCHs) at the standard federal rate for claims. This provision 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 implementing a more limited benefit change for COVID–19 patients by not covering treatment INDs. While 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: Health Care and Administrative Costs.

The cost estimates related to the changes discussed in this Interim Final Rule (IFR) include incremental health care cost increases as well as administrative costs to the government. The duration of the COVID–19 national emergency and Health and Human Services Public Health Emergency (PHE) are uncertain, resulting in a range of estimates for each provision in this IFR. Cost estimates are provided for an approximate nine-month (ending 12/31/2020) and eighteen-month scenario (ending 9/30/2021). The nine-month and 18-month periods would be longer for those provisions applicable beginning in January of this year, and shorter for those effective the date this IFR publishes. The terms nine-month and 18-month period are used throughout this estimate for the sake of simplicity.

The cost estimates consider whether the outbreak will have more than one active stage. The first active stage is considered to be March through August 2020, based on the Institutes for Health Metrics and Evaluation data as of May 12, 2020 (*https://covid19.healthdata.org/united-states-of-america*). A two-wave scenario would have a second stage in winter/spring 2021, while a three-wave scenario would have additional waves from September 2020 to December 2020 and from January 2021 to June 2021.

Based on these factors, we estimate that the total cost estimate for this IFR will be between $43.6M and $59.4M for a nine-month period, and $66.3M to $82.1M for an 18-month period. This estimate includes just over $1M in administrative start-up costs and no ongoing administrative costs. The primary cost drivers in this analysis are the reimbursement changes being adopted under the statutory requirement that TRICARE reimburse like Medicare; that is, the 20 percent DRG increase for COVID–19 patients, the adoption of NTAPs and HVBP, and the waiver of LTCH site neutral payment reductions.

A breakdown of costs, by provision, is provided in the below table. A discussion of assumptions follows.

Provision	Nine-month scenario	Eighteen-month scenario
Paragraph 199.4(b)(3)(xiv) SNF Three-Day Prior Stay Waiver	$0.3M	$0.6M
Paragraph 199.4(g)(15)(A) INDs for COVID–19	0.7M–2.2M	2.7M–4.2M
Paragraph 199.6(b)(4)(i) Temporary Hospitals and Freestanding ASCs Registering as Hospitals	0M	0M
Paragraph 199.14(a)(1)(iii)(E)(2) 20 Percent DRG Increase for COVID–19 Patients	27.7M–42M	37.1M–51.4M
Paragraph 199.14(a)(1)(iii)(E)(5) NTAPs	5.7M	11.6M
Paragraph 199.14(a)(1)(iii)(E)(6) HVBP	2.5M	2.5M
Paragraph 199.14(a)(9) LTCH Site Neutral Payments	5.6M	10.6M
Administrative Costs	1.1M	1.2M
Estimated Total Cost Impact	43.6M–59.4M	66.3M–82.1M

Benefits to the TRICARE Program

Depending on the impact of certain provisions of this IFR, some cost savings could be achieved from a reduction in hospitalization rates (*i.e.,* use of treatment INDs), estimated from no savings to $40M over 18 months. The amount of cost-savings achieved will be determined by the therapies developed, how widespread their usage is, the extent to which the therapies are authorized as treatment INDs, the effectiveness of the therapies in reducing hospitalizations and/or the use of mechanical ventilators, and how long the therapies remain as INDs before transitioning to United States Food and Drug Administration-approval, clearance, or emergency use authorization.

Any benefits achieved in reduced hospitalizations and/or mechanical ventilator use are also benefits to TRICARE beneficiaries, for whom avoidance of more serious COVID–19 illness is of paramount concern. While we cannot estimate the value of this avoidance in quantitative figures, the potential long-term consequences of a serious COVID–19 illness, including permanent cardiac or lung damage, are not insignificant. If beneficiaries are able to access emerging therapies that prevent long-term consequences (including death), this will be a benefit to the beneficiary.

The largest creators of costs under this IFR (reimbursement changes) are not anticipated or intended to create any cost savings. However, these changes will benefit TRICARE institutional providers and take stress off the entire health care system by ensuring adequate reimbursement during the PHE, at a time during which hospitals are losing revenue due to reduced elective procedures and patients who delay care due to fears of contracting COVID–19 during health care encounters. Ensuring a robust health care system is of benefit to our beneficiaries and the general public, particularly in rural or underserved areas, even though this benefit is not quantifiable.

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.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/03/20	85 FR 54915
Interim Final Rule Effective.	09/03/20	
Interim Final Rule Comment Period End.	11/02/20	
Final Action	02/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

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RIN: 0720–AB82

DOD—DODOASHA

29. TRICARE Coverage of National Institute of Allergy and Infectious Disease Coronavirus Disease 2019 Clinical Trials

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 that temporarily amended 32 CFR 199 to revise certain elements of the TRICARE program, to add coverage for National Institute of Allergy and Infectious Disease-sponsored clinical trials for the treatment or prevention of coronavirus disease 2019 (COVID–19).

Statement of Need: 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 modifies 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. 1079 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:

Costs: We estimate the total cost for TRICARE participation in NIAID-sponsored COVID–19 clinical trials will 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 this 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	06/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

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RIN: 0720–AB83

DOD—DODOASHA

30. Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic

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 interim final rule with comment will temporarily amend the TRICARE regulation at 32 CFR part 199 by: (1) Adding freestanding End Stage Renal Disease facilities as a category of TRICARE-authorized institutional provider and modifying the reimbursement for such facilities; (2) adding coronavirus 2019 (COVID–19) Immunizers who are not otherwise an eligible TRICARE-authorized provider as providers eligible for reimbursement for COVID–19 vaccines and vaccine administration; (3) and adopting Medicare New COVID–19 Treatments Add-on Payments (NTCAPs).

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.

The modification to paragraph 199.6(d)(7) adds providers who administer COVID–19 vaccinations, but are not otherwise authorized under 199.6, as TRICARE-authorized providers. This provision increases access to COVID–19 vaccinations. This provision increases access to COVID–19 vaccines for eligible TRICARE beneficiaries and supports the United States (U.S.) public health goal of ending the COVID–19 pandemic.

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: Health Care and Administrative Costs.

The Independent Cost A by Kennell and Associates, Inc., estimates a total of $6.8M. 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. For these temporary changes to the regulation, our cost estimate assumes that the majority of adults in the U.S. will be vaccinated by September 2021, based on the most recent information provided by Federal and state agencies, and, as a result, that the President's emergency declaration and the public health emergency relating to the COVID–19 pandemic will end by September 2021. While this estimate would have the President's emergency declaration end shortly after publication of the rule, the COVID–19 pandemic contains substantial uncertainty including the possibility of a virus variant resistant to current vaccines. As such, we find it appropriate to make these regulatory changes despite the potential short effective period, as the end of the pandemic is by no means a certainty.

Based on these factors, as well as the assumptions for each provision detailed below, we estimate that the total cost estimate for this Interim Final Rule (IFR) will be approximately $6.8M. 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.

A breakdown of costs, by provision, is provided in the below table.

Provision	Costs
Add Freestanding ESRD Facilities as TRICARE-Authorized Institutional Providers and Modify ESRD Reimbursement	$5.3M
Temporarily Authorize Immunizers Providing COVID–19 Vaccines	0.4M
Temporarily Adopt DRG Add-On Payment for NCTAPs	1.1M
Estimated Total Cost Impact	6.8M

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	11/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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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.

Overall, the laws, regulations, and programs that the Department administers will affect nearly every American during his or her life. Indeed, in the 2020–21 school year, about 56 million students attended an estimated 131,000 elementary and secondary schools in approximately 13,600 districts, and about 20 million students were enrolled in postsecondary schools. Many of these students may benefit from some degree of financial assistance or support from the Department.

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, nonprofits, advocacy organizations, businesses, and labor organizations.

If we determine that it is necessary to develop regulations, we 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.

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 first year 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. The rules below cover 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.

These key rulemakings include Public Service Loan Forgiveness, Income Contingent Repayment, Improving Student Loan Cancellation Authorities, Pell Grants for Prison Education Programs, State-Defined Processes for Ability to Benefit, and Civil Rights, such as Title IX Nondiscrimination on the Basis of Sex in Education Program or Activities Receiving Federal Financial Assistance. For example, the Pell Grants for Prison Education Programs rule would support increased educational opportunities for individuals who are incarcerated and provide quality options for individuals in this underserved community. Additionally, the Income Contingent Repayment rule would make student loan payments

more affordable for borrowers, with a particular goal of helping increase educational opportunities for many low-income borrowers. The Department has also dispersed billions of dollars in funding during the COVID–19 pandemic to address inequities exacerbated by the pandemic, which targets resources to historically underserved groups of students and those students most impacted by the pandemic through the American Rescue Plan and other relief efforts.

For rulemakings that we are just beginning now, we have limited information about their potential costs and benefits. We note that some policies that were previously included in the Spring Unified Agenda, such as policies impacting the magnet schools and charter school programs, are still part of the Department's plans but do not require regulation and, therefore, are not included as items in the Fall regulatory agenda or in this regulatory plan. We have also identified the Innovative Assessment Demonstration Authority (IADA) rulemaking as a long-term action because we are waiting for the forthcoming progress report on the initial demonstration authority to inform any potential regulatory proposal.

Postsecondary Education/Federal Student Aid

The Department's upcoming higher education regulatory efforts include the following areas:

- Public Service Loan Forgiveness
- Borrower Defense to Repayment
- Improving Student Loan Cancellation Authorities
- Income Contingent Repayment
- Pell Grants for Prison Education Programs
- Gainful Employment
- 90/10 rule

These areas are focused on several general areas which include improving the rules governing student loan repayment and targeted student loan cancellation authorities and protecting students and taxpayers from poor-performing programs, among other topics. These rulemakings reflect the Department's commitment to serving students and borrowers well and protecting them from harmful programs and practices that may derail their postsecondary and career goals. Through these regulatory efforts, the Department plans to address gaps in postsecondary outcomes, particularly those related to student loan repayment, affordability, and default. The Department is also focused on the disparate impacts by income, race/ethnicity, gender, disability status, and other demographic characteristics that may affect students' postsecondary and career goals. For its higher education rulemakings, generally the Department uses a negotiated rulemaking process. We have selected participants for the negotiated rulemaking committees from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we selected nominees who reflect the diversity among program participants.

Specifically, the Department is currently conducting negotiated rulemaking addressing, among other things, student loan repayment and targeted student loan discharges by improving Public Service Loan Forgiveness, Borrower Defense to Repayment, and other targeted student loan cancellation authorities. On Income Contingent Repayment, the Department plans to create or adjust an income-contingent repayment plan that would allow borrowers to more easily afford their student loan payments. For Public Service Loan Forgiveness, the Department plans to streamline the process for receiving loan forgiveness after 10 years of qualifying payments on qualifying loans while engaging in public service. For Borrower Defense, the Secretary plans to amend the regulations that specify the acts or omissions of an institution of higher education that a borrower may assert as a defense to repayment of a loan made under the Federal Direct Loan Program. In Improving Student Loan Cancellation Authorities, the Department plans to propose improvements in areas where Congress has provided borrowers with relief or benefits related to Federal student loans. This includes authorities granted under the Higher Education Act (HEA) that allow the Department to cancel loans for borrowers who meet certain criteria, such as having a total and permanent disability, attending a school that closed, or having been falsely certified for a student loan. For these borrowers, the Secretary plans to amend the regulations relating to borrower eligibility and streamline application requirements and the application and certification processes. To increase access to educational opportunities, the Department also plans to propose regulations that would guide correctional facilities and eligible institutions of higher education that seek to establish eligibility for the Pell Grant program for individuals who are incarcerated.

The Department also plans to conduct negotiated rulemaking on Gainful Employment and how to determine the amount of Federal educational assistance received by institutions of higher education through implementation of the 90/10 rule. For Gainful Employment, the Department plans to propose regulations on program eligibility under the HEA, including 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. On the 90/10 rule, in response to changes to the HEA made by the American Rescue Plan Act of 2021, the Department plans to amend provisions governing whether proprietary institutions meet requirements that institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

Civil Rights/Title IX

The Secretary is planning a new rulemaking 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.

COVID–19 Regulations

As part of the Biden-Harris Administration's efforts to combat COVID–19, safely reopen and support schools, and implement the American Rescue Plan Act (ARP), the Department has issued: Interim final requirements to promote accountability, transparency, and the effective use of ARP Elementary and Secondary School Emergency Relief

Funds; a request for information regarding implementation of the statutory requirements for ARP's maintenance of equity (a first-of-its-kind requirement to protect schools and districts serving students from low-income backgrounds from harmful budget cuts); final requirements to clarify the requirements applicable to the ARP Emergency Assistance to Non-Public Schools program; amended regulations so that an institution of higher education (IHE) may appropriately determine which individuals currently or previously enrolled at an institution are eligible to receive emergency financial aid grants to students under the Higher Education Emergency Relief programs; and a final rule regarding the allocations to Historically Black Colleges and Universities (HBCUs) awarded under section 314(a)(2) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA).

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)

Proposed Rule Stage

31. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

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 propose to amend 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. We anticipate this rulemaking may include, but would not be limited to, amendments to 34 CFR 106.8 (Designation of coordinator, dissemination of policy, and adoption of grievance procedures), 106.30 (Definitions), 106.44 (Recipient's response to sexual harassment), and 106.45 (Grievance process for formal complaints of sexual harassment).

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: 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
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Anne Hoogstraten, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, Room PCP–6148, Washington, DC 20202, *Phone:* 202 245–7466, *Email: anne.hoogstraten@ed.gov.*

RIN: 1870–AA16

ED—OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT (OPEPD)

Proposed Rule Stage

32. Family Educational Rights and Privacy Act

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	08/00/22	

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)

Prerule Stage

33. Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10)

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c

CFR Citation: 34 CFR 668.28.

Legal Deadline: None.

Abstract: To reflect changes to the HEA made by the American Rescue Plan Act, the Secretary plans to propose to amend the Student Assistance General Provisions (34 CFR 668.28 Non-Title IV revenue) governing whether proprietary institutions meet the requirement in 34 CFR 668.14(b)(16) that institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

Statement of Need: This rulemaking is necessary to reflect changes to the HEA made by the American Rescue Plan Act, governing whether proprietary institutions meet the requirement in 34 CFR 668.14(b)(16) that these institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

Summary of Legal Basis: We are conducting this rulemaking under the following authorities: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, and 1099c.

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.	11/00/21	
NPRM	07/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

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–AD55

ED—OPE

Proposed Rule Stage

34. Borrower Defense

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 20 U.S.C. 1082(a)(5), (a)(6); 20 U.S.C. 1087(a); 20 U.S.C. 1087e(h); 20 U.S.C. 1221e–3; 20 U.S.C. 1226a–1; 20 U.S.C. 1234(a); 31 U.S.C. 3711

CFR Citation: 34 CFR 30; 34 CFR 668; 34 CFR 674; 34 CFR 682; 34 CFR 685; 34 CFR 686.

Legal Deadline: None.

Abstract: The Secretary proposes to amend regulations that determine what acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under the Federal Direct Loan and Federal Family Education Loan Programs and specify the consequences of such borrower defenses for borrowers, institutions, and the Secretary. Further, the Secretary intends to review the use of class-action lawsuits and pre-dispute arbitration agreements for matters pertaining to borrower defense claims by schools receiving Title IV assistance under the Higher Education Act.

Statement of Need: This rulemaking is necessary to determine what acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under the Federal Direct Loan Program and specify the consequences of such borrower defenses for borrowers, institutions, and the Secretary.

Summary of Legal Basis: We are conducting this rulemaking under the following authorities: 20 U.S.C. 1082(a)(5), (a)(6); 20 U.S.C.1087(a); 20 U.S.C. 1087e(h); 20 U.S.C. 1221e–3; 20 U.S.C. 1226a–1; 20 U.S.C. 1234(a); and 31 U.S.C. 3711.

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	05/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Jennifer Hong, Director, Policy Coordination Group, Department of Education, 400 Maryland Avenue SW, Room 287–23, Washington, DC 20202, *Phone:* 202 453–7805, *Email: jennifer.hong@ed.gov.*

RIN: 1840–AD53

ED—OPE

35. Pell Grants for Prison Education Programs

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 20 U.S.C. 1001–1002; 20 U.S.C. 1070a, 1070a–1, 1070b, 1070c–1, 1070c–2, 1070g; 20 U.S.C. 1085, 1087aa–1087hh, 1088, 1091; 1094; 1099b, and 1099c; 42 U.S.C. 2753

CFR Citation: 34 CFR 600.20; 34 CFR 600.21; 34 CFR 668.8.

Legal Deadline: None.

Abstract: The Consolidated Appropriation Act, 2021 defines prison education programs for purposes of Pell Grant eligibility. The Department plans to propose regulations that would guide correctional facilities and eligible institutions of higher education that seek to establish eligibility for the Pell Grant program.

Statement of Need: These regulations are necessary to increase access to educational opportunities for individuals who are incarcerated because research demonstrates that high-quality prison education programs increase the knowledge and skills necessary to obtain high-quality and stable employment.

Summary of Legal Basis: These regulations are being issued under the following authorities: 20 U.S.C. 1001–1002; 20 U.S.C. 1070a, 1070a–1, 1070b, 1070c–1, 1070c–2, 1070g; 20 U.S.C. 1085, 1087aa–1087hh, 1088, 1091; 1094; 1099b, and 1099c; and 42 U.S.C. 2753.

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	05/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Aaron Washington, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 294–12, Washington, DC 20202, *Phone:* 202 453–7241, *Email: aaron.washington@ed.gov*.

RIN: 1840–AD54

ED—OPE

36. Gainful Employment

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

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 plans to propose to amend 34 CFR parts 668 and 600 on institution and program eligibility under the HEA, including regulations that determine whether postsecondary educational programs prepare students for gainful employment in recognized occupations, and the conditions under which institutions and programs remain eligible for student financial assistance programs under Title IV of the 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	07/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

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–AD57

ED—OPE

37. Improving Student Loan Cancellation Authorities

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 20 U.S.C. 1087; 20 U.S.C. 1087e; 20 U.S.C. 1087dd

CFR Citation: 34 CFR 674; 34 CFR 682; 34 CFR 685.

Legal Deadline: None.

Abstract: The Department plans to propose improvements in areas where Congress has provided borrowers with relief or benefits related to Federal student loans. This includes authorities granted under the HEA that allow the Department to cancel loans for borrowers who meet certain criteria, such as: (a) Being totally and permanently disabled; (b) attending a school that recently closed; or (c) having been falsely certified as able to benefit from a program despite not having a high school diploma or its recognized equivalent. For these borrowers, the Secretary plans to amend regulations to improve borrower eligibility, application requirements, and processes.

Statement of Need: This rulemaking is necessary to improve areas where Congress has provided borrowers with relief or benefits related to Federal student loans, including to improve borrower eligibility, application requirements, and processes.

Summary of Legal Basis: We are conducting this rulemaking under 20 U.S.C. 1087; 20 U.S.C. 1087e; and 20 U.S.C. 1087dd.

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 them 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

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Jennifer Hong, Director, Policy Coordination Group, Department of Education, 400 Maryland Avenue SW, Room 287–23, Washington, DC 20202, *Phone:* 202 453–7805, *Email: jennifer.hong@ed.gov*.

RIN: 1840–AD59

ED—OPE

38. Income Contingent Repayment

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 20 U.S.C. 1087e

CFR Citation: 34 CFR 685.

Legal Deadline: None.

Abstract: Using the income-contingent repayment (ICR) authority under the Higher Education Act of 1965, the Secretary of Education may create or adjust income-driven repayment plans to cap borrower payments at a set share of their income. The Department will propose improvements to these plans in 34 CFR part 685.

Statement of Need: This rulemaking is necessary to make improvements to the income- driven repayment plans created under the ICR authority in 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: The Department is conducting this rulemaking under 20 U.S.C. 1087e.

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	05/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Jennifer Hong, Director, Policy Coordination Group, Department of Education, 400 Maryland Avenue SW, Room 287–23, Washington, DC 20202, *Phone:* 202 453–7805, *Email: jennifer.hong@ed.gov*.

RIN: 1840–AD69

ED—OPE

39. Public Service Loan Forgiveness

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 20 U.S.C. 1087e

CFR Citation: 34 CFR 685.

Legal Deadline: None.

Abstract: The Higher Education Act of 1965 allows borrowers to receive loan forgiveness after 10 years of qualifying payments on qualifying loans while engaging in public service. The Department will propose improvements to this program in 34 CFR part 685.

Statement of Need: This rulemaking is necessary to make improvements that more closely align the Public Service Loan Forgiveness program with the statute and purpose of the program.

Summary of Legal Basis: We are conducting this rulemaking under 20 U.S.C. 1087e.

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 Negotiating Rulemaking.	05/26/21	86 FR 28299
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Jennifer Hong, Director, Policy Coordination Group, Department of Education, 400 Maryland Avenue SW, Room 287–23, Washington, DC 20202, *Phone:* 202 453–7805, *Email: jennifer.hong@ed.gov*.

RIN: 1840–AD70

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.

Review of Regulations Under Executive Order 13990

Pursuant to Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,'' DOE reviewed all regulations, orders, guidance documents and policies promulgated or adopted between January 20, 2017, and January 20, 2021, and determined whether these actions are consistent with the policy goals of protecting public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to the impacts of climate change. DOE identified fourteen rulemakings that the Department will review under E.O. 13990.

In response to E.O. 13990, DOE published ten notices of proposed rulemakings or technical determinations re-evaluating rulemakings finalized in the prior four years. Four of these

publications were explicitly required to be published in 2021. First, DOE published two notices of proposed rulemaking in 2021 that remove unnecessary obstacles to DOE's ability to develop energy conservation standards and test procedures for consumer products and commercial/industrial equipment. Second, DOE published two technical determinations that determined that the latest version of a commercial building code and residential building code are more efficient than the prior versions of these codes, paving the path for states to adopt these codes.

Other 2021 proposed Departmental appliance standards program actions triggered by E.O. 13990 but based on DOE statutory authorities included a rule to revert to the prior, water-saving definition of showerheads; a rule to remove a product class for dishwashers, clothes washers and clothes dryers that had the effect of removing standards from these products; a rule to streamline the test procedure waiver process; a rule to broaden the definition of general service lamps; and a rule proposing to reinterpret a features provision for some types of consumer products and commercial equipment.

Energy Efficiency Program for Consumer Products and Commercial Equipment

The Energy Policy and Conservation Act 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 addressing its backlog of rulemakings with missed statutory deadlines and advancing rulemakings with upcoming statutory deadlines. In the August 2021 Energy Policy Act of 2005 Report to Congress, DOE notes that it plans to publish 31 actions relating to energy conservation standards, including four final rules, and 31 actions related to test procedures, including six final rules, before the end of 2021. See: *https://www.energy.gov/eere/buildings/reports-and-publications.* These rulemakings are expected to save American consumers billions of dollars in energy costs over a 30-year timeframe.

In the Department's 2021 Fall Regulatory Plan, DOE is highlighting three important appliance rules. The first rule is ''Energy Conservation Standards for Commercial Water Heating Equipment.'' DOE estimates that the energy conservation standards rulemaking for commercial water heating-equipment will result in energy savings for combined natural gas and electricity of up to 1.8 quads over 30 years and the net benefit to the Nation will be between $2.26 billion and $6.75 billion.

The second rule is ''Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment.'' This rulemaking is focused on both the procedural requirements as well as the methodologies used to establish all DOE energy conservation standards and their related test procedures. DOE anticipates that the contemplated revisions would allow DOE to eliminate inefficiencies that lengthen the rulemaking process and consume DOE and stakeholder resources without appreciable benefit, while not affecting the ability of the public to participate in the agency's rulemaking process. Eliminating these inefficiencies would allow DOE to more quickly develop energy conservation standards that deliver benefits to the Nation, including environmental benefits such as reductions in greenhouse gas emissions.

The third rule is ''Backstop Requirement for General Service Lamps.'' This rulemaking would codify in the Code of Federal Regulations the 45 lumens per watt backstop requirement for general service lamps (''GSLs'') that Congress prescribed in the Energy Policy and Conservation Act, as amended. Codifying the statutory standard, which would also prohibit sales of GSLs that do not meet a minimum 45 lumens per watt standard, is estimated to result in total net benefits of $3.3 billion to $4.9 billion per year.

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 Federal government energy efficiency rulemakings. DOE is highlighting one rule supporting Federal agency leadership in climate change under the Energy Conservation and Production Act. The rule establishes baseline Federal energy efficiency performance standards for the construction of new Federal commercial and multi-family high-rise residential buildings. The total incremental first cost savings under the rule is $32.67 million per year, with a potential cost reduction in new Federal construction costs of 0.85%, and life-cycle cost net savings of $161.9 million. Compared to the prior building standard, DOE expects a 4,472,870 metric ton reduction in carbon dioxide emissions over 30 years.

DOE—ENERGY EFFICIENCY AND RENEWABLE ENERGY (EE)

Proposed Rule Stage

40. Energy Conservation Standards for Commercial Water Heating-Equipment

Priority: Economically 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. 6313(a)(6)(C)(i) and (vi)

CFR Citation: 10 CFR 429; 10 CFR 431.

Legal Deadline: Other, Statutory, Subject to 6-year-look-back in 42 U.S.C. 6313(a)(6)(C).

Abstract: Once completed, this rulemaking will fulfill the U.S. Department of Energy's (DOE) 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, 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.

Statement of Need: DOE is required under 42 U.S.C. 6313(a)(6)(C) to consider the need for amended performance-based energy conservation standards for commercial water heaters. This rulemaking is being conducted to satisfy that requirement by evaluating potential standards related to certain classes of commercial water heating equipment.

Summary of Legal Basis: This rulemaking is being conducted under DOE's authority pursuant to 42 U.S.C. 6311, which establishes the agency's legal authority over water heaters as one type of covered equipment that DOE may regulate, and 42 U.S.C. 6313(a)(6)(C), which requires DOE to conduct a rulemaking to consider the need for amended performance-based energy conservation standards for this equipment.

Alternatives: Under EPCA, DOE shall either establish an amended uniform national standard for this equipment at the minimum level specified in the

amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE/IES Standard 90.1 for this equipment would result in significant additional conservation of energy and is technologically feasible and economically justified (42 U.S.C. 6313(a)(6)(A)–(C)).

Anticipated Cost and Benefits: DOE preliminarily determined that the anticipated benefits to the Nation of the proposed energy conservation standards for the subject commercial water heating equipment would outweigh the burdens DOE estimates that potential amended energy conservation standards for commercial water heaters may result in energy savings for combined natural gas and electricity of 1.8 quads over 30 years and the net benefit to the Nation of between $2.26 billion and $6.75 billion.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	10/21/14	79 FR 62899
RFI Comment Period End.	11/20/14	
NPRM	05/31/16	81 FR 34440
NPRM Comment Period End.	08/01/16	
NPRM Comment Period Reopened.	08/05/16	81 FR 51812
NPRM Comment Period Reopened End.	08/30/16	
Notice of Data Availability (NODA).	12/23/16	81 FR 94234
NODA Comment Period End.	01/09/17	
Notice of NPRM Withdrawal.	01/15/21	86 FR 3873
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

URL For More Information: www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/51.

URL For Public Comments: www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042.

Agency Contact: Julia Hegarty, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 597–6737, *Email: julia.hegarty@ee.doe.gov.*

Related RIN: Related to 1904–AE39.

RIN: 1904–AD34

DOE—EE

41. Backstop Requirement for General Service Lamps

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 6295(i)(6)(A)

CFR Citation: 10 CFR 430.

Legal Deadline: Other, Statutory, Subject to 7-year-lookback in 42 U.S.C. 6293(b).

Abstract: The U.S. Department of Energy (DOE) proposes to codify the 45 lumens per watt (''im/W'') backstop requirement for general service lamps (GSLs) that Congress prescribed in the Energy Policy and Conservation Act, as amended. DOE proposes this backstop requirement apply because DOE failed to complete a rulemaking regarding general service lamps in accordance with certain statutory criteria. This proposal represents a departure from DOE's previous determination published in 2019 that the backstop requirement was not triggered. DOE re-evaluates its previous determination that the backstop was not triggered in accordance with the review requirement under E.O. 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,'' 86 FR 7037 (January 25, 2021).

Statement of Need: Under the Energy Policy and Conservation Act (EPCA), as amended, if DOE fails to complete a rulemaking regarding general service lamps (GSL's) in accordance with certain statutory criteria, the Secretary of Energy (Secretary) must prohibit the sale of any GSL that does not meet a minimum efficacy of 45 lumens per watt. In two final rules published on September 5, 2019 and December 27, 2019, DOE determined that this statutory backstop requirement for GSLs was not triggered. DOE now revisits this determination and proposes to determine that the statutory backstop does not apply, consistent with its statutory obligations under EPCA. This action was triggered in part by Executive order 13990, which specifically instructed DOE to examine the GSL rules.

Anticipated Cost and Benefits: Codifying the statutory standard, which would also prohibit sales of GSLs that do not meet a minimum 45 lumens per watt standard, is estimated to result in total net benefits of 3.3 billion to $4.9 billion per year.

Timetable:

Action	Date	FR Cite
Request for Information (RFI); Early Assessment Review.	05/25/21	86 FR 28001
RFI Comment Period End.	06/24/21	
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Stephanie Johnson, General Engineer, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Building Technologies Office, EE5B, Washington, DC 20585, *Phone:* 202 287–1943, *Email: stephanie.johnson@ee.doe.gov.*

RIN: 1904–AF09

DOE—EE

Final Rule Stage

42. Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings Baseline Standards Update

Priority: Other Significant.

Legal Authority: 42 U.S.C. 6834

CFR Citation: 10 CFR 433.

Legal Deadline: Final, Statutory, October 31, 2020, 42 U.S.C. 6834(a)(3)(B).

Abstract: The U.S. Department of Energy (DOE) is working on a final rule to implement provisions in the Energy Conservation and Production Act (ECPA) that require DOE to update the baseline Federal energy efficiency performance standards for the construction of new Federal commercial and multi-family high-rise residential buildings. This rule would update the baseline Federal commercial standard to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2019, if the Secretary determines that the baseline Federal energy efficiency performance standards should be updated to reflect the new standard, based on the cost-effectiveness of the requirements under the amendment.

Statement of Need: This rule addresses DOE's statutory obligation under ECPA to review the newest version of ASHRAE 90.1, that is, ASHRAE 90.1–2019, and update the energy efficiency performance standards for federal commercial and multi-family, high-rise buildings to reflect the new version of this industry standard. the rule will also support federal agency

leadership in addressing climate change by reducing energy use in Federal buildings and reducing emissions.

Anticipated Cost and Benefits: This rule is expected to result in 432.67 million annual incremental first-cost savings and annual life-cycle cost net savings of $161.9 million. Furthermore, compared to the prior Federal buildings standard, DOE expects a 4,472,870 metric ton reduction in carbon dioxide emissions over 30 years.

Timetable:

Action	Date	FR Cite
Final Rule	01/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Nicolas Baker, Office of Federal Energy Management Program, EE–2L, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 586–8215, *Email: nicolas.baker@ee.doe.gov*.

RIN: 1904–AE44

DOE—EE

43. Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

Priority: Other Significant.

Legal Authority: 42 U.S.C. 6191 to 6317

CFR Citation: 10 CFR 430, subpart C, App. A; 10 CFR 431.

Legal Deadline: None.

Abstract: The U.S. Department of Energy (''DOE'' or ''the Department'') is finalizing its revisions to the Department's current rulemaking guidance titled ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment'' (''Process Rule''), which was last modified in 2020. These proposed revisions, which are the first of two sets of revisions to the Process Rule that DOE intends to propose, are consistent with longstanding DOE practice prior to the 2020 amendment and would remove unnecessary obstacles to DOE's ability to meet its statutory obligations under the Energy Policy and Conservation Act (''EPCA'') and other applicable law. These proposed changes would include modifying the Process Rule to remove its mandatory application, removing its recently-added threshold for determining when significant energy savings is met, removing the current provision regarding the use of a comparative analysis when selecting potential energy conservation standards, and reverting to its prior guidance for determining whether a trial standard level is economically justified, among other changes. DOE is undertaking this action as required by E.O. 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'', 86 FR 7037 (January 25, 2021).

Statement of Need: On February 14, 2020 and August 19, 2020, DOE published two final rules (''Process Rule Amendment Final Rules'') that made significant revisions to the existing Process Rule. DOE is reconsidering the merits of the approach taken by these 2020 revisions to the Process Rule—specifically, the one-fits-all rulemaking approach and the added rulemaking steps now required under the Process Rule. In its proposed revisions, the Department seeks to ensure that the document remains consistent with DOE's legal obligations under the Energy Policy and Conservation Act, as amended. DOE's action in examining the current Process Rule was triggered in part by Executive Order 13990, which specifically instructed DOE to examine the Process Rule.

Anticipated Cost and Benefits: DOE anticipates that the contemplated revisions would allow DOE to eliminate inefficiencies that lengthen the rulemaking process and consume DOE and stakeholder resources without appreciable benefit, while not affecting the ability of the public to participate in the agency's rulemaking process. Eliminating these inefficiencies would allow DOE to more quickly develop energy conservation standards that deliver benefits to the Nation, including environmental benefits, such as reductions in greenhouse gas emissions, that DOE is directed to pursue under E.O. 13990. DOE notes that these revisions would not dictate any particular rulemaking outcome in an energy conservation standard or test procedure rulemaking.

Timetable:

Action	Date	FR Cite
NPRM (Round 1)	04/12/21	86 FR 18901
NPRM (Round 1) Comment Period End.	05/27/21	
NPRM (Round 2)	07/07/21	86 FR 35668
NPRM (Round 2) Comment Period Extended.	08/09/21	86 FR 43429
NPRM (Round 2) Comment Period Extended End.	09/13/21	
Final Rule	12/00/21	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: John Cymbalsky, Building Technologies Office, EE–5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 287–1692, *Email: john.cymbalsky@ee.doe.gov*.

RIN: 1904–AF13

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Regulatory Priorities for Fiscal Year 2022

As the federal agency with principal responsibility for protecting the health of all Americans and for 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 2022 delivers on the Biden-Harris Administration's commitment to tackle the COVID–19 pandemic, build, and expand access to affordable health care, address health disparities, increase health equity, and promote the wellbeing of children and families:

- This agenda expands access to quality, affordable health care for all Americans, with rules to provide evidence-based behavioral health treatment via telehealth and rules to streamline enrollment and improve access to care in Medicaid and the Children's Health Insurance Program (CHIP) to ensure that children and families eligible for these programs are able to maintain coverage and obtain needed care.
- As we work to expand access to affordable health care, we will simultaneously tackle disparities that persist in who gain access to care. Forthcoming rules—including one designed to prevent discrimination in accessing care and coverage—serve to protect every person's right to access the health care they need, no matter where they live or who they are.

• Building on recent rules requiring COVID–19 vaccinations for staff at most Medicare- and Medicaid-participating health care providers and in Head Start programs, our Regulatory Plan augments our fight against COVID–19 and future pandemics by including new rules that permit CDC to set vaccination requirements for airline passengers entering the U.S. and increase the resilience of HHS programs to deal with COVID–19 and future public health emergencies.

• Our work to promote the health and wellbeing of every person includes extending additional support and resources to children and families. Whether we are providing flexibility to ensure more children in foster care are placed in homes with their relatives or reimbursing state foster care agencies for the cost of providing independent legal representation for children and parents, we are working to support our next generation of leaders—and the people who help raise them.

In short, this agenda allows the Department to support government-wide efforts to build a healthy America by charting a course to Build Back Better with rules designed to help protect public health and improve the health and wellbeing of every person touched by our programs.

I. Building and Expanding Access to Affordable Health Care

Since its enactment, the Affordable Care Act (ACA) has dramatically reduced the number of uninsured Americans while strengthening consumer protections and improving our nation's health care system. Yet high uninsured rates and other barriers to care continue to persist, compounded by the health and economic challenges facing Americans nationwide due to the COVID–19 pandemic. From day one, the Biden-Harris Administration has been focused on closing these gaps in coverage and access. The American Rescue Plan (ARP) alongside the ACA and executive actions by the Biden-Harris Administration have already led to lower premiums for consumers and more opportunities to gain coverage, achieving record-high enrollment in ACA Marketplace and Medicaid coverage.

The Department plans to continue expanding access to affordable health care over the next year, including through its regulatory actions. Secretary Becerra's regulatory priorities in this area include: Enhancing coverage and access for Americans in the ACA Marketplace, Medicaid, CHIP, and Medicare; expanding the accessibility and affordability of drugs and medical products; addressing behavioral health needs; and streamlining the secure exchange of health information.

Enhancing Coverage and Access in the ACA Marketplace, Medicaid, CHIP, and Medicare

The Department will take several regulatory actions in the next year building on the success of the ACA and improving access to care for Americans. In his Executive Order on Strengthening Medicaid and the Affordable Care Act (E.O. 14009), President Biden asked the Department to consider a range of actions, including actions that would protect and strengthen Medicaid. Following this regulatory review, the Department is issuing two rules. First, the Department will issue a proposed rule on Assuring Access to Medicaid and Children's Health Insurance Program (CHIP) Services. Together, Medicaid and CHIP cover nearly one in four Americans and provide for access to a broad array of health benefits and services critical to underserved populations, including low-income adults, children, pregnant women, elderly, and people with disabilities. This rule would empower the Department to assure and monitor equitable access to services in Medicaid and CHIP.

Additionally, the Department will issue a proposed rule on Streamlining the Medicaid and CHIP Application, Eligibility Determination, Enrollment, and Renewal Processes. Although considerable progress has been made in these areas, gaps remain in states' ability to seamlessly process beneficiaries' eligibility and enrollment. This rule would streamline eligibility and enrollment processes for all Medicaid and CHIP populations and create new enrollment pathways to maximize enrollment and retention of eligible individuals. The first step to ensuring access to services is making certain that people can maintain a consistent source of high-quality coverage.

The Department also plans to issue a proposed rule on Requirements for Rural Emergency Hospitals. This rule would establish health and safety requirements as Conditions of Participation (CoPs) for Rural Emergency Hospitals (REHs) participating in Medicare or Medicaid, in accordance with Section 125 of the Consolidated Appropriations Act, 2021, and will establish payment policies and payment rates for REHs. This rule will aim to address barriers to health care, unmet social needs, and other health challenges and risks faced by rural communities.

Improving access to care for populations with ACA Marketplace coverage is also a regulatory priority of the Department. For instance, the Department will issue a proposed rule to protect patients' access to care and promote competition by ensuring that plans do not engage in unlawful discrimination against health care providers. While the ACA's provider nondiscrimination protections are currently set forth in guidance, the No Surprises Act directs the Department to implement these protections through regulation.

The Department will also work to ensure access to benefits and services afforded under the law. A critical part of this work will include amending regulations on contraceptive coverage which guarantee cost-free coverage to the consumer under the ACA. In addition to the actions described above, the Department's regulatory agenda includes several payment rules and notices issued annually by the Centers for Medicare & Medicaid Services (CMS) that affect Medicare, Medicaid, and the ACA Marketplace. These rules, though they are not included in the HHS Regulatory Plan, will include policies in service of the Secretary's priority of expanding access to affordable, high-quality health care.

Expanding the Accessibility and Affordability of Drugs and Medical Products

The Department is committed to improving Americans' access to affordable drugs and medical products. Earlier this year, the Department issued a proposed rule entitled Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids and Aligning Other Regulations. Consistent with President Biden's Executive Order on Promoting Competition in the American Economy (E.O. 14036), this rule proposes to establish a new category of over the counter of hearing aids. If finalized, the rule would allow hearing aids within this category to be sold directly to consumers in stores or online without a medical exam or a fitting by an audiologist. This action will address existing barriers on access to hearing aids, improve consumer choice, and have a direct impact on quality of life.

Over the next year, the Department will continue pursuing greater accessibility and affordability for Americans in need of drugs and medical products, consistent with the Department's Comprehensive Plan for Addressing High Drug Prices, released in September 2021. For example, the Department plans to issue a proposed

rule entitled Nonprescription Drug Product With an Additional Condition for Nonprescription Use. This rule would establish requirements for drug products that could be marketed as nonprescription drug products with an additional condition that a manufacturer must implement to ensure appropriate self-selection or appropriate actual use or both for consumers. The rule is expected to increase consumer access to drug products, which could translate into a reduction in under-treatment of certain diseases and conditions. The Department also plans to issue a proposed rule on Biologics Regulation Modernization, which would update Food and Drug Administration (FDA) biologics regulations to account for the existence of biosimilar and interchangeable biological products. This rule is intended to support competition and enhance consumer choice by preventing efforts to delay or block competition from biosimilars and interchangeable products.

In addition, the Department will issue a proposed rule entitled 340B Drug Pricing Program; Administrative Dispute Resolution. The 340B Drug Pricing Program, which requires drug manufacturers to provide discounts on outpatient prescription drugs to certain safety net providers, is critical to the ability of safety net providers to stretch scarce federal resources and reach patients with low incomes or without insurance. The rule would establish new requirements and procedures for the Program's Administrative Dispute Resolution (ADR) process, making the process more equitable and accessible for participation by program participants. This is intended to replace the previous administration's rulemaking on the same subject, which was finalized in December 2020.

Addressing Behavioral Health Needs

The COVID–19 pandemic has made clear that too many Americans have unmet behavioral health needs, which have seen an alarming rise during the pandemic due to illness, grief, job loss, food insecurity, and isolation. The Secretary is committed to addressing the behavioral health effects of the COVID–19 pandemic—including mental health conditions and substance use disorders—especially in underserved communities. This commitment informs the Department's regulatory priorities over the next year.

The Department is proposing two rules intended to extend telehealth flexibilities for substance use disorder treatments that were granted during the COVID–19 public health emergency. First, the Department will issue a proposed rule on Treatment of Opioid use Disorder With Extended Take Home Doses of Methadone. This rule would propose revisions to Substance Abuse and Mental Health Services Administration (SAMHSA) regulations to make permanent regulatory flexibilities for opioid treatment programs to provide extended take-home doses of methadone to patients when it is safe and appropriate to do so. Likewise, the Department also plans to issue a proposed rule on Treatment of Opioid Use Disorder with Buprenorphine Utilizing Telehealth. This rule would propose revisions to SAMHSA regulations to permanently allow opioid treatment programs and certain other providers to provide buprenorphine via telehealth. Both changes would allow more patients to receive comprehensive opioid use disorder treatment and could address barriers to treatment such as transportation, geographic proximity, employment, or other required activities of daily living.

Furthermore, the Department, working closely with the Department of Labor, will issue a proposed rule on the Mental Health Parity and Addiction Equity Act (MHPAEA) and the Consolidated Appropriations Act, 2021. The MHPAEA is a federal law that prevents group health plans and health insurance issuers that provide mental health or substance use disorder benefits from imposing less favorable benefit limitations on those benefits than on medical and surgical benefits. This rule would clarify group health plans and health insurance issuers' obligations under the MHPAEA and promote compliance with MHPAEA, among other improvements.

Finally, the Department also plans to issue a proposed rule on the Confidentiality of Substance Use Disorder Patient Records. Section 3221 of the CARES Act modifies the statute that establishes protections for the confidentiality of substance use disorder treatment records and directs the Department to work with other federal agencies to update the regulations at 42 CFR part 2 (part 2). As required by the CARES Act, this rule would align certain provisions of part 2 with aspects of the HIPAA Privacy, Breach Notification, and Enforcement Rules; strengthen part 2 protections against uses and disclosures of patients' substance use disorder records for civil, criminal, administrative, and legislative proceedings; and require that a HIPAA Notice of Privacy Practices address privacy practices with respect to Part 2 records.

Streamlining the Secure Exchange of Health Information

The secure exchange of health information among health care providers and other entities improves patient care, reduces costs, and provides more accurate public health data. The 21st Century Cures Act (Cures Act) included important provisions related to improving the interoperability and transparency of health information.

Two of the Department's planned rulemakings directly address and implement these statutory provisions. First, the Department plans to finalize the implementation of the Cures Act provision that authorizes the Department to impose civil monetary penalties, assessments, and exclusions upon individuals and entities that engage in fraud and other misconduct related to HHS grants, contracts, and other agreements. It would also implement Cures Act provisions on information blocking, which authorize the Office of Inspector General (OIG) to investigate claims of information blocking and grant the Department the power to impose civil monetary penalties (CMPs) for information blocking. The Department's regulations would also be updated to include the increased civil monetary penalties provided in the Bipartisan Budget Act of 2018.

Additionally, the Department will issue a proposed rule entitled Health Information Technology: Updates to the ONC Health IT Certification Program, Establishment of the Trusted Exchange Framework and Common Agreement Attestation Process, and Enhancements to Support Information Sharing. This rule would implement certain provisions of the Cures Act, including the Electronic Health Record (EHR) Reporting Program condition and maintenance of certification requirements under the ONC Health IT Certification Program (Certification Program); a process for health information networks that voluntarily adopt the Trusted Exchange Framework and Common Agreement to attest to the agreed upon interoperable data exchange; and enhancements to support information sharing under the information blocking regulations.

II. Addressing Health Disparities and Promoting 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, and

queer (LGBTQ+) 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 outcomes and 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. This regulatory priority includes promoting equity in health care, strengthening health and safety standards for consumer products that impact underserved communities, preventing and combatting discrimination, and ensuring the equitable administration of HHS programs. The Department is also systematically reviewing existing regulations to make certain they adequately address the needs of those most vulnerable to climate change related impacts.

Promoting Equity in Health Care

The Department is taking action to promote equity in health care programs and delivery. Earlier this year, the Department finalized a rule on Ensuring Access to Equitable, Affordable, Client-centered, Quality Family Planning Services. This rule revoked the previous administration's harmful restrictions on the use of Title X family planning funds, which had a disproportionate impact on low-income clients and caused substantial decreases in utilization among clients of color. Revoking the previous rule will allow the Title X service network to expand in size and capacity to provide quality family planning services to more clients.

In addition, the rule updates the Title X regulations to ensure access to equitable, affordable, client-centered, quality family planning services.

The Department is also committed to improving the effectiveness of federal health programs that constitute an important source of care for underserved communities. For instance, the Department plans to issue a proposed rule on the Catastrophic Health Emergency Fund (CHEF). CHEF was established to reimburse tribally operated Indian Health Service (IHS) Purchased/Referred Care programs, which serve American Indian/Alaska Native patients, for medical expenses related to high-cost illnesses and events after a threshold cost has been met. This rule would establish regulations governing CHEF, set the threshold cost that must be reached before CHEF reimbursement can be paid, and establish the procedures for reimbursement under the program.

Strengthening Health and Safety Standards for Consumer Products That Impact Underserved Communities

The Department recognizes that people of color, LGBTQ+ people, people with disabilities, people with low incomes, and other underserved populations experience longstanding disparities in leading public health indicators—including obesity and the use of certain tobacco products. To protect the public health and advance equity, the Department is pursuing regulatory action with respect to consumer products that have a disproportionate impact on the health of underserved groups.

For instance, the Department plans to propose two rules on tobacco product standards. First, the Department will issue a proposed rule on Tobacco Product Standard for Menthol in Cigarettes, which would ban menthol as a characterizing flavor in cigarettes. Menthol cigarettes are marketed to and disproportionately used by Black smokers and increase the appeal of smoking for youth and young adults. This standard would reduce the availability of menthol cigarettes. By likely decreasing consumption and increasing the likelihood of cessation, the standard would likely improve the health of current menthol cigarette smokers. Similarly, the Department plans to issue a proposed rule on Tobacco Product Standard for Characterizing Flavors in Cigars. This rule is a tobacco product standard that would ban characterizing flavors—such as strawberry, grape, orange, and cocoa—in all cigars. As with menthol cigarettes, flavored cigars appeal to youth and disproportionately affect underserved communities. This product standard would likely reduce the appeal of cigars, particularly to youth and young adults, and is intended to decrease the likelihood of experimentation, progression to regular use, and the potential for addiction to nicotine.

Furthermore, the Department will issue a proposed rule entitled Nutrient Content Claims, Definition of Term: Healthy. This rule would update the definition for the implied nutrient content claim ''healthy'' to be consistent with current nutrition science and federal dietary guidelines. This would ensure that foods labeled ''healthy'' can help consumers build more healthful diets to help reduce their risk of diet-related chronic disease. This action is necessary to improve the public health and reduce disparities in health outcomes, particularly among people of color and people with low incomes in the U.S., who are disproportionately affected by obesity and diet-related chronic illness.

Preventing and Remedying Discrimination

The Department is taking actions to eliminate discrimination as a barrier for historically marginalized communities seeking access to HHS programs and activities. This includes two proposed rules in the Department's Regulatory Plan for the coming year. First, the Department will issue a proposed rule on Nondiscrimination in Health Programs and Activities, which would make changes to the previous administration's final rule implementing the nondiscrimination provisions in section 1557 of the ACA. The current section 1557 regulations significantly narrow the scope of section 1557'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 will issue a proposed rule entitled Rulemaking on Discrimination on the Basis of Disability in Critical 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 certain vital HHS-funded health and human services programs. Covered topics include nondiscrimination in life-sustaining care, organ transplantation, suicide prevention services, child welfare programs and services, health care value assessment methodologies, accessible medical equipment, auxiliary aids and services, Crisis Standards of Care and other relevant health and human services activities.

Ensuring the Equitable Administration of HHS Programs

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 is working to embed equity throughout HHS programs and policies, including in the awarding of grants, loans, and procurement contracts.

For instance, the Department plans to issue a proposed rule on the National Institute for Disability, Independent Living, and Rehabilitation Research

(NIDILRR), which would propose revisions to the NIDILRR regulations to advance equity in the peer review criteria used to evaluate disability research applications across all of its research programs, in addition to making other changes. The Department will also issue a proposed rule on the Native Hawaiian Revolving Loan Fund (NHRLF). The Native Hawaiian Revolving Loan Fund (NHRLF) was established to provide loans and loan guarantees to Native Hawaiians who are unable to obtain loans from private sources on reasonable terms and conditions for the purpose of promoting economic development in Hawaii. This rule proposes to reduce the required Native Hawaiian ownership or control for an eligible applicant to NHRLF program from 100 percent, as the 100 percent Native Hawaiian ownership requirement prevents many Native Hawaiian family-owned businesses and families from obtaining a loan. Additionally, the Department plans to issue a proposed rule entitled Acquisition Regulations; Buy Indian Act; Procedures for Contracting. This rule would establish regulations guiding implementation of the Buy Indian Act, which allows the Department to set aside procurement contracts for Indian-owned and controlled businesses. This would promote the growth and development of Indian industries and in turn, foster economic development and sustainability in Indian Country.

III. Tackling the COVID–19 Pandemic

As the federal agency charged with protecting the health of all Americans, the Department plays a central role in the Biden-Harris Administration's whole-of-government response to the COVID–19 pandemic. From ensuring access to COVID–19 testing, treatment, and vaccines, to bolstering the capacity of the health care system in a public health emergency, to addressing the effects of the pandemic on the behavioral health of Americans, Secretary Becerra has leveraged the Department's full resources to pursue a comprehensive strategy to combat COVID–19. Over the last several months, the Secretary has pursued this regulatory priority by issuing a number of critical rules requiring COVID–19 vaccinations to keep schools, workplaces, and communities safe and increasing regulatory oversight of SARS–CoV–2 laboratory experimentation. Over the next year, the Department plans to continue its work to address COVID–19 through new regulations.

Building on COVID–19 Vaccine Requirements To Keep Schools, Workplaces, and Communities Safe

Despite tremendous gains over the course of 2021, tens of millions of people remain unvaccinated against COVID–19. Reaching this population is an essential component of the Biden-Harris Administration's strategy to accelerate our nation's path out of the pandemic. For this reason, vaccine requirements are one of the Department's most impactful regulatory options in combatting COVID–19.

Accordingly, the Department has recently issued rules expanding COVID–19 vaccine requirements. For example, the Department issued an interim final rule requiring COVID–19 vaccinations for staff at most Medicare- and Medicaid-participating providers and suppliers.

Additionally, the Department issued an interim final rule with comment period to add new provisions to the Head Start Program Performance Standards to mitigate the spread of the COVID–19 in Head Start programs through COVID–19 vaccine requirements.

Building on these accomplishments, in the coming months, the Department plans to issue an interim final rule that will provide CDC with authority to require individuals entering the U.S. at any port of entry to present proof of vaccination or other proof of immunity against any quarantinable communicable diseases for which the Centers for Disease Control and Prevention (CDC) determines that a public health need exists. This rule will provide CDC with authority to require travelers to be fully vaccinated upon arrival and will reduce the number of international travelers arriving while infected.

Increasing the Resilience of HHS Programs To Deal With COVID–19 and Future Public Health Emergencies

The Department is planning to introduce new flexibilities in HHS programs to minimize disruptions and alleviate burdens that may be caused by COVID–19 or future emergencies. For example, the Department issued a final rule on Flexibility for Head Start Designation Renewals in Certain Emergencies. This rule adds a new provision to the Head Start Program Performance Standards to establish parameters by which the Administration for Children and Families (ACF) may make designation renewal determinations during widespread disasters or emergencies and in the absence of all normally required data.

The Department also plans to issue a proposed rule on Administration for Native Americans (ANA) Non-federal Share Emergency Waivers. The rule will propose the ability for current grantees to request an emergency waiver for the non-federal share match. This update to ANA's regulation would provide a new provision for recipients to request an emergency waiver in the event of a natural or man-made emergency such as a public health pandemic.

Additionally, the Department issued a proposed rule on Paternity Establishment Percentage Performance Relief. This rule proposes to modify the Paternity Establishment Percentage performance requirements in child support regulations to provide relief from financial penalties to states impacted by the COVID–19 pandemic. Without regulatory relief, 20 out of the 54 child support programs may be subject to financial penalties associated with their failure to achieve performance for the Paternity Establishment Percentage (PEP). PEP-related financial penalties, which are imposed as reductions in the state's Temporary Assistance for Needy Families (TANF) program funding, place an undue burden on state budgets and threaten funding that supports the very families who are most in need during this time of crisis.

IV. Boosting the Wellbeing of Children and Families

The Department's mission to provide effective human services to Americans includes a focus on protecting the wellbeing of children and families. This focus has special significance given the COVID–19 pandemic and its economic consequences, which have deeply affected the lives of children and youth, especially those who are in foster care or otherwise involved in the child welfare system. Secretary Becerra has therefore prioritized children and youth that are in, or candidates for, foster care in the HHS Regulatory Plan.

In support of this priority, the Department will issue a proposed rule to allow Licensing Standards for Relative or Kinship Foster Family Homes that are different from non-relative homes. Currently, in order to claim Title IV–E funding, federal regulations require that all foster family homes meet the same licensing standards, regardless of whether the foster family home is a relative or non-relative placement. The proposed change would address barriers to licensing relatives and kin who can provide continuity and a safe and loving home for children when they cannot be with their parents.

The Department will also issue a proposed rule to reimburse agencies for Title IV–E Administrative Expenditures for Independent Legal Representation in Foster Care and other Related Civil Legal Issues. This rule would make it easier for Title IV–E agencies 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.

HHS—OFFICE OF THE INSPECTOR GENERAL (OIG)

Final Rule Stage

44. Amendments to Civil Monetary Penalty Law Regarding Grants, Contracts, and Information Blocking

Priority: Other Significant.

Legal Authority: 21st Century Cures Act; Pub. L. 114–255; secs. 4004 and 5003; Bipartisan Budget Act of 2018 (BBA 2018), Pub. L. 115–123. sec. 50412

CFR Citation: 42 CFR 1003; 42 CFR 1005.

Legal Deadline: None.

Abstract: The final regulation modifies 42 CFR 1003 and 1005 by addressing three issues. First, the 21st Century Cures Act (Cures Act) provision that authorizes the Department of Health and Human Services (HHS) to impose civil monetary penalties, assessments, and exclusions upon individuals and entities that engage in fraud and other misconduct related to HHS grants, contracts, and other agreements. Second, the Cures Act information blocking provisions that authorize the Office of Inspector General to investigate claims of information blocking and provide HHS the authority to impose CMPs for information blocking. Third, the Bipartisan Budget Act of 2018 increases in penalty amounts in the Civil Monetary Penalties Law.

Statement of Need: The 21st Century Cures Act (Cures Act) set forth new authorities which need to be added to HHS's existing civil monetary penalty authorities. This final rule seeks to add the new authorities to the existing civil monetary penalty regulations and to set forth the procedural and appeal rights for individuals and entities. The Bipartisan Budget Act of 2018 (BBA) amended the Civil Monetary Penalties Law (CMPL) to increase the amounts of certain civil monetary penalties which requires amending the existing regulations for conformity. The final rule seeks to ensure alignment between the increased civil monetary penalties in the statute and the civil monetary penalties set forth in the OIG's rules.

Summary of Legal Basis: The legal authority for this regulatory action is found in: (1) Section 1128A(a)–(b) of the Social Security Act, the Civil Monetary Penalties Law (42 U.S.C. 1320a-7a), which provides for civil monetary penalty amounts; (2) section 1128A(o)–(s) of the Social Security Act, which provides for civil monetary penalties for fraud and other misconduct related to grants, contracts, and other agreements; and (3) section 3022(b) of the Public Health Service Act (42 U.S.C. 300jj–52), which provides for investigation and enforcement of information blocking.

Alternatives: The regulations incorporate the statutory changes to HHS' authority found in the Cures Act and the BBA. The alternative would be to rely solely on the statutory authority and not align the regulations accordingly. However, we concluded that the public benefit of providing clarity by placing the new civil monetary penalties and updated civil monetary penalty amounts within the existing regulatory framework outweighed any burdens of additional regulations promulgated.

Anticipated Cost and Benefits: We believe that there are no significant costs associated with these proposed revisions that would impose any mandates on State, local, or Tribal governments or the private sector. The regulation will provide a disincentive for bottlenecks to the flow of health data that exist, in part, because parties are reticent to share data across the healthcare system or prefer not to do so. The final rule will help foster interoperability, thus improving care coordination, access to quality healthcare, and patients' access to their healthcare data.

Risks: We believe the risks of this regulatory action are minimal because we are relying upon statutory authorities and placing the regulation within our existing regulatory framework.

Timetable:

Action	Date	FR Cite
NPRM	04/24/20	85 FR 22979
NPRM Comment Period End.	06/23/20	
Final Action	03/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Chris Hinkle, Senior Advisor, Department of Health and Human Services, Office of the Inspector General, 330 Independence Avenue SW, Washington, DC 20201, *Phone:* 202 891–6062, *Email: christina.hinkle@oig.hhs.gov.*

RIN: 0936–AA09

HHS—OFFICE FOR CIVIL RIGHTS (OCR)

Proposed Rule Stage

45. Rulemaking on Discrimination on the Basis of Disability in Critical Health and Human Services Programs or Activities (Rulemaking Resulting From a Section 610 Review)

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: Sec. 504 of the Rehabilitation Act of 1973

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 unlawful discrimination on the basis of disability in certain vital HHS-funded health and human services programs. Covered topics include non-discrimination in life-sustaining care, organ transplantation, suicide prevention services, child welfare programs and services, health care value assessment methodologies, accessible medical equipment, auxiliary aids and services, Crisis Standards of Care 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), caselaw, 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, including non-discrimination in life-sustaining care, organ transplantation, suicide prevention services, child welfare programs and services, health care value assessment methodologies, accessible medical equipment, auxiliary aids and services, Crisis Standards of Care and other

relevant health and human services activities.

Summary of Legal Basis: These regulations are required by law. 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.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

Agency Contact: Molly Burgdorf, Section Chief, Civil Rights Division, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 202 357–3411, *Email: ocrmail@hhs.gov*.

RIN: 0945–AA15

HHS—OCR

46. Confidentiality of Substance Use Disorder Patient Records

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 the 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 rulemaking, 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. This rulemaking also would implement the requirement in section 3221 of the CARES Act to modify the HIPAA Privacy Rule NPP provisions so that HIPAA covered entities and part 2 programs provide notice to individuals regarding part 2 records, including patients' rights and uses and disclosures permitted or required without authorization.

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 NPRM proposes regulatory modifications to: (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. HHS considered whether to propose additional changes to part 2 that are not required by section 3221 of the CARES Act. However, adding more proposals would delay publication of the proposed rule and eventual implementation of the CARES Act requirements.

Anticipated Cost and Benefits: HHS estimates that the effects of the proposed requirements for regulated entities would result in new costs of $16,872,779 within 12 months of implementing the final rule. HHS estimates these first-year costs would be partially offset by $11,182,618 of first year cost savings, followed by net savings of $9,612,567 annually in years two through five, resulting in overall net cost savings of $32,760,108 over 5 years.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Marissa Gordon-Nguyen, Senior Advisor for Health Information Privacy 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–AA16

HHS—OCR

47. Nondiscrimination in Health Programs and Activities

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: Sec. 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. 18116)

CFR Citation: 42 CFR 92.

Legal Deadline: None.

Abstract: This proposed rulemaking would propose 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 I of the PPACA.

Statement of Need: The Biden Administration has made advancing health equity 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 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 is pending 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, 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 does not yet have an anticipated cost for this proposed rulemaking; however, it is important to recognize that this NPRM 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	04/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Dylan Nicole de Kervor, Section Chief, Civil Rights Division, 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: ocrmail@hhs.gov.*

RIN: 0945–AA17

HHS—OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY (ONC)

Proposed Rule Stage

48. • ONC Health IT Certification Program Updates, Health Information Network Attestation Process for the Trusted Exchange Framework and Common Agreement, and Enhancements To Support Information Sharing

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 300jj–11; 42 U.S.C. 300jj–14; 42 U.S.C. 300jj–19a; 42 U.S.C. 300jj–52; 5 U.S.C. 552; Pub. L. 114–255; Pub. L. 116–260

CFR Citation: 45 CFR 170; 45 CFR 171; 45 CFR 172.

Legal Deadline: Final, Statutory, December 13, 2017, Conditions of certification and maintenance of certification.

Final, Statutory, July 24, 2019, Publish a list of the health information networks that have adopted the common agreement and are capable of trusted exchange pursuant to the common agreement.

Abstract: The rulemaking implements certain provisions of the 21st Century Cures Act, including: the Electronic Health Record Reporting Program condition and maintenance of certification requirements under the ONC Health IT Certification Program; a process for health information networks that voluntarily adopt the Trusted Exchange Framework and Common Agreement to attest to such adoption of the framework and agreement; and enhancements to support information sharing under the information blocking regulations. The rulemaking would also include proposals for new standards and certification criteria under the Certification Program related to real-time benefit tools and electronic prior authorization and potentially other revisions to the Certification Program.

Statement of Need: The rulemaking would implement certain provisions of the 21st Century Cures Act, including: the Electronic Health Record (EHR) Reporting Program condition and maintenance of certification requirements under the (Certification Program); a process for health information networks that voluntarily adopt the Trusted Exchange Framework and Common Agreement to attest to such adoption of the framework and agreement; and enhancements to support information sharing under the information blocking regulations. The rulemaking would also include

proposals for new standards and certification criteria under the Certification Program related to real-time benefit tools and electronic prior authorization. These proposals would fulfill statutory requirements, provide transparency, advance interoperability, and support the access, exchange, and use of electronic health information. Transparency regarding health care information and activities as well as the interoperability and electronic exchange of health information are central to the efforts of the Department of Health and Human Services to enhance and protect the health and well-being of all Americans.

Summary of Legal Basis: The provisions would be implemented under the authority of the Public Health Service Act, as amended by the HITECH Act and the 21st Century Cures Act.

Alternatives: ONC will consider different options and measures to improve transparency, and the interoperability and access to electronic health information so that the benefits to providers, patients, and payers are maximized and the economic burden to health IT developers, providers, and other stakeholders is minimized.

Anticipated Cost and Benefits: The majority of costs for this proposed rule would be incurred by health IT developers in terms of meeting new requirements and continual compliance with the EHR Reporting Program condition and maintenance of certification requirements. We also expect that implementation of new standards and information sharing requirements may also account for some costs. We expect that through implementation and compliance with the regulations, the market (particularly patients, payers, and providers) will benefit greatly from increased transparency, interoperability, and streamlined, lower cost access to electronic heath information.

Risks: At this time, ONC has not been able to identify any substantial risks that would undermine likely proposals in the proposed rule. ONC will continue to consider and deliberate regarding any identified potential risks and will be sure to identify them for stakeholders and seek comment from stakeholders during the comment period for the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	
NPRM Comment Period End.	09/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Agency Contact: Michael Lipinski, Director, Regulatory & Policy Affairs Division, Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Mary E. Switzer Building, 330 C Street SW, Washington, DC 20201, *Phone:* 202 690–7151, *Email: michael.lipinski@hhs.gov*.

RIN: 0955–AA03

HHS—SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA)

Proposed Rule Stage

49. • Treatment of Opioid Use Disorder With Buprenorphine Utilizing Telehealth

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: The Controlled Substances Act, as amended by the Ryan Haight Act (21 U.S.C. 802(54)(G))

CFR Citation: 42 CFR 8.11(h).

Legal Deadline: None.

Abstract: In the face of an escalating overdose crisis and an increasing need to reach remote and underserved communities, extending the buprenorphine telehealth flexibility is of paramount importance. To permanently continue this flexibility among OTPs after the COVID–19 public health emergency ends, SAMHSA proposes to revise OTP regulations under 42 CFR part 8.

Statement of Need: This change will help facilitate access to Medications for Opioid Use Disorder (MOUD) in SAMHSA-regulated opioid treatment programs (*https://www.samhsa.gov/medication-assisted-treatment/become-accredited-opioid-treatment-program*). Research details that many patients are unable to regularly access OTPs due to unreliable transportation, geographic disparity, employment or required activities of daily living. Providing buprenorphine via telehealth will allow more patients to receive comprehensive treatment.

Summary of Legal Basis: To be determined.

Alternatives: In the absence of congressional action, rulemaking is required.

Anticipated Cost and Benefits: This change will help facilitate access to and ensure continuity of medication treatment for opioid use disorder in SAMHSA-regulated opioid treatment programs. The change will likely reduce long-term costs at the practice level, while also facilitating access to treatment. However, a minority of providers may face upfront technology costs as they scale-up the provision of treatment via telehealth. We expect that since many providers have now shifted in part to telehealth services during the COVID–19 Public Health Emergency, their costs should now be related to equipment upgrades and software updates. The cost to patients would involve either use of Wi-Fi, data usage with their respective cellular devices or landline telephone service. We expect that many patients already have acquired some of these services, so the cost would be monthly maintenance of such services.

Risks: Patients seeking this care might still be required to have an in person visit, as specified by their provider's plan of care, so to receive comprehensive treatment. Without this provision, there is risk of patients receiving a lower standard of care and increased risk of diversion of the prescribed medications.

Timetable:

Action	Date	FR Cite
NPRM	09/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

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–AA38

HHS—SAMHSA

50. • Treatment of Opioid Use Disorder With Extended Take Home Doses of Methadone

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 21 U.S.C. 823(g)(1)

CFR Citation: 42 CFR 8.

Legal Deadline: None.

Abstract: SAMHSA will revise 42 CFR part 8 to make permanent some regulatory flexibilities for opioid treatment programs to provide extended take home doses of methadone. To facilitate this new treatment paradigm, sections of 42 CFR part 8 will require updating to reflect current treatment

practice. SAMHSA's changes will impact roughly 1,800 opioid treatment programs and state opioid treatment authorities.

Statement of Need: This change will help ensure continuity of access to Medications for Opioid Use Disorder (MOUD) in SAMHSA-regulated opioid treatment programs (*https://www.samhsa.gov/medication-assisted-treatment/become-accredited-opioid-treatment-program*). Research and stakeholder feedback details that the take home flexibilities have been well received by treatment programs and patients. There are very few reports of diversion or overdose, and the provision of extended take home doses facilitates patient engagement in activities, such as employment, that support recovery. Moreover, those with limited access to transportation benefit from extended take home doses since they are not required to attend the OTP almost each day of the week to receive Methadone. In this way, making permanent the methadone extended take home flexibility will facilitate treatment engagement.

Summary of Legal Basis: The current OTP exemption at issue allows OTPs to operate in a manner that is otherwise inconsistent with existing OTP regulations, and therefore, a permanent extension of such exemptions would necessitate revisions of the OTP regulations.

Alternatives: In the absence of congressional action, rulemaking is required.

Anticipated Cost and Benefits: This change will help facilitate and ensure continuity of access to medication treatment for opioid use disorder in SAMHSA-regulated opioid treatment programs. Programs have already incorporated this flexibility into practice and have systems in place that support its delivery in a cost effective and patient centered manner. This proposed rule is not expected to impart a cost to patients. In fact, the proposed rule allows patients to engage in employment and necessary daily activities. This supports income generation and also recovery. The increased number of take homes allowed may affect OTP clinic visit and thereby reduce revenue derived from clinical encounters and medication visits. Conversely patients may experience more convenient engagement with OTPs as the visits to clinic would be decreased.

Risks: Patients seeking this care should still be required to have an in-person visit at the OTP in between provision of take-home doses, as directed by their treating physician's plan of care. Without this provision, there is risk of patients receiving a lower standard of care and increased risk of diversion of the prescribed medications.

Timetable:

Action	Date	FR Cite
NPRM	09/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: State.

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RIN: 0930–AA39

HHS—CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

Final Rule Stage

51. • Requirement for Proof of Vaccination or Other Proof of Immunity Against Quarantinable Communicable Diseases

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); sec. 361 to 369, PHS Act, as amended (42 U.S.C. 264 to 272)

CFR Citation: 42 CFR 71.

Legal Deadline: None.

Abstract: This Interim Final Rule (IFR) will amend current regulations to permit CDC to require proof of vaccination or other proof of immunity against quarantinable communicable diseases. When CDC exercises this authority, persons arriving at a U.S. port of entry will be required to provide proof of immunity against quarantinable communicable diseases or proof of having been fully vaccinated against quarantinable communicable diseases. Additionally, as a condition of controlled free pratique under 42 CFR 71.31(b), carriers destined for the United States must also comply with requirements of any order issued pursuant to the IFR.

Statement of Need: In response to the COVID–19 pandemic, CDC is amending current regulations to require proof of vaccination or other proof of immunity against quarantinable communicable diseases for persons arriving at a U.S. port of entry.

Summary of Legal Basis: HHS/CDC is promulgating this rule under sections 215 and 311 of the Public Health Service Act, as amended (42 U.S.C. 216, 243); section 361 to 369, PHS Act, as amended (42 U.S.C 264 to 272).

Alternatives: An alternative considered would allow non-U.S. nationals to submit accurate contact information, complete post-arrival testing, and self-quarantine after arrival in the United States in lieu of the vaccination requirement.

Anticipated Cost and Benefits: HHS/CDC believes it is likely that this rulemaking will be determined to be economically significant under E.O. 12866.

Risks: This rulemaking addresses the risk of introduction of communicable diseases by international travelers into the United States. By implementing this rulemaking, CDC can reduce the risk of importation of new COVID–19 variants into the United States. This rulemaking is expected to increase the number of travelers who are fully vaccinated upon arrival and reduce the number of international travelers arriving while infected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/21	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State.

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: Ashley C. Altenburger JD, Public Health 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–AA80

HHS—FOOD AND DRUG ADMINISTRATION (FDA)

Proposed Rule Stage

52. Nonprescription Drug Product With an Additional Condition for Nonprescription Use

Priority: Other Significant.

Unfunded Mandates: Undetermined.

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 proposed rule is intended to increase access to nonprescription drug products. The proposed rule would establish requirements for a drug product that could be marketed as a nonprescription drug product with an additional condition that an applicant must implement to ensure appropriate self-selection, appropriate actual use, or both by consumers.

Statement of Need: Nonprescription products have traditionally been limited to drugs that can be labeled with information for consumers to safely and appropriately self-select and use the drug product without supervision of a health care provider. There are certain prescription medications that may have comparable risk-benefit profiles to over-the-counter medications in selected populations. However, appropriate consumer selection and use may be difficult to achieve in the nonprescription setting based solely on information included in labeling. FDA is proposing regulations that would establish the requirement for a drug product that could be marketed as a nonprescription drug product with an additional condition that an applicant must implement to ensure appropriate self-selection or appropriate actual use or both for consumers.

Summary of Legal Basis: FDA's proposed revisions to the regulations regarding labeling and applications for nonprescription drug products labeling 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 proposed rule would include increased consumer access to drug products, which could translate to a reduction in under treatment of certain diseases and conditions. Benefits to industry would arise from the flexibility in drug product approval. The proposed rule would impose costs arising from the development of an innovative approach to assist consumers with nonprescription drug product self-selection or use.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

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–AH62

HHS—FDA

53. Nutrient Content Claims, Definition of Term: Healthy

Priority: Economically Significant. Major under 5 U.S.C. 801.

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 proposed rule would update the definition for the implied nutrient content claim ''healthy'' to be consistent with current nutrition science and federal dietary guidelines. The proposed rule would revise the requirements for when the claim ''healthy'' can be voluntarily used in the labeling of human food products so that the claim reflects current science and dietary guidelines and helps consumers maintain healthy dietary practices.

Statement of Need: FDA is proposing to redefine ''healthy'' to make it more consistent with current public health recommendations, including those captured in recent changes to the Nutrition Facts label. The existing definition for ''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; recommended diets now focus on dietary patterns, which includes getting enough of certain food groups such as fruits, vegetables, low-fat dairy, and whole grains. Chronic diseases, such as heart disease, cancer, and stroke, are the leading causes of death and disability in the United States and diet is a contributing factor to these diseases. Claims on food packages such as ''healthy'' can provide quick signals to consumers about the healthfulness of a food or beverage, thereby making it easier for busy consumers to make healthy choices.

FDA is proposing to update the existing nutrient content claim definition of ''healthy'' based on the food groups recommended by the Dietary Guidelines for Americans and also require a food product to be limited in certain nutrients, including saturated fat, sodium, and added sugar, to ensure that foods bearing the claim can help consumers build more healthful diets to help reduce their risk of diet-related chronic disease.

Summary of Legal Basis: FDA is issuing this proposed 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 proposed rule would update the existing definition to be consistent with current federal dietary guidance.

Alternatives:

Alternative 1: Codify the policy 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 policy in this guidance. 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 proposed compliance date on the rule updating the definition 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, a longer compliance date runs the risk of confusing consumers that may not understand whether a packaged food product labeled ''healthy'' follows the old 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 proposed 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 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 proposed rule is $260 million, with a lower bound estimate of $17 million and an upper bound estimate of $700 million.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

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

54. Biologics Regulation Modernization

Priority: Other Significant.

Legal Authority: 42 U.S.C. 262; 42 U.S.C. 301, *et seq.*

CFR Citation: 21 CFR 601.

Legal Deadline: None.

Abstract: FDA's biologics regulations will be updated to clarify existing requirements and procedures related to Biologic License Applications and to promote the goals associated with FDA's implementation of the abbreviated licensure pathway created by the Biologics Price Competition and Innovation Act of 2009.

Statement of Need: As biologics regulations were primarily drafted in the 1970s, before passage of the BPCI Act, the regulations need to be updated and modernized to account for the existence of biosimilar and interchangeable biological products. The intent of this rulemaking is to make high priority updates to FDA's biologics regulations with the goals of (1) providing enhanced clarity and regulatory certainty for manufacturers of both originator and biosimilar/interchangeable products and (2) help prevent the gaming of FDA regulatory requirements to prevent or delay competition from biosimilars and interchangeable products.

Summary of Legal Basis: FDA's authority for this rule derives from the biological product provisions in section 351 of the PHS Act (42 U.S.C. 262), and the provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301, *et seq.*) applicable to biological products.

Alternatives: FDA would continue to rely on guidance and one-on-one communications with sponsors through formal meetings and correspondence to provide clarity on existing requirements and procedures related to Biologic License Applications, increasing the risk of potential confusion and burden.

Anticipated Cost and Benefits: This proposed rule would impose compliance costs on affected entities to read and understand the rule and to provide certain information relevant to the regulation. The provisions in this proposed rule would reduce regulatory uncertainty for manufacturers of originator and biosimilar and interchangeable products. This reduction of uncertainty may lead to time-savings to industry and cost-savings to government due to better organized and more complete BLAs and increased procedural clarity and predictability.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	08/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Federalism: Undetermined.

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RIN: 0910–AI14

HHS—FDA

55. Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids and Aligning Other Regulations

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331 to 334; 21 U.S.C. 351 and 352; 21 U.S.C. 360; 21 U.S.C. 360c to 360e; Pub. L. 115–52, 131 Stat. 1065–67; 21 U.S.C. 360i to 360k; 21 U.S.C. 360l; 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 381; . . .

CFR Citation: 21 CFR 800; 21 CFR 801; 21 CFR 808; 21 CFR 874.

Legal Deadline: NPRM, Statutory, August 18, 2020.

Abstract: FDA is proposing to establish an over-the-counter category of hearing aids to promote the availability of additional kinds of devices that address mild to moderate hearing loss, and proposing related amendments to the current hearing aid regulations, the regulations codifying FDA decisions on State applications for exemption from preemption, and the hearing aid classification regulations.

Statement of Need: Hearing loss affects an estimated 30 million people in the United States and can have a significant impact on communication, social participation, and overall health and quality of life. However, only about one-fifth of people who could benefit from a hearing aid seek intervention. Several barriers likely impede the use of hearing aids, and FDA is proposing rules to address some of these concerns.

Summary of Legal Basis: The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) establishes a comprehensive system for the regulation of devices intended for human use, and hearing aids are subject to those provisions. Furthermore, the FDA Reauthorization Act of 2017 (Pub. L. 115–52, 131 Stat. 1005, 1066) directs FDA to establish by regulation a category of over-the-counter hearing aids. This rulemaking establishes requirements for the safe and effective use of hearing aids, including for the over-the-counter category of hearing aids.

Alternatives: FDA must establish the category of over-the-counter hearing aids as well as requirements that provide for reasonable assurance of safety and effectiveness of these hearing aids. However, FDA will consider different specific options to maximize the health benefits to hearing aid users while minimizing the economic burdens of the final rules.

Anticipated Cost and Benefits: FDA expects benefits of the rule to include cost savings to consumers who wish to buy lower-cost hearing aids, in part by enabling consumers to cross-compare and purchase the devices more easily. Other benefits may include improving health equity, especially for Americans living in rural areas, those with limited mobility, or those with limited means. Individual benefits may include improved health outcomes, and therefore improved social and economic participation. FDA expects costs to include those costs to manufacturers for changing labeling and updating existing processes.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	10/20/21	86 FR 58150
NPRM Comment Period End.	01/18/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

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–AI21

HHS—FDA

56. Tobacco Product Standard for Characterizing Flavors in Cigars

Priority: Economically Significant. Major under 5 U.S.C. 801.

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: 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 them easier to use. Over a half million youth in the United States use flavored cigars, placing these youth at risk for cigar-related disease and death. This proposed rule is a tobacco product standard that would ban 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.

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 ban 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 would reduce the appeal of cigars, particularly to youth and young adults, and is intended to decrease the likelihood of experimentation, progression to regular use, and potential for addiction to nicotine. In addition, most of the users of flavored cigars are from under served communities and/or at risk populations, including racial/ethnic minorities, lesbian, gay, bisexual, transgender and queer (LGBTQ+) persons, those of lower socioeconomic status, and youth. As such, reducing the appeal and use of cigars by eliminating characterizing flavors is also expected to decrease tobacco-related disparities and promote health equity across population groups.

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 the 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 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 proposed rule, FDA will assess the costs and benefits of changing the effective date of the rule, and including pipe tobacco in the proposed standard.

Anticipated Cost and Benefits: The anticipated benefits of the proposed rule stem from diminished exposure to tobacco smoke for users of cigars from decreased experimentation, progression to regular use, and consumption of cigars with characterizing flavors other than tobacco. The diminished exposure and use is expected to reduce illness and improve health.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	03/21/18	83 FR 12294
ANPRM Comment Period End.	07/19/18	
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Samantha LohColladom, 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–AI28

HHS—FDA

57. Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 21 U.S.C. 355; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 262

CFR Citation: 21 CFR 16; 21 CFR 314; 21 CFR 320; 21 CFR 321; 21 CFR 601; . . .

Legal Deadline: None.

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 analytical and clinical pharmacology, 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.

Statement of Need: FDA receives clinical pharmacology and clinical and analytical bioavailability (BA) and bioequivalence (BE) study data in support of new and abbreviated new drug applications, and biological license applications. Our ability to ensure studies supporting those applications are reliable and valid, including data reliability and human subject protection, is severely limited because our regulations governing BA and BE studies at 21 CFR part 320 lack basic study conduct requirements necessary for the Agency to verify study data reliability. Current part 320 does not describe specific responsibilities for persons involved in the conduct of clinical and analytical BA and BE studies, recordkeeping and record retention requirements, standing operating procedures, or compliance provisions. The proposed rule would revise part 320 and establish a new part 321 to codify the Agency's expectations, and industry best practices, for the conduct of clinical pharmacology and clinical and analytical BA and BE studies for human drug and biological product marketing applications.

Summary of Legal Basis: FDA's proposed revisions to the regulations regarding the conduct of clinical pharmacology and clinical and analytical BA and BE are authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 371 and 374) and by the Public Health Service Act (42 U.S.C. 262).

Alternatives: FDA considered providing guidance to applicants and their contractors that conduct and submits clinical pharmacology and clinical and analytical BA and BE studies to the Agency in support of marketing applications.

Anticipated Cost and Benefits: The benefits of the proposed rule would be increased clarity to industry on study conduct expectations that should improve study quality and thereby, to the extent possible, result in fewer study rejections due to deficiencies identified by Agency inspections, and thus promote faster application approvals. Also, potential benefit to patients by increasing the speed in which new human drug and biological products are approved to market. The costs would stem from the proposed rule establishing recordkeeping requirements and procedures and processes requirements that applicants and their contractors would need to meet. These proposed requirements are in-line with current industry best practices.

Risks: The current regulatory framework does not adequately describe FDA's expectations for the conduct clinical pharmacology and clinical and analytical BA and BE studies to ensure industry performs those studies in a consistent and reliable manner. The proposed rule would establish basic study conduct expectations to ensure study reliability, including data reliability and human subject protection.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Agency Contact: Brian Joseph Folian, Regulatory Counsel, 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

HHS—FDA

58. Tobacco Product Standard for Menthol in Cigarettes

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 21 U.S.C. 387g

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This proposed 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 ban menthol as a characterizing flavor in cigarettes. The standard would reduce the availability of menthol cigarettes and thereby decrease the likelihood that nonusers who would experiment with these products would progress to regular cigarette smoking. In addition, among current menthol cigarette smokers, the proposed tobacco product standard is likely to improve the health of current menthol cigarette smokers by decreasing 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 proposed 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 proposed product standard, and prohibiting menthol as an additive in cigarette products rather than prohibiting menthol as a characterizing flavor.

Anticipated Cost and Benefits: 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/importing practices. The quantified benefits of the proposed 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 proposed rule include impacts such as reduced illness for smokers.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	07/24/13	78 FR 44484
ANPRM Comment Period End.	09/23/13	
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

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

59. • 340B Drug Pricing Program; Administrative Dispute Resolution

Priority: Other Significant.

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 10.

Legal Deadline: None.

Abstract: This proposed rule would replace 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 would establish new requirements and procedures for the 340B Program's ADR process. This administrative process would 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 NPRM proposes to replace the 340B Administrative Dispute Resolution (ADR) final rule, which was published in December 2020 and became effective January 13, 2021. This new rule will propose new requirements and procedures for the 340B Program's ADR process. The proposed 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. This NPRM better 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 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: N/A.

Anticipated Cost and Benefits: N/A.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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RIN: 0906–AB28

HHS—INDIAN HEALTH SERVICE (IHS)

Proposed Rule Stage

60. Catastrophic Health Emergency Fund (Chef)

Priority: Other Significant.

Legal Authority: Pub. L. 94–437, sec. 202(d), IHCI Act, as amended by Pub. L. 111–148, sec. 10221

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The Catastrophic Health Emergency Fund (CHEF) pays for extraordinary medical costs associated with treatment of victims of disasters or catastrophic illnesses. CHEF is used to reimburse PRC programs for high cost cases (*e.g.,* burn victims, motor vehicle accidents, high risk obstetrics, cardiology, etc.). The proposed rule establishes conditions and procedures for payment from the fund. During the comment period for the NPRM, several Tribes and Tribal Organizations expressed concern about provisions in the NRPM related to coordination with Tribal self-insurance as an alternate resource. In response to those concerns, the IHS engaged in additional Tribal consultation and decided to delay moving forward with the NPRM pending the resolution of relevant litigation. IHS intends to proceed with developing the NPRM consistent with how Tribal self-insurance is currently recognized in agency policy at *https://www.ihs.gov/ihm/pc/part-2/chapter-3-purchased-referred-care/.* On January 29, 2021, IHS issued a Dear Tribal Leader Letter to clarify that the proposed rule should not be relied upon and that IHS will be moving forward by publishing a new proposed rule in the near future. A copy of the Dear Tribal Leader Letter concerning next steps for the CHEF regulations is available on the IHS website at: *https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2021_Letters/DTLL_01292021.pdf.*

Statement of Need: These regulations propose to (1) establish definitions governing CHEF, including definitions of disasters and catastrophic illnesses; (2) establish that a service unit shall not be eligible for reimbursement for the cost of treatment from CHEF until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost; (3) establish a procedure for reimbursement of the portion of the costs for authorized services that exceed such threshold costs; (4) establish a procedure for payment from CHEF for cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment; and (5) establish a procedure that will ensure no payment will be made from CHEF to a service unit to the extent that the provider of services is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

Summary of Legal Basis: Section 202(d) of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437 (1976), as amended by the Patient Protection and Affordable Care Act, Public Law 111–148, section 10221 (2010) requires the Secretary of the Department of Health and Human Services, acting through the Indian Health Service (IHS), to promulgate regulations to implement section 202(d). Section 202(d) of the IHCIA amends the IHS Catastrophic Health Emergency Fund (CHEF) by establishing the CHEF threshold cost to the 2000 level of $19,000; maintains requirements in current law to promulgate regulations consistent with the provisions of the CHEF to establish a definition of disasters and catastrophic illnesses for which the cost of the treatment provided under contract would qualify for payment under CHEF; provides that a service unit shall not be eligible for reimbursement for the cost of treatment from CHEF until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost which the Secretary shall establish at the 2000 level of $19,000; and for any subsequent year, not less than the threshold cost of the previous year increased by the percentage increase in medical care expenditure category of the consumer price index for all urban consumers; establish a procedure that will ensure no payment will be made from CHEF to a service unit to the extent that the provider of services is eligible to receive payment for the treatment from any other Federal, State,

local, or private source of reimbursement for which the patient is eligible.

Alternatives: None.

Anticipated Cost and Benefits: Reducing the threshold to $19,000 will allow for more purchased/referred care cases to be eligible for CHEF. Tribal and Federal PRC programs with limited budgets would have more of an opportunity to access the CHEF.

Risks: The increase in cases will deplete the CHEF earlier in the fiscal year unless CHEF funding is increased.

Timetable:

Action	Date	FR Cite
NPRM	01/26/16	81 FR 4339
NPRM Comment Period End.	03/11/16	
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

Agency Contact: CAPT John E. Rael, Director, Office of Resource Access and Partnerships, Department of Health and Human Services, Indian Health Service, 5600 Fishers Lane, Suite 10E73, Rockville, MD 20857, *Phone:* 301 443–0969, *Email: john.rael@ihs.gov.*

RIN: 0917–AA10

HHS—IHS

Final Rule Stage

61. Acquisition Regulations; Buy Indian Act; Procedures for Contracting

Priority: Other Significant.

Legal Authority: Transfer Act of 1954 (42 U.S.C. 2001 *et seq.*); Transfer Act (42 U.S.C. 2003); 25 U.S.C. 1633; Buy Indian Act 1910; Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261); . . .

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The Indian Health Service (IHS) is proposing to issue regulations guiding implementation of the Buy Indian Act, which provides IHS with authority to set-aside procurement contracts for Indian-owned and controlled businesses. This rule supplements the Federal Acquisition Regulation (FAR) and the current HHS Acquisition Regulations (HHSAR). IHS may use the Buy Indian Act procurement authority for acquisitions in connection with those functions. This rule is proposed to describe administration procedures that the IHS will use in all of its locations to encourage procurement relationships with eligible Indian Economic Enterprises in the execution of the Buy Indian Act. These proposed rules are intended to be consistent with Buy Indian Act rules previously promulgated by the Department of Interior. IHS published the proposed rule on November 10, 2020, with a 60-day comment period ending January 11, 2021 (85 FR 71596). Comments were received from tribes and tribal entities requesting an extension of the comment period due to the encompassing of the holiday season during the original comment period, as well as the disproportionately high impact of the pandemic on Indian Country. Both of these events delayed stakeholders from being able to perform a complete and full review and provide comments within the initial 60-day comment period. On April 21, 2021, HHS reopened the NPRM and extended the comment period for 60 days. The comment period closed on June 21, 2021.

Statement of Need: Due to the unique legal and political relationship with Indian Tribes, the Federal government has a number of programs and authorities to support and expand the economic development of tribal entities and their individual members. The Buy Indian Act of 1910 is one of these programs that allows for the Department of Health and Human Services' IHS and the Department of the Interior's BIA to award federal contracts to Indian-owned businesses without using the standard competitive process. The IHS annually obligates over $1 billion in commercial contracts. Much of this can be set-aside under the Buy Indian Act. The established use of this rule will promote the growth and development of Indian industries and in turn, foster economic development and sustainability in Indian Country.

Summary of Legal Basis: This rule proposes to amend the HHSAR, which is maintained by Assistant Secretary for Financial Resources (ASFR) pursuant to 48 CFR 301.103, to establish Buy Indian Act acquisition policies and procedures for IHS that are consistent with rules proposed and/or adopted by the Department of the Interior. This rule is to provide uniform administration procedures that the IHS will use in all of its locations to encourage procurement relationships with Indian labor and industry in the execution of the Buy Indian Act. IHS' current rules are codified at HHSAR, 48 CFR part 326, subpart 326.6. The Transfer Act authorizes the Secretary of HHS to make such other regulations as he deems desirable to carry out the provisions of the [Transfer Act]. 42 U.S.C. 2003. The Secretary's authority to carry out functions under the Transfer Act has been vested in the Director of the Indian Health Service under 25 U.S.C. 1661. Because of these authorities, use of the Buy Indian Act is reserved to IHS and is not available for use by any other HHS component. IHS authority to use the Buy Indian Act is further governed by 25 U.S.C.1633, which directs the Secretary to issue regulations governing the application of the Buy Indian Act to construction activities. Additionally, when Congress amended the Buy Indian Act, they added a requirement to harmonize the Buy Indian Act regulations. As such, the Secretaries shall promulgate regulations to harmonize the procurement procedures of the Department of the Interior and the Department of Health and Human Services, to the maximum extent practicable.

Alternatives: There are no apparent alternatives to ensure compliance with this law.

Anticipated Cost and Benefits: The benefits of this rule include, policy and compliance objectives such as: Supporting procurement relationships with Indian labor and industry as well as overall Tribal relationships, in the execution of the Buy Indian Act; consistent IHS use with the DOI/BIA regulations; and fostering economic development and sustainability in Indian Country. To avoid additional costs, the rule supports utilization of fair and reasonable price requirements, pursuant to the Federal Acquisition Regulations (FAR). Additionally, IHS intends to conduct all training on the Buy Indian Act in-house and/or in collaboration with the DOI/BIA.

Risks: IHS foresees minimal risks in the implementation of this rule. One potential risk is an increased number of Buy Indian Act challenges to representation requirement but IHS views this more as a benefit in ensuring Buy Indian Act set-aside commercial contracts are appropriately awarded to confirmed Indian Economic Enterprises.

Timetable:

Action	Date	FR Cite
NPRM	11/11/20	85 FR 71596
NPRM Comment Period End.	01/11/21	
NPRM Comment Period Re-opened.	04/21/21	86 FR 20648
NPRM Comment Period Re-opened End.	06/21/21	
Final Action	02/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses.
Government Levels Affected: Undetermined.
Agency Contact: Santiago Almaraz, Acting Director, Office of Management Service, Department of Health and Human Services, Indian Health Service, 5600 Fishers Lane, Suite 09E45, Rockville, MD 20857, *Phone:* 301 443–4872, *Email: santiago.almaraz@ihs.gov.*
RIN: 0917–AA18

HHS—CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

Proposed Rule Stage

62. Streamlining the Medicaid and Chip Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS–2421)

Priority: Economically 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.
Legal Deadline: None.
Abstract: This proposed rule would streamline eligibility and enrollment processes for all Medicaid and CHIP populations and create new enrollment pathways to maximize enrollment and retention of eligible individuals.
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 proposed 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.
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 to the presented proposals, including maintaining existing requirements. These alternatives will be described in the rule.
Anticipated Cost and Benefits: The provisions in this rule would streamline Medicaid and CHIP enrollment processes and ensure that eligible beneficiaries can maintain coverage. While states and the Federal Government may incur some 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 any 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 would 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 would reduce the risk of improper payments.
Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: No.
Government Levels Affected: 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

63. Provider Nondiscrimination Requirements for Group Health Plans and Health Insurance Issuers in the Group and Individual Markets (CMS–9910)

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Legal Authority: Pub. L. 116–260, Division BB, title I; 42 U.S.C. 300gg–5(a)
CFR Citation: Not Yet Determined.
Legal Deadline: NPRM, Statutory, January 1, 2022, Section 108 of the No Surprises Act requires proposed rulemaking by January 1, 2022.
Abstract: This proposed rule would implement section 108 of the No Surprises Act.
Statement of Need: Not yet determined.
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: Not yet determined.
Anticipated Cost and Benefits: Not yet determined.
Risks: Not yet determined.
Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Undetermined.
Government Levels Affected: Federal, State.
Federalism: Undetermined.
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–AU64

HHS—CMS

64. Assuring Access to Medicaid Services (CMS–2442)

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Unfunded Mandates: Undetermined.
Legal Authority: 42 U.S.C. 1302
CFR Citation: 42 CFR 438; 42 CFR 447.

Legal Deadline: None.

Abstract: This rule proposes to assure and monitor equitable access in Medicaid and the Children's Health Insurance Program (CHIP). These activities could include actions that support the implementation of a comprehensive access strategy as well as payment specific requirements related to particular delivery systems.

Statement of Need: In order to assure equitable access to health care for all Medicaid and Children's Health Insurance Program (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 ranging from potential barriers to access 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. CMCS is developing a comprehensive access strategy that will address not only Fee-For-Service (FFS) payment, but also access in managed care and Home and Community-Based Services (HCBS). The scope of this rule is unknown at this time, but will seek to assure and monitor equitable access in Medicaid and CHIP.

Summary of Legal Basis: At this time, the scope of the rule is unknown. However, there are no broad access requirements specified in the statute beyond payment: 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.''

Alternatives: In developing the policies contained in this rule, we will consider numerous alternatives to the presented proposals, including maintaining existing requirements. These alternatives will be described in the rule.

Anticipated Cost and Benefits: This proposed rule would be 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 proposed rule.

Risks: At this time, we are still at work developing a comprehensive access strategy. We have not yet concluded which pieces are best done through rulemaking versus other guidance.

Timetable:

Action	Date	FR Cite
NPRM	10/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: State.

Federalism: Undetermined.

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

65. • Implementing Certain Provisions of the Consolidated Appropriations Act and Other Revisions to Medicare Enrollment and Eligibility Rules (CMS–4199)

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 116–260, secs. 120 & 402; 42 U.S.C 1395i–2

CFR Citation: 42 CFR 400; 42 CFR 406; 42 CFR 407; 42 CFR 408; . . .

Legal Deadline: Final, Statutory, October 1, 2022, Enrollments under section 402 of the CAA start on 10/1/22. Final, Statutory, January 1, 2023, Provisions under sections 120 and 402 of the CAA must be effective 1/1/23.

Abstract: This proposed rule would implement certain Medicare-related provisions of the Consolidated Appropriations Act, 2021 (CAA). Specifically, section 120 of the CAA allows for Medicare coverage to take effect earlier for people who enroll in the General Enrollment Period (GEP) or within the last three months of their Initial Enrollment Period (IEP). Section 120 also gives the Secretary the authority to establish special enrollment periods for exceptional circumstances. Section 402 of the CAA extends immunosuppressive drug coverage for Medicare kidney transplant recipients beyond the current law 36-month limit following a transplant by providing immunosuppressive drug coverage under Medicare Part B for these individuals. Separately, this rule would address enrollment in Medicare Part A for applicants who are eligible for Social Security benefits, but are not yet receiving them, and make certain updates related to state payment of Medicare premiums.

Statement of Need: This rule is necessary to implement section 120 of the Consolidated Appropriations Act, 2021 (CAA) that revises effective dates of coverage for individuals enrolling in Medicare and gives the Secretary of the Department of Health and Human Services the authority to establish special enrollment periods (SEPs) for exceptional circumstances beginning January 1, 2023. This rule also implements section 402 of the CAA that, beginning January 1, 2023, provides for coverage of immunosuppressive drugs under part B for certain individuals whose Medicare entitlement based on end-stage renal disease (ESRD) would otherwise end 36-months after the month in which they received a successful kidney transplant.

Summary of Legal Basis: The legal basis of this rule is the Consolidated Appropriations Act, 2021 (sections 120 and 402).

Alternatives: The provisions of this rule are primarily established in statute. Where there is discretion, alternatives will be discussed within the text of the rule. Public comments will also be considered in the development of the final rule.

Anticipated Cost and Benefits: We believe that this rule will have a positive impact on health outcomes of beneficiaries because it provides for Medicare coverage to begin earlier and provides for coverage of immunosuppressive drugs in situations where, currently, they are not covered.

Risks: The risks associated with not publishing this regulation would be not establishing the regulatory authority under which immunosuppressive drug benefits and effective dates of coverage will be based upon beginning January 2023.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Kristy Nishimoto, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: 100, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 206 615–2367, *Email: kristy.nishimoto@cms.hhs.gov*.

RIN: 0938–AU85

HHS—CMS

66. • Requirements for Rural Emergency Hospitals (CMS–3419) (Section 610 Review)

Priority: Economically Significant. Major under 5 U.S.C. 801.
Unfunded Mandates: Undetermined.
Legal Authority: 42 U.S.C. 1395x
CFR Citation: Not Yet Determined.
Legal Deadline: Final, Statutory, January 1, 2023, Per statute, amendments made by this section apply to items and services furnished on or after January 1, 2023.
Abstract: This proposed rule would establish health and safety requirements for a new provider type, Rural Emergency Hospitals, in accordance with section 125 of the Consolidated Appropriations Act, 2021.
Statement of Need: This rule proposes health and safety standards for Rural Emergency Hospitals (REHs).
Summary of Legal Basis: This rule addresses section 125 of the Consolidated Appropriations Act (Pub. L. No: 116–260), which establishes REHs as a new provider type eligible for Medicare payment.
Alternatives: We understand that the policies that will be included in this proposed rule will have impacts on rural communities and providers of health care services in these communities. These impacts will be taken into consideration as we evaluate policy alternatives in the development of this proposed rule. These alternatives will be included in the rule.
Anticipated Cost and Benefits: This proposed rule aims to increase access to health care services, including emergency services, to rural communities. Many rural Americans face healthcare inequities resulting in worse outcomes overall in rural areas. Increasing access to key health care services in these communities will help address such healthcare inequities. Estimates of the cost and benefits of the developed provisions will be included in the proposed rule.
Risks: Although there are some risks associated with the potential loss of inpatient services in rural communities as providers convert to an REH, we anticipate that only eligible rural hospitals and critical access hospitals with very low average daily inpatient censuses will convert to an REH. We anticipate that the provisions of this proposed rule would help further HHS's goal of increasing rural access to care.
Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Yes.
Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.
Government Levels Affected: Federal, Local, State.
Federalism: Undetermined.
Agency Contact: Kianna Banks, Technical Advisor, 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:* 410 786–8486, *Email: kianna.banks@cms.hhs.gov*.
RIN: 0938–AU92

HHS—CMS

67. • Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 (CMS–9902)

Priority: Other Significant.
Legal Authority: Pub. L. 116–260, Division BB, title II; Pub. L. 110–343, secs. 511 to 512
CFR Citation: Not Yet Determined.
Legal Deadline: None.
Abstract: This rule would propose amendments to the final rules implementing the Mental Health Parity and Addiction Equity Act, taking into account the amendments to the law enacted by the Consolidated Appropriations Act, 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 Consolidated Appropriations Act, 2021. This rule would propose amendments to the final rules and incorporate examples and modifications to account for this legislation and previously issued guidance.
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: Not yet determined.
Anticipated Cost and Benefits: Not yet determined.
Risks: Not yet determined.
Timetable:

Action	Date	FR Cite
NPRM	07/00/22	

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–AU93

HHS—CMS

68. • Coverage of Certain Preventive Services (CMS–9903)

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 propose 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: Not yet determined.
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: Not yet determined.
Anticipated Cost and Benefits: Not yet determined.
Risks: Not yet determined.
Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

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: 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

Final Rule Stage

69. • Omnibus COVID–19 Health Care Staff Vaccination (CMS–3415) (Section 610 Review)

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1395hh; 42 U.S.C. 1302

CFR Citation: 42 CFR 483.

Legal Deadline: None.

Abstract: This interim final rule with comment period revises the infection control requirements that most Medicare- and Medicaid-participating providers and suppliers must meet to participate in the Medicare and Medicaid programs. These changes are necessary to protect the health and safety of residents, clients, patients, and staff and reflect lessons learned as result of the COVID–19 public health emergency. The revisions to the infection control requirements establish COVID–19 vaccination requirements for staff at the included Medicare- and Medicaid-participating providers and suppliers.

Statement of Need: The rule establishes COVID–19 vaccination requirements for staff at the included Medicare-and Medicaid-participating providers and suppliers. These changes are necessary to protect the health and safety of residents, clients, patients, and staff.

Summary of Legal Basis: CMS has broad statutory authority to establish health and safety regulations, which includes authority to establish health and safety standards for Medicare and Medicaid certified facilities. We believe requiring staff vaccinations for COVID–19 is critical to safeguarding the health and safety of all individuals seeking health care in Medicare and Medicaid certified facilities. Sections 1102 and 1871 of the Social Security Act (the Act) grant the Secretary of Health and Human Services authority to make and publish such rules and regulations, not inconsistent with the Act, as may be necessary to the efficient administration of the functions with which the Secretary is charged under this Act.

Alternatives: In developing the policies contained in this rule, we considered numerous alternatives to the final provisions including limiting vaccination requirements to direct care employees, additional requirements, and different implementation time frames. These alternatives are discussed in further detail in the rule.

Anticipated Cost and Benefits: We estimate costs associated with this rulemaking including those costs associated with information collection requirements, additional recordkeeping, and costs associated with vaccination. We anticipate benefits of the rule to include reduction in the transmission of infections and decreases in hospitalizations and mortality.

Risks: Although there is some uncertainty about the effects of this rule on health care staffing, we believe that the wide application of these requirements will reduce the likelihood of individual workers seeking new employment in order to avoid vaccination.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/05/21	86 FR 61555
Interim Final Rule Effective.	11/05/21	
Interim Final Rule Comment Period End.	01/04/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Kim Roche, Nurse, 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, *Phone:* 410 786–3524, *Email: kim.roche@cms.hhs.gov*.

RIN: 0938–AU75

HHS—ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

Proposed Rule Stage

70. Native Hawaiian Revolving Loan Fund Eligibility Requirements

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2991

CFR Citation: 45 CFR 1336.

Legal Deadline: None.

Abstract: This regulation proposes to reduce the required Native Hawaiian ownership or control for an eligible applicant to the Native Hawaiian Revolving Loan Fund program under 45 CFR 1336.62.

Statement of Need: The Native Hawaiian Revolving Loan Fund (NHRLF) was established to provide loans and loan guarantees to Native Hawaiians who are unable to obtain loans from private sources on reasonable terms and conditions for the purpose of promoting economic development in the State of Hawaii. Since many Native Hawaiians reside on leasehold interests that cannot be collateralized (Hawaiian Homelands), the NHRLF serves as an important lender of last resort for Native Hawaiian borrowers. Applicants for an NHRLF loan must be an individual Native Hawaiian or a 100 percent Native Hawaiian owned organization. To qualify for an NHRLF loan when one spouse is not Native Hawaiian, Native Hawaiian borrowers must establish or reorganize their business' legal structure to exclude a non-Native Hawaiian spouse from ownership. As the 100 percent Native Hawaiian ownership requirement prevents many Native Hawaiian family-owned businesses and families from obtaining a loan, the Administration for Children and Families (ACF) proposes to reduce the eligibility requirement to maximize loan funds and spur further economic development. This proposed change will likely increase the applicant pool and availability of loan proceeds to small Native Hawaiian-owned businesses and families whose credit would be deemed too risky for traditional lenders as businesses recover from the COVID–19 pandemic. As a lender of last resort, this revolving loan fund has filled and will continue to fill a unique credit niche for Native Hawaiian-owned businesses.

Summary of Legal Basis: This NPRM is under the authority granted by section 803A of Native Americans Programs Act. That section directed ACF's Administration for Native Americans (ANA) to develop the regulations that set forth the procedures and criteria for making loans under the NHRLF. Section 803A also permits the ANA Commissioner to prescribe any other regulations that the Commissioner determines are necessary to carry out the purposes of NHRLF.

Alternatives: ACF reviewed alternatives to providing greater flexibility to NHRLF applicants that directly respond to barriers for accessing loans and other viable options were not identified.

Anticipated Cost and Benefits: ANA does not provide loans directly to entities but does so through the regulated entity, the State of Hawaii's

Office of Hawaiian Affairs. The rule does not create additional requirements but provides flexibility by expanding eligibility and availability of loan proceeds to small entities.

Risks: It is possible that this proposed change will increase business loan demand. There is also the possibility that businesses may act strategically to qualify for NHLRF loans by adding Native Hawaiian ownership. This restructuring may still benefit Native Hawaiians as more Native Hawaiians could become business partners with non-Native Hawaiians. Expansion of the program to more Native Hawaiian families is consistent with the policy goal of the statute which is promoting economic development among Native Hawaiians in Hawaii.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Mirtha Beadle, Senior Policy Advisor, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 401–6506, *Email: mirtha.beadle@acf.hhs.gov.*

RIN: 0970–AC84

HHS—ACF

71. Paternity Establishment Percentage Performance Relief

Priority: Other Significant.

Legal Authority: Sec. 1102 of the Social Security Act

CFR Citation: 45 CFR 305.

Legal Deadline: None.

Abstract: This regulation proposes to modify the Paternity Establishment Percentage performance requirements in child support regulations under 45 CFR part 305, to provide relief from financial penalties to states impacted by the COVID–19 pandemic.

Statement of Need: The COVID–19 pandemic has had a debilitating effect on state child support programs, disrupting administrative and judicial operations and limiting states' ability to provide services and maintain performance. Without regulatory relief, 20 out of the 54 child support programs (title IV–D under the Act) will be subject to financial penalties associated with their failure to achieve performance for the Paternity Establishment Percentage (PEP) described in section 409(a)(8) and 452(g) of the Social Security Act (the Act) and child support regulations under 45 CFR part 305. PEP-related financial penalties, which are imposed as reductions in the state's Temporary Assistance for Needy Families (TANF) program funding, place an undue burden on state budgets and threaten funding that supports the very families who are most in need during this time of crisis.

Summary of Legal Basis: This proposed rule is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act. The proposed relief from the Paternity Establishment Percentage performance penalty under this NPRM is based on statutory authority granted under section 452(g)(3)(A) of the Act (42 U.S.C. 652(g)(3)(A)).

Alternatives: Because PEP performance measures and penalties are required by statute and regulation, relief can only be provided through regulation or legislation. The PEP performance requirement is established under 452(g) of the Social Security Act and 45 CFR 305.40. Section 452(a)(4)(C)(i) of the Act requires the Secretary to determine whether State-reported data used to determine the performance levels are complete and reliable. Additionally, section 409(a)(8)(A) of the Act and 45 CFR 305.61(a)(1) provides for a financial penalty if there is a failure to achieve the required level of performance or an audit determines that the data is incomplete or unreliable.

Anticipated Cost and Benefits: This proposed rule, if finalized, will ensure that penalties are not imposed against a state's TANF grant, during a time when public assistance funds are critically needed. The financial penalties against states are estimated at $3.5 million of penalties for 3 states that did not meet PEP performance levels in FY 2019 and FY 2020 and $83 million for 18 states that did not meet performance levels in FY 2020 and FY 2021 PEP.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	10/19/21	86 FR 57770
NPRM Comment Period End.	11/18/21	
Final Action	10/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Yvette Riddick, Director, Division of Policy, Office of Child Support Enforcement, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 401–4885, *Email: yvette.riddick@acf.hhs.gov.*

RIN: 0970–AC86

HHS—ACF

72. ANA Non-Federal Share Emergency Waivers

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 2991

CFR Citation: 45 CFR 1336.

Legal Deadline: None.

Abstract: This regulation proposes to streamline the process for Administration for Native Americans (ANA) grant program applicants to request a waiver for non-federal share for the 20 percent match required by statute for ANA grants. The regulation will also propose the ability for current grantees to request an emergency waiver for the non-federal share match.

Statement of Need: The Native American Programs Act of 1974, as amended, (NAPA) requires projects awarded funding through sections 803, 804, and 805 provide a 20 percent match of the total cost of the project, unless a waiver is obtained through objective criteria as outlined in ANA's regulations. The current regulations outline the requirements and criteria for applicants to request a waiver for non-federal share (NFS) at 45 CFR part 1336.50 at time of application for a new or continuation award. The COVID–19 pandemic had a detrimental impact on the economies and financial resources of ANA's Native American recipients, most of whom had to close their borders to protect their citizens. Many tribal enterprises were forced to close, and tourism revenues became non-existent. Partnerships and vendors were no longer able to contribute previously committed resources for NFS. During this time, many recipients grew concerned that they would be unable to fully meet their NFS of their grant award. ANA explored the possibility of providing emergency NFS waivers to ANA grantees. Unfortunately, ANA learned that it does not currently have the authority to issue emergency NFS waivers, as neither emergency waiver authority nor a process to approve such

requests exists in ANA's regulations. Current regulations require waiver requests to be submitted at the time of application or during the non-competitive continuation process. This request to update ANA's regulation would provide a new provision for recipients to request an emergency NFS waiver in the event of a natural or man-made emergency such as a public health pandemic.

Summary of Legal Basis: The Native American Programs Act of 1974, as amended, (NAPA) requires projects awarded funding through sections 803, 804, and 805 provide a 20 percent match of the cost of the project, unless a waiver is obtained through objective criteria as outlined in ANA's regulations. Current regulations outline the requirements and criteria to request a waiver at 45 CFR part 1336.50 at time of application for a new or continuation award. However, there is no existing regulations or criteria to provide an emergency waiver for NFS to recipients experience a natural or man-made disaster or public health emergency such as COVID–19.

Alternatives: The alternative would be to not offer the emergency waiver.

Anticipated Cost and Benefits: There are no known costs to the program by issuing this rule. Benefits—This proposed rule is responsive to the President's Executive Order 13995: Ensuring an Equitable Pandemic Response and Recovery and the Executive Order on Economic Relief Related to the COVID–19 Pandemic and also responsive to the needs of Native American communities. Existing regulations states that ANA must determine that approval of an NFS waiver will not prevent the award of other grants at levels it believes are desirable for the purposes of the program. Approval of this emergency waiver regulation will also decrease the potential audit findings of entities not meeting the required NFS. In addition, it reduces further harm to recipients that are impacted by an emergency situation which caused unforeseen and additional financial hardships.

Risks: There are no known risks to the program by issuing this rule.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Mirtha Beadle, Senior Policy Advisor, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 401–6506, *Email: mirtha.beadle@acf.hhs.gov.*

RIN: 0970–AC88

HHS—ACF

73. • Foster Care Legal Representation

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Sec. 474(a)(3) of the Social Security Act; sec. 1102 of the Social Security Act

CFR Citation: 45 CFR 1356.60(c).

Legal Deadline: None.

Abstract: This regulation proposes to allow a title IV–E agency to claim Federal financial participation for the administrative cost of providing independent legal representation to a child who is either a candidate for foster care or in foster care, and his/her parent to prepare for and participate in judicial determinations in foster care and other related civil legal proceedings.

Statement of Need: Allowing title IV–E agencies to claim Federal reimbursement for independent legal representation in legal proceedings that are necessary to carry out the requirements in the agency's title IV–E plan, including civil proceedings, may help prevent the need to remove a child from the home or, for a child in foster care, achieve permanence faster. Research demonstrates that some of the circumstances bringing families into contact with the child welfare system (poverty, educational neglect, inadequate housing, failure to provide adequate nutrition, and failure to safeguard mental health due to domestic violence) can be addressed before a child enters foster care by providing legal representation early in foster care legal proceedings and in civil legal matters. When children are removed from the home, studies show having access to legal representation for civil legal issues earlier in a case can improve the rate of reunification, nearly double the speed to legal guardianship or adoption, and result in more permanent outcomes for children and families.

Summary of Legal Basis: Section 474(a)(3) of the Act authorizes Federal reimbursement for title IV–E administrative costs, which are defined as costs found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State [title IV–E] plan. 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 with which the Secretary is responsible under the Act.

Alternatives: If this NPRM is not published, agencies may continue to claim FFP for administrative costs of independent legal representation provided by attorneys representing children in title IV–E foster care, children who are candidates for title IV–E foster care, and the child's parents in all stages of foster care legal proceedings (Child Welfare Policy Manual (CWPM) 8.1B #30, 31 and 32).

Anticipated Cost and Benefits: This final rule impacts state and tribal title IV–E (child welfare) agencies. ACF estimates that the proposed regulatory change would cost the federal government $141 million in FFP per year within 5 years of implementation. This proposal does not impose a burden or cost on the title IV–E agency. The title IV–E agency has discretion to provide allowable independent legal representation to families.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

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, 370 L'Enfant Promenade SW, Washington, DC 20447, *Phone:* 202 401–5789, *Fax:* 202 205–8221, *Email: kmchugh@acf.hhs.gov.*

RIN: 0970–AC89

HHS—ACF

74. • Separate Licensing Standards for Relative or Kinship Foster Family Homes

Priority: Other Significant.

Legal Authority: 42 U.S.C. 620 *et seq.;* 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302

CFR Citation: 45 CFR 1355.20.

Legal Deadline: None.

Abstract: This regulation proposes to allow 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 IVE, 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. This will remove a barrier to licensing relatives, many of whom are older, more likely to be single, more likely to be African American, more likely to live in poverty, and less well educated.

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.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	

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, 370 L'Enfant Promenade SW, Washington, DC 20447, *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

75. • National Institute for Disability, Independent Living, and Rehabilitation Research Notice of Proposed Rulemaking

Priority: Other Significant.

Legal Authority: 29 U.S.C. 29—Labor; Chapter 16—Vocational Rehabilitation and Other Rehabilitation Services Subchapter II—Research and Training; sec. 762—National Institute on Disability, Independent Living, and Rehabilitation Research

CFR Citation: 45 CFR 1330.24.

Legal Deadline: None.

Abstract: The proposed rule will amend subsection 24 of the National Institute for Disability, Independent Living and Rehabilitation Research (NIDILRR) regulation (45 CFR 1330.24), which would make revisions to advance equity in the peer review criteria that NIDILRR uses to evaluate disability research applications across all of its research programs, as well as emphasize the need for engineering research and development activities within NIDILRR's Rehabilitation Engineering Research Centers (RERC) program.

Statement of Need: There is a need for increased representation of people with disabilities among the research teams of NIDILRR grantees to help ensure rigor and relevance of sponsored research. There is a separate need for increased emphasis on engineering R&D in NIDILRR's Rehabilitation Engineering Research Centers program.

Summary of Legal Basis: (1) An update of 45 CFR 1330.24 will strengthen NIDILRR's ability to meet goals described in the Executive Orders on Advancing Equity. Updating this regulation will also better address one of NIDILRR's core statutory purposes: To increase opportunities for researchers who are members of traditionally underserved populations, including researchers who are members of minority groups and researchers who are individuals with disabilities (29 U.S.C. 760(7)). (2) NIDILRR's statute calls for a Rehabilitation Engineering Research Centers program (29 U.S.C. 764(b)(3)(A)), but related peer review criteria in 45 CFR 1330.24 do not currently emphasize the importance of engineering Research & Development methods.

Alternatives: None.

Anticipated Cost and Benefits: ACL anticipates little to no cost associated with this refinement of existing regulation. The benefits include the potential for greater representation of people with disabilities and other underrepresented populations among NIDILRR-sponsored researchers. The regulation update also will incite grantees of the NIDILRR Rehabilitation Engineering Research Centers program to include engineering Research & Development methods in their funded research projects.

Risks: NIDILRR is addressing significant risks that (1) The research it sponsors may not address the needs and experiences of the full diversity of people with disabilities, and (2) NIDILRR Rehabilitation Engineering Research Centers are not optimally emphasizing engineering R&D methods.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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–AA16

BILLING CODE 4150–03–P

DEPARTMENT OF HOMELAND SECURITY (DHS)

Fall 2021 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 contains these words: ''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 that commitment. 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 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.

Six overarching homeland security missions 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, not by hunches and guesswork, 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. 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 2021 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. In addition, these regulations respond to and implement legislative initiatives such as those found in the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), FAA Extension, Safety, and Security Act of 2016, and the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act). 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 protect civil rights and civil liberties, integrate our actions, listen to those affected by our actions, build coalitions and partnerships, eliminate unjustified burdens and barriers, 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. Consistent with President Biden's *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (E.O. 13985). 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).

The Fall 2021 regulatory plan for DHS includes regulations from multiple DHS components, including 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), the U.S. Immigration and Customs Enforcement (ICE), the Federal Emergency Management Agency (FEMA), and the Cybersecurity and Infrastructure Security Agency (CISA). We next describe the regulations that comprise the DHS fall 2021 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* (E.O. 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. 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 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 propose a regulation titled *Individual Assistance Program Equity* to further align with Executive Order 13895. Climate change results in more frequent and/or intense extreme weather events like severe storms, flooding and wildfires, disproportionately impacting the most vulnerable in society. FEMA will propose to amend its Individual Assistance (IA) regulations to increase equity and ease of entry to the IA Program. To provide a full opportunity for underserved communities to participate, FEMA will propose to amend application of ''safe, sanitary, and functional'' for IA repair assistance; re-evaluate the requirement to apply for a Small Business Administration loan prior to receipt of Other Needs Assistance; add eligibility criteria for its Serious Needs & Displacement Assistance; amend its requirements for Continued Temporary Housing Assistance; re-evaluate its approach to insurance proceeds; and amend its appeals process. FEMA will also propose 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, childcare assistance, and maximum assistance limits.

FEMA will issue a regulation titled *Amendment to the Public Assistance Program's Simplified Procedures Large Project Threshold.* It will revise its regulations governing the Public Assistance program to update the monetary threshold at or below which FEMA will obligate funding based on an estimate of project costs, and above which FEMA will obligate funding based on actual project costs. This rule will ensure FEMA and recipients can more efficiently process unobligated Project Worksheets for COVID–19 declarations, which continue to fund important pandemic-related work, while avoiding unnecessary confusion and administrative burden by not affecting previous project size determinations.

On October 12, 2021, FEMA issued a Request for Information 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, as directed by Executive Order 14030. FEMA seeks input on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities. Additionally, FEMA seeks input on how the NFIP can better promote protection of and minimize any adverse impact to threatened and endangered species, and their habitats.

United States Citizenship and Immigration Services

U.S. Citizenship and Immigration Services (USCIS) is the government agency that administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values. USCIS is committed to taking the necessary steps to reduce barriers to legal immigration, increase access to immigration benefits (consistent with law), and reinvigorate the size and scope of humanitarian relief. In the coming year, USCIS intends to pursue several regulatory actions that support these goals while balancing our fiscal stability.

Asylum Reforms. This Administration is focused on pursuing regulations to rebuild and streamline the asylum system, consistent with President Biden's *Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border* (E.O. 14010). On August 20, 2021, DHS/USCIS and DOJ/Executive Office of Immigration Review (EOIR) jointly proposed regulatory amendments that aim to accelerate the adjudication process for individuals in expedited removal proceedings who are seeking asylum, withholding of removal, or protection under the Convention Against Torture. The current system in place has resulted in unsustainable backlogs that span many years. USCIS and EOIR will seek to issue a final rule that makes concrete and lasting improvements in the processing of those cases after considering public input received on the proposed rule. *(Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers).* In addition, USCIS will propose regulations to remove barriers to affirmative asylum claims, while also proposing processing timeframes for initial application for employment authorization applications filed by pending asylum applicants that reflect the operational capabilities of USCIS. *(Rescission of ''Asylum Application, Interview, & Employment Authorization'' Rule and Change to ''Removal of 30-Day Processing Provision for Asylum Applicant Related Form I–765 Employment Authorization'').* USCIS and EOIR will also take steps to remove or modify regulatory provisions that have created unnecessary hurdles in the asylum system, many of which are currently enjoined by various courts. *(Bars to Asylum Eligibility and Procedures; Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review).* Finally, USCIS and EOIR will jointly propose updates to their regulations to clarify eligibility for asylum and withholding, and better describe the circumstances in which a person should be considered a member of a ''particular social group.'' *(Asylum and Withholding Definitions).*

Review of the Public Charge of Inadmissibility Ground. On August 23, 2021, USCIS published an Advance Notice of Proposed Rulemaking (ANPRM) to gather input from interested and impacted stakeholders on how USCIS should implement the public charge ground of inadmissibility. This action was the first step taken in response to President Biden's *Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans* (E.O. 14012). USCIS will propose regulations to define the

term ''public charge'' and to identify considerations relevant to the public charge inadmissibility determination, while recognizing that we must continue to be a Nation of opportunity and of welcome, and that we must provide due consideration to the confusion, fear, and negative public health consequences that may result from public charge policies. *(Inadmissibility on Public Charge Grounds).*

Deferred Action for Childhood Arrivals (DACA). On September 28, 2021, USCIS issued a proposed rule that establishes specified guidelines for considering requests for deferred action submitted by certain individuals who entered the United States many years ago as children. The proposed rule invites public comments on a number of issues relating to DACA, including issues identified in a recent decision of the U.S. District Court for the Southern District of Texas court regarding DHS's authority to maintain the DACA policy, and possible alternatives. In keeping with President Biden's *Presidential Memorandum: Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA),* USCIS will consider public comments and seek to finalize the proposed rule in the coming months *(Deferred Action for Childhood Arrivals).*

Improvements to the Overall Immigration System. After performing the required biennial fee review, USCIS will propose adjustments to certain immigration and naturalization benefit request fees to ensure that fees recover full costs borne by the agency. In doing so, USCIS will adhere to the ideals described in Executive Orders 14010 and 14012 of removing barriers and promoting access to the immigration system; improving and expanding naturalization processing; and meeting the administration's humanitarian priorities. *(U.S. Citizenship and Immigration Services Fee Schedule).*

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.

The Coast Guard highlights the following regulatory actions:

Shipping Safety Fairways Along the Atlantic Coast. The Coast Guard published an ANPRM on June 19, 2020. The Coast Guard is reviewing comments to help develop a proposed rule that would establish shipping safety fairways (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. The Coast Guard is taking this action to ensure that obstruction-free routes are preserved to and from U.S. ports and along the Atlantic coast and to reduce the risk of collisions, allisions and grounding, as well as alleviate the chance of increased time and expenses in transit.

Electronic Chart and Navigation Equipment Carriage Requirements. The Coast Guard will seek comment on the modification of its chart and navigational equipment regulations. We plan to publish an ANPRM that outlines the Coast Guard's strategy to revise the chart and navigational equipment requirements for all commercial U.S.-flagged vessels and foreign-flagged vessels operating in the waters of the United States to fulfill the electronic chart use requirements as required by statute. Acceptable standards and capabilities need to be clarified before paper charts are discontinued and replaced by digital electronic navigation charts. The ANPRM should provide us with information on how widely electronic charts are used, who is using them, the appropriate equipment requirements for different vessel classes, and where they operate. The public comments should better enable us to tailor proposed electronic charts requirements to vessel class and location.

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 and supports Administration goals outlined in Executive Order 14008 titled Tackling the Climate Crisis at Home and Abroad. 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.

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. 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. Below, CBP provides highlights of certain planned actions for the coming fiscal year.

Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders—Automation of CBP Form I–94W. CBP intends to amend existing regulations to implement the ESTA requirements under the Implementing Recommendations of the 9/11 Commission Act of 2007 for noncitizens who intend to enter the United States under the Visa Waiver Program (VWP) at land ports of entry. Currently, noncitizens from VWP countries must provide certain biographic information to U.S. CBP officers at land ports of entry on a paper form. Under this rule, these VWP travelers would instead provide this information to CBP electronically through ESTA prior to application for admission to the United States. In addition to fulfilling a statutory mandate, this rule will strengthen national security through enhanced traveler vetting, will streamline the processing of visitors, will reduce inadmissible traveler arrivals, and will save time for both travelers and the government. (Note: There is no associated Regulatory Plan entry for this rule because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

Automation of CBP Form I–418 for Vessels. CBP intends to amend existing regulations regarding the submission of Form I–418, Passenger List—Crew List. Currently, the master or agent of every commercial vessel arriving in the United States, with limited exceptions, must submit a paper Form I–418 to CBP at the port where immigration inspection is performed. Most commercial vessel operators are also required to submit a paper Form I–418 to CBP at the final U.S. port prior to departing for a foreign port. Under this rule, most vessel operators would be required to electronically submit the data elements on Form I–418 to CBP through the National Vessel Movement Center in lieu of submitting a paper form. This rule would eliminate the need to file the paper Form I–418 in most cases. This rule is included in this narrative because it reduces administrative and paperwork burdens on the regulated public. (Note: There is no associated Regulatory Plan entry for this rule because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

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 (CDC's) mission in monitoring and tracing the contacts for persons involved in health incidents (*e.g.,* COVID–19). 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. TSA seeks to ensure ever-improving ''customer service'' so as to improve the experience of the many millions of travelers whom it serves. In fiscal year 2022, TSA is prioritizing the following actions that are required to meet statutory mandates and that are necessary for national security.

Vetting of Certain Surface Transportation Employees. TSA will propose a rule that requires security threat assessments for security coordinators and other frontline employees of certain public transportation agencies (including rail mass transit and bus systems), railroads (freight and passenger), and over-the-road bus owner/operators. The NPRM will also propose provisions to implement TSA's statutory requirement to recover its cost of vetting user fees. While many stakeholders conduct background checks on their employees, their actions are limited based upon the data they can access. Through this rule,

TSA will be able to conduct a more thorough check against terrorist watch-lists of individuals in security-sensitive positions.

Flight Training Security. In 2004, TSA published an Interim Final Rule (IFR) that 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. TSA is 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.

Indirect Air Carrier Security. Current regulations for Indirect Air Carriers (IACs) require annual renewal of the IAC's security program and prompt notification to TSA of any changes to operations related to information previously provided to TSA. This rule will propose 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. These changes will not have a negative impact on security as TSA will maintain the requirement to notify the agency of changes to operations and will continue its robust inspection and compliance program. TSA believes this action will reduce burdens on an industry affected by the COVID–19 public health crisis and enhance the industry's ability to focus limited human resources on the core tasks of moving air cargo.

Cybersecurity Requirements for Certain Surface Owner/Operators. On July 28, 2021, the President issued the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. Consistent with that Memorandum and in response to the ongoing cybersecurity threat to pipeline systems, TSA issued security directives to owners and operators of TSA-designated critical pipelines that transport hazardous liquids and natural gas. The security directives implement urgently needed protections against cyber intrusions. The first directive, issued in May 2021, requires critical owner/operators to (1) Report confirmed and potential cybersecurity incidents to DHS's Cybersecurity and Infrastructure Security Agency (CISA); (2) 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 security directive. A second security directive, 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 is committed to enhancing and sustaining cybersecurity in transportation and intends to issue a rulemaking to codify these and other requirements for certain surface transportation owner-operators.

Amending Vetting Requirements for Employees with Access to a Security Identification Display Area. The FAA Extension, Safety, and Security Act of 2016 mandates that TSA consider modifications to the list of disqualifying criminal offenses and criteria, develop a waiver process for approving the issuance of credentials for unescorted access, and propose an extension of the look back period for disqualifying crimes. Based on these requirements, and current intelligence pertaining to the ''insider threat,'' TSA is developing a proposed rule. The rule would revise current vetting requirements to enhance eligibility and disqualifying criminal offenses for individuals seeking or having unescorted access to any Security Identification Display Area of an airport.

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. During the coming fiscal year, ICE will focus rulemaking efforts on regulations pertaining to adjusting fees, including the rule mentioned below.

Fee Adjustment for U.S. Immigration and Customs Enforcement Form I–246, Application for a Stay of Deportation or Removal. ICE will propose a rule that would adjust the fee for adjudicating and handling Form I–246, Application for a Stay of Deportation or Removal. The Form I–246 fee was last adjusted in 1989. After a comprehensive fee review, ICE has determined that the current Form I–246 fee does not recover the full costs of processing and adjudicating Form I–246. The rule will also clarify the availability of Form I–246 fee waivers.

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.

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

76. Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1158; 8 U.S.C. 1225; 8 U.S.C. 1231 and 1231 (note)

CFR Citation: 8 CFR 235; 8 CFR 208; 8 CFR 1208.

Legal Deadline: None.

Abstract: On December 11, 2020, the Department of Justice and the Department of Homeland Security (collectively, ''the Departments'') published a final rule titled Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (RINs 1125–AA94 and 1615–AC42) to amend the regulations governing credible fear determinations so that individuals found to have such

a fear will have their claims for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (''INA'' or ''the Act'') (''statutory withholding of removal''), or protection under the regulations issued pursuant to the legislation implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT''), adjudicated by an immigration judge within the Executive Office for Immigration Review (''EOIR'') in separate proceedings (rather than in proceedings under section 240 of the Act), and to specify what standard of review applies in such proceedings. The final rule amended the regulations regarding asylum, statutory withholding of removal, and withholding and deferral of removal under the CAT regulations. The final rule also made changes to the standards for adjudication of applications for asylum and statutory withholding. The Departments are planning to rescind or modify the December 2020 rule, in several rulemaking efforts. The Departments have proposed to rescind certain portions of the final rule (including regulations related to credible fear screenings) as part of the rulemaking action described in RIN 1615–AC67.The Departments will also propose to rescind or modify the remaining portions of the December 2020 rule under this RIN, 1615–AC42.

Statement of Need: The Departments are reviewing the regulatory changes made in the final rule in light of the issuance of Executive Order 14010 and Executive Order 14012. This rule is needed to ensure that the regulations align with the goals and principles outlined in Executive Order 14010 and Executive Order 14012.

Anticipated Cost and Benefits: DHS is still currently considering the specific cost and benefit impacts associated with the proposal to rescind or modify the December 2020 rule.

Timetable:

Action	Date	FR Cite
NPRM	06/15/20	85 FR 36264
NPRM Comment Period End.	07/15/20	
Final Rule	12/11/20	85 FR 80274
Final Rule; Correction.	01/11/21	86 FR 1737
Final Rule Effective.	01/11/21	
Second NPRM	08/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov*.

URL For Public Comments: *www.regulations.gov*.

Agency Contact: Andria Strano, Chief, Humanitarian Affairs Division, 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.

Related RIN: Related to 1125–AA94, Related to 1125–AB14, Related to 1615–AC65.

RIN: 1615–AC42

DHS—USCIS

77. Deferred Action for Childhood Arrivals

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 6 U.S.C. 101 *et seq.;* 8 U.S.C. 1101 *et seq.*

CFR Citation: 8 CFR 106; 8 CFR 236; 8 CFR 274a.

Legal Deadline: None.

Abstract: On June 15, 2012, the DHS established the DACA policy. The policy directed USCIS to create a process to defer removal of certain noncitizens who years earlier came to the United States as children, meet other criteria, and do not present other circumstances that would warrant removal. On January 20, 2021, President Biden directed DHS, to take all appropriate actions to preserve and fortify DACA, consistent with applicable law. On July 16, 2021, the U.S. District Court for the Southern District of Texas vacated the June 2012 Memorandum that created the DACA policy and permanently enjoined DHS from ''administering the DACA program and from reimplementing DACA without compliance with the APA.'' However, the district court temporarily stayed its vacatur and injunction with respect to most individuals granted deferred action under DACA on or before July 16, 2021, including with respect to their renewal requests. The district court's vacatur and injunction were based, in part, on its conclusion that the June 2012 Memorandum announced a legislative rule that required notice-and-comment rulemaking. The district court further remanded the DACA policy to DHS for further consideration. DHS has announced its intent to appeal the district court's decision. Consistent with the Presidential Memorandum, DHS intends to engage in notice- and-comment rulemaking to consider all issues regarding DACA, including those identified by the district court relating to the policy's substantive legality.

Statement of Need: The Secretary proposes in this rule to establish specified guidelines for considering requests for deferred action submitted by certain individuals who entered the United States many years ago as children. This proposed rule will also address the availability of employment authorization for persons who receive deferred action under the rule, as well as the issue of lawful presence. The Secretary will invite public comments on a number of issues relating to DACA, including issues identified by the district court regarding the authority of DHS to maintain the DACA policy, and possible alternatives.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	09/28/21	86 FR 53736
NPRM Comment Period End.	11/29/21	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Andria Strano, Chief, Humanitarian Affairs Division, 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–AC64

DHS—USCIS

78. Asylum and Withholding Definitions

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 2; 8 CFR 208; 8 CFR 1208.

Legal Deadline: None.

Abstract: This rule proposes to amend Department of Homeland Security (DHS) and Department of Justice (DOJ) 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, the requirements for failure of State

protection, and determinations about whether persecution is on account of a protected ground. This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to, within 270 days, 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 which 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, Department of Justice Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals (BIA).

Furthermore, on February 2, 2021, President Biden issued Executive Order 14010 that directs DOJ and DHS within 270 days of the date of this order, [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.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

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: Ronald W. Whitney, Deputy Chief, Refugee and Asylum Law Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Chief Counsel, 20 Massachusetts Avenue NW, Washington, DC 20529, *Phone:* 415 293–1244, *Fax:* 415 293–1269, *Email: ronald.w.whitney@uscis.dhs.gov*.

Related RIN: Related to 1615–AC42, Related to 1125–AB13, Related to 1125–AA94.

RIN: 1615–AC65

DHS—USCIS

79. Rescission of ''Asylum Application, Interview, & Employment Authorization'' Rule and Change to ''Removal of 30 Day Processing Provision for Asylum Applicant Related Form I–765 Employment Authorization''

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 8 U.S.C. 1158(d)(2); 8 U.S.C. 1101 and 1103 ; Pub. L. 103–322; 8 U.S.C. 1105a; 8 U.S.C. 1151, 1153 and 1154; 8 U.S.C. 1182; 8 U.S.C. 1186a; 8 U.S.C. 1255; Pub. L. 113–4; 5 U.S.C. 801

CFR Citation: 8 CFR 208.3; 8 CFR 208.4; 8 CFR 208.7; 8 CFR 208.9; 8 CFR 208.10; 8 CFR 274a.12; 8 CFR 274a.13; 8 CFR 274a.14.

Legal Deadline: None.

Abstract: DHS plans to issue a notice of proposed rulemaking that would rescind or substantively revise two final rules related to employment authorization for asylum applicants. On August 25, 2020, the Department of Homeland Security (DHS) published a final rule that modified DHS's regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application. (85 FR 38532). On August 21, 2020, the Department of Homeland Security (DHS) published a final rule that removed a Department of Homeland Security (DHS) regulatory provision stating that U.S. Citizenship and Immigration Services (USCIS) has 30 days from the date an asylum applicant files the initial Form I–765, Application for Employment Authorization, to grant or deny that initial employment authorization application. (85 FR 37502).

Statement of Need: The proposed change is intended to help ensure the eligibility requirements for employment authorization for asylum applicants and processing times established in the DHS regulations are reasonable.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Andria Strano, Chief, Humanitarian Affairs Division, 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.

Related RIN: Related to 1615–AC19, Related to 1615–AC27.

RIN: 1615–AC66

DHS—USCIS

80. U.S. Citizenship and Immigration Services Fee Schedule

Priority: Economically 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.

Legal Deadline: None.

Abstract: DHS will propose 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.

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: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: None.

Agency Contact: Kika M. 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:* 202 721–3000.

RIN: 1615–AC68

DHS—USCIS

81. Bars to Asylum Eligibility and Procedures

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 final rules amending their respective regulations governing bars to asylum eligibility and procedures, including the Procedures for Asylum and Bars to Asylum Eligibility, (RINs 1125–AA87 and 1615–AC41), 85 FR 67202 (Oct. 21, 2020), Asylum Eligibility and Procedural Modifications, (RINs 1125–AA91 and 1615–AC44), 85 FR 82260 (Dec. 17, 2020) and Security Bars and Processing, (RINs 1125–AB08 and 1615–AC57), 85 FR 84160, (Dec. 23, 2020) final rules. The Departments propose to modify or rescind the regulatory changes promulgated in these three final rules consistent with Executive Order 14010 (Feb. 2, 2021).

Statement of Need: The Departments are reviewing these regulations 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 the Executive Order 14010 and Executive Order 14012.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Andria Strano, Chief, Humanitarian Affairs Division, 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.

Related RIN: Related to 1125–AA87, Split from 1615–AC41, Related to 1125–AA91, Related to 1615–AC44, Related to 1125–AB08, Related to 1615–AC57.

RIN: 1615–AC69

DHS—USCIS

82. Inadmissibility on Public Charge Grounds

Priority: Other Significant.

Legal Authority: 6 U.S.C. 101 *et seq.;* 8 U.S.C. 1101 *et seq.*

CFR Citation: 8 CFR 212; 8 CFR 245; . . .

Legal Deadline: None.

Abstract: Section 4 of Executive Order 14012 of February 2, 2021 (86 FR 8277) directed DHS and other federal agencies to immediately review agency actions related to the public charge grounds of inadmissibility and deportability for noncitizens at sections 212(a)(4) and 237(a)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(4), 1227(a)(5)).

DHS intends to proceed with rulemaking to define the term public charge and identify considerations relevant to the public charge inadmissibility determination. DHS will conduct the rulemaking consistent with section 212(a)(4) of the INA and consistent with the principles described in Executive Order 14012. Such principles include recognizing our character as a Nation of opportunity and of welcome and of providing due consideration to the confusion, fear, and negative public health consequences that may result from public charge policies.

Consistent with section 6 of Executive Order 12866 (58 FR 51735) and section 2 of Executive Order 13563 (76 FR 3821), and in consideration of the significant public interest in this rulemaking proceeding, DHS published an advance notice of proposed rulemaking and notice of virtual public listening sessions on August 23, 2021. There is a 60-day public comment period and the listening sessions are scheduled for September 14 and October 5, 2021.

Statement of Need: DHS published an advance notice of proposed rulemaking seeking broad public feedback on the public charge ground of inadmissibility to inform DHS's development of a future regulatory proposal. DHS intends to use this feedback to develop a proposed rule that will be fully consistent with law; that will reflect empirical evidence to the extent relevant and available; that will be clear, fair, and comprehensible for officers as well as for noncitizens

and their families; that will lead to fair and consistent adjudications and thus avoid unequal treatment of the similarly situated; and that will not otherwise unduly impose barriers on noncitizens seeking admission to or adjustment of status in the United States. DHS also intends to ensure that its regulatory proposal does not cause undue fear among immigrant communities or present other obstacles to immigrants and their families accessing public services available to them, particularly in light of the COVID–19 pandemic and the resulting long-term public health and economic impacts in the United States.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
ANPRM	08/23/21	86 FR 47025
ANPRM Comment Period End.	10/22/21	
NPRM	03/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

URL For More Information: http://www.regulations.gov.

URL For Public Comments: http://www.regulations.gov.

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–AC74

DHS—USCIS

Final Rule Stage

83. Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and Cat Protection Claims by Asylum Officers

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: INA sec. 103(a)(1); INA sec. 103(a)(3); 8 U.S.C. 1103(a)(1); 8 U.S.C. 1103(a)(3); INA sec. 235(b)(1)(B); 8 U.S.C. 1225(b)(1)(B); The Refugee Act of 1980 (''Refugee Act'') (Pub. L. 96–212, 94 Stat. 102)

CFR Citation: 8 CFR 208; 8 CFR 235; 8 CFR 1003; 8 CFR 1208; 8 CFR 1235.

Legal Deadline: None.

Abstract: On August 20, 2021 the Department of Justice (DOJ) and the Department of Homeland Security (DHS) (collectively, the Departments) published a Notice of Proposed Rulemaking (NPRM) to amend the regulations governing the determination of certain protection claims raised by individuals subject to expedited removal and found to have a credible fear of persecution or torture. Under the proposed rule, such individuals would have their claims for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA or the Act) (statutory withholding of removal), or protection under the regulations issued pursuant to the legislation implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) initially adjudicated by an asylum officer within U.S. Citizenship and Immigration Services (USCIS). Such individuals who are denied protection would be able to seek prompt, de novo review with an immigration judge (IJ) in the DOJ Executive Office for Immigration Review (EOIR), with appeal available to the Board of Immigration Appeals (BIA). These changes are intended to improve the Departments' ability to consider the asylum claims of individuals encountered at or near the border more promptly while ensuring fundamental fairness.

In conjunction with the above changes, the Departments are proposing to return the regulatory framework governing the credible fear screening process so as to once more apply the longstanding ''significant possibility'' screening standard to all protection claims, but not apply the mandatory bars to asylum and withholding of removal (with limited exception) at this initial screening stage. The Departments also propose that, if an asylum officer makes a positive credible fear determination, the documentation the USCIS asylum officer creates from the individual's sworn testimony during the credible fear screening process would serve as an initial asylum application, thereby improving efficiency in the asylum adjudication system. Lastly, the Departments are proposing to allow, when detention is unavailable or impracticable, for the consideration of parole prior to a positive credible fear determination of an individual placed into expedited removal who makes a fear claim. The Departments are reviewing the public comments received and plan to issue a final rule.

Statement of Need: There is wide agreement that the system for dealing with asylum and related protection claims at the southwest border has long been overwhelmed and in desperate need of repair. As the number of such claims has skyrocketed over the years, the system has proven unable to keep pace, resulting in large backlogs and lengthy adjudication delays. A system that takes years to reach a result delays justice and certainty for those who need protection, and it encourages abuse by those who will not qualify for protection and smugglers who exploit the delay for profit. The aim of this rule is to begin replacing the current system, within the confines of the law, with a better and more efficient one that will adjudicate protection claims fairly and expeditiously.

Anticipated Cost and Benefits: DHS estimated the resource cost needed to implement and operationalize the rule along a range of possible future credible fear volumes. The average annualized costs could range from $179.5 million to $995.8 million at a 7 percent discount rate. At a 7 percent discount factor, the total ten-year costs could range from $1.3 billion to $7.0 billion, with a midrange of $3.2 billion.

There could also be cost-savings related to Forms I–589 and I–765 filing volume changes. In addition, some asylum applicants may realize potential early labor earnings, which could constitute a transfer from workers in the U.S. labor force to certain asylum applicants, as well as tax impacts. Qualitative benefits include, but may not be limited to: (i) Beneficiaries of new parole standards may not have to wait lengthy times for a decision on whether their asylum claims will receive further consideration; (ii) some individuals could benefit from de novo review by an IJ of the asylum officer's denial of their asylum; (iii) DOJ–EOIR may focus efforts on other priority work and reduce its substantial current backlog; (iv) as some applicants may be able to earn income earlier than they otherwise could currently, burdens to the support network of the applicant may be lessened.

Timetable:

Action	Date	FR Cite
NPRM	08/20/21	86 FR 46906
NPRM Correction	10/18/21	86 FR 57611
NPRM Comment Period End.	10/19/21	
Final Action	03/00/22	

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.

URL For More Information: http://www.regulations.gov.

URL For Public Comments: http://www.regulations.gov.

Agency Contact: Andria Strano, Chief, Humanitarian Affairs Division, 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.

Related RIN: Related to 1125–AB20.

RIN: 1615–AC67

DHS—U.S. COAST GUARD (USCG)

Prerule Stage

84. • Electronic Chart and Navigation Equipment Carriage Requirements

Priority: Other Significant.

Legal Authority: 46 U.S.C. 3105

CFR Citation: 33 CFR 164 ; 46 CFR 25 and 26 ; 46 CFR 28; 46 CFR 32; 46 CFR 35; 46 CFR 77 and 78; 46 CFR 96 and 97; 46 CFR 108 and 109; 46 CFR 121; 46 CFR 130; 46 CFR 140; 46 CFR 167; 46 CFR 169; 46 CFR 184; 46 CFR 195 and 196.

Legal Deadline: None.

Abstract: The Coast Guard seeks comments regarding the modification of the chart and navigational equipment requirements in titles 33 and 46 of the Code of Federal Regulations. This advance notice of proposed rulemaking (ANPRM) outlines the Coast Guard's broad strategy to revise the chart and navigational equipment requirements for all commercial U.S.-flagged vessels and foreign-flagged vessels operating in the waters of the United States to fulfill the electronic chart use requirements as required by statute. This ANPRM is necessary to obtain additional information from the public before issuing a notice of proposed rulemaking. It will allow us to verify the extent of the requirements for the rule, such as how widely electronic charts are used, who is using them, the appropriate equipment requirements for different vessel classes, and where they operate, allowing us to tailor electronic charts requirements to vessel class and location.

Statement of Need: In this ANPRM, we are seeking information on how widely electronic charts are used, which types of vessels are using them, and where the vessels operate, as well as views on the appropriate equipment requirements for different vessel classes. Issuing this ANPRM to obtain information from the public before drafting a proposed rule should enable us to issue a proposed rule that better tailors electronic charts requirements to vessel class and location.

Alternatives: The Coast Guard will use the information solicited from the ANPRM to shape regulatory language and alternatives.

Anticipated Cost and Benefits: The Coast Guard will use the ANPRM to solicit public input to help develop estimates of the costs and benefits of any proposed regulation.

Timetable:

Action	Date	FR Cite
ANPRM	04/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information: Docket number USCG–2021–0291.

Agency Contact: John Stone, Program Manager, Department of Homeland Security, U.S. Coast Guard, Office of Navigation Systems (CG–NAV), 2703 Martin Luther King Jr. Avenue SE, STOP 7418, Washington, DC 20593–7418, *Phone:* 202 372–1093, *Email: john.m.stone2@uscg.mil.*

RIN: 1625–AC74

DHS—USCG

Proposed Rule Stage

85. Shipping Safety Fairways Along the Atlantic Coast

Priority: Other Significant.

Legal Authority: 46 U.S.C. 70003

CFR Citation: 33 CFR 166.

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 obstructions are prohibited. The proposed fairways are based on two 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. The establishment of fairways would ensure that obstruction-free routes are preserved to and from U.S. ports and along the Atlantic coast. This will reduce the risk of collision, allision and grounding, as well as alleviate the chance of increased time and expenses in transit.

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.

Anticipated Cost and Benefits: The fairways are intended to preserve traditional vessel navigation routes and are not mandatory. The Coast Guard anticipates the proposed fairways to improve navigational safety.

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	06/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information: Docket number USCG–2019–0279.

URL For More Information: www.regulations.gov.

URL For Public Comments: www.regulations.gov.

Agency Contact: John Stone, Program Manager, Department of Homeland Security, U.S. Coast Guard, Office of Navigation Systems (CG–NAV), 2703 Martin Luther King Jr. Avenue SE, STOP 7418, Washington, DC 20593–7418, *Phone:* 202 372–1093, *Email: john.m.stone2@uscg.mil.*

RIN: 1625–AC57

DHS—USCG

86. • Marpol Annex VI; Prevention of Air Pollution From Ships

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 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 and supports Administration goals outlined in Executive Order 14008 titled Tackling the Climate Crisis at Home and Abroad. 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.

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. This proposed rule would apply to U.S.-flagged ships. And it would also apply to foreign-flagged ships operating in U.S. navigable waters or in the U.S. Exclusive Economic Zone.

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.

Alternatives:

Alternative 1—No Action. USCG considered taking no action, but 33 U.S.C. 1903 (c)(1) directs the DHS Secretary to prescribe any regulations necessary to implement Annex VI. We have determined that it is necessary for the Coast Guard to issue regulations to implement Annex VI. Therefore, if we take no action, the Coast Guard having been delegated this rulemaking authority from the DHS Secretary would not fulfill its mandate from Congress to implement Annex VI.

Alternative 2—USCG considered not pursuing a rulemaking and allowing the Annex VI International Air Pollution Prevention (IAPP) certificate provision (Regulation 6) to be a mechanism to ensure compliance with Annex VI. We did not follow this alternative because not all ships subject to Annex VI would be required to obtain an IAPP certificate.

Alternative 3—USCG considered issuing only regulations that were required to explain how the United States planned to exercise its discretion under Annex VI, but we determined that additional regulations were necessary to clarify how we would be implementing Annex VI. The intent of these clarifying regulations (*e.g.,* how will a vessel that does not have a GT ITC measurement know if it will be subject to surveys under Regulation 5.1) is not to impose any additional burden—for it is APPS that requires compliance with Annex VI, but to make implementation of Annex VI more effective, efficient, and transparent.

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 estimates that the requirement will total approximately $2 million over a ten year period.

USCG expects the proposed rule to have unquantified benefits from reduction in fatalities and injuries due to pollutant in engine emissions, and also reduced risk of retaliation due to breaching international agreement.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: No.
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, Washington, DC 20593, *Phone:* 202 372–1375, *Email: frank.a.strom@uscg.mil.*
RIN: 1625–AC78

DHS—U.S. CUSTOMS AND BORDER PROTECTION (USCBP)

Proposed Rule Stage

87. Advance Passenger Information System: Electronic Validation of Travel Documents

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 contract-trace health incidents.

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 and recommends that air carriers deny boarding to those deemed inadmissible.

To further improve CBP's vetting processes with respect to identifying and preventing passengers with fraudulent or improper documents from traveling 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 additional opportunity costs of time to CBP, air carriers, and passengers for coordination required to resolve a passenger's status should there be a security issue. In addition, CBP has incurred 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	03/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Robert Neumann, Program Manager, Office of Field Operations, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, *Phone:* 202 412–2788, *Email: robert.m.neumann@cbp.dhs.gov.*

RIN: 1651–AB43

DHS—USCBP

Final Rule Stage

88. Automation of CBP Form I–418 for Vessels

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 8 U.S.C. 1101 and 1103; 8 U.S.C. 1182; 8 U.S.C. 1221; 8 U.S.C. 1281 and 1282; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1433; 19 U.S.C. 1434; 19 U.S.C. 1624; 19 U.S.C. 2071 note; 46 U.S.C. 501; 46 U.S.C. 60105

CFR Citation: 8 CFR 251.1; 8 CFR 251.3; 8 CFR 251.5; 8 CFR 258.2; 19 CFR 4.7 and 4.7a; 19 CFR 4.50; 19 CFR 4.81; 19 CFR 4.85; 19 CFR 4.91.

Legal Deadline: None.

Abstract: This rule amends the Department of Homeland Security's regulations regarding the submission of U.S. Customs and Border Protection Form I–418, Passenger List—Crew List (Form I–418). Currently, the master or agent of every commercial vessel arriving in the United States, with limited exceptions, must submit a paper Form I–418, along with certain information regarding longshore work, to CBP at the port where immigration inspection is performed. Most commercial vessel operators are also required to submit a paper Form I–418 to CBP at the final U.S. port prior to departing for a foreign port. Under this rule, most vessel operators would be required to electronically submit the data elements on Form I–418 to CBP through the National Vessel Movement Center in lieu of submitting a paper form. This rule would eliminate the need to file the paper Form I–418 in most cases. This will result in an opportunity cost savings for vessel operators as well as a reduction in their printing and storage costs. CBP no longer needs this information as it is receiving it from the Coast Guard.

Statement of Need: Currently, the master or agent of every commercial vessel arriving in the United States, with limited exceptions, must submit Form I–418, along with certain information regarding longshore work, in paper form to CBP at the port where immigration inspection is performed. Most commercial vessel operators are also required to submit a paper Form I–418 to CBP at the final U.S. port prior to departing for a foreign place. Alternative, most vessel operators are required to electronically submit the same information to the U.S. Coast Guard (USCG) prior to arrival into a U.S. port. Under this rule, vessel operators will be required to electronically submit the data elements on Form I–418 to CBP through an electronic data interchange system (EDI) approved by CBP in lieu of submitting a paper form. This rule will streamline vessel arrival and departure processes by providing for the electronic submission of the information collected on the Form I–418, eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping.

Anticipated Cost and Benefits: This rule will automate the Form I–418 process for all commercial vessel operators and eliminate the regulatory guidelines in place regarding the submission and retention of paper Form I–418s. These changes will generally not introduce new costs to commercial vessel operators, but they will introduce some costs to CBP. If vessel operators request a copy of their stamped and annotated electronic Form I–418, which they receive by paper now for CBP processing, they will incur negligible costs to do so. CBP will incur technology and printing costs from the Form I–418 Automation regulatory program, including costs to maintain mobile devices for real-time, electronic processing, and to print the paper Form I–418 until the admissibility inspection process is completely paperless.

However, this rule will provide considerable benefits and cost savings to both vessel operators and CBP. Following this rule's implementation, vessel operators will enjoy cost savings from forgone paper Form I–418 submissions and form printing. CBP will experience a cost savings from the rule's avoided printing, streamlined mobile post-inspection processing and electronic recordkeeping. In turn, CBP may dedicate these cost savings to other agency mission areas, such as improving border security or facilitating trade.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/21	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Brian Sale, Branch Chief, Manifest & Conveyance Security Division, Cargo & Conveyance, Office of Field Operation, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, *Phone:* 202 325–3338, *Email: brian.a.sale@cbp.dhs.gov; ofo-manifestbranch@cbp.dhs.gov.*

RIN: 1651–AB18

DHS—TRANSPORTATION SECURITY ADMINISTRATION (TSA)

Proposed Rule Stage

89. Vetting of Certain Surface Transportation Employees

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 49 U.S.C. 114; Pub. L. 110–53, secs. 1411, 1414, 1512, 1520, 1522, and 1531

CFR Citation: Not Yet Determined.

Legal Deadline: Other, Statutory, August 3, 2008, Background and immigration status check for all public transportation frontline employees is due no later than 12 months after date of enactment.

Sections 1411 and 1520 of Public Law 110–53, Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (121 Stat. 266, Aug. 3, 2007), require background checks of frontline public transportation and railroad employees not later than one year from the date of enactment. Requirement will be met through regulatory action.

Abstract: The 9/11 Act requires vetting of certain railroad, public transportation, and over-the-road bus employees. Through this rulemaking, the Transportation Security Administration (TSA) intends to propose the standards and procedures to conduct the required vetting. This regulation is related to 1652–AA55, Security Training for Surface Transportation Employees.

Statement of Need: Employee vetting is an important and effective tool for averting or mitigating potential attacks by those with malicious intent who may target surface transportation and plan or perpetrate actions that may cause significant injuries, loss of life, or economic disruption.

Anticipated Cost and Benefits: TSA is in the process of determining the costs and benefits of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Victor Parker, Transportation Security Specialist, 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.*

Alex Moscoso, 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:* 571 227–5839, *Email: alex.moscoso@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.*

Related RIN: Related to 1652–AA55, Related to 1652–AA56.

RIN: 1652–AA69

DHS—TSA

90. Indirect Air Carrier Security

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 one year to three years without having a negative impact on transportation security.

Statement of Need: Consistent with Executive Order 12866 and OMB Circular A–4, 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 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: TSA is in the process of determining the costs and benefits of this rulemaking. Cost savings are expected to arise from time saved due to a less frequent security program renewal cycle.

Timetable:

Action	Date	FR Cite
Final Rule	09/16/09	74 FR 47705
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Ronoy Varghese, Section Chief, Department of Homeland Security, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–2230, *Email: ronoy.varghese@tsa.dhs.gov.*

Related RIN: Related to 1652–AA23.

RIN: 1652–AA72

DHS—TSA

Final Rule Stage

91. Flight Training Security

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 1552.

Legal Deadline: Final, Statutory, February 10, 2004, sec. 612(a) of Vision 100 requires the Transportation Security Administration (TSA) to issue an interim final rule within 60 days of enactment of Vision 100.

Requires the TSA to establish a process to implement the requirements of section 612(a) of Vision 100–Century of Aviation Reauthorization Act (Pub. L. 108–176, 117 Stat. 2490, Dec. 12, 2003), including the fee provisions, not later than 60 days after the enactment of the Act.

Abstract: An Interim Final Rule (IFR) published and effective on September 20, 2004, created a new part 1552, Flight Schools, in title 49 of the Code of Federal Regulations (CFR). This IFR applies to flight schools and to individuals who apply for or receive flight training. Flight schools are required 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, 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.

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 improved and advanced. Publishing a final rule that addresses external recommendations and aligns with modern TSA vetting practices would streamline 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 providers would upload certain information to a TSA-managed website. Also at industry's request, TSA is considering changing the interval for a security threat assessment of each noncitizen flight student, 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 these revisions. The benefits of these actions would be immediate cost savings to flight schools and noncitizen students without compromising the security profile.

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 Reopened.	05/18/18	83 FR 23238
IFR; Comment Period Reopened 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
Final Rule	09/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Johannes Knudsen, Program Manager, Alien Flight Student Program, Department of Homeland Security, Transportation Security Administration, Intelligence and Analysis, 6595 Springfield Center Drive, Springfield, VA 20598–6010, *Phone:* 571 227–2188, *Email:* *johannes.knudsen@tsa.dhs.gov.*

Alex Moscoso, 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:* 571 227–5839, *Email: alex.moscoso@tsa.dhs.gov.*

David Ross, Attorney–Advisor, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Chief Counsel's Office, 6595 Springfield Center Drive, Springfield, VA 20598–6002, *Phone:* 571 227–2465, *Email:* *david.ross1@tsa.dhs.gov.*

Related RIN: Related to 1652–AA61.

RIN: 1652–AA35

DHS—TSA

Long-Term Actions

92. • Surface Transportation Cybersecurity Measures

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 49 U.S.C. 114

CFR Citation: 49 CFR 1570.

Legal Deadline: None.

Abstract: On July 28, 2021, the President issued the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control 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 owner/operators to (1) Report confirmed and potential cybersecurity incidents to the Cybersecurity and Infrastructure Agency (CISA); (2) 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 issued in July 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 is committed to enhancing and sustaining cybersecurity and intends to issue a rulemaking that will codify certain requirements with respect to pipeline and certain other surface modes.

Statement of Need: This rulemaking is necessary to address the ongoing cybersecurity threat to U.S. transportation modes.

Anticipated Cost and Benefits: TSA is in the process of determining the costs and benefits of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Scott Gorton, Executive Director, Surface Policy Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6002, *Phone:* 571 227–1251, *Email: tsa-surface@tsa.dhs.gov*.

RIN: 1652–AA74

DHS—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (USICE)

Proposed Rule Stage

93. Fee Adjustment for U.S. Immigration and Customs Enforcement Form I–246, Application for a Stay of Deportation or Removal

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1231; 8 U.S.C. 1356(m); 8 U.S.C. 1356(n)

CFR Citation: 8 CFR 103.

Legal Deadline: None.

Abstract: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) will propose to adjust the fee for ICE Form I–246, Application for a Stay of Deportation or Removal. ICE has determined that the current fee does not fully recover the costs incurred to perform the full range of activities associated with determining if a noncitizen ordered deported or removed from the United States is eligible to obtain a stay of deportation or removal.

Statement of Need: ICE has determined that the current fee for Form I–246 does not fully recover the costs incurred to perform the full range of activities associated with determining if a foreign national ordered deported or removed from the United States is eligible to obtain a stay of deportation or removal.

Anticipated Cost and Benefits: ICE is in the process of assessing the impacts of this rule. The rule would increase the fee for foreign nationals applying for a stay of deportation or removal with the Form I–246. The fee adjustment would result in an increase in transfers from foreign nationals to ICE.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Agency Contact: Sharon Hageman, Acting Deputy Assistant Director, Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Mail Stop 5006, Washington, DC 20536, *Phone:* 202 732–6960, *Email: ice.regulations@ice.dhs.gov*.

RIN: 1653–AA82

DHS—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Prerule Stage

94. • RFI 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

Priority: Other Significant.

Legal Authority: 42 U.S.C. 4001 *et seq.*

CFR Citation: 44 CFR 59.1; 44 CFR 60.3(d)(3); 44 CFR 64.3(a)(1).

Legal Deadline: None.

Abstract: The Federal Emergency Management Agency (FEMA) is issuing this Request for Information to receive the public's input on two topics. First, FEMA seeks the public's input on revising the National Flood Insurance Program's (NFIP) floodplain management standards for land management and use regulations to better align with the current understanding of flood risk and flood risk reduction approaches. Specifically, FEMA is seeking input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities. Additionally, FEMA seeks input on how the NFIP can better promote protection of and minimize any adverse impact to threatened and endangered species, and their habitats.

Statement of Need: FEMA is issuing this Request for Information to seek information from the public on the agency's current floodplain management standards to ensure the agency receives public input as part of the agency's regular review of programs, regulations, and policies, and to inform any action to revise the NFIP minimum floodplain management standards. FEMA also plans to re-evaluate the implementation of the NFIP under the Endangered Species Act at the national level to complete a revised Biological Evaluation re-examining how NFIP actions influence land development decisions; the potential for such actions to have adverse effects on threatened and endangered species and critical habitats; and to identify program changes that would prevent jeopardy to threatened and endangered species, and/or destruction or adverse modification of designated critical habitats, as well as to promote the survival and recovery of threatened and endangered species. As a result, FEMA also requests input from the public on what measures the NFIP can take to further protect and minimize any adverse impacts to threatened and endangered species and their habitat.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

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	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information: Docket ID FEMA–2021–0024.

URL For More Information: http://www.regulations.gov.

URL For Public Comments: http://www.regulations.gov.

Agency Contact: Rachel Sears, Federal Insurance and Mitigation Administration, 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

DHS—FEMA

Proposed Rule Stage

95. National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form

Priority: Other 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. 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 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 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, one increase in costs for FEMA will be for expenditures on implementation and familiarization of the rule.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: No.
Government Levels Affected: None.
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

Final Rule Stage

96. • Amendment to the Public Assistance Program's Simplified Procedures Large Project Threshold

Priority: Other Significant.
Legal Authority: 42 U.S.C. 5189
CFR Citation: 44 CFR 206.203(c)(1); 44 CFR 206.203(c)(2).
Legal Deadline: Final, Statutory, February 26, 2014, Every 3 years, the President, acting through the Administrator, shall review the threshold for eligibility under section 422 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
Abstract: The Federal Emergency Management Agency (FEMA) is revising its regulations governing the Public Assistance program to update the monetary threshold at or below which FEMA will obligate funding based on an estimate of project costs, and above which FEMA will obligate funding based on actual project costs. This rule will ensure FEMA and recipients can more efficiently process unobligated

Project Worksheets for COVID–19 declarations, which continue to fund important pandemic-related work, while avoiding unnecessary confusion and administrative burden by not affecting previous project size determinations.

Statement of Need: FEMA's Public Assistance (PA) program provides grants to State, local, Tribal, and Territorial governments, as well as eligible private nonprofit (PNP) organizations, for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged facilities after a Presidentially-declared major disaster. FEMA categorizes each grant award as either a small or large project, which is determined by a monetary threshold set each year by FEMA pursuant to statute. (See section 422 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, codified at 42 U.S.C. 5189). FEMA obligates money for a small project based on an estimate of the project costs, and FEMA obligates money for a large project based on actual project costs as the project progresses and cost documentation is provided to FEMA. This expedites FEMA's processing of PA grant funding by eliminating much of the administrative burden that FEMA experiences when awarding projects at or above the threshold (*i.e.,* large projects). Ultimately, this reduces FEMA's cost of administering PA funding and allows FEMA to expedite its provision of Federal disaster assistance.

In 2013, the Sandy Recovery Improvement Act amended section 422(b) of the Stafford Act and required FEMA to complete an analysis to determine whether an increase in the large project threshold was appropriate. Following this analysis, in 2014 FEMA updated the maximum threshold from $68,500 to $120,000 and continued to adjust the threshold annually to reflect changes in the Consumer Price Index, as required under section 422(b)(2). Section 422(b)(3) requires FEMA to review the threshold every three years. FEMA conducted an analysis in 2017 and recommended no change to the threshold at that time. As a result, the maximum threshold for Fiscal Year (FY) 2021 is currently set at $132,800.

Since FEMA's analysis in 2017, the U.S. has seen increased disaster activity either due to, or amplified or aggravated by, the climate crisis. For example, in 2017, Hurricanes Harvey, Irma, and Maria caused a combined total of $293.6 billion in damages. Damages from wildfires in that year and the next totaled approximately $61 billion. In 2020, FEMA responded to 22 one billion-dollar events the highest in its history which included a record number of tropical storms in the Atlantic and the Nation's most active wildfire year recorded. The estimated damages from these 22 events totaled approximately $95 billion. In addition to increased natural disasters, in 2020 FEMA also issued an unprecedented 57 major disaster declarations in response to COVID–19, including for every State, 5 territories, the Seminole Tribe of Florida, and the District of Columbia. In FY 2020 declarations, FEMA's funding under the PA program is over $32 billion. Although costs for COVID–19 accounted for 94 percent of this funding, FEMA expects climate change to make natural disasters more frequent and more destructive, requiring greater spending on recovery in the future.

As a result, in 2020, FEMA conducted another analysis to ensure that FEMA is maximizing the benefits of simplified procedures in light of its more recent disaster spending. Based on this analysis, FEMA determined that it should increase the threshold to $1,000,000, with continued annual adjustment for inflation based on the Consumer Price Index.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in transfers from FEMA to PA recipients and familiarization costs for PA applicants. Additionally, this rule would reduce the administrative burden and improve program efficiency for PA recipients, subrecipients, and FEMA, resulting in cost savings to FEMA and PA recipients/subrecipients.

Timetable:

Action	Date	FR Cite
Final Rule	04/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Valerie Boulet, Program Administration Section, Public Assistance Division, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3100, *Phone:* 202 538–3860, *Email: valerie.boulet@fema.dhs.gov*.

RIN: 1660–AB10

DHS—FEMA

Long-Term Actions

97. Individual Assistance Program Equity

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

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: As climate change results in more frequent and/or intense extreme weather events like severe storms, flooding and wildfires, disproportionately impacting the most vulnerable in society and in furtherance of E.O. 13895, the Federal Emergency Management Agency (FEMA) proposes to amend its Individual Assistance (IA) regulations to increase equity and ease of entry to the IA Program. To provide a full opportunity for underserved communities to participate, FEMA proposes to amend application of 'safe, sanitary, and functional' for IA repair assistance; re-evaluate the requirement to apply for a Small Business Administration loan prior to receipt of Other Needs Assistance; add eligibility criteria for its Serious Needs & Displacement Assistance; amend its requirements for Continued Temporary Housing Assistance; re-evaluate its approach to insurance proceeds; and amend its appeals process. FEMA also proposes 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, childcare assistance, and maximum assistance limits.

Statement of Need: FEMA's Individuals and Households Program (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. FEMA proposes an update to 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.

Timetable:

Action	Date	FR Cite
NPRM	11/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

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:* 202 604–8007, *Email: kristina.mcalister@fema.dhs.gov*.

RIN: 1660–AB07

DHS—CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY (CISA)

Proposed Rule Stage

98. Ammonium Nitrate Security Program

Priority: Other Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under PL 104–4.

Legal Authority: 6 U.S.C. 488 *et seq.*

CFR Citation: 6 CFR 31.

Legal Deadline: NPRM, Statutory, May 26, 2008, Publication of Notice of Proposed Rulemaking. Final, Statutory, December 26, 2008, Publication of Final Rule.

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).

Statement of Need: A Federal regulation governing the sale and transfer of ammonium nitrate is statutorily mandated. The statute requires that purchasers of ammonium nitrate and owners of ammonium nitrate facilities register with the Department of Homeland Security and be vetted against the Terrorist Screening Database. The statute further requires that information about transactions of ammonium nitrate be recorded and kept. Given the widespread use of ammonium nitrate in many sectors of the economy, including industrial, agricultural, and consumer uses, the Department is exploring ways to reduce the threat of terrorism posed by ammonium nitrate while remaining sensitive to the impacts on the supply chain and legitimate users.

Summary of Legal Basis: This regulation is statutorily mandated by 6 U.S.C. 488 *et seq.*

Anticipated Cost and Benefits: In the 2011 NPRM, CISA estimated cost of this proposed rule would range from $300 million to $1,041 million over 10 years at a 7 percent discount rate. In the intervening years, CISA has adjusted its approach to this rulemaking and has made significant changes to the way we estimate the costs associated with this SNPRM. At this time CISA is still developing the cost estimates for and substantive contents of this 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.	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

URL For More Information: www.regulations.gov.

URL For Public Comments: www.regulations.gov.

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*.

Related RIN: Previously reported as 1601–AA52.

RIN: 1670–AA00

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Statement of Regulatory Priorities for Fiscal Year 2022

Introduction

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2022 highlights the most 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 addressing the housing needs of all Americans by creating strong, sustainable, inclusive communities, and quality affordable homes for all. As a result, HUD plays a significant role in the lives of families and in communities throughout America.

HUD is currently working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination and transform the way HUD does business. Under the leadership of Secretary Marcia L. Fudge, HUD is dedicated to implementing the Administration's priorities by setting forth initiatives related to recovery from the COVID–19 pandemic, providing economic relief to those HUD serves, advancing racial equity and civil rights, and tackling the climate emergency.

Since the beginning of the Administration, HUD has taken a number of actions to advance equity in its programs and secure equal access to housing opportunity for all. For example, on February 11, 2021, HUD issued a memorandum directing its Office of Fair Housing and Equal Opportunity and organizations that enter into agreements with the Department to carry out fair housing laws and activities to fully enforce the Fair Housing Act to prohibit discrimination based on sexual orientation and gender identity; on April 26, 2021, HUD issued a plan of action the Department will take to

strengthen Nation-to-Nation relations and improve HUD-wide Tribal consultation; on June 10, 2021, HUD published an interim final rule to restore certain definitions and certifications to its regulations implementing the Fair Housing Act's requirement to affirmatively further fair housing (AFFH) (86 FR 30779); and on June 25, 2021, HUD published a proposed rule to reinstate HUD's discriminatory effects standard (86 FR 33590).

The rules highlighted in HUD's regulatory plan for FY 2022 reflect HUD's efforts to continue its work in meeting the needs of underserved communities and providing for equal access to housing opportunities. In addition, it reflects HUD's efforts to strengthen the housing market and protect consumers, and to aid in recovery from the COVID–19 pandemic. Additionally, HUD notes that the FY 2022 Semiannual Regulatory Agenda includes additional rules that advance the Administration's priorities, including, rules to advance equity by ensuring non-discrimination based on disability in HUD programs, and a rule to help address the climate emergency by improving the resilience of HUD-assisted or financed projects to the effect of climate change.

Affirmatively Furthering Fair Housing

Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' (86 FR 7009, January 20, 2021) requires each agency to consider whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs. Further, on January 26, 2021 (86 FR 7487), President Biden issued a ''Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies,'' which explained that the Federal Government will work with communities to, among other things, end housing discrimination, lift barriers that restrict housing and neighborhood choice, promote diverse and inclusive communities, and to secure equal access to housing opportunity for all.

As noted above, on June 10, 2021, HUD published an interim final rule to restore certain definitions and certifications to its regulations implementing the Fair Housing Act's requirement. HUD will build on that rule and issue an AFFH proposed rule that seeks to ensure that HUD and its grantees are sufficiently effective in fulfilling the purposes and policies of the Fair Housing Act. HUD's proposed rule will provide HUD and its program participants with a more effective Fair Housing Planning Process as a means to meet their duty to affirmatively further the Fair Housing Act. Currently, HUD funding recipients must certify compliance with their duty to AFFH on an annual basis and HUD itself has a continuous statutory obligation to ensure that the Fair Housing Act's AFFH obligations are followed.

For decades, courts have held that the AFFH obligation imposes a duty on HUD and its grantees to affirmatively further the purposes of the Fair Housing Act. These courts have held that for funding recipients to meet their AFFH obligations they must, at a minimum, make decisions informed by preexisting racial and socioeconomic residential segregation. The courts have further held that, informed by such information, funding recipients must strive to dismantle historic patterns of racial segregation; preserve integrated housing that already exists; and otherwise take meaningful steps to further the Fair Housing Act's purposes beyond merely refraining from taking discriminatory actions and banning others from such discrimination. Through this proposed rule, HUD plans to implement the AFFH mandate and work towards a more equitable future for all by developing a Fair Housing Planning Process that reduces burdens for program participants and achieves material, positive change that affirmatively furthers fair housing. Specifically, HUD is focused on advancing equity and providing access to opportunity for underserved populations in a manner that is more effective in achieving measurable improvements while avoiding unnecessary burden.

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 the neither the total economic costs nor the total efficiency gains will exceed $100 million. HUD grantees are already familiar with the AFFH compliance process as instituted by the 2015 rule and the 2021 interim final rule. Having learned from prior rulemakings, HUD believes that the rule will create the right balance of analysis so that grantees will have the available data necessary to help them in completing any analytical requirements without adding the same level of costs associated with the 2015 rulemaking.

Statement of Need

The rule is needed to conform HUD regulations with statutory standards and judicial interpretations of those standards, and to ensure consistency in fair housing certifications across HUD programs. This proposed rule would consider HUD's AFFH rule published on July 16, 2015 (80 FR 42272) (2015 AFFH rule) but improve upon its framework and impose less regulatory burden.

Alternatives: Alternatives to promulgating this rule involve finalizing the interim rule, ''Restoring Affirmatively Furthering Fair Housing Definitions and Certifications,'' without taking further action or repromulgating the 2015 AFFH rule without considering changes that could reduce regulatory burden and enable a more meaningful fair housing planning process. If HUD were to finalize the interim rule without taking further action, there would be inconsistency in fair housing certifications across different jurisdictions, as the interim rule does not require that jurisdictions submit fair housing plans in any particular form, such as an Analysis of Impediments, or an Assessment of Fair Housing, as was previously required. If HUD were to repromulgate the 2015 AFFH rule without considering changes, HUD would miss an opportunity to improve upon that rule and reduce the significant regulatory burdens resulting from that rule. HUD believes neither of those options are better than providing for a new certification process that will undergo new public comment.

Risks: Previous iterations of the AFFH rule have resulted in an amount of burden on grantees that made implementation challenging. HUD must balance the use of data and the depth of analysis that is required of differing sized grantees to ensure that grantees can implement the affirmatively furthering fair housing mandate while continuing to fulfill their programmatic requirements. In promulgating this rule, HUD will attempt to secure support from as many stakeholders as possible to ensure maximum compliance with the duty to AFFH.

Timetable:

Action	Date	FR Cite
Proposed Rule	12/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Governmental jurisdictions.

Government Levels Affected: Yes.

Federalism Affected: No.

Energy Affected: No.

International Impacts: No.

Increased Forty-Year Term for Loan Modifications

Executive Order 14002, ''Economic Relief Related to the COVID–19 Pandemic'' (Jan. 22, 2021), directs federal agencies to ''promptly identify actions they can take within existing authorities to address the current economic crisis resulting from the [COVID 19] pandemic.'' In response to this Executive Order and in support of the goal of achieving broad economic recovery following the COVID–19 pandemic, HUD has established expanded COVID–19 Loss Mitigation Options to address the impacts many Americans are experiencing in recovering financially from the long-lasting effects of the pandemic. HUD continues to evaluate both the effects of the pandemic on its portfolio as well as the economic indicators of the broader recovery.

This proposed rule would amend HUD's current regulation to allow for mortgagees to recast the total unpaid loan and other eligible costs for a new term not exceeding 480 months. HUD anticipates that this would allow mortgagees greater ability to assist defaulted borrowers, including borrowers affected by the COVID–19 pandemic, with avoiding foreclosure.

HUD's current regulations allow mortgagees to modify a Federal Housing Administration (FHA) insured mortgage by recasting the total unpaid loan and other eligible costs for a term limited to 360 months to cure a borrower's default. Mortgagees are required to consider utilizing deeds in lieu of foreclosure, pre-foreclosure sales, partial claims, assumptions, special forbearance, and recasting of mortgages.[1] One of these options allows mortgagees to modify a mortgage for the purpose of changing the amortization provisions and recasting the total unpaid loan and other eligible costs for a term not exceeding 360 months from the date of the modification.[2]

Allowing mortgagees to provide a 40-year loan modification would support HUD's mission of fostering homeownership by assisting more borrowers with retaining their homes after a default episode while mitigating losses to FHA's Mutual Mortgage Insurance (MMI) Fund. For many borrowers who have become delinquent, a lowered monthly payment is key to their ability to bring the mortgage current, prevent re-default, and ultimately retain their home and build wealth through homeownership. The difference between the monthly payment provided under a 40-year loan modification and a 30-year loan modification may be significant for a borrower and their ability to afford the modified payment.

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 2021. HUD expects that neither the total economic costs nor the total efficiency gains will exceed $100 million. This proposed rule would increase available loss mitigation options for borrowers and enable more borrowers to avoid foreclosure and remain in their homes. HUD also anticipates that this would have a positive effect on the FHA Mutual Mortgage Insurance Fund by lowering defaults.

Statement of Need

Borrowers impacted by the COVID–19 pandemic, including those who may re-default in the future after having received a loss mitigation option under HUD's COVID–19 policies, may need a 40-year loan modification to provide a monthly payment that they can afford. It is vital that these borrowers receive any loss mitigation options at HUD's disposal and for which they are eligible to avoid foreclosure whenever possible and to mitigate the impact of the COVID–19 pandemic.

Additionally, given the large number of FHA-insured mortgages that have been originated or refinanced in the past few years in a historically low interest rate environment, simply extending out the term of a mortgage in default for another 30 years at a similar interest rate would not provide a substantial reduction to a borrower's monthly mortgage payment. Therefore, providing this option for relief for all borrowers and originators is prudent for all FHA-insured mortgages.

Alternatives

HUD has considered other loss mitigation options which would allow borrowers to avoid foreclosure in response to the COVID–19 pandemic. HUD has made many of these options available through mortgagee letter. HUD does not view these options as alternatives, as different circumstances may call for different forms of loss mitigation. Additionally, HUD finds that this new option should not be limited only in response to the COVID–19 pandemic, but should be available in all circumstances where it could help individuals keep their homes.

Risks

Although the impact of introducing a 40-year loan modification option for borrowers on the MMI Fund will needed to be modeled, HUD anticipates a favorable impact through reduced utilization of other, more costly loss mitigation options and foreclosure prevention.

Additionally, HUD anticipates that the effect on FHA-insured mortgagors will be minor. HUD recognizes that a 40-year mortgage would cost the borrower in the form of greater interest paid over time and slower equity building. However, HUD notes that the average life of an FHA-insured mortgage is approximately seven years, and HUD anticipates that a borrower would similarly refinance a 40-year mortgage. Any additional interest and slowed equity build that a borrower might pay with a 40-year modified loan compared to a 30-year modified loan, especially when looked at over the life of an average FHA-insured mortgage, would not impose a significant burden to borrowers and would be outweighed by the benefits to a borrower of being able to retain their home.

Timetable:

Action	Date	FR Cite
Proposed rule	12/00/21	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
Federalism Affected: No.
Energy Affected: No.
International Impacts: No.

HUD—OFFICE OF HOUSING (OH)

Proposed Rule Stage

99. Increased 40-Year Term for Loan Modifications (FR–6263)

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z–16, 1715u, and 1715z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d)

CFR Citation: 24 CFR 203.

Legal Deadline: None.

Abstract: This would amend the current regulation at 24 CFR 203.616 to permit the modification of an FHA-insured mortgage for a maximum term not to exceed 480 months, or 40 years. The current regulation allows a

[1] 24 CFR 203.501.

[2] 24 CFR 203.616

mortgagee to modify a loan to cure a default by recasting the total unpaid amount due and other eligible costs for a term not exceeding 360 months, or 30 years. Increasing the term length of a modified loan would provide borrowers with a deeper reduction to their monthly mortgage payments as the outstanding principal would be spread over a longer time frame. This change would provide more FHA borrowers with the ability to retain their homes after default, including borrowers who have exhausted their partial claim allocation, as well as provide more affordable housing payments. This change would also align FHA with modifications available to borrowers with mortgages backed by Fannie Mae or Freddie Mac, which currently provide a 40-year loan modification option.

Statement of Need: HUD anticipates that this would allow mortgagees greater ability to assist defaulted borrowers, including mortgagees affected by the COVID–19 pandemic, with avoiding foreclosure. It is vital that borrowers receive any loss mitigation options at HUD's disposal and for which they are eligible to avoid foreclosure whenever possible and to mitigate the impact of a loss of job or other financial strains such as those resulting from the COVID–19 pandemic.

Additionally, given the large number of FHA-insured mortgages that have been originated or refinanced in the past few years in a historically low interest rate environment, simply extending out the term of a mortgage in default for another 30 years at a similar interest rate would not provide a substantial reduction to a borrower's monthly mortgage payment. Therefore, providing this option for relief for all borrowers and originators is prudent for all FHA-insured mortgages.

Summary of Legal Basis: Executive Order 14002, Economic Relief Related to the COVID–19 Pandemic (Jan. 22, 2021), directs federal agencies to promptly identify actions they can take within existing authorities to address the current economic crisis resulting from the [COVID 19] pandemic. In response to this Executive Order and in support of the goal of achieving broad economic recovery following the COVID–19 pandemic, HUD has established expanded COVID–19 Loss Mitigation Options to address the impacts many Americans are experiencing in recovering financially from the long-lasting effects of the pandemic.

Alternatives: HUD has considered other loss mitigation options which would allow borrowers to avoid foreclosure in response to the COVID–19 pandemic. HUD has made many of these options available through mortgagee letter. HUD does not view these options as alternatives, as different circumstances may call for different forms of loss mitigation. Additionally, HUD finds that this new option should not be limited only in response to the COVID–19 pandemic, but should be available in all circumstances where it could help individuals keep their homes.

Anticipated Cost 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 2021. HUD expects that neither the total economic costs nor the total efficiency gains will exceed $100 million. This proposed rule would increase available loss mitigation options for borrowers and enable more borrowers to avoid foreclosure and remain in their homes. HUD also anticipates that this would have a positive effect on the FHA Mutual Mortgage Insurance Fund by lowering defaults.

Risks: Although the impact of introducing a 40-year loan modification option for borrowers on the MMI Fund will needed to be modeled, HUD anticipates a favorable impact through reduced utilization of other, more costly loss mitigation options and foreclosure prevention.

Additionally, HUD anticipates that the effect on FHA-insured mortgagors will be minor. HUD recognizes that a 40-year mortgage would cost the borrower in the form of great interest paid over time and slower equity building. However, HUD notes that the average life of an FHA-insured mortgage is approximately seven years, and HUD anticipates that a borrower would similarly refinance a 40-year mortgage. Any additional interest and slowed equity build that a borrower might pay with a 40-year modified loan compared to a 30-year modified loan, especially when looked at over the life of an average FHA-insured mortgage, would not impose a significant burden to borrowers and would be outweighed by the benefits to a borrower of being able to retain their home.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Elissa Saunders, Acting Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing, 451 Seventh Street SW, Washington, DC 20410, *Phone:* 202 708–2121.

RIN: 2502–AJ59

HUD—OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY (FHEO)

Proposed Rule Stage

100. Affirmatively Furthering Fair Housing (FR–6250)

Priority: Other Significant.

Legal Authority: 42 U.S.C. 3608(e)(5); 42 U.S.C. 5304; 42 U.S.C. 12705(b); 42 U.S.C. 1437c–1; 42 U.S.C. 3535(d); 42 U.S.C. 3600 to 3620

CFR Citation: 24 CFR 5, 91, 92, 570, 574, 576, and 903.

Legal Deadline: None.

Abstract: Through this proposed rule, HUD seeks to provide HUD and its program participants with a more effective means to affirmatively further the purposes and policies of the Fair Housing Act. The current procedures for affirmatively furthering fair housing carried out by program participants are not sufficiently effective to fulfill the purposes and policies of the Fair Housing Act. HUD will be seeking public comment on a new proposed rule that is focused on advancing equity and providing access to opportunity for underserved populations in a manner that is more effective in achieving measurable improvements while avoiding unnecessary burden.

Statement of Need: The rule is needed to conform HUD regulations with statutory standards and judicial interpretations of those standards, and to ensure consistency in fair housing certifications across HUD programs. This proposed rule would consider HUD's AFFH rule published on July 16, 2015 (80 FR 42272) (2015 AFFH rule) but improve upon its framework and impose less regulatory burden.

Summary of Legal Basis: Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, (86 FR 7009, January 20, 2021) requires each agency to consider whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs. Further, on January 26, 2021 (86 FR 7487), President Biden issued a Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, which explained

that the Federal Government will work with communities to, among other things, end housing discrimination, lift barriers that restrict housing and neighborhood choice, promote diverse and inclusive communities, and secure equal access to housing opportunity for all.

Alternatives: Alternatives to promulgating this rule involve finalizing the interim rule, Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, without taking further action or repromulgating the 2015 AFFH rule without considering changes that could reduce regulatory burden and enable a more meaningful fair housing planning process. If HUD were to finalize the interim rule without taking further action, there would be inconsistency in fair housing certifications across different jurisdictions, as the interim rule does not require that jurisdictions submit fair housing plans in any particular form, such as an Analysis of Impediments or an Assessment of Fair Housing, as was previously required. If HUD were to repromulgate the 2015 AFFH rule without considering changes, HUD would miss an opportunity to improve upon that rule and reduce the significant regulatory burdens resulting from that rule. HUD believes neither of those options are better than providing for a new certification process that will undergo new public comment.

Anticipated Cost 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 the neither the total economic costs nor the total efficiency gains will exceed $100 million. HUD grantees are already familiar with the AFFH compliance process as instituted by the 2015 rule and the 2021 interim final rule. Having learned from prior rulemakings, HUD believes that the rule will create the right balance of analysis so that grantees will have the available data necessary to help them in completing any analytical requirements without adding the same level of costs associated with the 2015 rulemaking.

Risks: Previous iterations of the AFFH rule have resulted in an amount of burden on grantees that made implementation challenging. HUD must balance the use of data and the depth of analysis that is required of differing sized grantees to ensure that grantees can implement the affirmatively furthering fair housing mandate while continuing to fulfill their programmatic requirements. In promulgating this rule, HUD will attempt to secure support from as many stakeholders as possible to ensure maximum compliance with the duty to AFFH.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, Local, State.

Agency Contact: Demetria McCain, Principal Deputy Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 451 Seventh Street, Washington, DC 20410, *Phone:* 202 402–5188.

RIN: 2529–AB05

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UNITED STATES DEPARTMENT OF THE INTERIOR

Fall 2021 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 of the Interior 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 fiscal year (FY) 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;
- Investing in Healthy Lands, Waters and Local Economies and Strengthening Conservation, and Protecting Endangered Species and their Habitat

Tackling the Climate Crisis, Strengthening Climate Resiliency, and Facilitating the Transition to Renewable Energy

In one of his first official actions after taking the oath of office on January 20, 2021, President Biden signed Executive Order (E.O.) 13990, entitled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' This Executive order established the Biden-Harris administration's policy to ''improve public health and protect our environment, to ensure access to clean air and water, to reduce greenhouse gas emissions and to bolster resilience of the impacts of climate change.'' An accompanying document, entitled ''Fact Sheet: List of Agency Actions for Review,'' directed several Federal agencies, including the Department, to review various regulations in accordance with E.O. 13990, and that review will continue for FY 2022.

To help implement the commitment to tackling the climate crisis, Secretary Haaland signed her first Secretary's Order (SO), SO 3398, entitled ''Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' SO 3398 implements the review of Departmental actions mandated by Executive Order 13990. Foundational to this process is the commitment to science and transparency and a pledge ''to conserve and restore our land, water, and wildlife; to reduce greenhouse gas emissions; to create jobs through a growing clean energy economy; and to bolster resilience to the impacts of climate change.'' SO 3398 revoked 12 SOs that were issued between March 29, 2017, and December 22, 2020, and directed the Department to conduct reviews and take appropriate actions on certain regulations. The SO further directed Bureaus and Offices to review all policies and guidance documents that may warrant further action to be consistent with Executive Order 13990.

Recognizing the ongoing threat that climate change poses to our Nation and to the world, on January 27, 2021, President Biden also issued Executive Order 14008 entitled, ''Tackling the Climate Crisis at Home and Abroad.'' Executive Order 14008 directed Federal agencies to take a government-wide approach to the climate crisis and established a National Climate Task Force to facilitate the organization and deployment of such an approach.

To implement the directives in Executive Order 14008, on April 16, 2021, Secretary Haaland issued SO 3399, which directs a ''Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process.'' SO 3399 established a Departmental Climate Task Force charged with developing a strategy to reduce climate pollution; improving and increasing adaptation and resilience to the impacts of climate change; addressing current and historic environmental injustice; protecting public health; and conserving Department-managed lands.

In accordance with Executive Orders 13990 and 14008, a number of bureaus in the Department are pursuing regulatory actions to implement these administration priorities. The Bureau of Land Management (BLM), for example, is proposing rules to ensure the responsible development of oil and gas on public lands, including ''Waste Prevention, Production Subject to Royalties, and Resource Conservation 43 CFR parts 3160 and 3170'' (1004–AE79), known as the Waste Prevention Rule, and ''Revision of Existing Regulations Pertaining to Fossil Fuel Leases and Leasing Process 43 CFR parts 3100 and 3400'' (1004–AE80), known as the Fossil Fuel Rule. The Waste Prevention Rule would reduce methane emissions in the oil and gas sector and mitigate impacts of climate change. The Fossil Fuel Rule would 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 fossil fuel activities. Also, to comply with Executive Order 14008, BLM plans to complete a comprehensive review and reconsideration of Federal fossil fuel leasing practices considering BLM's broad stewardship responsibilities over the public lands, including potential climate and other impacts associated with fossil fuel activities on public lands.

Similarly, the Bureau of Ocean Energy Management (BOEM) is also undertaking a comprehensive review and reconsideration of offshore Federal oil and gas permitting and leasing practices, including potential climate and other impacts associated with offshore oil and gas activities. The BOEM will evaluate the sources and impacts of climate change on the OCS, working in consultation with the Secretary of Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy. Given the Secretary's Outer Continental Shelf Lands Act (OCSLA) mandate to conserve the natural resources on the OCS, this initiative will evaluate the causes and effects of climate change and determine what appropriate measures BOEM should take to further control emissions of greenhouse gasses, including whether to adjust royalties associated with coal, oil, and gas resources extracted from public lands and offshore waters, develop regulations, or to take other action to account for corresponding climate costs.

One of the explicit directions in Executive Order 14008 provides that the Secretary, in consultation with the heads of other relevant agencies, will review siting and permitting processes on public lands and in offshore waters to identify steps that can be taken, consistent with applicable law, to increase renewable energy production. 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. This mandate is to be undertaken while also ensuring appropriate protection of public lands, waters, and biodiversity and creating good jobs.

As part of these efforts in FY 2022, BOEM will propose a rule entitled, ''Renewable Energy Modernization Rule'' (1010–AE04), that will substantially update the existing renewable energy regulations to facilitate responsible development of renewable energy resources more rapidly on the OCS and promote U.S. energy independence. This rule would also significantly reduce costs to developers for expanding renewable energy development in an environmentally sound manner. Similarly, BLM plans to update its regulations for onshore rights-of-way, leasing, and operations related to all activities associated with renewable energy and transmission lines (1004–AE78). This proposed rule would improve permitting activities and processes to facilitate increased renewable energy production on public lands.

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.

As part of these efforts, on April 27, 2021, Secretary Haaland signed SO 3400 entitled, ''Delegation of Authority for Non-Gaming Off-Reservation Fee-to-Trust Acquisitions.'' SO 3400 is intended to ensure that off-reservation fee-to-trust applications are effectively and efficiently processed. As Secretary Haaland noted upon signing the SO, ''At Interior, we have an obligation to work with Tribes to protect their lands and ensure that each Tribe has a homeland where its citizens can live together and lead safe and fulfilling lives . . . Our actions today will help us meet that obligation and will help empower Tribes to determine how their lands are used—from conservation to economic development projects.''

To advance the Department's trust responsibilities, the Bureau of Indian

Affairs (BIA) is currently identifying opportunities to promote Tribal economic growth and development. For example, BIA is working to remove barriers to the development of renewable energy and other resources in Indian country. During FY 2021, BIA finalized a rule that removed several required items from Tribal Energy Resource Agreement (TERA) applications and offered a new economic development option for Tribal Energy Development Organizations (TEDOs) (1076–AF65) (86 FR 40147, July 27, 2021).

In consultation with Tribes, BIA has been 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. This year, BIA published a final rule that modernizes the way the BIA Land Title and Records Office (LTRO) maintains title to Indian trust land and streamlines the process for probating estates that contain trust property to reduce delays (1076–AF56) (86 FR 45631, August 16, 2021). The bureau has 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. The BIA has preliminarily identified as a candidate for revision the regulations governing leases of Indian land for agricultural purposes, which are found at 25 CFR part 162 (1076–AF66).

The BIA is also committed to improving regulations meant to protect sacred and cultural resources. The BIA is working with the National Park Service (NPS) to consult with Tribes on updates to regulations implementing the Native American Graves and Repatriation Act (NAGPRA), 43 CFR 10 (1024–AE19). These regulations would provide a systematic process 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.

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 Executive Order 13985 entitled, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' This Executive order directs all Federal agencies to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. In FY 2022, the Department will undertake a number of regulatory actions that will assist people who reside in underserved communities.

The BLM (1004–AE60), FWS (1018–BD78), and NPS (1024–AE75), are proposing right-of-way (ROW) rules that would improve efficiencies in the communications programs, including plans and agreements for electric transmission, distribution facilities and broadband facilities. These rules are intended to increase services, such as broadband connectivity, with resulting benefits to underserved communities and visitors to Departmental lands and promote good governance.

Investing in Healthy Lands, Waters and Local Economies and Strengthening Conservation, and Protecting Endangered Species and Their Habitat

The Department's FY 2022 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, include expanding opportunities for outdoor recreation, including hunting and fishing, for all Americans; enhancing conservation stewardship; and improving the management of species and their habitat.

For example, the U.S. Fish and Wildlife Service (FWS) opened, for the first time, seven national wildlife refuges (NWRs), totaling 2.1 million acres of public lands, that were previously closed to hunting and sport fishing. Hunters and anglers are among the most ardent conservationists. The FWS opened or expanded hunting and sport fishing at 81 other NWRs and added pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2021–2022 season. The FWS also opened hunting or sport fishing on one unit of the National Fish Hatchery System (NFH), adding pertinent station-specific regulations for migratory game bird hunting, upland game hunting, big game hunting, and sport fishing at this NFH for the 2021–2022 season. Finally, FWS made regulatory changes to existing station-specific regulations to reduce the regulatory burden on the public, increase access for hunters and anglers on FWS lands and waters, and comply with a Presidential mandate for plain language standards. By responsibly expanding these opportunities, the Department is enhancing the lives of millions of Americans, promoting conservation stewardship, and stimulating the national economy (86 FR 48822, August 31, 2021).

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, snowmobiling, the use of motorized and non-motorized vessels, personal watercraft, and bicycling, within appropriate, designated areas of certain National Park System units. These regulations would benefit local economies as well as promote healthy lands and waters.

The Biden-Harris administration and Secretary Haaland are strongly committed to strengthening conservation and improving conservation partnerships. Through this regulatory plan, the Department affirms the importance of the Endangered Species Act (ESA) 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 to not only protect and recover America's imperiled wildlife but to ensure the ESA is helping meet 21st century challenges.

In FY 2022, FWS will continue its reviews of several ESA rules that were finalized prior to January 20, 2021, to continue improving the 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. For example, FWS and the National Marine Fisheries Service (NMFS) are reviewing the final rule that became effective on January 15, 2021, entitled, ''Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat,'' that established a regulatory definition of ''habitat.'' FWS is also reviewing the final rule entitled, ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat,'' that became effective on

January 19, 2021. That rule set forth a process for excluding areas of critical habitat under section 4(b)(2) of the ESA, which mandates our consideration of the impacts of designating critical habitat and permits exclusions of particular areas following a discretionary exclusion analysis. Finally, FWS and NMFS are reviewing the final rule entitled, ''Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation'' to determine whether and how the rule should be revised or rescinded.

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 FY 2021, BIA finalized a rule that removed several required items from TERA applications and offers a new economic development option for TEDOs (86 FR 40147, July 27, 2021).

The BIA also published a final rule that modernizes the manner in which the BIA LTRO maintains title to Indian trust land and streamlines the process for adjudicating probates of estates containing trust property to reduce delays (86 FR 45631, August 16, 2021).

The BIA intends to prioritize the following rulemakings in FY 2022:

Tribal Transportation Program: Allowable Lengths of Access Roads (1076–AF48)

This rule would change the allowable length of access roads in the National Tribal Transportation Facilities Inventory, as determined by 25 CFR 170.447, to increase the 15-mile limits on the length of access roads and create parity among all Tribes, regardless of land base or remoteness of location.

Trust Fund Accounts for Tribes and Individual Indians—Supervised Accounts (1076–AF57)

This rule would update the qualifications required for Indian Affairs personnel who conduct reviews of supervised individual Indian Money (IIM) accounts to ensure that personnel have appropriate accounting skills and make other changes to reflect the transition of duties from social services providers to IIM account specialists in the newly established Bureau of Trust Funds Administration (BTFA).

Leasing of Osage Reservation Lands for Oil and Gas Mining (1076–AF59)

The regulations in 25 CFR part 226 would be revised because they are outdated; do not reflect current oil and gas operations within the Osage Mineral Estate or the industry at large; and are inconsistent with Departmental regulations governing oil and gas exploration and development throughout the rest of Indian country. The last substantive revision to the regulations in 25 CFR part 226 occurred in 1974, with many provisions remaining unchanged since well before then.

105(l) Leases Under the Indian Self-Determination and Education Assistance Act (ISDEAA) (1076–AF60)

The current regulations governing 105(l) leases at 25 CFR 900, subpart H, allow Tribes to be compensated for a broad range of expenses ranging from rent to depreciation and ''other reasonable expenses.'' The revisions would establish sideboards on what costs the Department will pay Tribes for 105(l) leases including, for examples, more specific direction on the timing and scope of future 105(l) leases.

Self-Governance PROGRESS Act Regulations (1076–AF62)

This rule would implement the requirements of the PROGRESS Act requiring updates to BIA's regulations governing Tribal Self-Governance. The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.,* which addresses Indian Self-Determination, and subchapter IV of the ISDEAA which addresses the Department's Tribal Self-Governance Program. The PROGRESS Act calls for a negotiated rulemaking committee to be established under 5 U.S.C. 565, with membership consisting only of representatives of Federal and Tribal governments, with the Office of Self-Governance serving as the lead agency for the Department. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes.

Indian Business Incubators Program (1076–AF63)

This rule would establish the structure for the Office of Indian Energy and Economic Development (IEED) to implement the Native American Business Incubators Program, which was established by statute in October 2020. The rule will establish how IEED will provide competitive grants to eligible applicants to establish and operate business incubators that serve Tribal reservation communities. The business incubators will provide tailored business incubation services to Native businesses and Native entrepreneurs to overcome the unique obstacles they confront in offering products and services to reservation communities.

Agricultural Leasing of Indian Land (1076–AF66)

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.

Federal Recognition of Tribes Under Alaska IRA (1076–AF51)

This rule will establish criteria and procedures for groups seeking recognition as Tribes under the Alaska Indian Reorganization Act (Alaska IRA), which is separate and distinct from the Indian Reorganization Act of 1934, which has its own set of regulations for seeking recognition as Tribes. The Alaska IRA provides that groups of Indians in Alaska having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district may organize to adopt constitutions and bylaws and receive charters of incorporation and Federal loans. This rule will also establish what documents are required to apply. To date, there has been no regulatory process or criteria established for seeking recognition under the Alaska IRA.

Elections of Osage Minerals Council (1076–AF58)

Current BIA regulations address how BIA conducts elections of offices of the Osage Tribe, including provisions addressing nominating conventions and

petitions, election notices, opening and closing of polls, ballots, and contesting elections. This rule will remove outdated and unnecessary provisions. . Statutory changes and the Osage Nation Constitution have significantly pared down the role of BIA in the Tribe's elections. The only remaining portion that will be included in this rule states that BIA will provide, at the Osage Nation's request, a list of voters and their headright interests to the Osage Minerals Council Election Board.

Bureau of Indian Education

The Bureau of Indian Education (BIE) mission is to provide students at BIE-funded schools with a culturally relevant, high-quality education that prepares students with the knowledge, skills, and behaviors needed to flourish in the opportunities of tomorrow, become healthy and successful individuals, and lead their communities and sovereign nations to a thriving future that preserves their unique cultural identities. The BIE is the preeminent provider of culturally relevant educational services and supports provided by highly effective educators to students at BIE-funded schools to foster lifelong learning.

Regulatory and Deregulatory Actions

As BIE continues its work to fulfill its mission while keeping students and school staff safe and healthy, BIE finalized a new regulation in FY 2021 that will allow individual BIE-operated schools to retain the funding received through leasing their lands and facilities to third-parties, and direct that funding back into the school (86 FR 34943, July 1, 2021). The new regulation will also allow individual BIE-operated schools to retain fundraising proceeds and use those proceeds for the benefit of the school.

Appeals From Administrative Actions (1076–AF64)

This rule would clarify the processes for appeals of actions taken by officials in the Office of the Assistant Secretary Indian Affairs, BIA, BIE, and BTFA (collectively, Indian Affairs).

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

The BLM has identified the following priority rulemaking actions for FY 2022:

Livestock Grazing (1004–AE82)

This proposed rule would revise BLM's grazing regulations to improve resource management and increase efficiency by streamlining and clarifying grazing processes and improving coordination among Federal, State, and local government entities. The proposed rule would revise the regulations at 43 CFR parts 4100, 1600, and 1500. These revisions and additions would help to provide the public and land managers with accurate and reliable information regarding grazing administration on public lands.

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 is proposing amendments to its existing ROW regulations to 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 the Federal Land Policy and Management Act of 1976 (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 power-line ROWs on public lands and national forests. The regulatory amendments would also codify legislated agency requirements regarding review and approval of utilities maintenance plans, liability limitations, and definitions of hazard trees and emergency conditions.

Bonding (1004–AE68)

This proposed rule would update the bonding procedures for ROWs on BLM-managed public land. The proposed rule would revise the bonding portion of the BLM's ROW regulations to make them clearer and easier to understand, which would facilitate efficient bond calculations.

Rights-of-Way, Leasing and Operations For Renewable Energy and Transmission Lines 43 CFR Parts 2800, 2880, 3200 (1004–AE78)

This proposed rule would revise BLM's regulations for ROWs, leasing, and operations related to all activities associated with renewable energy and transmission lines. 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.

Waste Prevention, Production Subject to Royalties, and Resource Conservation 43 CFR Parts 3160 and 3170 (1004–AE79)

This proposed rule would 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 Executive Order 14008. In addition, in accordance with Executive Order 13990, this proposed rule would reduce methane emissions in the oil and gas sector and mitigate impacts of climate change.

Revision of Existing Regulations Pertaining to Fossil Fuel Leases and Leasing Process 43 CFR Parts 3100 and 3400 (1004–AE80)

This proposed rule would revise BLM's fossil fuel regulations to update the fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production. The proposed rule would 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 fossil fuel activities.

Revision of Existing Regulations Retaining to Leasing and Operations of Geothermal 43 CFR Part 3200 (1004–AE84)

This proposed rule would update and codify BLM's Geothermal Resource Orders into regulation, including common geothermal standard practices, and inspection requirements and procedures.

Protection, Management, and Control of Wild Horses and Burros 43 CFR Part 4700 (1004–AE83)

This proposed rule would address wild horse and burro management challenges by adding regulatory tools that better reflect BLM's current statutory authorities. For example, the existing regulations do not address certain management authorities that Congress has provided since 1986 to

control wild horse and burro populations, such as the BLM's authority to sell excess wild horses and burros. Updating the regulations would also facilitate management strategies and priorities that were not utilized when the regulations were originally promulgated, such as the application of fertility control vaccines, managing for nonreproducing herds, and feeding and caring for unsold and unadopted animals at off-range corrals and pastures. The proposed rule would also clarify ambiguities and management limitations in the existing regulations.

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. The BOEM is responsible for stewardship of U.S. OCS energy and mineral resources, as well as protecting the environment that the development of those resources may impact. The resources we manage belong to the American people and future generations of Americans; wise use of and fair return for these resources are foremost in our management efforts.

In accordance with its statutory mandate under 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 administration in E.O. 14008, BOEM is reevaluating all of its programs related to the offshore development of energy and mineral resources offshore. The BOEM is working with the Department as a whole 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 FY 2022, the BOEM plans to prioritize the following rulemaking actions:

Renewable Energy Modernization Rule (1010–AE04)

The BOEM's most important regulatory initiative is focused on expanding offshore wind energy's role in strengthening U.S. energy security and independence, create jobs, provide benefits to local communities, and further develop 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.

The BOEM is proposing a rule that would update the existing renewable energy regulations to help facilitate the timely and responsible development of renewable energy resources on the OCS and promote U.S. energy independence. 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. This rule advances the administration's energy policies in a safe and environmentally sound manner that provides a fair return to the American taxpayer while, at the same time, significantly reducing industry development.

Air Quality Rule (1010–AE09)

In accordance with the administration's renewed commitment to ensure the robust protection for the lands, waters, and biodiversity of the United States, BOEM is reevaluating the entirety of its air quality regulatory program and will propose further enhancements. The BOEM and the Department are proposing a new offshore air quality rule to tighten pollution standards for offshore operations and require improved pollution control technology. The proposed rule would amend regulations for air quality measurement, evaluation, and control for offshore oil and gas operations. The goal of this new proposed rule would be to improve the ambient air quality of the coastal States and their corresponding State submerged lands by addressing a number of issues that were not addressed by BOEM's prior final air quality rule. The BOEM expects to revisit a number of the topics that were originally reviewed in 2016.

Bureau of Safety and Environmental Enforcement

The Bureau of Safety and Environmental Enforcement's (BSEE) 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

The BSEE has identified the following rulemaking priorities for FY 2022:

Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule (1014–AA44)

The Oil Spill Response Requirements regulations in 30 CFR part 254 were last updated over 20 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would update the existing regulations in order 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 in order to bring those regulations up to date 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 BSEE 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 proposed rule would formally codify BSEE's existing process for reviewing and approving projects in HPHT environments.

Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions (1014–AA52)

The BSEE is revising existing regulations for well control and blowout preventer systems.

Bureau of Ocean Energy Management, and Bureau of Safety and Environmental Enforcement Renewable Energy Split Final Rule (1082–AA03)

The BOEM currently has authority over all renewable energy activities on the OCS under regulations at 30 CFR part 585. The BOEM and BSEE are in the process of amending the Department's Manual chapters to transfer the safety, environmental enforcement, and compliance functions relevant to renewable energy activities from BOEM to BSEE. Consistent with that effort, BSEE and BOEM would amend their respective regulations to reflect the split of functions between the two Bureaus.

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. To successfully serve the Department's multiple missions, the OCIO applies modern Information Technology 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.

For FY 2022, OCIO is working on these priority rules:

Network Security System of Records (1090–AB14)

This rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim Privacy Act exemptions for certain records in the DOI–49, Network Security, system of records from one or more provisions of the Privacy Act pursuant to 5 U.S.C 552a(j) and (k), because of criminal, civil, and administrative law enforcement requirements.

Insider Threat Program System of Records (1090–AB15)

This rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim Privacy Act exemptions for certain records in the DOI–50, Insider Threat Program, system of records from one or more provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k), because of criminal, civil, and administrative law enforcement requirements.

Personnel Security Files System of Records (1090–AB16)

This rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim Privacy Act exemptions for certain records in the DOI–45, Personnel Security Files, system of records from one or more provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k), because of criminal, civil, and administrative law enforcement requirements.

Social Security Number Fraud Prevention Act of 2017 Implementation (1090–AB24)

This direct final rule will amend 43 CFR part 2 to add subpart M to implement the Social Security Number Fraud Prevention Act of 2017, which directs Federal agencies to issue regulations that prohibit the inclusion of an individual's Social Security number (SSN) on any document sent through the mail unless the Secretary deems it necessary. The regulations also include requirements for protecting documents with SSNs sent through postal mail.

Office of Environmental Policy and Compliance

The Office of Environmental Policy and Compliance (OEPC) serves as a leader in conservation stewardship and the sustainable development and use of Department-managed resources for the benefit of the public. The office fosters partnerships to enhance resource use and protection, as well as to expand public access to safe and clean lands under the Department's jurisdiction. The office also strives to continually streamline environmental policies and procedures to increase management effectiveness and efficiency, reduce duplicative practices, and realize cost savings.

For FY 2022, OEPC will publish in the **Federal Register**:

Implementation of the National Environmental Policy Act (NEPA) of 1969 (1090–AB18)

This rule would develop regulations to streamline OEPC's NEPA process and comply with E.O. 13990 and SO 3399.

Office of Grants Management

The Office of Grants Management is responsible for providing executive leadership, oversight, and policy for the financial assistance across the Department.

Financial Assistance Interior Regulation (1090–AB23)

This rule will align the Department's regulations with new regulatory citations and requirements adopted by the Office of Management and Budget (OMB). On August 13, 2020, OMB published a revision to sections of Title 2 of the Code of Federal Regulations, Guidance for Grants and Agreements. The revision was an administrative simplification and did not make any substantive changes to 2 CFR part 200 policies and procedures. This rule will codify these changes in the Department's financial assistance regulations located in 2 CFR part 1402. (86 FR 57529, October 18, 2021).

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 of 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.

Updates to American Indian Probate Regulations (1094–AA55)

This final rule will make regulatory changes relating to efficiency and streamlining of probate processes, ensuring that the Department meets its trust obligations, and helping achieve the American Indian Probate Reform Act/statutory goal of reducing fractionalization of trust property interests.

Practices Before the Department of Interior (1094–AA56)

This direct final rule will amend existing regulations to keep up to date office addresses for hearings and appeals purposes, to allow for the OHA Director to issue interim orders in emergency circumstances, and to allow for the OHA Director to issue standing orders that will improve OHA's service to the public and the parties by modernizing its processes.

Office of Natural Resources Revenue

The Office of Natural Resources Revenue (ONRR) continues to collect, account for, and disburse revenues from Federal offshore energy and mineral leases and from onshore mineral leases on Federal and Indian lands. 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.

ONRR 2020 Valuation Reform and Civil Penalty Rule: Final Withdrawal Rule (1012–AA27)

The ONRR is withdrawing the ONRR 2020 Valuation Reform and Civil

Penalty Rule (86 FR 54045, September 30, 2021).

Amendments to ONRR's Mail Addresses Listed in Tiltle30 CFR, Chapter XII (1012–AA28)

This rule will amend mailing addresses listed in parts of Title 30 CFR, Chapter XII due to ONRR's main building renovation, which changed the organizations mailing addresses.

Civil Monetary Penalty Rates Inflation Adjustments for Calendar Year 2022 (1012–AA31)

This rule will adjust the maximum civil monetary penalty rates for inflation and announces the rates applicable to calendar year 2022.

Office of Small and Disadvantaged Business Utilization

The Office of Small and Disadvantaged Business Utilization advises the Secretary on small business issues and collaborates with leadership to maximize small business opportunities. The office implements policies, procedures, and training programs for the Department to emphasize its commitment to contracting with small businesses. The mission also includes outreach to small and disadvantaged business communities, including Indian economic enterprises, small disadvantaged, women-owned, veteran-owned, service-disabled veteran owned, small businesses located in historically underutilized business zones areas, and the Ability One Program.

Department of the Interior Acquisition Regulations, Buy Indian Act Acquisition Regulations (1090–AB21)

This rule would revise regulations implementing the Buy Indian Act, which provides the Department with authority to set aside procurement contracts for Indian-owned and controlled businesses. These revisions would eliminate barriers to Indian Economic Enterprises from competing on certain construction contracts, expand Indian Economic Enterprises' ability to subcontract construction work consistent with other socio-economic set-aside programs, and give greater preference to Indian Economic Enterprises when a deviation from the Buy Indian Act is necessary, among other updates (86 FR 59338, October 27, 2021).

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 establishing much-needed wildlife habitat.

Regulatory and Deregulatory Actions

The OSMRE does not currently expect to finalize any significant regulatory actions during FY 2022. The OSMRE does anticipate publishing:

Ten Day Notices (1029–AC81)

This rule would reexamine OSMRE's regulations on the ten-day notices rule that went into effect on December 24, 2020.

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). The proposed rule may result in revisions to OSMRE's regulations at 30 CFR 701.5, 780.25, 784.16, 816.49, 817.49, 816.84, and 817.84. Also, OSMRE may add new provisions to the regulations to explain the EAP and AAR requirements and 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. The FWS also provides opportunities for Americans to enjoy the outdoors and our shared natural heritage. The FWS also promotes and encourages the pursuit of recreational activities such as hunting and fishing and wildlife observation.

The FWS manages a network of 567 NWRs, with at least one 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. In 2019, more than 59 million visitors went 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.

Regulatory and Deregulatory Actions

The FWS has identified the following priority rulemaking actions for FY 2022:

Regulations Under the Endangered Species Act (ESA):

The FWS will promulgate multiple regulatory actions under the ESA to prevent the extinction of and facilitate the recovery of both domestic and foreign animal and plant species. Accordingly, FWS will add species to, remove species from, and reclassify species on the Lists of Endangered and Threatened Wildlife and Plants and designate critical habitat for certain listed species, in accordance with the National Listing Workplan. The Workplan enables FWS to prioritize workloads based on the needs of candidate and petitioned species, while providing greater clarity and predictability about the timing of listing determinations to State wildlife agencies, nonprofit organizations, and other stakeholders and partners. The Workplan represents the conservation priorities of FWS based on its review of scientific information. The goal is to encourage proactive conservation so that Federal protections are not needed in the first place. The FWS also plans to promulgate several species-specific rules to protect threatened species under section 4(d) of the ESA.

The Unified Agenda includes rulemaking actions pertaining to these issues:

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl (1018–BF01)

This rule revised the designated critical habitat for the northern spotted owl *(Strix occidentalis caurina)* under the ESA. After a review of the best available scientific and commercial information, FWS withdrew the January 15, 2021, final rule that would have excluded approximately 3.4 million acres of designated critical habitat for the northern spotted owl. Instead, FWS revised the species' designated critical habitat by excluding approximately 204,294 acres (82,675 hectares) in Benton, Clackamas, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties, Oregon, under section 4(b)(2) of the Act (86 FR 62606, November 10, 2021).

Endangered and Threatened Wildlife and Plants; Listing Determination and Critical Habitat Designation for the Monarch Butterfly (1018–BE30)

This rule would list the monarch butterfly under the ESA in FY 2024, if listing is still warranted at that time. FWS would also propose to designate critical habitat for the species, if prudent and determinable.

Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Endangered and Threatened Species and Designation of Critical Habitat (1018–BE69)

The FWS and the National Marine Fisheries Service propose to rescind the final rule titled ''Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat'' that was published on December 16, 2020, and became effective on January 15, 2021. The proposed rescission, if finalized, would remove the regulatory definition of ''habitat'' established by that rule.

Endangered and Threatened Wildlife and Plan; Revision of the Regulations for Designating Critical Habitat (1018–BD84)

The FWS proposes to rescind the final rule titled ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat'' that published on December 18, 2020, and became effective January 19, 2021. The proposed rescission, if finalized, would remove the regulations established by that rule.

Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat (1018–BF95)

This joint Departments of Commerce and the Interior (the Departments) rule would review 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), in which we revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designation of critical habitat. The Departments' review will determine whether and how that rule should be revised.

Endangered and Threatened Wildlife and Plants; Revisiting the Interagency Cooperation Final Rule (1018–BF96)

This joint rule by the Departments of Commerce and the Interior would review Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation (84 FR 44976; August 27, 2019) to determine whether and how the rule should be revised or rescinded.

Endangered and Threatened Wildlife and Plants; Compensatory Mitigation Mechanisms Under the Endangered Species Act (1018–BF63):

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. This law requires FWS to publish an advance notice of proposed rulemaking (ANPRM) by January 1, 2022. The purpose of the ANPRM is to inform FWS's development of regulations related to wildlife conservation banking to ensure opportunities for Department of Defense participation in wildlife conservation banking programs pursuant to section 2694c of title 10, United States Code.

Regulations Governing Take of Migratory Birds (1018–BD76):

On January 7, 2021, the FWS published a final rule defining the scope of the Migratory Bird Treaty Act (MBTA) as it applies to conduct resulting in the injury or death of migratory birds protected by the MBTA. We are now revoking that rule. The effect of this rule is a return to implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent.

Protection of Migratory Birds; Definitions and Authorizations (1018–BF71)

This rule would amend FWS regulations by providing definitions to terms used in the MBTA. This 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 rule would also propose to establish authorizations for compliance with MBTA prohibitions.

Eagle Permits; Incidental Take (1018–BE70)

This rule would provide potential approaches for further expediting and simplifying the permit process authorizing incidental take of eagles. The new process would improve and make more efficient the permitting process for incidental take of eagles in a manner that is compatible with the preservation of bald and golden eagles.

Possession of Eagle Specimens for Religious Purposes (1018–BB88)

This rule would propose extending legal access to bald and golden eagle parts and feathers for religious use to persons other than enrolled members of federally recognized Tribes.

2021–2022 Station-Specific Hunting and Sport Fishing Regulations (1018–BF09)

The FWS opens, for the first time, seven National Wildlife Refuges (NWRs) that are currently closed to hunting and sport fishing. In addition, the Service opens or expands hunting and sport fishing at 81 other NWRs and adds pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2021–2022 season. The Service also opens hunting or sport fishing on one unit of the National Fish Hatchery System (NFH). We add pertinent station-specific regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing at this NFH for the 2021–2022 season. Finally, we make regulatory changes to existing station-specific regulations in order to reduce the regulatory burden on the public, increase access for hunters and anglers on Service lands and waters, and comply with a Presidential mandate for plain language standards (86 FR 48822, August 31, 2021).

Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Eighteenth Meeting of the Conference of the Parties (CoP18) to CITES (1018–BF14)

The FWS is taking direct final action to revise regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Treaty) by incorporating certain non-controversial provisions adopted at the sixteenth through eighteenth meetings of the Conference of the Parties (CoP16–CoP18) to CITES and clarifying and updating certain other provisions. These changes will bring U.S. regulations in line with certain revisions adopted at the three most recent meetings of the CoP, which took place in March 2013 (CoP16), September–October 2016 (CoP17), and August 2019 (CoP18). The revised regulations will help FWS more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade.

National Park Service

The National Park Service (NPS) preserves the natural and cultural resources and values within 423 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

The following are the NPS's rulemaking priorities during FY 2022 year:

Native American Graves Protection and Repatriation Act Regulations (1024–AE19)

This rule would revise the NAGPRA implementing regulations. The rule would 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 would simplify and improve the regulatory process for repatriation and thereby advance the goals of racial justice, equity, and inclusion.

Colonial National Historical Park; Vessels and Commercial Passenger-Carrying Motor Vehicles (1024–AE39)

This final rule will amend the special regulations for Colonial National Historical Park. This rule will remove a regulation that prevents the Superintendent from designating sites within the park for launching and landing private vessels. The rule will also remove outdated permit and fee requirements for commercial passenger-carrying vehicles.

Visitor Experience Improvements Authority Contracts (1024–AE47)

This proposed rule would implement the Visitor Experience Improvements Authority (VEIA) given to NPS by Congress in title VII of the National Park Service Centennial Act. This authority allows the NPS to award and administer commercial services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System. The VEIA supplements but does not replace the existing authority granted to the NPS in the Concessions Management Improvement Act of 1988 to enter into concession contracts.

Whiskeytown National Recreation Area; Bicycling (1024–AE52)

This rule would allow bicycles on approximately 75 miles of trails throughout Whiskeytown National Recreation Area; 17 miles of trail will be newly constructed. Bicycling is an established use at the recreation area that has never been properly authorized under NPS bicycle regulations.

Pictured Rocks National Lakeshore; Snowmobiles (1024–AE53)

This final rule will clarify where snowmobiles may be used within the boundaries of the Lakeshore by replacing general language allowing snowmobiles on unplowed roads and the shoulders of plowed roads with a comprehensive list of designated snowmobile routes.

Gulf Islands National Seashore; Personal Watercraft (1024–AE55)

This final rule will amend special regulations for Gulf Island National Seashore that govern the use of personal watercraft (PWC) within the National Seashore in Mississippi and Florida. NPS regulations only allow for the operation of PWCs in park areas were authorized by special regulation.

Commercial Visitor Services; Concession Contracts (1024–AE57)

This final rule will revise regulations that govern the solicitation, award, and administration of concessions contracts to provide commercial visitor services at National Park System units under the Concessions Management Improvement Act of 1998. This rule would reduce administrative burdens and expand sustainable, high quality, and contemporary concessioner-provided visitor services in national parks.

Curation of Federally-Owned and Administered Archeological Collections (1024–AE58)

This final rule will amend the regulations for the curation of federally-owned and administered archeological collections to establish definitions, standards, and procedures to dispose of particular material remains that are determined to be of insufficient archaeological interest. This rule will promote more efficient and effective curation of these archeological collections.

Ozark National Scenic Riverways; Motorized Vessels (1024–AE62)

This rule would amend special regulations for Ozark National Scenic Riverways. The rule would modify regulations governing the use of motorized vessels within the Riverways to help accommodate a variety of desired river conditions and recreational uses, promote high quality visitor experiences, promote visitor safety, and minimize conflicts among different user groups. The rule would implement a management action that represents a compromise between user groups and was the result of a long planning process with robust community engagement.

Mount Rainier National Park; Fishing (1024–AE66)

This rule would revise special regulations for Mount Rainier National Park to remove all fishing closures and restrictions from 36 CFR 7.5. Instead, the NPS would manage fishing though administrative orders in the Superintendent's Compendium. This action would help implement a 2018 Fish Management Plan that aims to conserve native fish populations and restore aquatic ecosystems by reducing or eliminating nonnative fish.

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

Reclamation's rulemaking priorities for FY 2022 include the following:

Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies (1006–AA58)

This proposed update to an existing rule would revise existing definitions for the use of aircraft, the possession of firearms, camping, swimming, and winter recreation for the wide range of circumstances found across Reclamation and would clarify the permitting of memorials and correct inconsistencies found within this part.

Departmental

For FY 2022, the Department intends to publish in the **Federal Register**:

Paleontological Resources Preservation. (1093–AA25)

This rule addresses the management, collection, and curation of paleontological resources on or from Federal lands administered by the Department using scientific principles and expertise, including collection in accordance with permits; curation in an approved repository; and maintenance of confidentiality of specific locality data.

BILLING CODE 4334–63–P

DEPARTMENT OF JUSTICE (DOJ)—FALL 2021

Statement of Regulatory Priorities

The mission of the Department of Justice is to uphold the rule of law, to protect the public against foreign and domestic threats, to provide Federal leadership in preventing and controlling crime, and to ensure equal justice under the law for all. 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 strengthen enforcement of civil rights laws, defend against domestic and international terrorism, combat gun violence, 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.

The regulatory priorities of the Department include initiatives in the areas of immigration, criminal justice reform, and gun violence reduction. Those initiatives, as well as regulatory initiatives by several other components carrying out key law enforcement priorities, are summarized below.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

ATF issues regulations to enforce the Federal laws relating to the manufacture, importation, sale, and other commerce in firearms and explosives. ATF's mission and regulations are designed to, among other objectives: (1) Curb illegal traffic in, and criminal use of, firearms and explosives; and (2) assist State, local, and other Federal law enforcement agencies in reducing violent crime. ATF will continue, as a priority during fiscal year 2021, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals.

ATF plans to finalize regulations regarding definitions of firearm, firearm frame or receiver, gunsmith, complete weapon, complete muffler or silencer device, privately made firearm, and readily, and finalize regulations on marking and recordkeeping that are necessary to implement these new or amended definitions (RIN 1140–AA54). The intent of this rulemaking is to consider technological developments and modern terminology in the firearms industry, and to enhance public safety by helping to stem the proliferation of unmarked, privately made firearms that have increasingly been recovered at crime scenes. Further, ATF plans to finalize regulations to implement certain provisions of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (RIN 1140–AA10), and to set forth factors considered when evaluating firearms with an attached stabilizing brace to determine whether they are considered firearms under the National Firearms Act and/or the Gun Control Act (RIN 1140–AA55). This second rule would make clear that all weapons that fall under the National Firearms Act, however they are made, are subject to its heightened regulations—including registration and background check requirements. ATF also has begun a rulemaking process that amends 27 CFR part 447 to update the terminology in ATF's import control regulations based on similar terminology amendments made by the Department of State on the U.S. Munitions List in the International Traffic in Arms Regulations, and the Department of Commerce on the Commerce Control List in the Export Administration Regulations (RIN 1140–AA49).

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.

Over the past year, the Bureau has successfully implemented its Incident Action Plan, developed in response to 2020 pandemic conditions to facilitate continuity of operations, supplies, inmate movement, visitation, staff training, and official staff travel. As pandemic conditions continue to evolve, BOP plans to continue to employ and improve its Incident Action Plan, currently comprised of BOP's approved Pandemic Influenza Plan; its Incident Command System (ICS) framework; and guidance and directives from the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), the Office of Personnel Management (OPM), DOJ, and the Office of the Vice President.

In the near future, BOP plans to finalize procedures for eligible inmates to earn FSA Time Credits, as authorized by the First Step Act of 2018 (FSA), Public Law 115–391, 132 Stat. 5194 (2018). The FSA provides that eligible inmates earn FSA Time Credits towards prerelease custody or early transfer to supervised release for successfully completing approved Evidence-Based Recidivism Reduction (EBRR) Programs or Productive Activities (PAs) assigned to each inmate based on the inmate's risk and needs assessment.

BOP will also finalize regulations implementing additional legislative changes enacted in the FSA to broaden the Good Conduct Time Credit system, revise inmate disciplinary regulations, and provide effective literacy programming which serves both general and specialized inmate needs.

Civil Rights Division (CRT)

CRT works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. Consistent with this mission, CRT plans to engage in three separate rulemakings under the Americans with Disabilities Act (ADA).

First, CRT plans to amend its current regulations 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 them up to date. Second, the Department plans to publish a new ANPRM 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. Third, the Department of Justice intends to propose requirements for the construction and alteration of pedestrian facilities covered by subtitle 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 ensure that sidewalks and other pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities.

Drug Enforcement Administration (DEA)

DEA is the primary agency responsible for coordinating the drug law enforcement activities of the United States and assists 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 CSA and its regulations 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 propose a regulation that allows practitioners, subject to certain limitations, to supply up to a three-day supply of buprenorphine or other medications for maintenance and detoxification treatment of opioid use disorder, as instructed by Congress in Public Law 116–215 (RIN–1117–AB73). The intent of this rulemaking is to ensure patients with opioid use disorder have access to needed medications while longer-term treatment is being coordinated. DEA also anticipates finalizing a rulemaking action clarifying the procedures a registrant must follow in the event a suspicious order for controlled substances is received (RIN 1117–AB47).

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, appellate reviews, and administrative hearings. Immigration judges in EOIR's Office of the Chief Immigration Judge adjudicate cases to determine whether noncitizens should be ordered removed from the United States or should be granted some form of protection or relief from removal. The Board of Immigration Appeals (BIA) has jurisdiction over appeals from the decisions of immigration judges, as well as other matters. 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.

Consistent with Executive Order 14010, EOIR is developing numerous regulations related to the asylum system. Specifically, EOIR is working with the Department of Homeland Security (DHS) to finalize a recently proposed rule to amend the procedures for the processing of asylum claims in expedited removal proceedings (RIN 1125–AB20). In addition, EOIR and DHS intend to propose a rule to address the circumstances in which an individual would be considered a member of a ''particular social group'' (RIN 1125–AB13). Similarly, EOIR and DHS intend to propose a rule to rescind bars to asylum implemented by three prior rules: RIN 1125–AA87 related to an applicant's criminal activity, RIN 1125–AA91 related to an applicant's transit through third countries, and RIN 1125–AB08 related to public health concerns. Moreover, EOIR intends to issue a rule to rescind or revise previous regulatory amendments regarding the time allowed for filing applications for asylum and withholding of removal by individuals in proceedings before EOIR (RIN 1125–AB15). EOIR is developing a proposed rule that would require immigration judges to conduct a hearing in which the applicant may provide testimony on his or her application for asylum and withholding of removal before the judge could deny the application (RIN 1125–AB22).

Finally, EOIR is also working to revise and update the regulations relating to immigration proceedings to increase efficiencies and productivity, while also safeguarding due process. EOIR is in the process of publishing a final rule regarding its new EOIR Case and Appeals System, which provides for greatly expanded electronic filing and calendaring for cases before EOIR's immigration courts and the BIA (RIN 1125–AA81). In addition, EOIR is drafting a proposed rule that would codify administrative closure procedures before the immigration courts and the BIA and make other revisions to ensure that BIA adjudications appropriately balance due process and efficiency considerations (RIN 1125–AB18). Further, EOIR is planning to finalize a rule that would establish procedures for practitioners to provide individual document assistance without triggering the full obligations required of practitioners engaging in full representation of a noncitizen in EOIR proceedings (RIN 1125–AA83)

Federal Bureau of Investigation (FBI)

The Federal Bureau of Investigation 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, municipal, and international agencies and partners. Only in limited contexts does the FBI rely on rulemaking. For example, the FBI is currently drafting a rule that establishes 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 shall, 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).

Office of Justice Programs (OJP)

OJP provides innovative leadership to Federal, State, local, and tribal justice systems by disseminating state-of-the-art knowledge and practices and providing financial assistance for the implementation of crime fighting strategies.

OJP published a notice of proposed rulemaking for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Formula Grant Program on August 8, 2016, and in early 2017 published a final rule addressing some of those provisions. For other provisions included in the proposed rule, OJJDP received many comments that require additional time for OJJDP to consider. OJP published an additional final rule removing certain provisions of the regulations that are no longer legally supported, and to make technical corrections, in June 2021. OJJDP now plans to publish a second notice of proposed rulemaking addressing amendments to the Juvenile Justice and Delinquency Prevention Act included in the Juvenile Justice Reform Act signed into law on December 21, 2018, and the remaining changes that OJJDP intends to make to the formula grant program regulation.

DOJ—CIVIL RIGHTS DIVISION (CRT)

Prerule Stage

101. • Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture

Priority: Other Significant.

Legal Authority: 42 U.S.C. 12101 *et seq.*

CFR Citation: 28 CFR 35; 28 CFR 36.

Legal Deadline: None.

Abstract: The ADA requires State and local governments and public accommodations to provide programs, activities, and services in a manner that is accessible to people with disabilities, including non-fixed equipment and furniture that is used in the delivery of programs, activities, and services. The ADA also requires that covered entities communicate effectively with people with disabilities and provide appropriate auxiliary aids and services.

While some types of fixed equipment and furniture are explicitly covered by the 2010 Standards for Accessible Design, there are no specific provisions in the ADA regulations that include standards for the accessibility of equipment and furniture that are not fixed. See, *e.g.,* 28 CFR 36.406(b) (the 1991 and 2010 Standards apply to fixed or built-in elements of buildings and structures). Because the 2010 ADA Standards include accessibility requirements for some types of fixed equipment (*e.g.,* ATMs, washing machines, dryers, tables, benches, and vending machines), the Department plans to look to these standards for guidance, where applicable, when it proposes accessibility standards for equipment and furniture that is not fixed.

The Department plans to publish an ANPRM 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.

Statement of Need: The Department's Americans with Disabilities Act (ADA) regulations contain the ADA Standards for Accessible Design (the ADA Standards) which provide 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 governing the accessibility of equipment and furniture that are not fixed or built in. *Changes in technology have resulted in the development and improved availability of accessible equipment and furniture that benefit individuals with disabilities, and accessible equipment and furniture is often critical to an entity's ability to provide an individual with a disability equal access to its services.* This rule is necessary to ensure that inaccessible equipment and furniture do not prevent people with disabilities from accessing State and local governments and public accommodations' programs and services.

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 ANPRM. The Architectural and Transportation Barriers Compliance Board (Access Board) may issue minimum standards on equipment and furniture, but these standards only become binding when the Department adopts the Access Board's standards through a rulemaking. Alternatively, the Department may create its own technical standards and implement them through a rulemaking.

Anticipated Cost and Benefits: The Department anticipates costs to covered entities, including State and local governments and places of public accommodation. Entities may need to acquire new equipment or furniture or retrofit existing equipment and furniture to meet technical standards that the Department includes in its regulations.

Risks: Failure to implement technical standards to ensure that people with disabilities have access to equipment and furniture in public entities' and public accommodations' programs and services will make some of these programs and services inaccessible to people with disabilities.

Timetable:

Action	Date	FR Cite
ANPRM	09/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

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:* 202 305–2952.

RIN: 1190–AA76

DOJ—CRT

Proposed Rule Stage

102. Implementation of the ADA AMendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973)

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 defenses 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 defenses 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 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 defenses arising from the statute and judicial decisions.

Anticipated Cost and Benefits: Because the NPRM would incorporate existing legal requirements and defenses 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 defenses provided under 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	02/00/22	
NPRM Comment Period End.	04/00/22	

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:* 202 305–2952.

RIN: 1190–AA73

DOJ—CRT

103. • Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way

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 ensure that sidewalks and other pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities.

The Americans with Disabilities Act (ADA) directs the Architectural and Transportation Barriers Compliance Board (Access Board) to issue minimum guidelines to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities. The Access Board intends to issue minimum accessibility guidelines for pedestrian facilities in the public right-of-way, called the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way.

The ADA directs the Department of Justice to promulgate regulations implementing subtitle A of title II of the ADA. The ADA further directs that the Department of Justice's regulations include standards that are consistent with the minimum ADA guidelines issued by the Access Board. Accordingly, the Department of Justice intends to propose requirements for the construction and alteration of pedestrian facilities covered by subtitle 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.

Statement of Need: This rule is necessary 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 subtitle 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 the construction and alteration of pedestrian facilities covered by subtitle 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 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 subtitle 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 the construction and alteration of pedestrian facilities in the public right-of-way comply with the Department's accessibility requirements under subtitle A of title II of the ADA.

Risks: Failure to adopt requirements for the construction and alteration of pedestrian facilities covered by subtitle 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	09/00/22	

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:* 202 305–2952.

RIN: 1190–AA77

DOJ—BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (ATF)

Final Rule Stage

104. Definition of ''Frame or Receiver'' and Identification of Firearms

Priority: Other Significant.

Legal Authority: 18 U.S.C. 921 to 931; 22 U.S.C. 2778; 26 U.S.C. 5812; 26 U.S.C. 5822; 26 U.S.C. 7801 and 7805

CFR Citation: 27 CFR 447; 27 CFR 478; 27 CFR 479.

Legal Deadline: None.

Abstract: The Department of Justice proposes amending Bureau of Alcohol, Tobacco, Firearms, and Explosives regulations to provide new regulatory definitions of firearm frame or receiver and frame or receiver because they are outdated. The Department also proposes amending ATF's definitions of firearm and gunsmith to clarify the meaning of those terms, and to add new regulatory terms such as complete weapon, complete muffler or silencer device, privately made firearm, and readily for purposes of clarity given advancements in firearms technology. Further, the Department proposes amendments to ATF's regulations on marking and recordkeeping that are necessary to implement these new or amended definitions.

Statement of Need: This rule is intended to clarify the definition of firearm and to provide a more comprehensive definition of frame or receiver so that those definitions more accurately reflect firearm configurations not explicitly captured under the existing definitions in 27 CFR 478.11 and 479.11. Further, this NPRM proposes new terms and definitions to take into account technological developments and modern terminology in the firearms industry, as well as amendments to the marking and recordkeeping requirements that would be necessary to implement these definitions.

Summary of Legal Basis: The Attorney General has express authority pursuant to 18 U.S.C. 926 to prescribe rules and regulations necessary to carry out the provisions of chapter 44, title 18, United States Code. The detailed legal analysis supporting the amendments in this rule are expressed in the abstract for the rule itself.

Alternatives: There are no feasible alternatives to the proposed rule that would allow ATF to maximize benefits.

Anticipated Cost and Benefits: The rule will not be economically significant; however, it is a significant regulatory action under section 3(f)(4) of Executive Order 12866 because this rule raises novel legal or policy issues arising out of legal mandates. ATF estimates that the costs for this proposed rule is minimal. The total 10-year undiscounted cost of this proposed rule is estimated to be $1.3 million. The total 10-year discounted cost of the rule is $1.0 million and $1.2 million at 7 percent and 3 percent respectively. The annualized cost of this proposed rule would be $147,048 and $135,750, also at 7 percent and 3 percent, respectively. This rule provides for updated definitions to account for technological advances, ensures traceability regardless of age of firearm, and makes consistent marking requirements

Risks: Without this rule, public safety will continue to be threatened by the lack of traceability of firearms.

Timetable:

Action	Date	FR Cite
NPRM	05/21/21	86 FR 27720
NPRM Comment Period End.	08/19/21	
Final Action	06/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Vivian Chu, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE, Washington, DC 20226, *Phone:* 202 648–7070.

RIN: 1140–AA54

DOJ—ATF

105. Factoring Criteria for Firearms With an Attached Stabilizing Brace

Priority: Other Significant.

Legal Authority: 18 U.S.C 921 to 931; 26 U.S.C 5812; 26 U.S.C 5822; 26 U.S.C. 7801; 26 U.S.C. 7805

CFR Citation: 27 CFR 478; 27 CFR 479.

Legal Deadline: None.

Abstract: The Department of Justice is planning to propose to amend the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to set forth factors considered when evaluating firearms with an attached stabilizing brace to determine whether they are considered firearms under the National Firearms Act and/or the Gun Control Act.

Statement of Need: This rule is intended to clarify when a rifle is intended to be fired from the shoulder and to set forth factors that ATF considers when evaluating firearms with an attached purported stabilizing brace to determine whether these are rifles under the GCA or NFA, and therefore whether they are firearms subject to the NFA. It amends the definition of rifle in 27 CFR 478.11 and 479.11, respectively, by adding a sentence at the end of each definition. The new sentence would clarify that the term rifle includes any weapon with a rifled barrel and equipped with an attached stabilizing brace that has objective design features and characteristics that indicate that the firearm is designed to be fired from the shoulder, as indicated on ATF Worksheet 4999.

Summary of Legal Basis: The Attorney General has express authority pursuant to 18 U.S.C. 926 to prescribe rules and regulations necessary to carry out the provisions of chapter 44, title 18, United States Code. The detailed legal analysis supporting the amendments in this rule are expressed in the abstract for the rule itself.

Alternatives: There are no feasible alternatives to the proposed rule that would allow ATF to maximize benefits.

Anticipated Cost and Benefits: The rule is a significant regulatory action that is economically significant under section 3(f) of Executive Order 12866, because the rule will have an annual effect on the economy of $100 million or more. The annualized cost of this proposed rule would be $114.7 million and $125.7 million, at 3 percent and 7 percent, respectively. This proposed rule would affect attempts by manufacturers and individuals to circumvent the requirements of the NFA and would affect the criminal use of

weapons with a purported stabilizing brace.

Risks: Without this rule, public safety will continue to be threatened by the criminal use of such firearms, which are easily concealable from the public and first responders.

Timetable:

Action	Date	FR Cite
NPRM	06/10/21	86 FR 30826
NPRM Comment Period End.	09/08/21	
Final Action	08/00/22	

Regulatory Flexibility Analysis Required: No.

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: Denise Brown, Regulations Writer, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE, Washington, DC 20226, *Phone:* 202 648–7070.

RIN: 1140–AA55

DOJ—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR)

Proposed Rule Stage

106. Bars to Asylum Eligibility and Procedures

Priority: Other Significant.

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), (a)(3), (g); 8 U.S.C. 1225(b); 8 U.S.C. 1231(b)(3) and 1231 note; 8 U.S.C. 1158; E. O. 14010, 86 FR 8267 (Feb. 2, 2021)

CFR Citation: 8 CFR 208; 8 CFR 235; 8 CFR 1208; 8 CFR 1235; 8 CFR 1003.

Legal Deadline: None.

Abstract: In 2020, the Department of Homeland Security and Department of Justice (collectively, the Departments) published final rules amending their respective regulations governing bars to asylum eligibility and procedures, including the Procedures for Asylum and Bars to Asylum Eligibility, (RINs 1125–AA87 and 1116–AC41), 85 FR 67202 (Oct. 21, 2020), Asylum Eligibility and Procedural Modifications, (RINs 1125–AA91 and 1615–AC44), 85 FR 82260 (Dec. 17, 2020), and Security Bars and Processing, (RINs 1125–AB08 and 1615–AC57), 85 FR 84160 (Dec. 23, 2020), final rules. The Departments propose to modify or rescind the regulatory changes promulgated in these three final rules, consistent with Executive Order 14010 (Feb. 2, 2021).

Statement of Need: The Departments are reviewing these regulations 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 the Executive Order 14010 and Executive Order 14012.

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(b)(2)(C) and (d)(5)(B), the Attorney General has authority to provide by regulation additional conditions and limitations consistent with the INA for asylum eligibility. Thus, this proposed rule utilizes such authority to propose revisions to the regulations related to processing procedures for asylum and withholding of removal claims.

Alternatives: Unless the Departments rely on the pending litigation to enjoin Asylum and Bars to Asylum Eligibility, 85 FR 67202, and Asylum Eligibility and Procedural Modifications, 85 FR 82260, there are no other alternatives to revise those two rules. As for Security Bars and Processing, 85 FR 84160 (Dec. 23, 2020), because it relies on the framework for applying bars to asylum during credible fear processing that was established in an enjoined rule titled Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 80274, the only alternative is to wait for the outcome of that litigation before making changes to the regulation. Relying on litigation to address these rules could be extremely time-burdensome and may introduce confusion as to effectiveness of the regulations. Thus, the Departments consider this alternative to be a burdensome and inadvisable course of action and therefore not feasible.

Anticipated Cost and Benefits: DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

Risks: Without this rulemaking, regulations related to Procedures for Asylum and Bars to Asylum Eligibility, 85 FR 67202, and Asylum Eligibility and Procedural Modifications, 85 FR 82260, will remain enjoined pending litigation. This is inadvisable, as litigation typically takes much time to resolve. Moreover, the implementation of Security Bars and Processing, 85 FR 80274, will not be viable (as described in the Alternatives section). Thus, the Department strongly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

URL For More Information: http://www.regulations.gov.

URL For Public Comments: http://www.regulations.gov.

Agency Contact: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 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 1615–AC69, Related to 1125–AB08.

RIN: 1125–AB12

DOJ—EOIR

107. Asylum and Withholding Definitions

Priority: Other Significant. Major status under 5 U.S.C. 801 is 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; Executive Order 14010, 86 FR 8267 (Feb. 2, 2021)

CFR Citation: 8 CFR 2; 8 CFR 208; 8 CFR 1208.

Legal Deadline: None.

Abstract: This rule proposes to amend Department of Homeland Security (DHS) and Department of Justice (DOJ) 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, the requirements for failure of State protection, and determinations about whether persecution is on account of a protected ground.

This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to, within 270 days, 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 which 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, Department of Justice Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals (BIA).

Furthermore, on February 2, 2021, President Biden issued Executive Order 14010 that directs DOJ and DHS within 270 days of the date of this order, [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 to be completed within a short timeframe, 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 and changes in administration.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Undetermined.

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.

URL For More Information: http://www.regulations.gov.

URL For Public Comments: http://www.regulations.gov.

Agency Contact: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 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

108. Procedures for Asylum and Withholding of Removal

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1103(g); 8 U.S.C. 1229a(c)(4)(B); 8 U.S.C. 1158(d)(5)(B)

CFR Citation: 8 CFR 1003.10; 8 CFR 1208; 8 CFR 1235; 8 CFR 1240.

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 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. To revise the regulations related to adjudicatory procedures for asylum and withholding of removal, the Department is planning to rescind or modify the regulatory revisions made by that rule under this RIN.

Statement of Need: This proposed rule will revise the regulations related to adjudicatory procedures for asylum and withholding of removal. On December 16, 2020, the Department of Justice (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 adjudicatory procedures for asylum and withholding of removal pursuant, in part, to 8 U.S.C. 1229a(c)(4)(B).

Alternatives: Unless the Department relies on litigation to permanently enjoin the December 2020 rule, 85 FR 81698 (Dec. 16, 2020), there are no other alternatives to revise the regulations. Relying on litigation could be extremely time-burdensome and may introduce confusion as to effectiveness of the regulations. 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. The Department believes the costs to the public will be negligible, if any, given that costs will revert to those established prior to the December 2020 rule. 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. The Department believes that this proposed rule would impose only minimal, if any, direct costs on the public. Any new minimal cost would be limited to the cost of the public familiarizing itself with proposed rule, although, as previously stated, the proposed rule reinstates 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 OCIJ 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 typically takes an inordinate time to resolve. The Department highly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information: Related to EOIR Docket No. 19–0010.

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–AA93.

RIN: 1125–AB15

DOJ—EOIR

109. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure

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 1003.1; 8 CFR 1003.2; 8 CFR 1003.3; 8 CFR 1003.10.

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 appellate procedures to ensure that immigration proceeding appeals are adjudicated in an efficient manner and to eliminate unnecessary remands by the Board of Immigration Appeals. The Department also amended its regulations to promote the final disposition of cases at both the immigration court and appellate levels. The Department is planning to modify or rescind those regulations under this RIN.

Statement of Need: On December 16, 2020, the Department of Justice (Department) amended the regulations related to processing of appeals and administrative closure. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (RIN 1125–AA96). 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 and make other related amendments. This proposed rule clarifies immigration judge and Board of Immigration Appeals (BIA) authority, including providing general administrative closure authority and the ability to sua sponte reopen and reconsider cases. The proposed rule also revises BIA standards involving adjudication timelines, briefing schedules, self-certification, remands, background checks, administrative notice, and voluntary departure. Lastly, the proposed rule removes the EOIR Director's authority to issue decisions in certain cases, removes the ability of immigration judges to certify cases for quality assurance, and revises procedures for the forwarding of the record on appeal, as well as other minor revisions.

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 immigration appeals processing and administrative closure.

Alternatives: Unless the Department relies on litigation to permanently enjoin the December 2020 rule, 85 FR 81588 (Dec. 16, 2020), there are no other alternatives to revise the regulations. Relying on litigation could be extremely time-burdensome and may introduce confusion as to effectiveness of the regulations. 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 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 BIA's administrative closure 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 resolve. The Department highly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

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

Final Rule Stage

110. Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1103; 8 U.S.C. 1326

CFR Citation: 8 CFR 1003.

Legal Deadline: None.

Abstract: This rule amends Department of Justice regulations addressing the assistance of individuals with the writing or filing of documents in proceedings before the Executive Office for Immigration Review. The rule also proposes to make minor technical revisions and to amend outdated references to the former Immigration and Naturalization Service.

Statement of Need: This rule would establish procedures for practitioners to provide individual document assistance without triggering the full obligations required of practitioners engaging in full representation of a noncitizen in EOIR 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 the procedures for practitioners to assist noncitizens in removal proceedings.

Alternatives: There are no feasible alternatives that will make the necessary changes to the representation requirement.

Anticipated Cost and Benefits: EOIR expects the costs resulting from this rule to be de minimis, as it does not impose new or additional costs on EOIR, practitioners, or noncitizens. Additionally, the number of practitioners impacted by this rule would be insignificant because most practitioners do not solely provide preparation of a filing and are already required to file a Notice of Entry of Appearance as an Attorney or Representative with EOIR.

Risks: Without this rulemaking, noncitizens may be at risk of being defrauded by unqualified individuals offering assistance with immigration documents. Additionally, without assistance from a practitioner, noncitizens may be at risk of failing to obtain benefits for which they are otherwise eligible.

Timetable:

Action	Date	FR Cite
ANPRM	03/27/19	84 FR 11446
ANPRM Comment Period End.	04/26/19	
NPRM	09/30/20	85 FR 61640
NPRM Comment Period End.	10/30/20	
Final Action	11/00/21	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

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RIN: 1125–AA83

DOJ—EOIR

111. Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 8 U.S.C. 1103(g); 8 U.S.C. 1158(b)(2)(C); 8 U.S.C. 1158(d)(5)(B); 8 U.S.C. 1225; 8 U.S.C. 1231(b)(3)

CFR Citation: 8 CFR 208; 8 CFR 235; 8 CFR 1003; 8 CFR 1208; 8 CFR 1235.

Legal Deadline: None.

Abstract: The Department of Justice and the Department of Homeland Security (DHS) propose to amend the regulations so that individuals found to have a credible fear can have their claims for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (statutory withholding of removal), or protection under the regulations issued pursuant to the legislation implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, initially adjudicated by an asylum officer within DHS with administrative review of the decision by the Executive Office for Immigration Review.

Statement of Need: There is wide agreement that the system for dealing with asylum and related protection claims at the southwest border has long been overwhelmed and in desperate need of repair. As the number of such claims has skyrocketed over the years, the system has proven unable to keep pace, resulting in large backlogs and lengthy adjudication delays. A system that takes years to reach a result delays justice and certainty for those who need protection, and it encourages abuse by those who will not qualify for protection and smugglers who exploit the delay for profit. The aim of this rule is to begin replacing the current system, within the confines of the law, with a better and more efficient one that will adjudicate protection claims fairly and expeditiously.

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(b)(2)(C) and (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 processing procedures for asylum and withholding of removal claims pursuant to 8 U.S.C. 1225 and 1231.

Alternatives: There are no feasible alternatives that make similarly impactful changes to the system without a more widespread overhaul of the entire system in one rulemaking.

Anticipated Cost and Benefits: DHS estimated the resource cost needed to implement and operationalize the rule along a range of possible future credible fear volumes. The average annualized costs could range from $179.5 million to $995.8 million at a 7 percent discount rate. At a 7 percent discount factor, the total ten-year costs could range from $1.3 billion to $7.0 billion, with a midrange of $3.2 billion.

There could also be cost-savings related to Forms I–589 and I–765 filing volume changes. In addition, some asylum applicants may realize potential early labor earnings, which could constitute a transfer from workers in the U.S. labor force to certain asylum applicants, as well as tax impacts. Qualitative benefits include, but may not be limited to: (i) Beneficiaries of new parole standards may not have to wait lengthy times for a decision on whether their asylum claims will

receive further consideration; (ii) some individuals could benefit from de novo review by an IJ of the asylum officer's denial of their asylum; (iii) DOJ–EOIR may focus efforts on other priority work and reduce its substantial current backlog; (iv) as some applicants may be able to earn income earlier than they otherwise could currently, burdens to the support network of the applicant may be lessened.

Risks: Without this rulemaking, the current system will remain status quo. The backlogs and delays will continue to grow, and potential for abuse will remain. Most importantly, noncitizens in need of protection will continue to experience delays in the adjudication of their claims.

Timetable:

Action	Date	FR Cite
NPRM	08/20/21	86 FR 46906
NPRM Comment Period End.	10/19/21	
Final Action	03/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Additional Information: Joint rule with DHS 1616–AC67.

URL For More Information: http://regulations.gov.

URL For Public Comments: http://regulations.gov.

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RIN: 1125–AB20

BILLING CODE 4410–BP–P

U.S. DEPARTMENT OF LABOR

Fall 2021 Statement of Regulatory Priorities

Introduction

The Department's Fall 2021 Regulatory Agenda continues to advance the Department's mission to foster, promote, and develop the welfare of wage earners, job seekers, and retirees; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. These rules will strengthen protections for some of the Nation's most vulnerable workers, empower and support opportunities for advancement, secure our safety nets and advance equity and economic security.

In just the first months of the Biden Administration, the Department of Labor has begun historic rulemakings on issues central to workers in the United States and their families, including worker safety, protections from discrimination, fair wages, and retirement security and health care. These include the following rulemakings:

- We issued an Emergency Temporary Standard to help protect millions of frontline healthcare workers from exposure and spread of COVID–19, a virus that has already claimed the lives of over 750,000 people in the U.S. We also issued an Emergency Temporary Standard on Vaccination and Testing to protect more than 84 million additional workers from the consequences of COVID–19 exposure on the job. These science-based standards outline workplace safety protocols and will help save thousands of lives and prevents hundreds of thousands of hospitalizations.
- We finalized Interim Final Rules with the U.S. Department of Health and Human Services, the U.S. Department of Treasury, and the Office of Personnel Management to implement the No Surprises Act and protect people from unexpected medical expenses. Surprise billing can cause economic devastation for patients. This rule puts patients first by providing safeguards to keep families from financial ruin when they need medical care.
- We have also expeditiously withdrawn or rescinded rules as necessary to protect and strengthen workers' economic security, including withdrawing the Independent Contractor Rule and rescinding the Joint Employer Rule.

The 2021 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 Secretary's agenda to empower all workers morning, noon, and night, including:

- Investing in and valuing the nation's care economy;
- Building a safe, modern, inclusive workforce; and
- Supporting a lifetime of worker empowerment.

Under Secretary Walsh's leadership, the Department is committed to ensuring that equity, a strong foundation of evidence, and extensive stakeholder outreach are integral to all of our regulatory efforts. Our Regulatory Agenda additionally reflects our ongoing commitment to the Biden Administration's prioritization of economic relief, raising wages, and addressing the threat of climate change, while embedding equity across the department's agencies, policies, and programs.

Investing In and Valuing the Nation's Care Economy

The Department's regulatory priorities reflect the Secretary's focus on care infrastructure to ensure workers have the opportunity and support to thrive in their jobs. That means ensuring workers can care for their families without risking their jobs, stay home when they're sick or when they need to care for a sick family member, and have access to the resources they need to manage their mental health.

- EBSA's rulemaking implementing the Mental Health Parity and Addiction Equity Act (MHPAEA) will strengthen health enforcement by clarifying plan and issuer obligations, promote compliance and address amendments to the Act from the Consolidated Appropriations Act of 2021.

In addition, OSHA will supplement its outreach and enforcement with rulemaking that protects employees in the care economy. Enhancing our care infrastructure starts with making sure our frontline care providers are safe on the job.

- 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 initiate small business consultations as its first step in developing a Workplace Violence rulemaking, to provide protections for healthcare and other care economy workers, who are the most frequent victims of violence on the job.

Building a Safe, Modern, Inclusive Workforce

The Department's regulatory priorities reflect the Secretary's focus on ensuring people can have a good job and

opportunity for advancement. That means people can have a job that is safe, a job that pays a fair wage, a job that does not discriminate and that has opportunities for advancement. And that means a job where workers have a seat at the table and have a say in their work.

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 a rulemaking on heat illness prevention. 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. OSHA will develop a standard to protect workers from these heat hazards in the workplace, helping to save lives while we confront the growing threat of climate change.
- MSHA will propose a new silica standard to effectively assess health concerns with a goal of ensuring that all miners are safe at their work places.
- MSHA will promulgate a rule establishing that mine operators must develop and implement a written safety program for surface mobile equipment used at surface mines and surface areas of underground mines, in order to provide safe environments for miners.

The Department's regulatory agenda prioritizes workers' economic security; ensures they receive a fair day's pay for a fair day's work, and do not face discrimination in hiring, employment, or benefits on the basis of race, gender, religion, disability, national origin, veteran's status, sexual orientation, or gender identity. ETA, OFCCP and WHD will focus on regulatory changes that will have significant impact on workers of color, immigrant workers, and workers with disabilities.

- OFCCP is proposing to rescind certain provisions related to the religious exemption for federal contractors and subcontractors, 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.
- OFCCP will issue a proposal to modify the procedures for resolving potential employment discrimination, which is creating hurdles to effective enforcement.
- WHD issued regulations to implement President Biden's executive order requiring federal contractors to pay a $15 minimum wage to hundreds of thousands of workers who are working on federal contracts. This will eliminate subminimum wages paid to some tipped workers and workers with disabilities, improve the economic security of families and make progress toward reversing decades of income inequality.
- WHD is proposing to update and modernize the regulations implementing the Davis Bacon and Related Acts to provide greater clarity and ensure workers are truly paid local prevailing wages on federal construction contracts.
- WHD will propose updates to the overtime regulations to ensure that middle class jobs pay middle class wages, extending important overtime pay protections to millions of workers and raising their pay.
- WHD engaged in rulemaking to ensure the economic security of tipped workers.
- ETA will ensure fair wages and strengthen protections for foreign and U.S. workers under the H–1B/H–2A visa programs through regulatory changes.

The Department is committed to ensuring workers have opportunities for employment and training and advancement in their jobs.

- ETA will ensure job-seekers can more easily get the support they need by proposing changes to the Wagner-Peyser Employment Service regulations.
- ETA is focused on ensuring high-quality apprenticeship programs, and as part of this, has proposed rescinding Industry Recognized Apprenticeship Programs (IRAP) rules and suspending further application review efforts for new IRAP Standard Recognition Entities in order to renew focus on Registered Apprenticeship.

The Department is committed to ensuring workers have a seat at the table and furthering this Administration's support for unions and workers who are organizing unions, which are critical to achieving economic fairness and racial and gender justice.

Supporting a Lifetime of Worker Empowerment

We are focused on making sure people do not have to worry that the loss of a job or need for medical care will destroy their financial well-being. People should be able to save for retirement, access health care, and have the support they need to get through a personal or family crisis or when they become injured or ill on the job.

- EBSA will support the administration's agenda to address the threat of climate change by implementing two executive orders that increase transparency in climate-related financial investment options. To carry out Executive Order 13990 ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' and Executive Order 14030, ''Climate-Related Financial Risks,'' EBSA is proposing to remove provisions of the current regulation that inappropriately discourage consideration of environmental, social, and governance issues by fiduciaries in making investment and proxy voting decisions, and provide further clarity that would help safeguard the interests of participants and beneficiaries in the plan benefits.

DOL—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)

Proposed Rule Stage

112. Proposal To Rescind Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption

Priority: Other Significant.
Legal Authority: E.O. 11246
CFR Citation: 41 CFR 60–1.
Legal Deadline: None.
Abstract: The Office of Federal Contract Compliance Programs is proposing to rescind the December 8, 2020, final rule, ''Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption'' (85 FR 79324), which would include the removal of certain definitions at 41 CFR 60–1.3 related to the religious exemption and 41 CFR 60–1.5(e) and (f). The rescission would ensure that the religious exemption contained in section 204(c) of Executive Order 11246 is consistent with nondiscrimination principles of Title VII of the Civil Rights Act of 1964, as amended. The notice of proposed rescission was published on November 9, 2021.

Statement of Need: The Office of Federal Contract Compliance Programs issued a proposal to rescind the regulations established in the final rule titled Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption and returning to the agency's traditional approach, which applies Title VII principles and applicable case law and thus will promote clarity and consistency in the application of the religious exemption.

Summary of Legal Basis: Executive Order 11246 (as amended).

Alternatives: OFCCP considered the alternative of engaging in affirmative rulemaking to replace the 2020 rule rather than rescinding it.

Anticipated Cost and Benefits: The Department prepared estimates of the anticipated costs and discussed benefits associated with the proposed rule.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	08/15/19	84 FR 41677
NPRM Comment Period End.	09/16/19	
Final Rule	12/09/20	85 FR 79324
Final Rule Effective.	01/08/21	
Notification of Proposed Rescission.	11/09/21	86 FR 62115
Notification of Proposed Rescission Comment Period End.	12/09/21	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

URL For Public Comments: https://www.regulations.gov/document/OFCCP-2021-0001-0001.

Agency Contact: Tina Williams, Director, Division of Policy and Program Development, Department of Labor, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210, *Phone:* 202 693–0104, *Email: williams.tina.t@dol.gov*.

RIN: 1250–AA09

DOL—OFCCP

113. Modification of Procedures To Resolve Potential Employment Discrimination

Priority: Other Significant.

Legal Authority: E.O. 11246; 29 U.S.C. 793; 38 U.S.C. 4216

CFR Citation: 41 CFR 60–1, 60–2, 60–4, 60–20, 60–30; 41 CFR 60–40, 60–50, 60–300, 60–741.

Legal Deadline: None.

Abstract: This proposal would modify certain provisions set forth in the November 10, 2020 final rule, Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures To Resolve Potential Employment Discrimination (85 FR 71553) and make other related changes to the pre-enforcement notice and conciliation process. The proposal will promote effective enforcement through OFCCP's regulatory procedures.

Statement of Need: The Office of Federal Contract Compliance Programs intends to issue a Proposed Rule to modify regulations that delineate procedures and standards the agency follows when issuing pre-enforcement notices and securing compliance through conciliation. This proposal would support OFCCP in fulfilling its mission to ensure equal employment opportunity.

Summary of Legal Basis: Executive Order 11246 (as amended), section 503 of the Rehabilitation Act (as amended), and the Vietnam Era Veterans' Readjustment Assistance Act (as amended).

Alternatives: To be determined.

Anticipated Cost and Benefits: The Department will prepare estimates of the anticipated costs and discuss benefits associated with the proposed rule.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Tina Williams, Director, Division of Policy and Program Development, Department of Labor, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210, *Phone:* 202 693–0104, *Email: williams.tina.t@dol.gov*.

RIN: 1250–AA14

DOL—WAGE AND HOUR DIVISION (WHD)

Proposed Rule Stage

114. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 29 U.S.C. 201 *et seq.;* 29 U.S.C. 213

CFR Citation: 29 CFR 541.

Legal Deadline: None.

Abstract: WHD is reviewing the regulations at 29 CFR 541, which implement the exemption of bona fide executive, administrative, and professional employees from the Fair Labor Standards Act's minimum wage and overtime requirements.

Statement of Need: One of the primary goals of this rulemaking would be 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 to the employee's services is the amount he pays for them. 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, pursuant to Congress' grant of rulemaking authority, the Department issued regulations at 29 CFR part 541, defining the scope of the section 13(a)(1) exemptions. Congress explicitly delegated to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through notice-and-comment rulemaking.

Alternatives: Alternatives will be developed in considering proposed revisions to the current regulations. The public will be invited to provide comments on the proposed revisions and possible alternatives.

Anticipated Cost and Benefits: The Department will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: 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–AA39

DOL—WHD

115. Modernizing the Davis-Bacon and Related Acts Regulations

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 40 U.S.C. 3141 *et seq.;* 40 U.S.C. 3145

CFR Citation: 29 CFR 1; 29 CFR 3; 29 CFR 5; 29 CFR 6; 29 CFR 7.

Legal Deadline: None.

Abstract: The Davis-Bacon Act (DBA) was enacted in 1931 and amended in 1935 and 1964. The DBA requires the payment of locally prevailing wages and fringe benefits to laborers and mechanics as determined by the Department of Labor. The DBA applies to direct Federal contracts and District of Columbia contracts in excess of $2,000 for the construction, alteration, or repair of public buildings or public works. Congress has included DBA prevailing wage requirements in numerous statutes (referred to as Related Acts) under which Federal agencies assist construction projects through grants, loans, guarantees, insurance, and other methods. Covered contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wage rates and fringe benefits as required by the applicable wage determination. The Department proposes to update and modernize the regulations implementing the Davis-Bacon and Related Acts to provide greater clarity and enhance their usefulness in the modern economy.

Statement of Need: The Department proposes to update and modernize the regulations implementing the Davis-Bacon and Related Acts to provide greater clarity and enhance their usefulness in the modern economy.

Summary of Legal Basis: These regulations are authorized by Title 40, sections 3141–3148. Minimum wages are defined as those determined by the Secretary to be (a) prevailing; (b) in the locality of the project; (c) for similar craft and skills; (d) on comparable construction work. See section 3142.

Alternatives: Alternatives will be developed in considering proposed revisions to the current regulations. The public will be invited to provide comments on the proposed revisions and possible alternatives.

Anticipated Cost and Benefits: The Department will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: 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–AA40

DOL—WHD

Final Rule Stage

116. Tip Regulations Under the Fair Labor Standards Act (FLSA)

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: Fair Labor Standards Act; 29 U.S.C. 201 *et seq.;* 29 U.S.C. 203(m); Pub. L. 115–141

CFR Citation: 29 CFR 531; 29 CFR 10; 29 CFR 516; 29 CFR 578; 29 CFR 579; 29 CFR 580.

Legal Deadline: None.

Abstract: In the Consolidated Appropriations Act of 2018 (''CAA''), Congress amended section 3(m) of the Fair Labor Standards Act (''FLSA'') to prohibit employers from keeping tips received by their employees, regardless of whether the employers take a tip credit under section 3(m). Congress also amended section 16(e) of the FLSA to allow the Department to impose civil money penalties (''CMPs'') when employers unlawfully keep employees' tips. On December 30, 2020, the Wage and Hour Division (''WHD'') published Tip Regulations Under the Fair Labor Standards Act (the ''2020 Tip final rule'') in the **Federal Register** to address these amendments and to codify guidance regarding the FLSA tip credit's application to employees who perform tipped and non-tipped duties. The effective date of the 2020 Tip final rule was March 1, 2021, but the Department extended that date until April 30, 2021, in accordance with the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff. The Department further delayed three portions of the 2020 Tip final rule until December 31, 2021: Two portions addressing the assessment of CMPs and the portion addressing the application of the FLSA tip credit to tipped employees who perform tipped and non-tipped duties. The Department proposed to withdraw these three portions of the 2020 Tip final rule and proposed new language addressing these three issues. On September 24, 2021, a Department final rule (CMP final rule) was published in the **Federal Register**, which among other things, adopted language upholding the Department's statutorily-granted discretion with regard to section 3(m)(2)(B) CMPs, and aligned the Department's regulations with the FLSA's statutory text. On June 23, 2021, the Department published an NPRM (Dual Jobs NPRM) in the **Federal Register**, 86 FR 32818, proposing to withdraw and repropose the portion of the 2020 Tip final rule addressing when a tipped employee performs both tipped and non-tipped duties under the FLSA. The comment period closed on August 23, 2021. The Department published a final rule on October 29, 2021 to finalize its proposal to withdraw one portion of the Tip Regulations Under the FLSA (2020 Tip final rule) and finalize its proposed revisions related to the determination of when a tipped employee is employed in dual jobs. Specifically, the Department amended its regulations to clarify that an employer may only take a tip credit when its tipped employees perform work that is part of the employee's tipped occupation.

Statement of Need: Upon review of the portion of the 2020 Tip final rule addressing when a tipped employee performs both tipped and non-tipped duties under the FLSA, the Department was concerned that the lack of clear guidelines in the rule regarding when a tipped employee who is performing non-tipped duties is still engaged in a tipped occupation, such that an employer can continue to take a tip credit for the time the tipped employee spends on such non-tipped work failed

to achieve its goal of providing certainty for employers and created the potential for the misuse of the FLSA tip credit. Among other things, the 2020 Tip final rule would have permitted an employer to take a tip credit for time that an employee in a tipped occupation spends performing related, non-tipped duties contemporaneously with tipped duties, or for a reasonable time immediately before or after performing the tipped duties. The Department believes that because the 2020 Tip final rule did not define these key terms, the 2020 Tip final rule will invite rather than limit litigation in this area, and thus may not support one of the rule's stated justifications for departing from established guidance. The Dual Jobs final rule clarifies that an employer may only take a tip credit when its tipped employees perform work that is part of the employee's tipped occupation.

Summary of Legal Basis: The Fair Labor Standards Act (FLSA or Act) generally requires covered employers to pay employees at least the federal minimum wage, which is currently $7.25 per hour. See 29 U.S.C. 206(a)(1). Section 3(m) of the FLSA allows an employer that meets certain requirements to take a credit toward its minimum wage obligations of a limited amount, currently up to $5.12 per hour, of the tips received by employees (known as a tip credit). See 29 U.S.C. 203(m)(2)(A). Section 3(t) of the FLSA defines a tipped employee for whom an employer may take a tip credit under section 3(m) as any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips. See 29 U.S.C. 203(t). The FLSA regulations addressing tipped employment are codified at 29 CFR 531.50 through 531.60. See also 29 CFR 10.28 (establishing a tip credit for federal contractor employees covered by Executive Order 13658 who are tipped employees under section 3(t) of the FLSA).

Alternatives: The Department issued this final rule upon a reasoned determination that its benefits justify its costs; and that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis in the final rule outlines the impacts that the Department anticipates may result from this rule.

Anticipated Cost and Benefits: The Department believes that the revisions to its regulations regarding when a tipped employee is employed in dual jobs provides increased clarity to employers and workers and ensures workers are paid the wages they are owed. In the Dual Jobs final rule, the Department estimated that these changes would lead to costs for Year 1 that will consist of rule familiarization costs, adjustment costs, and management costs, and would be $224,882,399 ($23,827,236 + $23,827,236 + $177,227,926). For the following years, the Department estimates that costs will only consist of management costs and would be $177,227,926. Additionally, the Department estimated average annualized costs of this rule over 10 years. Over 10 years, it will have an average annual cost of $183.6 million calculated at a 7 percent discount rate ($151.1 million calculated at a 3 percent discount rate). All costs are in 2019 dollars.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/05/17	82 FR 57395
NPRM Comment Period Extended.	12/15/17	82 FR 59562
NPRM Comment Period Extended End.	02/05/18	
NPRM; and Withdrawal of NPRM dated 12/05/2017 (82 FR 57395).	10/08/19	84 FR 53956
NPRM Comment Period End.	12/09/19	
NPRM Comment Period Extension.	12/11/19	84 FR 67681
NPRM Comment Period Extension End.	12/11/19	
Final Rule (2020 Tip final rule).	12/30/20	85 FR 86756
Proposed Delay of Final Rule Effective Date (to 4/30/21).	02/05/21	86 FR 8325
Proposed Delay of Final Rule Effective Date Comment Period End.	02/17/21	
Final Rule Delay of Effective Date (to 4/30/21).	02/26/21	86 FR 11632
Final Rule Delay of Effective Date Effective.	04/30/21	
NPRM; Partial Withdrawal (CMP NPRM).	03/25/21	86 FR 15817
NPRM; Partial Withdrawal (CMP NPRM) Comment Period End.	05/24/21	
NPRM; Proposed Delay of Effective Date (to 12/31/2021).	03/25/21	86 FR 15811
NPRM; Proposed Delay of Effective Date Comment Period End (to 12/31/21).	04/14/21	
Final Rule; Delay of Effective Date (to 12/31/21).	04/29/21	86 FR 22597
Final Rule; Partial Withdrawal (CMP Final Rule).	09/24/21	86 FR 52973
Final Rule; Partial Withdrawal (CMP Final Rule) Effective.	11/23/21	
NPRM; Partial Withdrawal (Dual Jobs NPRM).	06/23/21	86 FR 32818
NPRM; Partial Withdrawal (Dual Jobs NPRM) Comment Period End.	08/23/21	
Final Rule; Partial Withdrawal (Dual Jobs Final Rule).	10/29/21	86 FR 60114
Final Rule; Partial Withdrawal (Dual Jobs Final Rule) Effective.	12/28/21	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses.

Government Levels Affected: None.

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–AA21

DOL—WHD

117. E.O. 14026, Increasing the Minimum Wage for Federal Contractors

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 104–4.

Legal Authority: E.O. 14026

CFR Citation: 29 CFR 23; 29 CFR 10.

Legal Deadline: None.

Abstract: On April 27, 2021, President Joseph Biden issued E.O. 14026, Increasing the Minimum Wage for Federal Contractors to promote economy and efficiency in procurement by increasing the hourly minimum wage rate paid by parties that contract with the Federal Government to $15.00 for those employees working on or in connection with a Federal Government contract. These regulations will implement the Executive Order.

Statement of Need: President Biden issued Executive Order 14026 pursuant to his authority under the Constitution and the laws of the United States, expressly including the Federal Property and Administrative Services Act (Procurement Act), 40 U.S.C. 101 *et seq.* 86 FR 22835. The Executive order directs the Secretary to issue regulations by November 24, 2021, consistent with applicable law, to implement the order's requirements.

Summary of Legal Basis: 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 14026 delegates to the Secretary the authority to issue regulations to implement the requirements of this order. 86 FR 22836. The Secretary has delegated his authority to promulgate these regulations to the Administrator of the WHD and to the Deputy Administrator of the WHD if the Administrator position is vacant. Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (published Dec. 24, 2014); Secretary's Order 01–2017 (Jan. 12, 2017), 82 FR 6653 (published Jan. 19, 2017).

Alternatives: The Department noted that due to the prescriptive nature of Executive Order 14026, the Department does not have the discretion to implement alternatives that would violate the text of the Executive order, such as the adoption of a higher or lower minimum wage rate, or continued exemption of recreational businesses. However, the Department considered several alternatives to discretionary proposals set forth in this final rule. In the final rule, the Department proposed to define the term United States, when used in a geographic sense, to mean the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

The Department considered defining the term United States to exclude contracts performed in the territories listed above, consistent with the discretionary decision made in the Department's prior rulemaking implementing Executive Order 13658. Such an alternative would result in fewer contracts covered by Executive Order 14026 and fewer workers entitled to an initial $15 hourly minimum wage for work performed on or in connection with such contracts. This alternative was rejected because the Department has further examined the issue since its prior rulemaking in 2014 and consequently determined that the Federal Government's procurement interests in economy and efficiency would be promoted by extending the Executive Order 14026 minimum wage to workers performing on or in connection with covered contracts.

A second alternative the Department considered in the final rule was raising (or eliminating) the 20 percent threshold for an exclusion for FLSA-covered workers performing in connection with covered contracts. If the Department were to omit this exclusion, more workers would be covered by the rule, and contractors would be required to pay more workers the applicable minimum wage rate (initially $15 per hour) for time spent performing in connection with covered contracts. This would result in greater income transfers to workers. Conversely, if the Department were to raise the 20 percent threshold, fewer workers would be covered by the rule, resulting in a smaller income transfer to workers.

The Department rejected this regulatory alternative because having an exclusion for FLSA-covered workers performing in connection with covered contracts based on a 20 percent of hours worked in a week standard is a reasonable interpretation.

Anticipated Cost and Benefits: In the final rule, the Department estimated the number of employees who would, as a result of the Executive order and the proposed rule, see an increase in their hourly wage, *i.e.,* affected employees. The Department estimates there will be 327,300 affected employees in the first year of implementation (Table 1 of final rule). During the first 10 years the rule is in effect, average annualized direct employer costs are estimated to be $2.4 million (Table 1 of final rule) assuming a 7 percent real discount rate (hereafter, unless otherwise specified, average annualized values will be presented using a 7 percent real discount rate). This estimated annualized cost includes $1.9 million for regulatory familiarization and $538,500 for implementation costs. Other potential costs are discussed qualitatively.

The direct transfer payments associated with this rule are transfers of income from employers to employees in the form of higher wage rates. Estimated average annualized transfer payments are $1.75 billion per year over 10 years.

The Department expects that increasing the minimum wage of Federal contract workers will generate several important benefits. However, due to data limitations, these benefits are not monetized. As noted in the Executive order, the NPRM will promote economy and efficiency. Specifically, the proposed rule discusses benefits from improved government services, increased morale and productivity, reduced turnover, reduced absenteeism, and reduced poverty and income inequality for Federal contract workers.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/23/21	86 FR 38816
NPRM Comment Period Extension.	08/04/21	86 FR 41907
NPRM Comment Period Extension End.	08/27/21	
Final Rule	11/24/21	86 FR 67126
Final Rule Effective Date.	01/30/22	
Final Rule Applicability Date.	01/30/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

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–AA41

DOL—EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)

Proposed Rule Stage

118. Wagner–Peyser Act Staffing

Priority: Other Significant.
Legal Authority: Wagner–Peyser Act
CFR Citation: 20 CFR 651; 20 CFR 652; 20 CFR 653; 20 CFR 658.
Legal Deadline: None.
Abstract: The Department proposes 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 for migrant and seasonal farmworkers (MSFW).
Statement of Need: The Department has identified areas of the regulation that should be changed to create a uniform standard of ES services provision for all States.
Summary of Legal Basis: The Department is undertaking this rulemaking pursuant to its authority under the Wagner-Peyser Act.
Alternatives: Two alternatives will be considered, and the public will have the opportunity to comment on these alternatives after publication of the NPRM.
Anticipated Cost and Benefits: The proposed rule is expected to have one-time rule familiarization costs of $4,205 in 2020 dollars, as well as unknown transition costs. The proposed rule is also expected 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. In the NPRM, the Department will solicit comments from stakeholders and the public on the unknown transition costs, plus transfer payments that would be incurred by the two additional 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	01/00/22	

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—ETA

119. Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations

Priority: Economically 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.
Legal Deadline: None.
Abstract: On February 17, 2021, the President signed an Executive Order: (1) Revoking Executive Order 13801 (issued on June 15, 2017); and (2) directing federal departments and agencies to consider taking steps promptly to rescind any orders, rules, regulations, guidelines or policies implementing Executive Order 13801. The Department is considering amending its apprenticeship regulations to rescind subpart B of title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs, including the status of those Standards Recognition Entities and Industry Recognized Apprenticeship Programs (IRAPs) that previously received recognition under the provisions of 29 CFR part 29, subpart B, and to make additional conforming edits in subpart A as appropriate.
Statement of Need: Executive Order 14016 (86 FR 11089), issued by the President on February 17, 2021, directed Federal agencies to promptly consider taking steps to rescind any orders, rules, regulations, guidelines, or policies implementing E.O. 13801. In response to E.O. 14016, the Department has reviewed the IRAP system and has determined that, because the IRAP system has fewer quality training and worker protection standards than the Registered Apprenticeship system and results in a duplicative system of apprenticeship, it will issue a proposed regulation to rescind subpart B of title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs.
Summary of Legal Basis: The National Apprenticeship Act of 1937 (NAA), 29 U.S.C. 50, authorizes the Secretary of Labor (Secretary) to: (1) Formulate and promote the use of labor standards necessary to safeguard the welfare of apprentices and to encourage their inclusion in apprenticeship contracts; (2) bring together employers and labor for the formulation of programs of apprenticeship; and (3) cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship.
Alternatives: Alternatives were proposed in the NPRM that is open for public comment.
Anticipated Cost and Benefits: The Department's preliminary estimates is anticipated cost savings of $8.9 million over the first 10 years of the proposed rule (2022–2031). Details for costs and benefits will be prepared.
Risks: This action does not affect the public health, safety, or the environment.
Timetable:

Action	Date	FR Cite
NPRM	11/15/21	86 FR 62966
NPRM Comment Period End.	01/14/22	

Regulatory Flexibility Analysis Required: Undetermined.
Government Levels Affected: Undetermined.
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–AC06

DOL—EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA)

Proposed Rule Stage

120. Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Priority: Economically Significant. Major under 5 U.S.C. 801.
Legal Authority: 29 U.S.C. 1104; 29 U.S.C. 1135
CFR Citation: 29 CFR 2550.
Legal Deadline: None.
Abstract: This rulemaking implements Executive Order 13990 of January 20, 2021, titled Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and Executive Order 14030 of May 20, 2021, titled Climate-Related Financial Risks. Among other things, these Executive Orders direct Federal agencies to review existing regulations promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the

policies set forth in section 1 of the orders 86 FR 7037 (January 25, 2021); 86 FR 27967 (May 25, 2021). Such policies include the promotion and protection of public health and the environment and ensuring that agency activities are guided by the best science and protected by processes that ensure the integrity of Federal decision-making, and to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk, including both physical and transition risks. Section 2 of E.O. 13990 provides that for any such regulatory actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions. Section 4 of E.O. 14030 directs the Secretary of Labor to consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind ''Financial Factors in Selecting Plan Investments,'' 85 FR 72846 (November 13, 2020), and ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' 85 FR 81658 (December 16, 2020). The Department of Labor's Employee Benefits Security Administration therefore will undertake a review of regulations under title I of the Employee Retirement Income Security Act in accordance with these orders, including ''Financial Factors in Selecting Plan Investments,'' 85 FR 72846 (November 13, 2020), and ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' 85 FR 81658 (December 16, 2020).

Statement of Need: The Department of Labor's Employee Benefits Security Administration undertook a review of the ''Financial Factors in Selecting Plan Investments'' and the ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' final rules in accordance with Executive Order 13990 and Executive Order 14030. Those final rules were intended to provide clarity and certainty regarding the scope and application of ERISA fiduciary duties to plan investment decisions and to the exercise of shareholder rights, including proxy voting. Stakeholder reactions to the 2020 rules, however, suggest that the rules may have caused more confusion than clarity. Many interested stakeholders have expressed concerns that the terms and tone of the rules and related preambles have increased uncertainty about the extent to which plan fiduciaries may take into account environmental, social, or governance (ESG) considerations, including climate-related financial risk, in their investment and proxy voting decisions, and that the final rules have and will continue to have chilling effects contrary to the financial interests of ERISA plans and their participants and beneficiaries. The NPRM is needed to address these concerns and negative impacts.

Summary of Legal Basis: The Department is proposing the amendments pursuant to ERISA sections 404 (29 U.S.C. 1104) and 505 (29 U.S.C. 1135), and Executive Order 14030 (86 FR 27967 (May 25, 2021)) and Executive Order 13990 (86 FR 7037 (January 25, 2021)).

Alternatives: The Department considered various alternatives, including leaving the current regulations in place without change, rescinding the Financial Factors in Selecting Plan Investments and Fiduciary Duties Regarding Proxy Voting and Shareholder Rights final rules, and revising the current regulation by, in effect, reverting it to its form before the 2020 final rules.

Anticipated Cost and Benefits:

Anticipated Benefits—The primary benefit of the proposal is clarification of legal standards, which should empower fiduciaries to take proper account of ESG factors when making investment decisions and exercising proxy voting rights on behalf of plan participants. The Department has heard from stakeholders that the current regulation, and investor confusion about it, has already had a chilling effect on appropriate integration of ESG factors in investment decisions, and could deter plan fiduciaries from taking into account ESG factors even when they are material to a risk-return analysis. Stakeholders also indicated that confusion surrounding the current regulation could discourage proxy voting and other exercises of shareholder rights even when doing so is in the plan's best interest. A significant benefit of this proposal would be to ensure that plans do not inappropriately avoid considering material ESG factors when selecting investments or exercising shareholder rights, as they might otherwise be inclined to do under the current regulation. Acting on material ESG factors in these contexts, and in a manner consistent with the proposal, will redound, in the first instance, to employee benefit plans covered by ERISA and their participants and beneficiaries, and secondarily and indirectly, to society more broadly but without any sacrifices by the participants and beneficiaries in ERISA plans. Further, by ensuring that plan fiduciaries would not sacrifice investment returns or take on additional investment risk to promote unrelated goals, this proposal would lead to increased investment returns over the long run. The proposal would also make certain that ERISA regulation would not chill or otherwise discourage proxy voting by plans governed by the economic interests of the plan and its participants. This would promote management accountability to shareholders, including the affected shareholder plans. These benefits, while difficult to quantify, are anticipated to outweigh the costs.

Anticipated Costs—By reversing aspects of the current regulation, this proposal would facilitate certain activities among plan fiduciaries in their investment decisions, including potential changes in asset management strategies and proxy voting behavior, that these plan fiduciaries otherwise likely would not take under the current regulation. The precise impact of this proposal on such behavior is uncertain. Therefore, a precise quantification of all costs similarly is not possible. To the extent that the proposal changes investment-related behavior among ERISA plans, its benefits are expected to outweigh the costs. Overall, the costs of the proposal are expected to be relatively small, in part because the Department assumes most plan fiduciaries are complying with the pre-2020 interpretive bulletins to the extent relevant to costs (specifically Interpretive Bulletin 2016–1 and 2015–1), and it is expected that the proposal would track that guidance to a very large extent. Known incremental costs of the proposal would be minimal on a per-plan basis.

Risks: The risk of not pursuing this rulemaking is that, if the current regulation is not amended, it could have a) a negative impact on plans' financial performance as they avoid materially sound ESG investments or integration of material ESG considerations in investment analysis, b) a negative impact on plans' financial performance as they shy away from economically relevant considerations in proxy voting and from exercising shareholder rights on material issues, and c) broader negative economic/societal impacts (*e.g.,* negative impacts on climate change and on corporate managers' accountability to the shareholders who own the companies they serve).

Timetable:

Action	Date	FR Cite
NPRM	10/14/21	86 FR 57272
NPRM Comment Period End.	12/13/21	

Action	Date	FR Cite
Analyze Comments.	03/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: 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–AC03

DOL—EBSA

121. • Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021

Priority: Other Significant.

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 propose amendments to the final rules implementing the Mental Health Parity and Addiction Equity Act (MHPAEA). The amendments would 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 as well as amendments to the law recently enacted as part of the Consolidated Appropriations Act, 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 Consolidated Appropriations Act, 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.

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: Not yet determined.

Anticipated Cost and Benefits: Not yet determined.

Risks: Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: 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

Final Rule Stage

122. Requirements Related to Surprise Billing, Part 1

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 116–260, Division BB, Title I and Title II

CFR Citation: Not Yet Determined.

Legal Deadline: NPRM, Statutory, July 1, 2021, Statutory Deadline for Rulemaking.

Abstract: This interim final rule with comment would implement certain protections against surprise medical bills under the No Surprises Act, including requirements on group health plans, issuers offering group or individual health insurance coverage, providers, facilities, and providers of air ambulance services.

Statement of Need: Surprise bills can cause significant financial hardship and cause individuals to forgo care. The No Surprises Act provides federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise medical bills arise most frequently. These interim final rules fulfill a rulemaking requirement under the No Surprises Act and protect individuals from surprise medical bills for emergency services, air ambulance services furnished by nonparticipating providers, and non-emergency services furnished by nonparticipating providers at participating facilities in certain circumstances.

Summary of Legal Basis: The Department of Labor regulations are 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 the interim final rules, the Departments considered various alternative approaches, including whether cost-sharing should be based on the recognized amount in circumstances where the billed charge is lower, whether plans and issuer should take into account the number of claims paid at the contracted rate when calculating the qualifying payment amount, and many others.

Anticipated Cost and Benefits: The provisions in these interim final rules will ensure that participants, beneficiaries, and enrollees with health coverage are protected from surprise medical bills. Individuals with health coverage will gain peace of mind, experience a reduction in out-of-pocket expenses, be able to meet their deductible and out-of-pocket maximum limits sooner, and may experience increased access to care. Plans, issuers, health care providers, facilities, and providers of air ambulance services will incur costs to comply with the requirements in these interim final rules.

Risks: The risk of not pursuing this rulemaking is that the Department would fail to meet its statutory obligations to issue regulations, group health plans would lack guidance needed to comply with the statutory requirements, and individuals would continue to be burdened by surprise medical bills.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/13/21	86 FR 36872
Interim Final Rule Comment Period End.	09/07/21	
Interim Final Rule Effective (Applicability Date 1/1/2022).	09/13/21	
Analyze Comments.	11/00/21	

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.

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–AB99

DOL—EBSA

123. Requirements Related to Surprise Billing, Part 2

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 116–260, Division I BB, Title I and Title II

CFR Citation: Not Yet Determined.

Legal Deadline: NPRM, Statutory, October 1, 2021, Statutory Deadline for Rulemaking.

Abstract: This interim final rule with comment would implement additional protections against surprise medical bills under the No Surprises Act, including provisions related to the independent dispute resolution processes.

Statement of Need: Surprise bills can cause significant financial hardship and cause individuals to forgo care. The No Surprises Act provides federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise medical bills arise most frequently. These interim final rules implement provisions of the No Surprises Act related to the independent dispute resolution process for settling payment disputes and protect individuals from surprise medical bills for emergency services, air ambulance services furnished by nonparticipating providers, and non-emergency services furnished by nonparticipating providers at participating facilities in certain circumstances.

Summary of Legal Basis: The Department of Labor regulations are 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 the interim final rules, the Departments considered various alternative approaches, including how to select a certified independent dispute resolution (IDR) entity if the parties fail to do so. The Department considered alternative approaches, including whether the Department should consider the specific fee of the certified IDR entity, or look to other factors, such as how often the certified IDR entity chooses the amount closest to the qualifying payment amount.

Anticipated Cost and Benefits: These interim final rules will ensure that consumers are protected from out-of-network medical costs by creating a process for plans and issuers and nonparticipating providers and facilities to resolve disputes on out-of-network rates. The Departments expect a significant reduction in the incidence of surprise billing, resulting in significant savings for consumers. There may be a potential transfer from providers, including air ambulance providers and facilities, to the participant, beneficiary, or enrollee if the out-of-network rate collected is lower than what would have been collected had the provider or facility balance billed the participant, beneficiary, or enrollee. Overall, these interim final rules provide a mechanism to effectively resolve disputes between issuers and providers, while protecting patients.

Risks: The risk of not pursuing this rulemaking is that group health plans would lack guidance needed to comply with the statutory requirements, plans and health care providers would not be able to resolve payment disputes, and individuals would continue to be burdened by surprise medical bills.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/07/21	86 FR 55980
Interim Final Rule Effective.	10/07/21	
Interim Final Rule Comment Period End.	12/06/21	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

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–AC00

DOL—MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

Proposed Rule Stage

124. Respirable Crystalline Silica

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 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 proposed 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	05/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, State.

Agency Contact: Jessica Senk, 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.

RIN: 1219–AB36

DOL—MSHA

125. Safety Program for Surface Mobile Equipment

Priority: Other Significant. Major under 5 U.S.C. 801.

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 is to reduce fatal and nonfatal injuries involving surface mobile equipment used at mines and to 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	
Final Rule	10/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Jessica Senk, 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.

RIN: 1219–AB91

DOL—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

Prerule Stage

126. Prevention of Workplace Violence in Health Care and Social Assistance

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 29 U.S.C. 655(b); 5 U.S.C. 609

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The Request for Information (RFI) (published on December 7, 2016 81 FR 88147)) provides OSHA's history with the issue of workplace violence in health care and social assistance, including a discussion of the Guidelines that were initially published in 1996, a 2014 update to the Guidelines, the agency's use of 5(a)(1) in enforcement cases in health care. The RFI solicited information primarily from health care employers, workers and other subject matter experts on impacts of violence, prevention strategies, and other information that will be useful to the agency. OSHA was petitioned for a standard preventing workplace violence in health care by a broad coalition of labor unions, and in a separate petition by the National Nurses United. On January 10, 2017, OSHA granted the petitions. OSHA is preparing for SBREFA.

Statement of Need: Workplace violence is a widespread problem, and there is growing recognition that workers in healthcare and social service occupations face unique risks and challenges. In 2018, the rate of serious workplace violence incidents (those requiring days off for an injured worker to recuperate) was more than five times greater in these occupations than in private industry on average, with both the number and share of incidents rising faster in these professions than among other workers.

Healthcare and social services account for nearly as many serious violent injuries as all other industries combined. Workplace violence comes at a high cost. It harms workers often both physically and emotionally and makes it more difficult for them to do their jobs.

Workers in some medical and social service settings are more at risk than others. According to the Bureau of Labor Statistics, in 2018 workers at psychiatric and substance abuse hospitals

experienced the highest rate of violent injuries that resulted in days away from work, at approximately 125 injuries per 10,000 full-time employees (FTEs). This is about 6 times the rate for workers at nursing and residential care facilities (21.1/10,000). But even workers involved in ambulatory care, while less likely than other healthcare workers to experience violent injuries, were 1.5 times as likely as workers outside of healthcare to do so.

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 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
Request for Information (RFI).	12/07/16	81 FR 88147
RFI Comment Period End.	04/06/17	
Initiate SBREFA ..	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Local, State.

Agency Contact: Andrew Levinson, Deputy 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–AD08

DOL—OSHA

127. Heat Illness Prevention in Outdoor and Indoor Work Settings

Priority: Other Significant.

Legal Authority: Not Yet Determined

CFR Citation: None.

Legal Deadline: None.

Abstract: Heat is the leading weather-related killer, and it is becoming more dangerous as 18 of the last 19 years were the hottest on record. 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 US 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 US, 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 man of the symptoms overlap with other more common diagnoses.

To date, California, 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. Most recently in 2021, Public Citizen petitioned OSHA to issue an emergency temporary standard on heat stress. OSHA is still considering these petitions and has neither granted nor denied to date. 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), a Request for Information would allow the agency to begin a dialogue and engage with stakeholders to explore the potential for rulemaking on this topic.

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 2019, 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. Moreover, climate change is increasing the heat hazard throughout the nation: 2020 was either the hottest or the second hottest year on record, with 2021 on track to be even hotter. Although official figures are not yet available, we already know that in many states heat related deaths are higher are far higher than normal this year.

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 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 End.	12/27/21	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Andrew Levinson, Deputy 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

128. Infectious Diseases

Priority: Economically 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	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

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RIN: 1218–AC46

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DEPARTMENT OF TRANSPORTATION (DOT)

Introduction: Department Overview

DOT has statutory responsibility for ensuring the United States has the safest and most efficient transportation system in the world. 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. 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).

The Department's Regulatory Philosophy and Initiatives

The U.S. Department of Transportation (Department or DOT) issues regulations to ensure the United States transportation system is the safest in the world, and addresses other urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID–19) pandemic, job creation, equity, and climate change. These issues are addressed, in part, by encouraging innovation, thereby ensuring that the Department's regulations keep pace with the latest developments and reflect its top priorities.

The Department's actions are also governed by several recent executive orders issued by the President, which direct agencies to utilize all available regulatory tools to address pressing national challenges. On January 20, 2021, the President signed Executive Order 13992, Revocation of Certain Executive Orders Concerning Federal Regulation. This Executive Order directs Federal agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies that would hamper the agencies' flexibility to use robust regulatory action to address national priorities. On January 20, the President also issued Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis. This Executive Order directs Federal agencies to review all regulatory actions issued in the previous Administration and revise or rescind any of those actions that do not adequately respond to climate change, protect the environment, advance environmental justice, or improve public health. Section 2(a)(ii) of Executive Order 13990 specifically requires the Department of Transportation to review ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,'' 84 FR 51310 (September 27, 2019) (SAFE I Rule) and ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,'' 85 FR 24174 (April 30, 2020) (SAFE II Rule). The Secretary of Transportation directed NHTSA to review these fuel economy rules.

On July 9, 2021, the President signed Executive Order 14036, Promoting Competition in the American Economy. Among other things, this Executive Order requires the Department to enhance consumer access to airline flight information and ensure that consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may constitute an unfair or deceptive practice or an unfair method of competition. This Executive Order also requires the Department to: (1) Publish a notice of proposed rulemaking (NPRM) requiring airlines to refund baggage fees when a passenger's luggage is substantially delayed and other ancillary fees when passengers pay for a service that is not provided; and (2) consider initiating a rulemaking to ensure that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees,'' at the time of ticket purchase.

On August 5, 2021, the President signed Executive Order 14037, Strengthening American Leadership in Clean Cars and Trucks. This Executive Order requires that the Department consider beginning work on a rulemaking to establish new fuel economy standards for passenger cars and light-duty trucks beginning with model year 2027 and extending through and including at least model year 2030. This Executive Order also requires the Department to consider beginning work on a rulemaking to establish new fuel efficiency standards for heavy-duty pickup trucks and vans beginning with model year 2028 and extending through and including at least model year 2030. Finally, this Executive Order requires the Department to consider beginning work on a rulemaking to establish new fuel efficiency standards for medium- and heavy-duty engines and vehicles to begin as soon as model year 2030.

In response to Executive Order 13992, in April 2021, the Department issued a final rule revising the regulations governing its regulatory process to ensure that it has the maximum flexibility necessary to quickly respond to the urgent challenges facing our Nation. Following implementation of the final rule, in June 2021, the Secretary of Transportation signed a Departmental Order strengthening the Department's internal rulemaking procedures and revitalizing the partnership between Operating Administrations and the Office of the Secretary in promulgating regulations to better achieve the Department's goals and priorities. As part of this critical overhaul, a Regulatory Leadership Group was established, led by the Deputy Secretary of Transportation, which provides vital legal and policy guidance on the Department's regulatory agenda.

In response to Executive Order 13990, in May 2021, the Department issued an NPRM proposing to repeal the SAFE I Rule and associated guidance documents. In August 2021, the Department issued a Supplemental Notice of Proposed Rulemaking inviting comments on the appropriate path forward regarding civil penalties imposed on violations of DOT's vehicle emissions rules. Finally, in September 2021, the Department issued an NPRM proposing more stringent vehicle emission limits than those set by the SAFE II Rule.

In response to Executive Orders 14036 and 14037, the Department is considering the following rulemakings: (1) Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided; (2) Airline Ticket Refunds; (3) Amendments to Department's Procedures in Regulating Unfair and Deceptive Practices; and (4) fuel economy standards for passenger cars, light-duty trucks, heavy-duty pickup trucks, and vans.

The Department's regulatory activities also remain directed toward protecting safety for all persons. Safety is a pressing national concern and our highest priority; the Department remains focused on managing safety risks and ensuring that the United States has the safest and most efficient transportation system in the world. This focus is as urgent as ever; after decades of declines in the number of fatalities on our roads, the United States has been seeing a recent increase in fatalities among pedestrians, bicyclists, and vehicle occupants that must be reversed. Similarly, we must address disparities in how the burden of these safety risks fall on different communities.

The Department's Regulatory Priorities

The regulatory plan laid out below reflects a careful balance that emphasizes the Department's priorities in responding to the urgent challenges facing our nation.

Safety. Safety is our North Star. The DOT Regulatory Plan reflects this commitment to safety 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. Innovations should reduce deaths and serious injuries on our Nation's transportation network, while committing to the highest standards of safety across technologies. For example, the Department is working on two rulemakings to require or standardize equipment performance for automatic emergency braking on heavy trucks and newly manufactured light vehicles.

Responding to the COVID–19 Pandemic. The Department is providing rapid response and emergency review of legal and operational challenges presented by COVID–19 and its associated burdens within the transportation network. Since the beginning of this Administration, our efforts have focused on ensuring compliance with the mask requirements issued by the Centers for Disease Control and Prevention and the Transportation Security Administration. These requirements help reduce the spread of the COVID–19 disease within the transportation sector and among the traveling public. DOT is also addressing regulatory compliance made impracticable by the COVID–19 public health emergency due to facility closures, personnel shortages, and other restrictions.

Economic Growth. The safe and efficient movement of goods and passengers requires us not just to maintain, but to improve our national transportation infrastructure. But that cannot happen without changes to the way we plan, fund, and approve projects. Accordingly, our Regulatory Plan incorporates regulatory actions that increase competition and consumer protection, as well as streamline the approval process and facilitate more efficient investment in infrastructure, which is necessary to maintain global leadership and foster economic growth.

Climate Change. Climate change is one of the most urgent challenges facing our nation. The Department has engaged in multiple regulatory activities to address this challenge. As discussed earlier, the Department is actively engaged in updating its regulations with the goal of reducing emissions. The Department is also engaged in rulemakings to measure and reduce emissions from transportation projects and improve safety related to movement of natural gas.

Equity. Ensuring that the transportation system equitably benefits underserved communities is a top priority. As discussed earlier, the Department is urgently working to address the threat of climate change, which is a burden often disproportionately borne by underserved communities. 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. The Department is also working on a rulemaking that would make it easier for members of underserved communities to apply to and be a part of the Disadvantaged Business Enterprise (DBE) and Airport Concession DBE Program. In addition, the Department is working on multiple rulemakings to ensure access to transportation for people with disabilities. For example, the Department is working on a rulemaking to ensure that people with disabilities can access lavatories on single-aisle aircraft, and it has commenced a rulemaking to ensure that disabled persons have equitable access to transit facilities.

All OAs are prioritizing their regulatory actions in accordance with Executive Orders 13985, 13990, and 13992 to make sure they are providing the highest level of safety while responding to the urgent challenges facing our Nation. 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, OST is also responsible for ensuring that the Department complies with the Administrative Procedure Act, Executive Orders 12866 and 13563, 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. The Office of the General Counsel (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.

In July 2021, the President issued Executive Order 14036, which directed the Department to take actions that would promote competition and deliver benefits to America's consumers, including potentially initiating a rulemaking to ensure that air consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees,'' 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.'' In addition, OST will further enhance its airline passenger protections through the rulemaking initiatives required by Executive Order 14036.

Advancing equity in air transportation for individuals with disabilities is also a priority for the Administration. To further this goal, the Department is developing a rulemaking to improve the accessibility of lavatories on single-aisle aircraft. In this rulemaking, the Department is considering options to significantly improve the ability of passengers with disabilities to travel with freedom and dignity by being able to access the lavatory.

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 finalizing a rulemaking that would require certain airport certificate holders to develop, implement, maintain, and adhere to a safety management system.

FAA is also developing a proposal to reduce risks caused by latent defects in critical systems on transport category airplanes.

The FAA will continue to advance rulemakings to ensure that the United States has the safest aviation, most efficient, and modern aviation system in the word, including proposing a rulemaking that would require certain aircraft, engine, and propeller manufacturers; certificate holders conducting common carriage operations; certain maintenance providers; and persons conducting certain, specific types of air tour operations to implement a Safety Management System. FAA will also manage rulemakings to further advance the integration of unmanned aircraft systems and commercial space operations into the national airspace system. In addition, the FAA will propose requirements for the certification of certain airplanes to enforce compliance with the emissions standards adopted by the Environmental Protection Agency under the Clean Air Act.

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 is scheduled to update the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), conforming technical provisions of the 2009 edition to reflect advances in technologies and operational practices that are not currently allowed in the MUTCD. This update will incorporate the latest human factors research to make road signage more accessible, thereby ensuring that both pedestrians and vehicles comply with that signage and reduce the risk of an accident. The Agency will also pursue a new regulation requiring safety integration across all Federal-aid programs and any necessary mitigation on Federal-aid projects. In addition, FHWA will work on a rulemaking to establish a method for the measurement and reporting of greenhouse gas emissions associated with transportation.

Federal Motor Carrier Safety Administration

The mission of FMCSA is to reduce crashes, injuries, and fatalities involving commercial trucks and buses. A strong regulatory program is a cornerstone of FMCSA's compliance and enforcement efforts to advance this safety mission. In addition to Agency-directed regulations, FMCSA develops regulations mandated by Congress, through legislation such as the Moving Ahead for Progress in the 21st Century (MAP–21) and the Fixing America's Surface Transportation (FAST) Acts. 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 review existing regulations to identify changes that might be needed to ensure that DOT regulations ensure safety and keep pace with innovations. Additionally, in support of the National Highway Traffic Safety Administration's (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.

National Highway Traffic Safety Administration

The mission of NHTSA is to save lives, prevent injuries, and reduce economic 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 light-, medium-, and heavy-duty vehicle fuel efficiency requirements. NHTSA pursues policies that enable safety, climate and energy policy and conservation, equity, and mobility. NHTSA develops safety standards and regulations driven by data and research, including those mandated by Congress under the MAP–21 Act, the FAST Act, and the Energy Independence and Security Act, among others. NHTSA's regulatory priorities for Fiscal Year 2022 focus on issues related to safety, climate, equity, and vulnerable road users.

To enhance the safety of vulnerable road users and vehicle occupants, NHTSA plans to issue a proposal to require automatic emergency braking (AEB) on light vehicles, including Pedestrian AEB. For heavy trucks, NHTSA also plans to propose to require AEB. For climate and equity, NHTSA plans to complete a rulemaking to address corporate average fuel economy (CAFE) preemption, pursuant to Executive Order 13990. Improving fuel economy for light, medium and heavy-duty vehicles can have significant public health impacts, especially for overburdened communities. NHTSA also plans to issue a final rule for Model Year 2024–2026 CAFE standards for passenger cars and light trucks. More information about these rules can be found in the DOT Unified Agenda.

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 Rail Safety Improvement Act of 2008 (RSIA08), the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), and the FAST Act. These actions support a safe, high-performing passenger rail network, address the safe and effective movement of energy products, and encourage innovation and the adoption of new technology in the rail industry to improve safety and efficiencies. FRA's regulatory priority for Fiscal Year 2022 is to propose regulations addressing the issue of the requirements for safe minimum train crew size depending on the type of operation.

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.

In furtherance of its mission and consistent with statutory changes, in Fiscal Year 2022, FTA will update its Buy America regulation to incorporate changes to the waiver process made by MAP–21 and the FAST Act and to make other conforming updates and amendments. FTA will also modify its Bus Testing regulation to improve testing procedures and to respond to technological advancements in vehicle testing. Finally, the Agency is considering a rulemaking that would address transit roadway worker protections and operator assaults.

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.

For Fiscal Year 2022, 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.

In Fiscal Year 2022, PHMSA will focus 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 avoidance/remediation of 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.

PHMSA will also focus on the Improving the Safety of Transporting Liquefied Natural Gas rulemaking. This rulemaking action would amend the Hazardous Materials Regulations governing transportation of liquefied natural gas (LNG) in rail tank cars. This rulemaking action would incorporate the results of ongoing research efforts and collaboration with other Department of Transportation Operating Administrations and external technical experts; respond to a directive in Executive Order 13990 for PHMSA to review recent actions that could be obstacles to Administration policies promoting public health and safety, the environment, and climate change mitigation; and provide an opportunity for stakeholders and the public to contribute their perspectives on rail transportation of LNG.

DOT—OFFICE OF THE SECRETARY (OST)

Proposed Rule Stage

129. +Processing Buy America and Buy American Waivers Based on Nonavailability

Priority: Other Significant.

Legal Authority: 23 U.S.C. 313; 49 U.S.C. 5323(j); 49 U.S.C. 24405(a); 49 U.S.C. 50101; Consolidated Appropriations Act of 2018, div. L, title IV, sec. 410; 41 U.S.C. 8301 to 8305; E.O. 13788, Buy American and Hire American (April 18, 2017)

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This rule will establish the applicable regulatory standard for waivers from the Buy America requirement on the basis that a product or item is not manufactured in the United States meeting the applicable Buy America requirement. This standard will require the use of items and products with the maximum known amount of domestic content. The rule will also establish the required information, which is expected to be consistent across the Department, the applicants must provide in applying for such waivers.

Statement of Need: Pursuant to Executive Order 13788, Buy American and Hire American, which establishes as a policy of the executive branch to ''maximize, consistent with law . . . the use of goods, products, and materials produced in the United States,'' DOT will be requiring that applicants for non-availability waivers select products that maximize domestic content. In addition, this rule will streamline the Buy America non-availability waiver process, and improve coordination across the Department of Transportation.

Summary of Legal Basis: 23 U.S.C. 313; 49 U.S.C. 5323(j); 49 U.S.C. 24405(a); 49 U.S.C. 50101; Consolidated Appropriations Act, 2018, div. L, tit. IV section 410; 41 U.S.C. 8301–8305; Executive Order 13788, Buy American and Hire American (Apr. 18, 2017).

Alternatives: TBD.

Anticipated Cost and Benefits: TBD.

Risks: TBD.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Federalism: Undetermined.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

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RIN: 2105–AE79

DOT—OST

130. +Accessible Lavatories on Single-Aisle Aircraft: Part II

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: Air Carrier Access Act, 49 U.S.C. 41705

CFR Citation: 14 CFR 382.

Legal Deadline: None.

Abstract: This rulemaking proposes that airlines make lavatories on new single-aisle aircraft large enough, equivalent to that currently found on twin-aisle aircraft, to permit a passenger with a disability (with the help of an assistant, if necessary) to approach, enter, and maneuver within the aircraft lavatory as necessary to use all lavatory facilities and leave by means of the aircraft's on-board wheelchair.

Statement of Need: This rulemaking proposes to improve accessibility of lavatories on single-aisle aircraft.

Summary of Legal Basis: 49 U.S.C. 41705; 14 CFR part 382.

Alternatives: N/A.

Anticipated Cost and Benefits: TBD.

Risks: N/A.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

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.*

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Related RIN: Split from 2105–AE32, Related to 2105–AE88.

RIN: 2105–AE89

DOT—OST

131. • +Enhancing Transparency of Airline Ancillary Service Fees

Priority: Other Significant.

Legal Authority: 49 U.S.C. 41712

CFR Citation: 14 CFR 399.

Legal Deadline: None.

The Department of Transportation is proposing to amend its aviation consumer protection regulations to ensure that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees'' at the time of ticket purchase. This rulemaking would also examine whether fees for certain ancillary services should be disclosed at the first point in a search process where a fare is listed. This rulemaking implements section 5, paragraph (m)(i)(F) of Executive Order 14.

Abstract: This rulemaking would amend DOT's aviation consumer protection regulations to ensure that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees'' at the time of ticket purchase. This rulemaking would also examine whether fees for certain ancillary services should be disclosed at the first point in a search process where a fare is listed. This rulemaking implements section 5, paragraph (m)(i)(F) of Executive Order 14036 on Promoting Competition in the American Economy, which directs the Department to better protect consumers and improve competition.

Statement of Need: This rulemaking proposes that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees,'' at the time of ticket purchase.

Summary of Legal Basis: 49 U.S.C. 41712; 14 CFR part 399, Executive Order 14036.

Alternatives: N/A.

Anticipated Cost and Benefits: TBD.

Risks: N/A.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	

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: 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@ost.dot.gov*.

RIN: 2105–AF10

DOT—FEDERAL AVIATION ADMINISTRATION (FAA)

Final Rule Stage

132. +Registration and Marking Requirements for Small Unmanned Aircraft

Priority: Other Significant.

Legal Authority: 49 U.S.C. 106(f), 49 U.S.C. 41703, 44101 to 44106, 44110 to 44113, and 44701

CFR Citation: 14 CFR 1; 14 CFR 375; 14 CFR 45; 14 CFR 47; 14 CFR 48; 14 CFR 91.

Legal Deadline: None.

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.

Statement of Need: This interim final rule (IFR) provides an alternative process that small unmanned aircraft owners may use to comply with the statutory requirements for aircraft operations. As provided in the clarification of these statutory requirements and request for further information issued October 19, 2015, 49 U.S.C. 44102 requires aircraft to be registered prior to operation. See 80 FR 63912 (October 22, 2015). Currently, the only registration and aircraft identification process available to comply with the statutory aircraft registration requirement for all aircraft owners, including small unmanned aircraft, is the paper-based system set forth in 14 CFR parts 45 and 47. As the Secretary and the Administrator noted in the clarification issued October 19, 2015 and further analyzed in the regulatory evaluation accompanying this rulemaking, the Department and the FAA have determined that this process is too onerous for small unmanned aircraft owners and the FAA. Thus, after considering public comments and the recommendations from the Unmanned Aircraft System (UAS) Registration Task Force, the Department and the FAA have developed an alternative process, provided by this IFR (14 CFR part 48), for registration and marking available only to small unmanned aircraft owners. Small unmanned aircraft owners may use this process to comply with the statutory requirement to register their aircraft prior to operating in the National Airspace System (NAS).

Summary of Legal Basis: The FAA's authority to issue rules on 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 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This rule is also promulgated pursuant to 49 U.S.C. 44101–44106 and 44110–44113 which require aircraft to be registered as a condition of operation and establish the requirements for registration and registration processes. Additionally, this rulemaking is promulgated pursuant to the Secretary's authority in 49 U.S.C. 41703 to permit the operation of foreign civil aircraft in the United States.

Alternatives: Currently, the only registration and aircraft identification process available to comply with the statutory aircraft registration requirement for all aircraft owners, including small unmanned aircraft, is the paper-based system set forth in 14 CFR parts 45 and 47. As the Secretary and the Administrator noted in the clarification issued October 19, 2015 and further analyzed in the regulatory evaluation accompanying this rulemaking, the Department and the FAA have determined that this process

is too onerous for small unmanned aircraft owners and the FAA.

Anticipated Cost and Benefits: In order to implement the new streamlined, web-based system described in this interim final rule (IFR), the FAA will incur costs to develop, implement, and maintain the system. Small UAS owners will require time to register and mark their aircraft, and that time has a cost. The total of government and registrant resource cost for small unmanned aircraft registration and marking under this new system is $56 million ($46 million present value at 7 percent) through 2020. In evaluating the impact of this interim final rule, we compare the costs and benefits of the IFR to a baseline consistent with existing practices: For modelers, the exercise of discretion by FAA (not requiring registration) and continued broad public outreach and educational campaign, and for non-modelers, registration via part 47 in the paper-based system. Given the time to register aircraft under the paper-based system and the projected number of sUAS aircraft, the FAA estimates the cost to the government and non-modelers would be about $383 million. The resulting cost savings to society from this IFR equals the cost of this baseline policy ($383 million) minus the cost of this IFR ($56 million), or about $327 million ($259 million in present value at a 7 percent discount rate). These cost savings are the net quantified benefits of this IFR.

Risks: Many of the owners of these new sUAS may have no prior aviation experience and have little or no understanding of the NAS, let alone knowledge of the safe operating requirements and additional authorizations required to conduct certain operations. Aircraft registration provides an immediate and direct opportunity for the agency to engage and educate these new users prior to operating their unmanned aircraft and to hold them accountable for noncompliance with safe operating requirements, thereby mitigating the risk associated with the influx of operations. In light of the increasing reports and incidents of unsafe incidents, rapid proliferation of both commercial and model aircraft operators, and the resulting increased risk, the Department has determined it is contrary to the public interest to proceed with further notice and comment rulemaking regarding aircraft registration for small unmanned aircraft. To minimize risk to other users of the NAS and people and property on the ground, it is critical that the Department be able to link the expected number of new unmanned aircraft to their owners and educate these new owners prior to commencing operations.

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	03/00/22	

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.

URL For More Information: www.regulations.gov.

URL For Public Comments: www.regulations.gov.

Agency Contact: Bonnie Lefko, Department of Transportation, Federal Aviation Administration, 6500 S MacArthur Boulevard, Registry Building 26, Room 118, Oklahoma City, OK 73169, *Phone:* 405 954–7461, *Email: bonnie.lefko@faa.gov.*

RIN: 2120–AK82

DOT—FEDERAL HIGHWAY ADMINISTRATION (FHWA)

Proposed Rule Stage

133. +Greenhouse Gas Emissions Measure

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 23 U.S.C. 150

CFR Citation: 23 CFR 490.

Legal Deadline: None.

Abstract: This rulemaking would establish a method for the measurement and reporting of greenhouse gas (GHG) emissions associated with on-road transportation under title 23 of the United States Code (U.S.C.). It is proposed as an addition to existing FHWA regulations that establish a set of performance measures for State departments of transportation (State DOTs) and metropolitan planning organizations (MPOs) to use pursuant to 23 U.S.C. 150(c) or other authorities.

Statement of Need: The proposed national performance management measure responds to the climate crisis. Establishing a method for measuring and reporting greenhouse gas (GHG) emissions associated with transportation under title 23, United States Code, is necessary because the environmental sustainability, including the carbon footprint, of the transportation system is an important attribute of the system that States can use to assess the performance of the Interstate and non-Interstate National Highway System (NHS). Consistent measurement and reporting of GHG emissions from on-road mobile source emissions under the proposed rule would assist all levels of government and the public in making more informed choices about GHG emissions trends.

Summary of Legal Basis: FHWA has the legal authority to establish the proposed GHG emissions measure under 23 U.S.C. 150(c)(3), which calls for performance measures that the States can use to assess performance of the Interstate and non-Interstate NHS for purposes of carrying out the National Highway Performance Program (NHPP) under 23 U.S.C. 119. Specifically, FHWA interprets the performance of the Interstate System and the NHS under 23 U.S.C. 150(c)(3)(A)(ii)(IV)–(V) to include environmental performance, consistent with the national goals established under 23 U.S.C. 150(b). Other statutory provisions also support the proposed measure, including 23 U.S.C. 119 (NHPP) and 23 U.S.C. 101(b)(3)(G) (transportation policy), 134(a)(1) (transportation planning policy), 134(c)(1) (metropolitan planning), and 135(d)(1) and (d)(2) (statewide planning process and a performance-based approach).

Alternatives: FHWA is developing a proposed rule and will consider all available alternatives in the development of its proposal.

Anticipated Cost and Benefits: FHWA is preparing a regulatory analysis of the costs and benefits associated with the proposed rule. In the analysis, FHWA anticipates quantifying estimates where possible and qualitatively discussing costs and benefits that cannot be quantified.

Risks: FHWA is developing a proposed rule and will consider potential risks in the development of its proposal.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Michael Culp, Department of Transportation, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–9229, *Email:* *michael.culp@dot.gov*.

RIN: 2125–AF99

DOT—FHWA

Final Rule Stage

134. +Manual on Uniform Traffic Control Devices for Streets and Highways

Priority: Other Significant.

Legal Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a)

CFR Citation: 23 CFR 655.

Legal Deadline: None.

Abstract: This rulemaking would update the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) incorporated by reference at 23 CFR part 655. The new edition would update the technical provisions of the 2009 edition to reflect advances in technologies and operational practices that are not currently allowed in the MUTCD.

Statement of Need: Updates to the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) are needed to update the technical provisions to reflect advances in technologies and operational practices, incorporate recent trends and innovations, and set the stage for automated driving systems as those continue to take shape. The proposed changes to the MUTCD would promote uniformity and incorporate technology advances in the traffic control device application. They ultimately would improve and encourage the safe and efficient utilization of roads that are open to public travel.

Summary of Legal Basis: FHWA proposed this rule under 23 U.S.C. 109(d), 315, and 402(a), which give the Secretary of Transportation the authority to promulgate uniform provisions to promote the safe and efficient utilization of the highways. The Secretary has delegated this authority to FHWA under 49 CFR 1.85.

Alternatives: FHWA continues to consider all available alternatives in this rulemaking as the Agency considers public comments received on the Notice of Proposed Amendments (NPA) to inform a final rule.

Anticipated Cost and Benefits: FHWA estimated the costs and potential benefits of the proposed changes to the MUTCD in an economic analysis. FHWA analyzed the expected compliance costs associated with 132 proposed substantive revisions. As summarized in the NPA, FHWA found that 8 of those substantive revisions have quantifiable economic impacts. FHWA quantified the total estimated cost of 3 substantive revisions for which costs can be quantified as $541,978 when discounted at 7 percent and $589,667 when discounted at 3 percent, measured in 2018 dollars. FHWA lacked information to estimate the cost of 5 substantive revisions but expects they will have net benefits based on per-unit or per-mile costs and benefits of the proposed revisions. FHWA will update the economic analysis to reflect the final rule, to be designated as the 11th edition of the MUTCD.

Risks: FHWA is continuing to consider potential risks as the Agency considers public comments received on the NPA to inform a final rule.

Timetable:

Action	Date	FR Cite
NPRM	12/14/20	85 FR 80898
Publication Date for Extension of Comment Period.	02/02/21	
NPRM Comment Period End.	05/14/21	
Final Rule	09/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, Local, State, Tribal.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Kevin Sylvester, Department of Transportation, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–2161, *Email:* *kevin.sylvester@dot.gov*.

RIN: 2125–AF85

DOT—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

Proposed Rule Stage

135. +Heavy Vehicle Automatic Emergency Braking

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 49 U.S.C. 30111; 49 U.S.C. 30115; 49 U.S.C. 30117; 49 U.S.C. 30166; 49 U.S.C. 322; delegation of authority at 49 CFR 1.95

CFR Citation: 49 CFR 571.

Legal Deadline: None.

Abstract: This notice will seek comments on a proposal to require and/or standardize equipment performance for automatic emergency braking on heavy trucks. The agency previously published a notice (80 FR 62487) on October 16, 2015, granting a petition for rulemaking submitted by the Truck Safety Coalition, the Center for Auto Safety, Advocates for Highway and Auto Safety, and Road Safe America (dated February 19, 2015), to establish a safety standard to require automatic forward collision avoidance and mitigation (FCAM) systems on certain heavy vehicles. For several years, NHTSA has researched forward collision avoidance and mitigation technology on heavy vehicles, including forward collision warning and automatic emergency braking systems. This rulemaking proposes test procedures for measuring performance of these systems.

Statement of Need: This proposed rule would establish a safety standard to require and/or standardize performance of automatic forward collision avoidance and mitigation systems on heavy vehicles. NHTSA believes there is potential for AEB to improve safety by reducing the likelihood of rear-end crashes involving heavy vehicles and the severity of crashes. NHTSA is commencing the rulemaking process to potentially require new heavy vehicles to be equipped with automatic emergency braking systems, or to standardize AEB performance when the systems are optionally installed on vehicles.

Summary of Legal Basis: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

Alternatives: NHTSA will present regulatory alternatives in the NPRM.

Anticipated Cost and Benefits: NHTSA will present preliminary costs and benefits in the NPRM.

Risks: The agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

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: David Hines, Director, Office of Crash Avoidance

Standards, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202–366–2720, *Email: david.hines@dot.gov*.

RIN: 2127–AM36

DOT—NHTSA

136. +Light Vehicle Automatic Emergency Braking (AEB) With Pedestrian AEB

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 49 U.S.C. 30111; 49 U.S.C. 30115; 49 U.S.C. 30117; 49 U.S.C. 30166; 49 U.S.C. 322; delegation of authority at 49 CFR 1.95

CFR Citation: 49 CFR 571.

Legal Deadline: None.

Abstract: This notice will seek comment on a proposal to require and/or standardize performance for Light Vehicle Automatic Emergency Braking (AEB), including Pedestrian AEB (PAEB), on all newly manufactured light vehicles. A vehicle with AEB detects crash imminent situations in which the vehicle is moving forward towards another vehicle and/or a pedestrian, and automatically applies the brakes to prevent the crash from occurring, or to mitigate the severity of the crash. This rulemaking would set performance requirements and would specify a test procedure under which compliance with those requirements would be measured.

Statement of Need: This proposed rule would reduce rear end vehicle-to-vehicle crashes and could reduce motor vehicle impacts with pedestrians that often result in death and injury.

Summary of Legal Basis: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Alternatives: NHTSA will present regulatory alternatives in the NPRM.

Anticipated Cost and Benefits: NHTSA will present preliminary costs and benefits in the NPRM.

Risks: The agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

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: David Hines, Director, Office of Crash Avoidance Standards, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202–366–2720, *Email: david.hines@dot.gov*.

RIN: 2127–AM37

DOT—NHTSA

Final Rule Stage

137. +Corporate Average Fuel Economy (CAFE) Preemption

Priority: Other Significant.

Legal Authority: delegation of authority at 49 CFR 1.95

CFR Citation: 49 CFR 533.

Legal Deadline: None.

Abstract: This action would repeal of The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 FR 51310 (Sept. 27, 2019) (''SAFE I Rule'').

Statement of Need: This action is directed under Executive Order 13990.

Summary of Legal Basis: This rulemaking would respond to requirements of the Energy Independence and Security Act of 2007 (EISA), Title 1, Subtitle A, Section 102, as it amends 49 U.S.C. 32902, which was signed into law December 19, 2007. The statute requires that corporate average fuel economy standards be prescribed separately for passenger automobiles and non-passenger automobiles. The law requires the standards be set at least 18 months prior to the start of the model year.

Alternatives: NHTSA considered alternatives in its May 2021 NPRM. NHTSA will update the regulatory alternatives in the final rule as appropriate.

Anticipated Cost and Benefits: NHTSA estimated costs and benefits in its May 2021 NPRM. NHTSA will update the costs and benefits in the final rule as appropriate.

Risks: The agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	05/12/21	86 FR 25980
NPRM Comment Period End.	06/11/21	
Final Rule	11/00/21	

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: Kerry Kolodziej, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590, *Phone:* 202 366–2161, *Email: kerry.kolodziej@dot.gov.*

RIN: 2127–AM33

DOT—NHTSA

138. +Passenger Car and Light Truck Corporate Average Fuel Economy Standards

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Delegation of authority at 49 CFR 1.95

CFR Citation: 49 CFR 533.

Legal Deadline: None.

Abstract: This rulemaking would reconsider Corporate Average Fuel Economy (CAFE) standards for passenger cars and light trucks that were established in the agency's April 30, 2020 final rule. This rulemaking would respond to requirements of the Energy Independence and Security Act of 2007 (EISA), title 1, subtitle A, section 102, as it amends 49 U.S.C. 32902. The statute requires that corporate average fuel economy standards be prescribed separately for passenger automobiles and non-passenger automobiles. For model years 2021 to 2030, the average fuel economy required to be attained by each fleet of passenger and non-passenger automobiles shall be the maximum feasible for each model year. The law requires the standards be set at least 18 months prior to the start of the model year.

Statement of Need: This action is directed under Executive Order 13990.

Summary of Legal Basis: This rulemaking would respond to requirements of the Energy Independence and Security Act of 2007 (EISA), Title 1, Subtitle A, Section 102, as it amends 49 U.S.C. 32902, which was signed into law December 19, 2007. The statute requires that corporate average fuel economy standards be prescribed separately for passenger automobiles and non-passenger automobiles. The law requires the standards be set at least 18 months prior to the start of the model year.

Alternatives: NHTSA considered alternatives in its September 2021 NPRM. NHTSA will update the regulatory alternatives in the final rule as appropriate.

Anticipated Cost and Benefits: NHTSA estimated costs and benefits in

its September 2021 NPRM. NHTSA will update the costs and benefits in the final rule as appropriate.

Risks: The agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	09/03/21	86 FR 49602
NPRM Comment Period End.	10/26/21	
Final Action	03/00/22	

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: Gregory Powell, Program Analyst, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–5206, *Email:* *gregory.powell@dot.gov.*

RIN: 2127–AM34

DOT—FEDERAL RAILROAD ADMINISTRATION (FRA)

Proposed Rule Stage

139. +Train Crew Staffing

Priority: Other Significant.

Legal Authority: 49 CFR 1.89(a); 49 U.S.C. 20103

CFR Citation: 49 CFR 218.

Legal Deadline: None.

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 different train crew staffs, depending on the type of operations.

Statement of Need: To 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, FRA is drafting an NPRM that would address the issue of minimum requirements for the size of different train crew staffs, depending on the type of operation.

Summary of Legal Basis: 49 U.S.C. 20103; 49 CFR 1.89(a).

Alternatives: FRA will analyze regulatory alternatives in the NPRM.

Anticipated Cost and Benefits: FRA is currently expecting the economic impact of this rule is expected to be less than $100 million; however, FRA has not yet quantified the costs or benefits associated with this proposed rulemaking.

Risks: The NPRM is based off a risk assessment that individual railroads will have to perform. The risks should be negatively impacted.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Local, State.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

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

DOT—PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

Long-Term Actions

140. +Pipeline Safety: Class Location Requirements

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 49 U.S.C. 60101 *et seq.*

CFR Citation: 49 CFR 192.

Legal Deadline: None.

Abstract: This rulemaking action would address class location requirements for natural gas transmission pipelines, specifically as they pertain to actions operators are required to take following class location changes due to population growth near the pipeline. Operators have suggested that performing integrity management measures on pipelines where class locations have changed due to population increases would be an equally safe but less costly alternative to the current requirements of either reducing pressure, pressure testing, or replacing pipe.

Statement of Need: Section 5 of the Pipeline Safety Act of 2011 required the Secretary of Transportation to evaluate and issue a report on whether integrity management (IM) requirements should be expanded beyond high-consequence areas and whether such expansion would mitigate the need for class location requirements. PHMSA issued a report to Congress on its evaluation of this issue in April 2016, noting it would further evaluate the feasibility and appropriateness of alternatives to address pipe replacement requirements when class locations change due to population growth. PHMSA issued an advance notice of proposed rulemaking on July 31, 2018, to obtain public comment on whether allowing IM measures on pipelines where class locations have changed due to population increases would be an equally safe but less costly alternative to the current class location change requirements. PHMSA is proposing revisions to the Federal Pipeline Safety Regulations to amend the requirements for pipelines that experience a change in class location. This proposed rule addresses a part of a congressional mandate from the Pipeline Safety Act of 2011 and responds to public input received as part of the rulemaking process. The amendments in this proposed rule would add an alternative set of requirements operators could use, based on implementing integrity management principles and pipe eligibility criteria, to manage certain pipeline segments where the class location has changed from a Class 1 location to a Class 3 location. PHMSA intends for this alternative to provide equivalent public safety in a more cost-effective manner to the current natural gas pipeline safety rules, which require operators to either reduce the pressure of the pipeline, pressure test the pipeline segment to higher standards, or replace the pipeline segment.

Summary of Legal Basis: Congress established the current framework for regulating the safety of natural gas pipelines in the Natural Gas Pipeline Safety Act of 1968 (NGPSA). The NGPSA provided the Secretary of Transportation the authority to prescribe minimum Federal safety standards for natural gas pipeline facilities. That authority, as amended in subsequent reauthorizations, is currently codified in the Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*).

Alternatives: PHMSA is evaluating and considering additional regulatory alternatives to these proposed requirements, including a ''no action'' alternative.

Anticipated Cost and Benefits: Estimated annual cost savings are $149 million.

Risks: The alternative conditions PHMSA is proposing to allow operators to manage class location changes through IM will provide an equivalent level of safety as the existing class location change regulations.

Timetable:

Action	Date	FR Cite
ANPRM	07/31/18	83 FR 36861
ANPRM Comment Period End.	10/01/18	
NPRM	10/14/20	85 FR 65142
NPRM Comment Period End.	12/14/20	
Final Rule	03/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Cameron H. Satterthwaite, Transportation Regulations Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202–366–8553, *Email:* *cameron.satterthwaite@dot.gov.*

RIN: 2137–AF29

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 2022, 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. Specifically, TTB plans to publish deregulatory rules that will 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. TTB expects these proposals to ultimately reduce the amount of operational information industry members must submit to TTB and provide for the piloting of a combined tax return and simplified operations report, reducing the overall number of reports industry members must submit. These measures are expected to reduce burden on industry member and provide them greater flexibility, and make starting new businesses easier and faster for new industry members.

TTB will also prioritize rulemaking to amend its regulations to reflect statutory changes pursuant to the Taxpayer Certainty and Disaster Tax Act of 2020, which made permanent most of the Craft Beverage Modernization and Tax Reform provisions of the Tax Cuts and Jobs Act of 2017. These legislative changes include reduced tax rates for beer and distilled spirits and tax credits for wine, among other provisions that had previously been provided on a temporary basis, as well as new provisions on the types of activities that qualify for reduced tax rates for distilled spirits and on permissible transfers of bottled distilled spirits in bond. Additionally, as a result of this legislation, and as addressed in a June 2021 Report to Congress on Administration of Craft Beverage Modernization Act Refund Claims for Imported Alcohol, TTB will also prioritize rulemaking to implement and administer refund claims for imported alcohol.

Additional priority projects include rulemaking to authorize new container sizes (standards of fill) for wine and responding to industry member petitions to authorize new wine treating materials and processes, new grape varietal names for use on labels of wine, and new American Viticultural Areas (AVAs).

This fiscal year TTB plans to prioritize the following measures:

- *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 2017, TTB engaged in a review of its regulations to identify any regulatory requirements that could potentially be eliminated, modified, or streamlined to reduce burdens on industry related to application and qualification requirements. Since that time, TTB has removed a number of requirements, particularly with regard to the information that is required to be submitted on TTB permit-related forms. In FY 2022, TTB intends to propose amending its regulations to further streamline the qualification and application requirements for new and existing businesses, including distilled spirits plants, wineries, and breweries.

- *Streamlining of Tax Return and Report Requirements (RIN: 1513–AC68).*

In FY 2022, TTB intends to propose for notice and comment regulatory amendments to substantially streamline current requirements pertaining to tax returns and operational reports and reducing the amount of information and the number of reports submitted. This measure will also include updates to return and report requirements to improve overall tax oversight and enforcement.

- *Modernizing the Alcohol Beverage Labeling and Advertising Requirements (RIN: 1513–AC66, Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverage, and 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 intends to address remaining aspects of this rulemaking initiative, including incorporating a proposed reorganization of the regulatory provisions intended to make the regulations easier to read and understand, for which industry members expressed support.

• *Implementation of the Craft Beverage Modernization Act (RIN: 1513–AC87, Implementing the Craft Beverage Modernization Act Permanent Provisions, and RIN: 1513–AC89, Administering the Craft Beverage Modernization Act Refund Claims for Imported Alcohol).*

TTB is amending its regulations for beer, wine, and distilled spirits, including those related to administration of import claims, to implement changes made to the Internal Revenue Code by the Taxpayer Certainty and Disaster Act of 2020, which made permanent most of the Craft Beverage Modernization and Tax Reform (CBMA) provisions of the Tax Cuts and Jobs Act of 2017. The CBMA provisions reduced excise taxes on all beverage alcohol producers, large and small, foreign and domestic. In 2020, these tax cuts were made permanent. The 2020 provisions also transferred responsibility for administering certain CBMA provisions for imported alcohol from U.S. Customs and Border Protection (CBP) to the Treasury Department after December 31, 2022. Importers will be required to pay the full tax rate at entry and submit refund claims to Treasury. Treasury intends for TTB to administer these claims.

• *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'' (RIN: 1513–AB61 and 1513–AC75).*

In FY 2017, TTB proposed 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 were made in response to requests from wine industry members to authorize certain wine treating materials and processes not currently authorized by TTB regulations. Although TTB may administratively approve such treatments, such administrative approval does not guarantee acceptance in foreign markets of any wine so treated. Under certain international agreements, wine made with wine treating materials is not subject to certain restrictions if the authorization to use the treating materials is implemented through public notice; thus, rulemaking facilitates the acceptance of exported wine made using those treatments in foreign markets. In FY 2018, TTB reopened the comment period for the notice in response to industry member requests and, after consideration of the comments, TTB intends in FY 2022 to issue a final rule on those proposals. In FY 2022, TTB also intends to propose for public comment additional changes to the regulations governing wine treating materials, in response to a petition to more broadly amend the regulations to allow more wine treating materials to be used within the limitations of ''good manufacturing practice'' rather than within specified numerical limits.

• *Addition of New Standards of Fill for Wine (RIN: 1513–AC86)*

TTB plans to publish a proposal to amend the regulations governing wine containers to add additional authorized standards of fill 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 will also propose a technical amendment to add equivalent standard United States measures to the wine labeling regulations for recently approved wine standards of fill and for the additional sizes proposed in this notice.

• *Addition of Singani to the Standards of Identity for Distilled Spirits (RIN: 1513–AC61).*

On August 25, 2021, TTB published a proposal (86 FR 47429) to amend the regulations that set forth the standards of identity for distilled spirits to include Singani as a type of brandy that is a distinctive product of Bolivia. This proposal follows a joint petition submitted by the Plurinational State of Bolivia and Singani 63, Inc., and subsequent discussions with the Office of the United States Trade Representative. TTB solicited comments on this proposal, including comments on its proposal to authorize a minimum bottling proof of 35 percent alcohol by volume (or 70° proof) for Singani. TTB expects to publish a final rule in FY22.

• *Proposal to Amend the Regulations to Add New Grape Variety Names for American Wines (RIN: 1513–AC24).*

In FY 2017, TTB proposed to amend its wine labeling regulations by adding a number of new names to the list of grape variety names approved for use in designating American wines. The proposed deregulatory amendments would allow wine bottlers to use these additional approved grape variety names on wine labels and in wine advertisements in the U.S. and international markets. In 2018, TTB reopened the comment period for the notice in response to requests. TTB was unable to complete this project in FY 2020 because of redirected efforts to address COVID–19 guidance, and TTB now intends to issue a final rule in FY 2022.

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 2022 are described below.

• *Amendments to Bank Secrecy Act Compliance Program Rule (12 CFR part 21).*

The OCC, the Board of Governors of the Federal Reserve System (FRB), and

the Federal Deposit Insurance Corporation (FDIC) plan to issue a notice of proposed rulemaking amending their respective Bank Secrecy Act Compliance Program Rules.

• *Basel III Revisions (12 CFR part 3).*

The OCC, the FRB, and the FDIC plan to issue a 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 FRB, and the FDIC plan to issue a 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 banking agencies expect the proposal 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.

• *Community Reinvestment Act Regulations (12 CFR parts 25 and 195).*

The OCC plans to issue a proposal to replace the current Community Reinvestment Act (CRA) rule with revised rules largely based on the 1995 CRA regulations.

• *Community Reinvestment Act Regulations (12 CFR part 25).*

Along with the Federal Deposit Insurance Agency and the Board of Governors of the Federal Reserve, the OCC plans to issue a joint rule to modernize the Community Reinvestment Act regulations.

• *Computer-Security Incident Notification (12 CFR part 53).*

The OCC, FRB, and FDIC plan to issue a final rule that would require a banking organization to notify its primary federal regulator of significant computer-security incidents on a timely basis. The rule would also require a bank service provider to promptly notify banking organization customers of certain significant computer-security incidents. The notice of proposed rulemaking was published on January 12, 2021 (86 FR 2299).

• *Exemptions to Suspicious Activity Report Requirements (12 CFR parts 21 and 163).*

The OCC plans to issue a final rule to modify the requirements for national banks and Federal savings associations to file Suspicious Activity Reports. The rule would amend the OCC's Suspicious Activity Report regulations to allow the OCC to issue exemptions from the requirements of those regulations. The rule would make it possible for the OCC to grant relief to national banks or federal savings associations that develop innovative solutions to meet Bank Secrecy Act requirements more efficiently and effectively. The notice of proposed rulemaking was published on January 22, 2021 (86 FR 6572).

• *Implementation of Emergency Capital Investment Program (12 CFR part 3).*

Section 104A of the Community Development Banking and Financial Institutions Act of 1994, which was added by the Consolidated Appropriations Act, 2021, authorizes the Secretary of the Treasury to establish the Emergency Capital Investment Program (ECIP) through which the Department of the Treasury (Treasury) can make capital investments in low- and moderate-income community financial institutions. The purpose of ECIP is to support the efforts of such financial institutions to, among other things, provide financial intermediary services for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities. In order to support and facilitate the timely implementation and acceptance of ECIP and promote its purpose, the OCC, FRB, and FDIC plan to issue a final rule that provides that preferred stock issued to Treasury under ECIP qualifies as additional tier 1 capital and that subordinated debt issued to Treasury under ECIP qualifies as tier 2 capital under the agencies' capital rule. The interim final rule was published on March 22, 2021 (86 FR 15076).

• *Rules of Practice and Procedure (12 CFR part 19).*

The OCC, FRB, and FDIC plan to issue a proposed rule to amend their rules of practice and procedure to reflect modern filing and communication methods and improve or clarify other procedures.

• *Tax Allocation Agreements (12 CFR part 30).*

The OCC, FRB, and FDIC plan to issue a final rule requiring banks that file income taxes as part of a consolidated group to develop and maintain tax allocation agreements with other members of the consolidated group. The notice of proposed rulemaking was published on May 10, 2021 (86 FR 24755).

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 2021, 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.

• *Inter Partes Proceedings Concerning Exclusion Orders Based on Unfair Practices in Import Trade.*

Treasury and CBP plan to publish a proposal to amend its regulations with respect to administrative rulings related to the importation of articles in light of exclusion orders issued by the United States International Trade Commission (''Commission'') under section 337 of the Tariff Act of 1930, as amended. The proposed amendments seek to promote

the speed, accuracy, and transparency of such rulings through the creation of an *inter partes* proceeding to replace the current *ex parte* process.

• *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.

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. 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; (4) maintaining a government-wide access service 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 2022 include:

• *Section 6110. BSA Application to Dealers in Antiquities and Assessment of BSA Application to Dealers in Art.*

On September 24, 2021, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) in order to implement Section 6110 of the Anti-Money Laundering Act of 2020 (the AML Act). This section amends the BSA (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.

• *Reports of Foreign Financial Accounts Civil Penalties (Technical Change).*

FinCEN is amending 31 CFR 1010.820 to withdraw the reports of foreign financial accounts (FBAR) civil monetary penalties language at 31 CFR 1010.820(g), which was made obsolete with the enactment of the American Jobs Creation Act of 2004. The American Jobs Creation Act of 2004 amended 31 U.S.C. 5321(a)(5) to allow for a greater maximum penalty for a willful violation of 31 U.S.C. 5314 than was previously authorized.

• *Clarification of the requirement to collect, retain, and transmit information on transactions involving convertible virtual currency and digital assets with legal tender status.*

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 BSA 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.

• *Real Estate Transaction Reports and Records.*

FinCEN will issue an Advanced Notice of Proposed Rulemaking (ANPRM) to seek guidance on a future rulemaking that would require certain legal entities involved in real estate transactions to submit reports and keep records. Specifically, the ANPRM will seek comment to assist FinCEN in preparing a proposed rule that would potentially impose nationwide recordkeeping and reporting requirements on financial institutions and nonfinancial trades and businesses participating in purchases of real estate by certain legal entities that are not financed by a loan, mortgage, or other similar instrument.

• *Section 6212. Pilot Program on Sharing Information Related to Suspicious Activity Reports (SARs) Within a Financial Group.*

FinCEN intends to issue a Notice of Proposed Rulemaking (NPRM) in order

to implement Section 6212 the AML Act. This section amends the BSA (31 U.S.C. 5318(g)) to establish a pilot program that permits financial institutions to 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.

• *Section 6101. Establishment of National Exam and Supervision Priorities.*

FinCEN intends to issue a NPRM to implement Section 6101 the AML Act. That section, among other things, amends section 5318(h) to title 31 of the United States Code to: (1) Require financial institutions to establish CFT programs in addition to AML programs; (2) require FinCEN to establish national AML/CFT Priorities and, as appropriate, promulgate implementing regulations within 180 days of the issuance of those priorities; and (3) provide that the duty to establish, maintain, and enforce a BSA AML/CFT program remains the responsibility of, and must be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator. Additionally, FinCEN intends to propose other changes, including regulatory amendments to establish that all financial institutions subject to an AML/CFT program requirement must maintain an effective and reasonably designed AML/CFT program, and that such a program must include a risk assessment process.

• *Sec. 6305. No Action Letter Program.*

FinCEN will issue an ANPRM following the implementation of Section 6305 of the AML Act. This section required FinCEN to conduct an assessment on whether to issue no-action letters in response to specific conduct requests from third parties, and propose rulemaking if appropriate. The assessment concluded that FinCEN should issue no-action letters, subject to sufficient resources, and proposed rulemaking to follow the issuance of the report. The ANPRM will seek guidance on the contours of a FinCEN no-action letter process, and, if necessary and appropriate, may be followed by a NPRM establishing regulations to govern the process. The ANPRM will also solicits feedback on FinCEN's current forms of regulatory guidance and relief.

• *Voluntary Information Sharing Among Financial Institutions Under Section 314(b) of the USA PATRIOT Act.*

FinCEN is considering issuing this rule to strengthen the administration of the regulation implementing the statutory safe harbor that allows eligible financial institutions and associations of financial institutions to voluntarily share information regarding activities that may involve terrorist acts or money laundering.

• *Sec. 6314. Updating Whistleblower Incentives and Protection.*

FinCEN intends to issue a NPRM relating to Section 6314 of the AML Act. Section 6314 of AML Act amends Section 5323 of title 31, United States Code. Section 6314, enacted on January 1, 2021, established a whistleblower program that requires FinCEN to pay an award, under regulations prescribed by FinCEN and subject to certain limitations, to eligible whistleblowers who voluntarily provide FinCEN or the Department of Justice (DOJ) with original information about a violation of the Bank Secrecy Act that leads to the successful enforcement of a covered judicial or administrative action, or related action, and requires that FinCEN preserve the confidentiality of a whistleblower.

Additionally, section 6314 of the AML Act repealed 31 U.S.C. 5328, the previous whistleblower protection provision, and replaced it with a new subsection to 31 U.S.C. 5323: Subsection (g) ''Protection of Whistleblowers.'' The new subsection (g) prohibits retaliation by employers against individuals that provide FinCEN or the DOJ with information about potential Bank Secrecy Act violations; any individual alleging retaliation may seek relief by filing a complaint with the Department of Labor.

• *Section 6403. Corporate Transparency Act.*

On April 5, 2021, FinCEN issued an ANPRM entitled ''Beneficial Ownership Information Reporting Requirements,'' relating to the Corporate Transparency Act (Sections 6401–6403 of the AML Act), and intends to issue a NPRM. Section 6403 of the AML Act amends the BSA by adding new Section 5336 to title 31 of the United States Code. New Section 5336 requires FinCEN to issue rules requiring: (i) Reporting companies to submit certain information about the individuals who are beneficial owners of those entities and the individuals who formed or registered those entities; (ii) establishing a mechanism for issuing FinCEN identifiers to entities and individuals that request them; (iii) requiring FinCEN to maintain the information in a confidential, secure, non-public database; and (iv) authorizing FinCEN to disclose the information to certain government agencies and financial institutions for purposes specified in the legislation and subject to protocols to protect the confidentiality of the information. Section 5336 requires that the first of these requirements, notably the beneficial ownership information reporting regulation for legal entities (the ''reporting regulation''), be published in final form by January 1, 2022. The ANPRM solicited comments on a wide range of questions having to do with the possible shape of the reporting regulation, as well as questions that concern the interaction of the requirements of this regulation and the shape and functionality of the database that will be populated with the information reported under Section 5336.

• *Orders Imposing Additional Reporting and Recordkeeping Requirements (Technical Change).*

On November 15, 2021, FinCEN issued a final rule to update the regulation set forth at 31 CFR 1010.370 to reflect amendments to the underlying statute, 31 U.S.C. 5326, concerning the authority of FinCEN to issue orders imposing additional reporting and recordkeeping requirements on financial institutions and nonfinancial trades or businesses in a geographic area.

• *Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets.*

FinCEN is proposing to amend the regulations implementing the BSA to require banks and money service businesses 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.

• *Report of Foreign Bank and Financial Accounts.*

FinCEN is proposing to amend the regulations implementing the BSA regarding reports of foreign financial accounts (FBARs). The proposed changes are intended to clarify which persons will be required to file reports of foreign financial accounts and what information is reportable. The proposed changes are intended to amend two provisions of the FBAR regulation: (1) Signature or other authority; and (2) special rules. Treasury is considering whether the relevant statutory objectives can be achieved at a lower cost.

• *Withdraw Obsolete Civil Money Penalty Provisions for BSA Violations. (Technical Change)*

FinCEN is amending 31 CFR 1010.820 to withdraw the civil money penalty provisions for BSA violations that are obsolete. Statutory amendments have been made to specific civil BSA penalties since the regulation was last revised. In addition, the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended, 28 U.S.C. 2461 note, requires agencies to issue regulations making annual adjustments reflecting the effect of inflation for civil penalties expressed in terms of a dollar amount. Those inflation adjustments are correctly captured in a separate regulation, and therefore the obsolete and inconsistent provisions will be withdrawn.

• *Amendments to the Definitions of Broker or Dealer in Securities.*

FinCEN is finalizing amendments to the regulatory definitions of ''broker or dealer in securities'' under the regulations implementing the BSA. The changes are intended to expand the current scope of the definitions to include funding portals. In addition, these amendments would require funding portals to implement policies and procedures reasonably designed to achieve compliance with all of the BSA requirements that are currently applicable to brokers or dealers in securities. The rule to require these organizations to comply with the BSA regulations is intended to help prevent money laundering, terrorist financing, and other financial crimes.

• *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 AML Act.

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 2022, Fiscal Service will accord priority to the following regulatory projects:

• *Surety Companies Doing Business with the United States.*

Fiscal Service is proposing to amend its regulations governing surety companies doing business with the United States, found at 31 CFR part 223. When a federal law requires a person to post a bond through a surety, the person satisfies the requirement if the bond is underwritten by a company that is certified by Treasury to write federal bonds. Fiscal Service administers the regulations governing the issuance, renewal, and revocation of certificates of authority to surety companies to write or reinsure federal bonds. Fiscal Service proposes to amend its regulations governing how it values the assets and liabilities of sureties to keep pace with changes in regulation of the surety industry occurring at the state and international levels.

• *Government Participation in the Automated Clearing House.*

The Fiscal Service is proposing to amend its regulation at 31 CFR part 210 governing the government's participation in the Automated Clearing House (ACH). The proposed amendment would address changes to the National Automated Clearing House Association's (Nacha) private-sector ACH rules that have been adopted since those rules were last incorporated by reference in part 210. Among other things, the amendment would address the increase in the Same-Day ACH transaction limit from $100,000 per transaction to $1,000,000 per transaction.

• *Re-Write of DCIA Offset Regulations in 31 CFR part 285 subpart A.*

The Fiscal Service is proposing to amend its offset regulations currently codified in 31 CFR part 285 subpart A. These regulations govern how Fiscal Service administers the offset of federal and state payments to collect federal and state debt through the Treasury Offset Program. Through the amendment, Fiscal Service will re-write and reorganize the current regulations. The main purpose of the amendment will be to improve the clarity of the regulations. A second purpose will be to restore flexibility where previously-issued regulations may have unintentionally narrowed statutory authority.

Internal Revenue Service

The Internal Revenue Service (IRS), working with the 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 2022, the IRS and Treasury's Office of Tax Policy's priority is to continue providing guidance regarding implementation of key provisions of the American Rescue Plan Act of 2021, Public Law 117–2, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, Public Law 115–97, known as the Tax Cuts and Jobs Act, as well as the Taxpayer First Act, Public Law 116–25, Division O of the Further Consolidated Appropriations Act, 2020, and Public Law 116–94, known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

Every year, Treasury and the IRS identify guidance projects that are priorities for allocation of the 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 2021–2022 Priority Guidance Plan (September 9, 2021). To help 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 2021–28 (April 14, 2021). We also invite the public to continue throughout the year to provide us with their comments and suggestions for guidance projects.

BILLING CODE 4810–25–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 public 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 bury 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 priority plan consists of three high priority regulations:

(1) *RIN 2900–AQ30 Proposed Rule—Modifying Copayments for Veterans at High Risk for Suicide.*

The Department of Veterans Affairs (VA) proposes to amend its medical regulations that govern copayments for outpatient medical care and medications for at-risk veterans.

(2) *RIN 2900–AR01 Proposed Rule—VA Pilot Program on Graduate Medical Education and Residency.*

The Department of Veterans Affairs proposes to revise its medical regulations to establish a new pilot program on graduate medical education and residency, as required by section 403 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Network Act of 2018.

(3) *RIN 2900–AR16 Interim Final Rule—Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program.*

The Department of Veterans Affairs (VA) is issuing this interim final rule to implement legislation authorizing VA initiate a three-year community-based grant program to award grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families. This rulemaking specifies grant eligibility criteria, application requirements, scoring criteria, constraints on the allocation and use of the funds, and other requirements necessary to implement this grant program.

VA

Proposed Rule Stage

141. Modifying Copayments for Veterans at High Risk for Suicide

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) proposes to amend its medical regulations that govern copayments for outpatient medical care and medications for at-risk veterans.

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 proposed 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 proposed 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.

VA has determined that there are transfers associated with this rulemaking and a loss of revenue to VA from the reduction of specific veteran copayments. The transfers are estimated to be $9.43M in FY2022 and $54.35M over a 5-year period. The loss of revenue to VA is estimated to be $0.21M in FY2022 and $1.11M over a five-year period. The total budgetary impact of this rulemaking is estimated to be $9.63M in FY2022 and $55.47M over a five-year period.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

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

142. VA Pilot Program on Graduate Medical Education and Residency

Priority: Other Significant.

Legal Authority: Pub. L. 115–182, sec. 403

CFR Citation: 38 CFR 17.243 to 17.248.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs proposes to revise its medical regulations to establish a new pilot program on graduate medical education and residency, as required by section

403 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Network Act of 2018.

Statement of Need: This rulemaking is needed to implement section 403 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Network Act of 2018 (hereafter referred to as the MISSION Act). Section 403 of the MISSION Act requires the Department of Veterans Affairs (VA) create a pilot program to establish additional medical residency positions authorized under section 301(b)(2) of Public Law 113–146 (note to section 7302 of title 38 United States Code (U.S.C.)) at certain covered facilities, to include non-VA facilities. Prior to section 403 of the MISSION Act, VA's authority in 38 U.S.C. 7302 permitted VA to establish medical residency programs in VA facilities and ensure that such programs have a sufficient number of residents, where VA's graduate medical education (GME) programming was limited to funding resident salaries and benefits only if such residents were in VA facilities, caring for Veterans, and supervised by VA staff, with some additional support to the affiliated educational institutions for educational costs.

Summary of Legal Basis: Section 403 of the MISSION Act expanded on this authority by creating a pilot to allow VA to fund residents regardless of whether they are in VA facilities, and to pay for certain costs of new residency programs that might also not be in VA facilities.

Alternatives: VA analyzed whether this pilot program could be implemented without regulations, because the administration of resident stipends and benefits, as well as the reimbursement of certain costs of new residency programs, would be controlled by contracts or agreements outside of regulations. However, regulations were thought necessary to: Better characterize selection criteria for the covered facilities in which residents will be placed, and to establish priority placement at certain covered facilities as required by section 403; establish criteria for defining new residency programs; qualify the resident activities that would be reimbursable; and qualify the reimbursable costs for new residency programs if VA places a resident in a new residency program. Regulations were also thought necessary to clarify that this pilot program, unlike many other VA pilot programs, is not a grant program or a cooperative agreement program through which entities may apply to be considered for resident funding or reimbursement of new residency program costs.

Anticipated Cost and Benefits: Increasing the number of residents and residency programs in underserved regions may improve the number of physicians practicing there after residency training and also will increase access to healthcare for veterans and possibly non-Veterans residing in those regions.

VA estimates that costs of this program will be $4,160,259 in FY22 and 13,691,052 over a 5-year period. Transfers will be zero in FY22 and $25,687,106 over a 5-year period. Combined, this results in a budget impact of $4,160,259 in FY 22 and $39,378,158 over a 5-year window.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: www.regulations.gov.

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RIN: 2900–AR01

VA

Final Rule Stage

143. Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program

Priority: Other Significant.

Legal Authority: Pub. L. 116–171, sec. 201; 38 U.S.C. 1720F; 38 U.S.C. 501

CFR Citation: 38 CFR 62.2; 38 CFR 50.1(d); 38 CFR 78.45.

Legal Deadline: Other, Statutory, December 31, 2025, Required consultation pursuant to section 201 of Pub. L. 116–171. Required consultation pursuant to section 201 of Pub. L. 116–171. This grant program is authorized by section 201 of Public Law 116–171. VA must publish regulations for matters related to grants as required by 38 U.S.C. 501(d).

Abstract: The Department of Veterans Affairs (VA) is issuing this interim final rule to implement legislation authorizing VA to initiate a three-year community-based grant program to award grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families. This rulemaking specifies grant eligibility criteria, application requirements, scoring criteria, constraints on the allocation and use of the funds, and other requirements necessary to implement this grant program.

Statement of Need: The Department of Veterans Affairs (VA) is issuing regulations for the implementation of section 201 of Public Law 116–171, the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (the Act). Title 38 of United States Code (U.S.C.) section 501(d) requires VA to publish regulations for matters related grants, notwithstanding section 553(a)(2) of the Administration Procedure Act.

Summary of Legal Basis: This grant program is authorized by section 201 of Public Law 116–171. VA must publish regulations for matters related to grants as required by 38 U.S.C. 501(d).

Alternatives: VHA initially was planning to implement the pilot program without any collaboration or planning with our internal or external partners. As an alternative, VHA intends to collaborate with other grant programs to examine certain costs which may be shared such as FTE, IT systems, and utilizing internal VA offices and infrastructure for certain aspect of grants management. This will maximize the effectiveness of the program and minimize any inefficiencies which would have otherwise arisen. VA determined the best course of action was to work with internal and external partners to develop the best grant program possible for suicide prevention among our Veteran population.

Anticipated Cost and Benefits: VA has estimated that there are both transfers and costs associated with the provisions of this rulemaking. The transfers are estimated to be $51.7M in FY2023 and $156 7M through FY2025. The costs are estimated to be $1.6M in FY2021 and $16.8M over five years (FY2021–FY2025).

Risks: None.

Timetable:

Action	Date	FR Cite
Request For Information (RFI).	04/01/21	86 FR 17268
RFI Comment Period End.	04/22/21	
Interim Final Rule	04/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: https://www.federalregister.gov

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RIN: 2900–AR16

BILLING CODE 8320–01–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—including low-income communities and communities of color, children, the elderly, tribes, and indigenous people—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 has initiated cross-Agency efforts to address our most complex environmental challenges including PFAS pollution. Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals, including PFOA and PFOS, that have been manufactured and used in a variety of industries around the globe, including in the United States, since the 1940s. Both chemicals persist in the environment and in the human body. The EPA Administrator established a Council on PFAS, comprised of a group of senior agency leaders who are charged with accelerating the Agency's progress on PFAS. EPA is committed to using all the Agency's authorities to address PFAS pollution including Safe Drinking Water Act, Clean Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. EPA also is expanding our existing data collection efforts to better understand the environmental and human health impacts of PFAS. Similarly, EPA has developed a cross-Agency strategy to coordinate the Agency's efforts to reduce lead exposure and protect children and families from the harmful effects of lead.

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 upcoming Strategic Plan:

- Tackle the Climate Crisis
- Advance Environmental Justice and Civil Rights
- 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

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 must take bold and decisive steps to respond to the severe and urgent threat of climate change, including taking appropriate regulatory action under existing statutory authorities to reduce emissions from our nation's largest sources of greenhouse gases (GHG). 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; limit GHGs from new light-duty vehicles and heavy-duty trucks; and set requirements for the use of renewable fuel. EPA will also carry out the mandates of the recently enacted 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.

- *Emission Guidelines for Oil and Natural Gas Sector.* The oil and natural gas industry are the largest industrial source of U.S. emissions of methane, a GHG more than 25 times as potent as carbon dioxide at trapping heat in the atmosphere. Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' states that the Administrator of EPA should consider proposing new regulations to establish emission guidelines for methane emissions from existing operations in the oil and gas sector, including the exploration and production, transmission, processing, and storage segments. The purpose of this action is to propose new emission guidelines for existing sources in the oil and gas sector by October 2021.
- *New Source Performance Standards for Crude Oil and Natural Gas Facilities: Review of Policy and Technical Rules.* Executive Order 13990 further directs EPA to review the new source performance standards (NSPS) issued in 2020 for the oil and gas sector about methane and volatile organic compound

(VOC) emissions and, as appropriate and consistent with applicable law, consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the NSPS. The Executive Order also directs EPA to consider proposing new regulations to establish comprehensive NSPS for methane and VOC emissions from the exploration and production, transmission, processing, and storage segments. The purpose of this action is to review the existing NSPS and propose new standards as necessary.

• *Emission Guidelines for Greenhouse Gas Emissions from Fossil Fuel-Fired Existing Electric Generating Units.* On January 19, 2021, the D.C. Circuit Court vacated the Affordable Clean Energy Rule (40 CFR part 60, subpart UUUUa) and remanded the rule to EPA for further consideration consistent with its decision. On February 12, 2021, considering the court's decision, the EPA published a memorandum on the status of the Affordable Clean Energy (ACE) rule and informed states not to continue the development or submittal of state plans in accordance with CAA section 111(d) guidelines for GHG emissions from power plants at this time. EPA continues to review the court's vacatur and remand of these actions. The anticipated proposal date for this action is by July 2022, and promulgation by July 2023.

• *Amendments to the NSPS for GHG Emissions from New, Modified, & Reconstructed Stationary Sources: EGUs.* Under CAA section 111(b), EPA sets New Source Performance Standards (NSPS) for GHG emissions from new, modified, and reconstructed fossil fuel-fired power plants. In 2015, EPA finalized regulations to limit GHG emissions from new fossil-fuel fired utility boilers and from natural gas-fired stationary combustion turbines. In 2018, EPA proposed to revise the NSPS for coal fired EGUs. To date, that proposed action has not been finalized. The 2018 proposed rule would have revised the 2015 NSPS finalized in conjunction with the Clean Power Plan (80 FR 64510). Litigation remains in abeyance for the 2015 final NSPS. The purpose of this action is to review the NSPS and, if appropriate, amend the standards for new fossil fuel fired EGUs. Anticipated timing of the proposed rule is by June 2022 and promulgation by June 2023.

• *Restrictions on Certain Uses of Hydrofluorocarbons under Subsection (i) of the American Innovation and Manufacturing Act.* EPA intends to propose a rule that, in part, responds to petitions granted under subsection (i) of the AIM Act. Subsection (i) of the AIM Act provides that a person may petition EPA to promulgate a rule for the restriction on use of a regulated substance in a sector or subsector. EPA will consider a rule restricting, fully, partially, or on a graduated schedule, the use of HFCs in sectors or subsectors including the refrigeration, air conditioning, aerosol, and foam sectors informed by petitions received from environmental groups, trade associations, and individual companies. Additionally, EPA will consider establishing recordkeeping and reporting requirements and addressing other related elements of the AIM Act.

• *Phasedown of Hydrofluorocarbons: Updates to the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act for 2024 and Later Years.* As noted above, the AIM Act directs EPA to sharply reduce production and consumption of HFCs, which are harmful and potent greenhouse gases, by using an allowance allocation and trading program. This phasedown will decrease the production and import of HFCs in the United States by 85% over the next 15 years. The first regulation under the AIM Act established the allowance allocation and trading program for 2022 and 2023. To continue phasing down the production and consumption of listed HFCs on the schedule listed in the AIM Act, this rulemaking will provide the framework for how the Agency will issue allowances in 2024 and beyond.

• *Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards.* Executive Order 13990 directed EPA to review the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks (April 30, 2020). In August 2021, EPA proposed to revise existing national GHG emissions standards for passenger cars and light trucks for Model Years 2023–2026. The proposed standards would achieve significant GHG emissions reductions along with reductions in other criteria pollutants. The proposal would result in substantial public health and welfare benefits, while providing consumers with savings from lower fuel costs.

• *Volume Requirements for 2023 and Beyond under the Renewable Fuel Standard Program.* CAA statutory provisions governing the Renewable Fuel Standard (RFS) program provide target volumes of renewable fuel for the RFS program only through 2022. For years 2023 and thereafter, the statute requires EPA to set those volumes based on an analysis of specified factors. If EPA does not set those volumes, there will be no applicable requirement to blend renewable fuel into gasoline and diesel. This rulemaking will establish volume requirements for 2023 and some years beyond. The proposal will provide the public with an opportunity to provide feedback on various alternative volume requirements.

• *Renewable Fuel Standard (RFS) Program: RFS Annual Rules.* CAA section 211 requires EPA to set renewable fuel percentage standards every year. This action establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to gasoline and diesel transportation fuel.

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 2020, the combined emissions of six key pollutants dropped by 78%, while the U.S. economy remained strong growing 272% 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 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.

• *Review of the National Ambient Air Quality Standards for Particulate Matter.* Under the CAA 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. In December 2020, EPA published its final decision in the review of the PM NAAQS, retaining the existing standard established in 2013. The review included the preparation of an Integrated Review Plan, an Integrated Science Assessment (ISA), and a Policy Assessment with opportunities for review by EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. These documents informed the Administrator's decision in the PM NAAQS review. On June 10, 2021, EPA notified the public that it will reconsider the 2020 decision to retain the PM NAAQS. As part of this reconsideration, EPA intends to develop a supplement to the ISA and a revised policy assessment to consider the most up-to-date science on public health and welfare impacts of PM and to engage with the CASAC and a newly constituted expert PM panel. Additionally, on July 7, 2020, EPA notified the public that it was initiating an update of the ISA for lead as part of the periodic review of the lead NAAQS.

• *NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding.* Executive Order 13990 directs EPA to take certain actions by August 2021, including considering 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). The May 2020 final action is the latest amendment to the February 16, 2012, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units (77 FR 9304). That 2012 rule (40 CFR part 63, subpart UUUUU), commonly referred to as the Mercury and Air Toxics Standards (MATS), includes standards to control HAP emissions from new and existing coal- and oil-fired steam EGUs located at both major and area sources of HAP emissions. In the May 22, 2020 action, EPA found that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112. As directed by E.O. 13990, EPA will review the May 22, 2020, finding and, under this action, will take appropriate action resulting from its review of the May 2020 finding that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under Clean Air Act section 112. Results of EPA's review of the May 2020 RTR will be presented in a separate action.

• *Interstate Transport Rule for 2015 Ozone NAAQS.* This action would apply in certain states for which EPA has either disapproved a ''good neighbor'' state implementation plan (SIP) submission under CAA section 110(a)(2)(D)(i)(I) or has made a finding of failure to submit such a SIP submission for the 2015 ozone NAAQS. This action would determine whether and to what extent upwind sources of ozone-precursor emissions need to reduce these emissions to prevent interference with downwind states' maintenance or attainment of the 2015 8-hour ozone NAAQS. For upwind states that EPA determines to be linked to a downwind nonattainment or maintenance receptor, EPA would conduct further analysis to determine what (if any) additional emissions controls are required in such states and develop an enforceable program for implementation of such controls.

• *Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards.* Heavy-duty engines have been subject to emission standards for criteria pollutants, including PM, hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X), for nearly half a century. Current data suggest that existing standards should be revised to ensure full, in-use emission control. NO_X emissions are major precursors of ozone and significant contributors to secondary $PM_{2.5}$ formation. Ozone and ambient $PM_{2.5}$ concentrations continue to be a nationwide health and air quality issue. Reducing NO_X emissions from on-highway, heavy-duty trucks and buses is an important component of improving air quality nationwide and reducing public health and welfare effects associated with these pollutants, especially for vulnerable populations and in highly impacted regions. Through this action, EPA will evaluate data on current NO_X emissions from heavy-duty vehicles and engines and propose options to improve control of criteria pollutant emissions through revised emissions standards. Additionally, this action will propose updates to the existing greenhouse gas emissions standards for heavy-duty vehicles.

• *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.* In response to EPA's most recent National Air Toxics Assessment (NATA), which identified several areas across the country as having the potential for elevated cancer risk due to emissions of ethylene oxide to the outdoor air, EPA has initiated a review of its existing air rules for source categories that emit this chemical. This includes reviewing the current National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide Commercial Sterilization and Fumigation Operations, which were finalized in December 1994 (59 FR 62585). The standards require existing and new major sources to control emissions to the level achievable by the maximum achievable control technology (MACT) and require existing and new area sources to control emissions using generally available control technology (GACT). In this action, EPA will conduct a statutorily required technology review for the NESHAP and will also consider the cancer risks of ethylene oxide emissions from this source category. To aid in this effort, EPA issued an advance notice of proposed rulemaking (ANPRM) on December 12, 2019 (84 FR 67889) that solicited comment from stakeholders, developed important emissions-related data through data collection activities, and undertook a Small Business Advocacy Review (SBAR) panel, which is needed when there is the potential for significant economic impacts to small businesses from any regulatory actions being considered.

• *Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.* This rulemaking will address the review of the final rule, ''Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act'' (Major MACT to Area, or MM2A final rule). See 85 FR 73854, November 19, 2020. Pursuant to Executive Order 13990, EPA has decided to review the MM2A final rule and, as appropriate and consistent with the CAA section 112, to publish for comment a notice of proposed rulemaking either suspending, revising, or rescinding the MM2A final rule. The MM2A final rule became effective on January 19, 2021 and provides that a major source can be reclassified to area source status at any time upon reducing its potential to emit (PTE) 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. Major sources that reclassify to area source status will no longer be subject to CAA section 112 major source requirements and, instead, will be subject to any applicable area source requirements. The MM2A final rule also included an interim ministerial revision

that removed the word ''federally'' from the phrase ''federally enforceable'' in the PTE definition in 40 CFR 63.2.

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. The 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.

• *Revised Definition of ''Waters of the United States''—Rule 1:* In April 2020, the EPA, and the Department of the Army (''the agencies'') published the Navigable Waters Protection Rule (NWPR) that revised the previously-codified definition of ''waters of the United States'' (85 FR 22250, April 21, 2020). The agencies are now initiating this new rulemaking process that restores the regulations in place prior to the 2015 ''Clean Water Rule: Definition of 'Waters of the United States' '' (80 FR 37054, June 29, 2015), updated to be consistent with relevant Supreme Court decisions. The agencies intend to consider further revisions in a second rule in light of additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

• *Revised Definition of ''Waters of the United States''—Rule 2:* The EPA and the Department of the Army (''the agencies'') intend to pursue a second rule defining ''Waters of the United States'' to consider further revisions to the agencies' first rule (RIN 2040–AG13) which proposes to restore the regulations in place prior to the 2015 ''Clean Water Rule: Definition of 'Waters of the United States' '' (80 FR 37054, June 29, 2015), updated to be consistent with relevant Supreme Court Decisions. This second rule proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

• *Clean Water Act Section 401: Water Quality Certification.* In accordance with Executive Order 13990, EPA has completed its review of the 2020 Clean Water Act Section 401 Certification Rule (85 FR 42210, July 13, 2020) and has determined that it erodes state and tribal authority as it relates to protecting water quality. Through the new rulemaking, EPA intends to restore the balance of state, tribal, and federal authorities while retaining elements that support efficient and effective implementation of section 401. Congress provided authority to states and tribes under CWA section 401 to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects. Under section 401, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into navigable waters unless the affected state or tribe certifies that the discharge is in compliance with the CWA and state law or waives certification. EPA intends to strengthen the authority of states and tribes to protect their vital water resources.

• *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.* On July 26, 2021, EPA announced its decision to conduct a rulemaking to potentially strengthen the Steam Electric Effluent Limitations Guidelines (ELGs) (40 CFR 423). This rulemaking process could result in more stringent ELGs for waste streams addressed in the 2020 final rule, as well as waste streams not covered in the 2020 rule. The former could address petitioners' claims in current litigation pending in the Fourth Circuit Court of Appeals. *Appalachian Voices* v. *EPA,* No. 20–2187 (4th Cir.). EPA revised the Steam Electric ELGs in 2015 and 2020.

• *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. With this action, EPA intends to develop a proposed national primary drinking water regulation for PFOA and PFOS, and, as appropriate, take final action. Additionally, EPA will continue to consider other PFAS as part of this action.

• *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). Consistent with the directives of Executive Order 13990, EPA is currently considering revising this rulemaking. EPA will complete its review of the rule by December 2021 in accordance with those directives and informed by a robust stakeholder engagement process, including hearing from low-income people and communities of color who are disproportionately affected by lead contamination. 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.''

• *Cybersecurity in Public Water Systems.* EPA is evaluating regulatory approaches to ensure improved cybersecurity at public water systems. EPA plans to offer separate guidance, training, and technical assistance to states and public water systems on cybersecurity. This action is expected to provide regulatory clarity and certainty and promote the adoption of cybersecurity measures by public water systems.

• *Federal Baseline Water Quality Standards for Indian Reservations.* EPA is developing a proposed rule to establish tribal baseline water quality standards (WQS) for waters on Indian reservations that do not have WQS under the CWA. The development of this rule will help advance President Biden's commitment to strengthening the nation-to-nation relationships with Indian Country. Currently, less than 20 percent of reservations have EPA-approved tribal WQS. Promulgating baseline WQS would address this longstanding gap and 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 would include designated uses, water quality criteria to protect those uses, and antidegradation policies to protect high quality waters. EPA has consulted with tribes and will continue to do so.

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 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'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.

• *Designation of Perfluorooctanoic and Perfluorooctanesulfonic Acids as Hazardous Substances.* EPA issued a PFAS Action Plan on February 14, 2019, responding to extensive public interest and input. The plan announced that EPA will begin the steps necessary to propose designating PFOA and PFOS as hazardous substances through one of the available statutory mechanisms in section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA, commonly known as Superfund, provides EPA with enforcement authority and establishes liability for releases or threatened releases of hazardous substances. 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 release. Moreover, designating PFOS and PFOA as hazardous substances under CERCLA would expand EPA's authority to investigate or respond to a release, and, thereby, reduce harm or risk to human health, welfare, and the environment.

• *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues from Electric Utilities.* EPA is planning to amend the existing regulations in 40 CFR part 257 on the disposal of Coal Combustion Residuals (CCR) under subtitle D of the Resource Conservation and Recovery Act, initially issued on April 17, 2015 (80 FR 21302). By implementing the April 2015 final rule, EPA is working to ensure that CCR disposal units that do not meet rule requirements, including unlined surface impoundments, cease receipt of waste and close in a way that protects public health and the environment. In addition, the Water Infrastructure Improvements for the Nation Act of 2016 established new statutory provisions applicable to CCR disposal units and authorized EPA, if provided specific appropriations, to develop a federal permit program in nonparticipating states for CCR units. EPA plans to finalize regulatory amendments to provide a federal CCR permitting program. Finally, EPA plans to propose a rule to regulate inactive CCR surface impoundments at inactive utilities, or ''legacy units.''

Accidental Release Prevention Requirements: Risk Management Program (RMP) under the Clean Air Act; Retrospection. In accordance with Executive Order 13990, EPA is revising the RMP regulations, which implement the requirements of CAA section 112(r)(7). RMP requires facilities that use extremely hazardous substances to develop a Risk Management Plan. In 2019, EPA finalized a reconsideration of the RMP regulations that eliminated many of the major incident prevention initiatives that had been established in 2017 amendments to the rule. To support the current revisions, EPA hosted listening sessions to provide interested stakeholders the opportunity to present information or comment on issues pertaining to these revisions.

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 FY2022:

Chemical Specific Risk Management Rulemakings under TSCA section 6(a). As amended in 2016, TSCA requires 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 evaluates high-priority chemicals for unreasonable risk. If, at the end of the risk evaluation process, EPA determines that a chemical presents an unreasonable risk to health or the environment, the Agency must immediately move the chemical to risk management action under TSCA. EPA is required to implement, via regulation, regulatory restrictions on the manufacture, processing, distribution, use or disposal of the chemical to eliminate the unreasonable risk. TSCA gives EPA a range of risk management options, including labeling, recordkeeping or notice requirements, actions to reduce human exposure or environmental release, or a ban of the chemical or of certain uses.

As announced on June 30, 2021, EPA reviewed the TSCA risk evaluations issued for the first 10 chemicals and as a result intends to implement policy changes to ensure the Agency is protecting human health and the environment under the requirements of TSCA. Upon review of the risk evaluations issued for Cyclic Aliphatic Bromide Cluster (HBCD) (RIN 2070–AK71), C.I. Pigment Violet 29 (PV29) (RIN 2070–AK87), and asbestos (part 1: Chrysotile asbestos) (RIN 2070–AK86), EPA currently believes these risk evaluations are likely sufficient to inform the risk management approaches being considered and that these approaches will be protective; therefore, the Agency does not think it needs to conduct any additional technical analysis that would amend the risk evaluation. However, EPA does intend to reissue individual chemical risk determinations that amend the approach to personal protective equipment (PPE) and include a whole chemical risk determination for HBCD (RIN 2070–AK71) and PV29 (RIN 2070–AK87) and, during part 2 of the risk evaluation for asbestos. The Agency is also working expeditiously on risk management and believes the proposed rules for HBCD (RIN 2070–AK71) and asbestos (part 1: Chrysotile asbestos) (RIN 2070–AK86)

will likely be the first of the 10 to be ready for release in FY2022.

• *Modification to the Minimum Risk Pesticide Listing Program.* Under FIFRA section 25(b), EPA has determined that certain ''minimum risk pesticides'' pose little to no risk to human health or the environment and has exempted them from registration and other requirements under FIFRA. In 1996, EPA created a regulatory list of minimum risk active and inert ingredients in 40 CFR 152.25. Such exemption reduces the cost and regulatory burdens on businesses and the public for those pesticides deemed to pose little or no risk and allows EPA to focus our resources on pesticides that pose greater risk to humans and the environment. EPA is considering streamlining the petition process and revising how the Agency evaluates the potential minimum risk active and inert substances, factors used in classes of exemptions, state implementation of the minimum risk program, and the need for any future exemptions or modifications to current exemptions. On April 8, 2021 (86 FR 18232), EPA issued an advance notice of proposed rulemaking to solicit public input that it is considering in developing a proposed rule that the Agency intends to issue in FY2022.

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

144. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations

Priority: Other Significant.
Legal Authority: 42 U.S.C. 7412 Clean Air Act; 42 U.S.C. 7607(d)(7)(B)
CFR Citation: 40 CFR 63.
Legal Deadline: None.
Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide Commercial Sterilization and Fumigation Operations were finalized in December 1994 (59 FR 62585). The standards require existing and new major sources to control emissions to the level achievable by the maximum achievable control technology (MACT) and require existing and new area sources to control emissions using generally available control technology (GACT). 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 and also assess potential updates to the rule. To aid in this effort, EPA issued an advance notice of proposed rulemaking (ANPRM) that solicited comment from stakeholders and undertook a Small Business Advocacy Review (SBAR) panel, which is needed when there is the potential for significant economic impacts to small businesses from any regulatory actions being considered. EPA is also planning to undertake community outreach as part of the development of this action.

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	06/00/22	
Final Rule	10/00/22	

Regulatory Flexibility Analysis Required: Yes.
Small Entities Affected: Businesses.
Government Levels Affected: None.
Additional Information:
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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RIN: 2060–AU37

EPA—OAR

145. Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards

Priority: Economically Significant. Major under 5 U.S.C. 801.
Unfunded Mandates: Undetermined.
Legal Authority: 42 U.S.C. 7414 *et seq.* Clean Air Act
CFR Citation: 40 CFR 86.
Legal Deadline: None.
Abstract: Heavy-duty engines have been subject to emission standards for criteria pollutants, including particulate matter (PM), hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X), for nearly half a century; however, current data suggest that the

existing standards do not ensure full, in-use emission control. In particular, in-use engine NO_X emission levels from heavy-duty vehicles can be significantly higher than their certified values under certain conditions. NO_X emissions are major precursors of ozone and significant contributors to secondary $PM_{2.5}$ formation. Ozone and ambient $PM_{2.5}$ concentrations continue to be a nationwide health and air quality issue. Reducing NO_X emissions from on-highway, heavy-duty trucks and buses is an important component of improving air quality nationwide and reducing public health and welfare effects associated with these pollutants, especially for vulnerable populations and in highly impacted regions. This action will evaluate data on current NO_X emissions from heavy-duty vehicles and engines, and options available to improve control of criteria pollutant emissions through revised emissions standards. Additionally, this action will contain targeted greenhouse gas (GHG) reductions and evaluate ways to streamline existing requirements. This rulemaking will address significant public health and environmental justice concerns caused by pollution from internal combustion engines while supporting early introduction of zero emission technologies.

Statement of Need: This action follows petitions for a rulemaking on this issue from over 20 organizations including state and local air agencies from across the country.

Summary of Legal Basis: CAA section 202(a).

Alternatives: EPA may request comment to address alternative options in the proposed rule.

Anticipated Cost and Benefits: Updating these standards will result in NO_X reductions from mobile sources and could be one important way that allows areas across the U.S. to meet National Ambient Air Quality Standards for ozone and particulate matter. Updating the standards will also offer opportunities to reduce regulatory burden through smarter program design.

Risks: EPA will evaluate the risks of this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	01/21/20	85 FR 3306
NPRM	01/00/22	
Final Rule	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

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.

Additional Information:

Sectors Affected: 11 Agriculture, Forestry, Fishing and Hunting; 211112 Natural Gas Liquid Extraction; 324110 Petroleum Refineries; 325110 Petrochemical Manufacturing; 325193 Ethyl Alcohol Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 333618 Other Engine Equipment Manufacturing; 335312 Motor and Generator Manufacturing; 336111 Automobile Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 336120 Heavy Duty Truck Manufacturing; 336211 Motor Vehicle Body Manufacturing; 336213 Motor Home Manufacturing; 336311 Carburetor, Piston, Piston Ring, and Valve Manufacturing; 336312 Gasoline Engine and Engine Parts Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 423110 Automobile and Other Motor Vehicle Merchant Wholesalers; 424690 Other Chemical and Allied Products Merchant Wholesalers; 424710 Petroleum Bulk Stations and Terminals; 486910 Pipeline Transportation of Refined Petroleum Products; 493130 Farm Product Warehousing and Storage; 811111 General Automotive Repair; 811112 Automotive Exhaust System Repair; 811198 All Other Automotive Repair and Maintenance.

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RIN: 2060–AU41

EPA—OAR

146. Amendments to the NSPS for GHG Emissions From New, Modified, Reconstructed Stationary Sources: EGUS

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 7411 Clean Air Act

CFR Citation: 40 CFR 60 TTTT.

Legal Deadline: None.

Abstract: On October 23, 2015, the EPA finalized Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units, found at 40 CFR part 60, subpart TTTT. On December 20, 2018, the EPA proposed to revise the standards of performance in 40 CFR part 60, subpart TTTT. The EPA proposed to amend the previous determination that the best system of emission reduction (BSER) for newly constructed coal-fired steam generating units (*i.e.,* EGUs) is partial carbon capture and storage, and replace it with a determination that BSER for this source category is the most efficient demonstrated steam cycle (*e.g.,* supercritical steam conditions for large units and subcritical steam conditions for small units) in combination with the best operating practices. The EPA is undertaking a comprehensive review of the NSPS for greenhouse gas emissions from EGUs, including a review of all aspects of the 2018 proposed amendments and requirements in the 2015 Rule that the Agency did not propose to amend in the 2018 proposal.

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

Anticipated Cost and Benefits: Undetermined.

Risks: Undetermined.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	
Final Rule	06/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

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.

Additional Information:

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Related RIN: Related to 2060–AT56.

RIN: 2060–AV09

EPA—OAR

147. Emission Guidelines for Greenhouse Gas Emissions From Fossil Fuel-Fired Existing Electric Generating Units

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 7411 Clean Air Act

CFR Citation: 40 CFR 60 UUUU.

Legal Deadline: None.

Abstract: On January 19, 2021, the D.C. Circuit Court issued an opinion vacating the Affordable Clean Energy Rule (found at 40 CFR part 60, subpart UUUUa)—the previously applicable emission guidelines for greenhouse gas (GHG) emissions from existing electric generating units (*i.e.* EGUs). The EPA is working on a new set of emission guidelines for states to follow in submitting state plans to establish and implement standards of performance for greenhouse gas emissions from existing fossil fuel-fired EGUs.

Statement of Need: There are no EPA regulations on the books for greenhouse gases from existing fossil-fuel fired electric generating units. Previous regulations of this nature have either been vacated or repealed prior to implementation.

Summary of Legal Basis: Clean Air Act section 111(d) provides the legal framework for establishing greenhouse gas emission standards for existing electric generating units.

Alternatives: There are no alternatives at this time.

Anticipated Cost and Benefits: EPA is still evaluating the scope and associated costs, benefits and reductions with a prospective rule.

Risks: EPA is still evaluating the scope and risks with a prospective rule.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	
Final Rule	07/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, State, Tribal.

Federalism: Undetermined.

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:

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RIN: 2060–AV10

EPA—OAR

148. Renewable Fuel Standard (RFS) Program: RFS Annual Rules

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7414 *et seq.* Clean Air Act

CFR Citation: 40 CFR 80.

Legal Deadline: Final, Statutory, November 30, 2021, The Energy Independence and Security Act of 2007 (EISA 2007) requires the RFS volumes be finalized by November 30th of the year preceding the compliance year.

Abstract: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to gasoline and diesel transportation fuel.

Statement of Need: The Clean Air Act requires EPA to promulgate regulations that specify the annual volume requirements for renewable fuels under the Renewable Fuel Standard (RFS) program. The RFS program was created under the Energy Independence and Security Act of 2007 to ''move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas capture and storage options, and to improve the energy performance of the Federal Government.''

Summary of Legal Basis: CAA section 211(o).

Alternatives: EPA is considering alternative volume standards in the development of the proposal, including a response to the D.C. Circuit remand of the rule establishing the RFS volumes for 2016. We intend to continue to consider alternatives as we develop the proposed rule.

Anticipated Cost and Benefits: Anticipated costs will be developed for the proposed rule. Costs and benefits of this rulemaking account for the nature of the program and the nested structure of the volume requirements. An updated estimate of the costs, based on a number of illustrative assumptions, will be provided in the proposed rule.

Risks: Environmental and resource impacts of the RFS program are primarily addressed under another section of the CAA (Section 204). EPA released an updated report to congress on June 29, 2018. More information on this report can be found at: *https://cfpub.epa.gov/si/si_public_record_Report.cfm?dirEntryId=341491*.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	
Final Rule	02/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Additional Information:

Sectors Affected: 325199 All Other Basic Organic Chemical Manufacturing; 325193 Ethyl Alcohol Manufacturing; 221210 Natural Gas Distribution; 111120 Oilseed (except Soybean) Farming; 424710 Petroleum Bulk Stations and Terminals; 324110 Petroleum Refineries; 424720 Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).

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Related RIN: Related to 2060–AU82.

RIN: 2060–AV11

EPA—OAR

149. NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding

Priority: Other Significant.
Legal Authority: 42 U.S.C. 7412 Clean Air Act; 42 U.S.C. 7607(d)(7)(B)
CFR Citation: 40 CFR 63.
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 will review the May 22, 2020 final action and, under this action, will take appropriate action resulting from its review of the May 2020 finding that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under Clean Air Act section 112. Results of EPA's review of the May 2020 RTR will be presented in a separate action (RIN 2060–AV53).
Statement of Need: As directed by Executive Order 13990, EPA has completed its review of the May 2020 finding that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under Clean Air Act section 112. EPA will issue the results of the review in a notice of proposed rulemaking and will solicit comment on the resulting finding.
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: Two bases for the appropriate and necessary determination, one preferred and one alternative, are put forth in the proposed rulemaking.
Anticipated Cost and Benefits: There are no anticipated costs or benefits because there are no regulatory amendments or impacts associated with review of the appropriate and necessary finding.
Risks: There are no anticipated risks because there are no regulatory amendments or impacts associated with review of the appropriate and necessary finding.
Timetable:

Action	Date	FR Cite
NPRM	11/00/21	
Final Rule	09/00/22	

Regulatory Flexibility Analysis Required: Undetermined.
Government Levels Affected: None.
Additional Information: EPA–HQ–OAR–2018–0794.
Sectors Affected: 921150 American Indian and Alaska Native Tribal Governments; 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation.
URL For More Information: ttps://www.epa.gov/mats/regulatory-actions-final-mercury-and-air-toxics-standards-mats-power-plants.
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Related RIN: Related to 2060–AT99.
RIN: 2060–AV12

EPA—OAR

150. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review

Priority: Economically Significant. Major under 5 U.S.C. 801.
Legal Authority: 42 U.S.C. 7411
CFR Citation: 40 CFR 60; 40 CFR 60 subpart OOOOa.
Legal Deadline: None.
Abstract: On January 20, 2021, President Joe Biden issued an Executive Order titled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' which directs the EPA to take certain actions by September 2021 to reduce methane and volatile organic compound (VOC) emissions in the oil and natural gas sector. Specifically, the Executive Order directs the EPA to review the new source performance standards (NSPS) issued in 2020 for the oil and gas sector and, as appropriate and consistent with applicable law, consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the NSPS. The Executive Order further directs the EPA to consider proposing (1) new regulations to establish comprehensive NSPS for methane and VOC emissions and (2) new regulations to establish emission guidelines for methane emissions from existing operations in the oil and gas sector, including from the exploration and production, transmission, processing, and storage segments. The purpose of this action is to review the existing NSPS and propose new standards as necessary to meet the directives set forth in the Executive Order, as well as to propose new emission guidelines for existing sources in the oil and gas sector.
Statement of Need: Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis''. The Executive Order directs the EPA to consider proposing, by September 2021, a rulemaking to reduce methane emissions in the Oil and Natural Gas source category by suspending, revising, or rescinding previously issued new source performance standards. It also instructs the EPA to consider proposing new regulations to establish comprehensive standards of performance and emission guidelines for methane and volatile organic

compound (VOC) emissions from existing operations in the oil and natural gas sector, including the exploration and production, processing, transmission and storage segments.

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: EPA is still evaluating the scope and associated costs, benefits and reductions associated with the forthcoming proposed rules.

Risks: EPA is still evaluating the scope and risks associated with the forthcoming proposed rules.

Timetable:

Action	Date	FR Cite
NPRM	11/15/21	86 FR 63110
NPRM Comment Period End.	01/14/22	
Final Rule	10/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Additional Information:

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RIN: 2060–AV16

EPA—OAR

151. Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

Priority: Other Significant.

Unfunded Mandates: Undetermined.

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

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, will publish for comment a notice of proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

Statement of Need: The EPA will issue 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: 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 anticipated costs and benefits of this action are to be determined.

Risks: The risks of this action are to be determined.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	
Final Rule	06/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: Undetermined.

Additional Information:

Agency Contact: Elineth Torres, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D205–02, Research Triangle Park, NC 27709, *Phone:* 919 541–4347, *Email: torres.elineth@epa.gov*.

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Related RIN: Related to 2060–AM75.

RIN: 2060–AV20

EPA—OAR

152. • Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

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

CFR Citation: 40 CFR 610.

Legal Deadline: None.

Abstract: EPA is considering a rule that will in part respond to petitions granted under subsection (i) of the American Innovation and Manufacturing (AIM) Act of 2020, enacted on December 27, 2020. Specifically, EPA is considering a rule restricting, fully, partially, or on a graduated schedule, the use of HFCs in sectors or subsectors including the refrigeration, air conditioning, aerosol, and foam sectors, and establishing recordkeeping and reporting requirements, and addressing other related elements of the AIM Act.

Statement of Need: This rule is required to meet the statutory provisions of subsection (i) 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 (i) of the AIM Act provides that a person may petition EPA to promulgate a rule for the restriction on use of a regulated substance in a sector or subsector. The statute requires EPA to grant or deny a petition under not later than 180 days after the date of receipt of the petition. If EPA grants a petition under subsection (i), then the statute requires EPA to promulgate a final rule not later than two years after the date on which the EPA grants the petition. In carrying out a rulemaking or making a determination to grant or deny a petition, the statute requires EPA, to the extent practicable, to take into account specified factors.

Alternatives: The alternatives for establishing a subsection (i) rule are whether to restrict, fully, partially, or on a graduated schedule, the use of HFCs in sectors or subsectors.

Anticipated Cost and Benefits: The Agency will prepare a Regulatory Impact Analysis (RIA) to provide the public with estimated potential costs and benefits of this action.

Risks: EPA is still evaluating the scope and risks associated with a prospective rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	
Final Rule	04/00/23	

Regulatory Flexibility Analysis Required: 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.

Additional Information:

Agency Contact: Joshua Shodeinde, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–7037, *Email: shodeinde.joshua@epa.gov.*

RIN: 2060–AV46

EPA—OAR

153. • Review of the National Ambient Air Quality Standards for Particulate Matter

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 7414 *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 review of the decision to retain the PM NAAQS. Based on that review, EPA is undertaking a rulemaking to reconsider the December 18, 2020 decision 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 intends to develop an updated Integrated Science Assessment (ISA) and revised policy assessment to take into account the most up-to-date science on public health impacts of PM, and to engage with the Clean Air Scientific Advisory Committee (CASAC) and a newly constituted expert PM panel.

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: 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. Accordingly, 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.

Risks: The reconsideration will build on the review completed in 2020, which included the preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, and also 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 will prepare an updated Policy Assessment and a Supplement to the Integrated Science Assessment, which will be reviewed at a public meeting by the CASAC. These documents will inform the Administrator's proposed decisions on whether to revise the PM NAAQS, and will take into consideration these documents, CASAC advice, and public comment on the proposed decision.

Timetable:

Action	Date	FR Cite
NPRM	08/00/22	
Final Rule	03/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Federalism: Undetermined.

Additional Information:

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RIN: 2060–AV52

EPA—OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSPP)

Proposed Rule Stage

154. Pesticides; Modification to the Minimum Risk Pesticide Listing Program and Other Exemptions Under FIFRA Section 25(b)

Priority: Other Significant.

Legal Authority: 7 U.S.C. 136(w) Federal Insecticide Fungicide and Rodenticide Act

CFR Citation: 40 CFR 152.

Legal Deadline: None.

Abstract: Under section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA has determined that certain ''minimum risk pesticides'' pose little to no risk to human health or the environment, and has exempted them from registration and other requirements under FIFRA. In 1996, EPA created a regulatory list of minimum risk active and inert ingredients in 40 CFR 152.25. Such an exemption reduces the cost and regulatory burdens on businesses and the public for those pesticides deemed to pose little or no risk, and allows EPA to focus our resources on pesticides that pose greater risk to humans and the environment. In April 2021, EPA issued an advance notice of proposed rulemaking (ANPRM) soliciting public comments and suggestions about the petition process for exemptions regarding pesticides from registration and other requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), where the pesticides are determined to be of a character unnecessary to be subject to regulation under FIFRA. The Agency is considering streamlining the petition process and revisions to how the Agency evaluates the potential minimum risk active and inert substances, factors used in classes of exemptions, state implementation of the minimum risk program and the need for any future exemptions or modifications to current exemptions. EPA is also sought comment on whether the Agency should consider amending existing exemptions or adding new classes of pesticidal substances for exemption, such as peat when used in septic filtration systems. EPA is currently considering the public input received and development of a proposed rule.

Statement of Need: This rulemaking effort is intended to reduce regulatory burdens and focus EPA resources on pesticide products that have risks to public health or the environment by streamlining the petition process used to seek such exemptions; revising how the Agency evaluates the potential minimum risk active and inert substances, factors used in classes of exemptions and state implementation of the minimum risk program; and considering the need for any future exemptions or modifications to current exemptions.

Summary of Legal Basis: Exemptions to the requirements of FIFRA are issued under the authority of FIFRA section 25(b). Eligible products may be exempt from, among other things, registration requirements under FIFRA section 3.

Alternatives: In considering a streamlined petition process and other improvements, EPA intends to identify and evaluate available alternatives that facilitate the effective and efficient identification of pesticides products that could be exempt from registration and other requirements under FIFRA.

Anticipated Cost and Benefits: EPA intends to consider the costs and benefits of proposed improvements during the development of the proposed rule.

Risks: This procedural rule is not intended to address identified risks, and, by definition, will only involve pesticides products identified as having minimal risk.

Timetable:

Action	Date	FR Cite
ANPRM	04/08/21	86 FR 18232
NPRM	08/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information:

Sectors Affected: 624410 Child Day Care Services; 424210 Drugs and Druggists' Sundries Merchant Wholesalers; 561710 Exterminating and Pest Control Services; 424910 Farm Supplies Merchant Wholesalers; 561730 Landscaping Services; 423120 Motor Vehicle Supplies and New Parts Merchant Wholesalers; 444220 Nursery, Garden Center, and Farm Supply Stores; 311119 Other Animal Food Manufacturing; 444210 Outdoor Power Equipment Stores; 325320 Pesticide and Other Agricultural Chemical Manufacturing; 926150 Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors; 562991 Septic Tank and Related Services; 221320 Sewage Treatment Facilities; 238910 Site Preparation Contractors; 325611 Soap and Other Detergent Manufacturing; 611620 Sports and Recreation Instruction; 445110 Supermarkets and Other Grocery (except Convenience) Stores.

URL For More Information: https://www.epa.gov/minimum-risk-pesticides.

Agency Contact: Sara Kemme, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7101M, Washington, DC 20460, *Phone:* 202 566–1217, *Email: kemme.sara@epa.gov.*

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RIN: 2070–AK55

EPA—OCSPP

155. Cyclic Aliphatic Bromide Cluster (HBCD); Rulemaking Under TSCA Section 6(a)

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, September 15, 2021, TSCA section 6(c).

Final, Statutory, September 15, 2022, TSCA section 6(c).

Abstract: 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. Following a risk evaluation for cyclic aliphatic bromide cluster (HBCD) carried out under the authority of the TSCA section 6, EPA initiated rulemaking to address unreasonable risks of injury to health and the environment identified in the final risk evaluation. EPA's risk evaluation for HBCD, describing the conditions of use and presenting EPA's determinations of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0237, with additional information in docket EPA–HQ–OPPT–2016–0735.

Statement of Need: This rulemaking is needed to address the unreasonable risk of the Cyclic Aliphatic Bromide Cluster (or, ''HBCD'') identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of HBCD 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; (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: There are no non-regulatory alternatives to this rulemaking. 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: As EPA determined in the TSCA section 6(b) risk evaluation, HBCD presents unreasonable risks to human health and the environment. EPA must issue regulations 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	09/00/22	
Final Rule	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Additional Information: EPA–HQ–OPPT–2020–0548.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-cyclic-aliphatic-bromide-cluster-hbcd.

Agency Contact: Sue Slotnick, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460, *Phone:* 202 566–1973, *Email: slotnick.sue@epa.gov.*

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RIN: 2070–AK71

EPA—OCSPP

156. Asbestos (Part 1: Chrysotile Asbestos); Rulemaking Under TSCA Section 6(a)

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 28, 2021, TSCA sec. 6(c).

Final, Statutory, December 28, 2022, TSCA sec. 6(c).

Abstract: 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. Following a risk evaluation for chrysotile asbestos carried out under the authority of TSCA section 6, EPA initiated rulemaking to address unreasonable risks of injury to health identified in the final risk evaluation. EPA's risk evaluation for chrysotile asbestos, describing the conditions of use and presenting EPA's determinations of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0501, with additional information in docket EPA–HQ–OPPT–2016–0736.

Statement of Need: This rulemaking is needed to address the unreasonable risks of chrysotile asbestos that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of chrysotile asbestos, 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 section 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: There are no non-regulatory alternatives to this rulemaking. 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: As EPA determined in the TSCA section 6(b) risk evaluation, chrysotile asbestos present unreasonable risks to human health. EPA must issue regulations 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	04/00/22	
Final Rule	11/00/23	

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.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-asbestos-part-1-chrysotile-asbestos.

Agency Contact: Robert Courtnage, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460, *Phone:* 202 566–1081, *Email: courtnage.robert@epa.gov.*

RIN: 2070–AK86

EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

Proposed Rule Stage

157. Designating PFOA and PFOS as CERCLA Hazardous Substances

Priority: Other Significant.

Legal Authority: 42 U.S.C. 9602

CFR Citation: 40 CFR 302.

Legal Deadline: None.

Abstract: On February 14, 2019, the Environmental Protection Agency (EPA) issued a PFAS Action Plan, which responded to extensive public interest and input the agency had received and represented the first time EPA has built a multi-media, multi-program, national communication and research plan to address an emerging environmental challenge like PFAS. This Plan was updated on February 26, 2020. EPA's Action Plan identified both short-term solutions for addressing these chemicals and long-term strategies that may provide the tools and technologies states, tribes, and local communities requested to provide clean and safe drinking water to their residents and to address PFAS at the source before it gets into the water. The designation of PFOA and PFOS as CERCLA hazardous substances was one of several actions mentioned in the PFAS Action Plan. EPA is undertaking a rulemaking effort to designate PFOA and PFOS as CERCLA hazardous substances. 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.

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	03/00/22	
Final Rule	To Be Determined	

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.

Agency Contact: Michelle Schutz, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 703 603–8708, *Email: schutz.michelle@epa.gov.*

RIN: 2050–AH09

EPA—OLEM

158. Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments

Priority: Other Significant.

Legal Authority: 42 U.S.C. 6906; 42 U.S.C. 6907; 42 U.S.C. 6912(a); 42 U.S.C. 6944; 42 U.S.C. 6945(c)

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. The EPA is developing regulations to implement this part of the court decision for inactive CCR surface impoundments at inactive utilities, or ''legacy units''. This proposal may include adding a new definition for legacy CCR surface impoundments. The EPA may also propose to require such legacy CCR surface impoundments to follow existing regulatory requirements for fugitive dust, groundwater monitoring, and closure, or other technical requirements.

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	09/00/22	
Final Rule	09/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Additional Information: Docket #: 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

159. Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Retrospection

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 7412 Clean Air Act

CFR Citation: 40 CFR 68.

Legal Deadline: None.

Abstract: The Environmental Protection Agency (EPA) is considering revising the Risk Management Program (RMP) regulations, which implement the requirements of section 112(r)(7) of the 1990 Clean Air Act amendments. The RMP requires facilities that use listed extremely hazardous substances above specified threshold quantities to develop a Risk Management Plan. The EPA is reviewing the RMP rule in accordance with Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, which directs federal agencies to review existing regulations and take action to address the Administration's priorities, including bolstering resilience to the impacts of climate change and prioritizing environmental justice.

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	09/00/22	
Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information:

Sectors Affected: 42469 Other Chemical and Allied Products Merchant Wholesalers; 22131 Water Supply and Irrigation Systems; 49313 Farm Product Warehousing and Storage; 11511 Support Activities for Crop Production; 221112 Fossil Fuel Electric Power Generation; 31152 Ice Cream and Frozen Dessert Manufacturing; 311612 Meat Processed from Carcasses; 311411 Frozen Fruit, Juice, and Vegetable Manufacturing; 49311 General Warehousing and Storage; 42491 Farm Supplies Merchant Wholesalers; 49312 Refrigerated Warehousing and Storage; 32519 Other Basic Organic Chemical Manufacturing; 211112 Natural Gas Liquid Extraction; 49319 Other Warehousing and Storage; 322 Paper Manufacturing; 22132 Sewage Treatment Facilities; 325 Chemical Manufacturing; 311511 Fluid Milk Manufacturing; 32411 Petroleum Refineries; 311615 Poultry Processing; 42471 Petroleum Bulk Stations and Terminals; 311 Food Manufacturing.

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RIN: 2050–AH22

EPA—OFFICE OF WATER (OW)

Proposed Rule Stage

160. Federal Baseline Water Quality Standards for Indian Reservations

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1313(c)(4)(B)

CFR Citation: 40 CFR 131.

Legal Deadline: None.

Abstract: EPA is developing a proposed rule to establish tribal baseline water quality standards (WQS) for waters on Indian reservations that do not have WQS under the Clean Water Act (CWA). Less than 20 percent of reservations have EPA-approved tribal WQS. Promulgating baseline WQS would address this longstanding gap and provide more scientific rigor and regulatory certainty to National Pollutant Discharge Elimination System (NPDES) permits for discharges to these waters. Consistent with EPA regulations, the baseline WQS would include designated uses, water quality criteria to protect those uses, and antidegradation policies to protect high quality waters. EPA initiated tribal consultation on June 15th, 2021 and will be engaged in coordination and consultation with tribes throughout the consultation period, which ends September 13th, 2021. EPA welcomes consultation with tribes both during and after the consultation period. EPA plans to propose this rule by early 2022 and to finalize by early 2023.

Statement of Need: The federal government has recognized 574 tribes. More than 300 of these tribes have reservation lands such as formal reservations, Pueblos, and informal reservations (*i.e.,* lands held in trust by the United States for tribal governments that are not designated as formal reservations) and are eligible to apply to administer a WQS program. Only 75 tribes, out of over 300 tribes with reservations, currently have such TAS authorization to administer a WQS program. Of these 75 tribes, only 46 tribes to date have adopted WQS and submitted them to EPA for review and approval under the 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. This lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a longstanding gap in human health and environmental protections, 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. In Indian country waters where tribes are not yet authorized to establish WQS and where states lack jurisdiction to do the same, EPA is responsible for implementing section 303(c) of the CWA. 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.

Alternatives: To be determined.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
ANPRM	09/29/16	81 FR 66900
NPRM	04/00/22	
Final Rule	02/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, State, Tribal.

Additional Information:

URL For More Information: https://www.epa.gov/wqs-tech/advance-notice-proposed-rulemaking-federal-baseline-water-quality-standards-indian.

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.*

RIN: 2040–AF62

EPA—OW

161. Clean Water Act Section 401: Water Quality Certification

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 1151

CFR Citation: 40 CFR 121.1.

Legal Deadline: None.

Abstract: Clean Water Act (CWA) section 401 provides States and Tribes with a powerful tool to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects. Under section 401, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into navigable waters, unless the State or Tribe where the discharge would originate either issues a section 401 water quality certification finding ''that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307'' of the CWA, or certification is waived. EPA promulgated implementing regulations for water quality certification prior to the passage of the CWA in 1972, which created section 401. In June 2020, EPA revised these regulations, titled ''Clean Water Act section 401 Certification Rule.'' In accordance with Executive Order 13990, the EPA has completed its review of the June 2020 regulation and determined that it will propose revisions to the rule through a new rulemaking effort.

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
Notice	06/02/21	86 FR 29541
NPRM	03/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information:

Agency Contact: Lauren Kasparek, Environmental Protection Agency, Office of Water, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–3351, *Email: kasparek.lauren@epa.gov.*

Related RIN: Related to 2040–AF86.

RIN: 2040–AG12

EPA—OW

162. Revised Definition of ''Waters of the United States''—Rule 1

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 1251

CFR Citation: 40 CFR 120.1.

Legal Deadline: None.

Abstract: In April 2020, the EPA and the Department of the Army (the agencies) published the Navigable Waters Protection Rule (NWPR) that revised the previously codified definition of ''waters of the United States'' (85 FR 22250, April 21, 2020). The agencies are now initiating this new rulemaking process that restores the regulations in place prior to the 2015 ''Clean Water Rule: Definition of 'Waters of the United States' '' (80 FR 37054, June 29, 2015), updated to be consistent with relevant Supreme Court decisions. The agencies intend to consider further revisions in a second rule in light of additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

Statement of Need: In 2015, the Environmental Protection Agency and the Department of the Army (''the agencies'') published the ''Clean Water Rule: Definition of 'Waters of the United States' '' (80 FR 37054, June 29, 2015). In April 2020, the agencies published the Navigable Waters Protection Rule (85 FR 22250, April 21, 2020). The agencies conducted a substantive re-evaluation of the definition of ''waters of the United States'' in accordance with the Executive Order 13990 and determined that they need to revise the definition to ensure the agencies listen to the science, protect the environment, ensure access to clean water, consider how climate change resiliency may be affected by the definition of waters of the United States, and to ensure environmental justice is prioritized in the rulemaking process.

Summary of Legal Basis: The Clean Water Act (33 U.S.C. 1251 *et seq.*).

Alternatives: To be determined.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information:

Sectors Affected: 11 Agriculture, Forestry, Fishing and Hunting; 112990 All Other Animal Production; 111998 All Other Miscellaneous Crop Farming; 111 Crop Production.

Agency Contact: Whitney Beck, Environmental Protection Agency, Office of Water, Mail Code 4504T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–2553, *Email: beck.whitney@epa.gov.*

Related RIN: Related to 2040–AF75.

RIN: 2040–AG13

EPA—OW

163. • Revised Definition of ''Waters of the United States''—Rule 2

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1251

CFR Citation: 40 CFR 120.1.

Legal Deadline: None.

Abstract: The EPA and the Department of the Army (the agencies'') intend to pursue a second rule defining ''Waters of the United States'' to consider further revisions to the agencies' first rule (RIN 2040–AG13) which proposes to restore the regulations in place prior to the 2015 ''Clean Water Rule: Definition of 'Waters of the United States' '' (80 FR 37054, June 29, 2015), updated to be consistent with relevant Supreme Court Decisions. This second rule proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

Statement of Need: The agencies intend to pursue a second rule defining waters of the United States to consider

further revisions to the agencies' first rule which proposes to restore the regulations in place prior to the 2015 WOTUS rule, updated to be consistent with relevant Supreme Court Decisions. This second rule proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule.

Summary of Legal Basis: The Clean Water Act (33 U.S.C. 1251 *et seq.*).

Alternatives: To be determined.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

Additional Information:

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RIN: 2040–AG19

EPA—OFFICE OF AIR AND RADIATION (OAR)

Final Rule Stage

164. Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7411 Clean Air Act; 42 U.S.C. 7401

CFR Citation: 40 CFR 85.1401; 40 CFR 86; 40 CFR 600.001.

Legal Deadline: None.

Abstract: 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 Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks (April 30, 2020). Based on the Agency's reevaluation, EPA will determine whether to revise the GHG standards for certain model years.

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 Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks (April 30, 2020).

Summary of Legal Basis: CAA section 202 (a).

Alternatives: EPA requested comment to address alternative options in the proposed rule.

Anticipated Cost and Benefits: Compliance with the standards would impose reasonable costs on manufacturers. The proposed revised standards would result in significant benefits for public health and welfare, primarily through substantial reductions in both GHG emissions and fuel consumption and associated fuel costs paid by drivers.

Risks: EPA will evaluate the risks of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	08/10/21	86 FR 43726
NPRM Comment Period End.	09/27/21	
Final Rule	12/00/21	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Additional Information: EPA–HQ–OAR–2021–0208.

Sectors Affected: 335312 Motor and Generator Manufacturing; 336111 Automobile Manufacturing; 811111 General Automotive Repair; 811112 Automotive Exhaust System Repair; 811198 All Other Automotive Repair and Maintenance.

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RIN: 2060–AV13

EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

Final Rule Stage

165. Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program

Priority: Other Significant.

Legal Authority: 42 U.S.C. 6945

CFR Citation: 40 CFR 22; 40 CFR 124; 40 CFR 257.

Legal Deadline: None.

Abstract: The Water Infrastructure Improvements for the Nation (WIIN) Act established a new coal combustion residual (CCR) regulatory structure under which states may seek approval from the Environmental Protection Agency (EPA) to operate a permitting program that would regulate CCR facilities within their state; if approved, the state program would operate in lieu of the federal requirements. The WIIN Act requires that such state programs must ensure that facilities comply with either the federal regulations or with state requirements that the EPA has determined are ''at least as protective as'' the federal regulations. Furthermore, the WIIN Act established a requirement for the EPA to establish a federal permit program for the disposal of CCR in Indian Country and in ''nonparticipating'' states, contingent upon Congressional appropriations. In March 2018 (Pub. L. 115–141) and March 2019 (Pub. L. 116–6), Congress appropriated funding for federal CCR permitting. The final rule would establish a new federal permitting program for disposal of CCR. The potentially regulated universe is limited to facilities with CCR disposal units subject to regulation under 40 CFR part 257 subpart D, which are located in Indian Country and in nonparticipating states. Remaining CCR facilities would be regulated by an approved state program and would not be subject to federal permitting requirements.

Statement of Need: The Water Infrastructure Improvements for the Nation (WIIN) Act established a new CCR regulatory structure under which states may seek approval from the EPA to operate a permitting program that would operate in lieu of the federal requirements. Furthermore, the WIIN Act established a requirement for the EPA to establish a federal permit program for the disposal of CCR in Indian Country and in nonparticipating states, contingent upon Congressional appropriations. In March 2018, Congress appropriated funding for federal CCR permitting.

Summary of Legal Basis: No statutory or judicial deadlines apply to this rule. This 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 provided public notice and opportunity for comment on the proposal to establish a federal permit program. The proposal included procedures for issuing permits. Substantive requirements are addressed in the existing CCR regulations (40 CFR part 257 subpart D). Alternatives considered in the proposal included approaches to tiering initial application deadlines (*e.g.,* by risks presented due to unit stability or other factors, such as leaking units) and procedures for permit by rule or issuance of general permits as an alternative to individual permits.

Anticipated Cost and Benefits: Costs and benefits of the February 20, 2020 proposal were presented in the Regulatory Impact Analysis (RIA) supporting the proposed rule. The EPA estimated that the net effect of proposed revisions would result in an estimated annual cost of this proposal is a cost increase of approximately $136,312. This cost increase is composed of approximately $135,690 in annualized labor costs and $622 in capital or operation and maintenance costs.

Risks: The proposal to establish a federal CCR permit program is not expected to impact the overall risk conclusions discussed in the 2015 CCR Rule. The proposal would establish procedural requirements for issuance of permits would generally not establish substantive requirements affecting environmental risk.

Timetable:

Action	Date	FR Cite
NPRM	02/20/20	85 FR 9940
Final Rule	10/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, Tribal.

Additional Information: Docket #: EPA–HQ–OLEM–2019–0361.

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?D=EPA-HQ-OLEM-2019-0361.

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RIN: 2050–AH07

EPA—OLEM

166. Hazardous and Solid Waste Management System: Disposal of CCR; a Holistic Approach to Closure Part B: Implementation of Closure

Priority: Other Significant.

Legal Authority: 42 U.S.C. 6906; 42 U.S.C. 6907; 42 U.S.C. 6912(a); 42 U.S.C. 6944; 42 U.S.C. 6945(c)

CFR Citation: 40 CFR 257.

Legal Deadline: None.

Abstract: On April 17, 2015, the Environmental Protection Agency (EPA) 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. On October 15, 2018, the court issued its mandate, vacating certain provisions of the 2015 final rule. On March 3, 2020, the EPA proposed a number of revisions and flexibilities to the CCR regulations. In particular, the EPA proposed the following revisions: (1) Procedures to allow facilities to request approval to use an alternate liner for CCR surface impoundments; (2) Two co-proposed options to allow the use of CCR during unit closure; (3) An additional closure option for CCR units being closed by removal of CCR; and (4) Requirements for annual closure progress reports. The EPA has since taken final action on one of the four proposed issues. Specifically, on November 12, 2020, the EPA issued a final rule that would allow a limited number of facilities to demonstrate to the EPA that based on groundwater data and the design of a particular surface impoundment, the unit has and will continue to have no probability of adverse effects on human health and the environment. (This final rule was covered under RIN 2050–AH11. See ''Additional Information'' section.) The present rulemaking would consider taking final action on the remaining proposed issues.

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 Rule). On March 3, 2020, the EPA proposed a number of revisions to the CCR regulations, the last in a set of four planned actions to implement the Water Infrastructure Improvements for the Nation (WIIN) Act, respond to petitions, address litigation and apply lessons learned to ensure smoother implementation of the regulations.

Summary of Legal Basis: No statutory or judicial deadlines apply to this rule. This 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 provided public notice and opportunity for comment on these issues associated with the closure of CCR surface impoundments. Each of these issues is fairly narrow in scope and we have not identified any significant alternatives for analysis.

Anticipated Cost and Benefits: Costs and benefits of the March 3, 2020 proposed targeted changes were presented in the Regulatory Impact Analysis (RIA) supporting the proposed rule. EPA estimated that the net effect of proposed revisions (excluding the one issue that EPA finalized on November 12, 2020) to be an annualized cost savings of between $37 million and $129 million when discounting at 7%. The RIA also qualitatively describes the potential effects of the proposal on two categories of benefits from the 2015 CCR Rule.

Risks: Key benefits of the 2015 CCR Rule included the prevention of future catastrophic failures of CCR surface impoundments, the protection of groundwater from contamination, the reduction of dust in communities near CCR disposal units and increases in the beneficial use of CCR. The average annual monetized benefits of the 2015 CCR Rule were estimated to be $232 million per year using a seven percent discount rate. For reasons discussed in the March 3, 2020 proposal, the EPA was unable to quantify or monetize the proposed rule's incremental effect on human health and the environment using currently available data.

Timetable:

Action	Date	FR Cite
NPRM	03/03/20	85 FR 12456
Final Rule	09/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Additional Information: Docket #: EPA–HQ–OLEM–2019–0173. The action is split from 2050–AH11: Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration

for Unlined Surface Impoundments; Implementation of Closure. This action was split from 2050–AH11 after the March 3, 2020 NPRM (85 FR 12456) as two final rules would be developed based on the proposed rule. The November 12, 2020 final rule (85 FR 72506) mentioned in this abstract was covered under 2050–AH11.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation.

URL For More Information: https://www.epa.gov/coalash.

URL For Public Comments: https://www.regulatons.gov/docket?D=EPA-HQ-OLEM-2019-0173.

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RIN: 2050–AH18

EPA—OFFICE OF WATER (OW)

Final Rule Stage

167. • Cybersecurity in Public Water Systems

Priority: Other Significant.

Legal Authority: 5 U.S.C. 553(b)(3)(A)

CFR Citation: 40 CFR 142.16; 40 CFR 142.2.

Legal Deadline: None.

Abstract: EPA is evaluating regulatory approaches to ensure improved cybersecurity at public water systems. EPA plans to offer separate guidance, training, and technical assistance to states and public water systems on cybersecurity. This action will provide regulatory clarity and certainty and promote the adoption of cybersecurity measures by public water systems.

Statement of Need: A cyber-attack can degrade the ability of a public water system to produce and distribute safe drinking water. The risk of a cyber-attack can be reduced through the adoption of cybersecurity best practices by public water systems. Sanitary surveys, which states, tribes, or the EPA typically conduct every 3 to 5 years on all public water systems, should include an evaluation of cybersecurity to identify significant deficiencies. EPA recognizes, however, that many states currently do not assess cybersecurity practices during public water system sanitary surveys. This action is necessary to convey to states that EPA interprets existing regulations for public water system sanitary surveys as including the possible identification of significant deficiencies in cybersecurity practices.

Summary of Legal Basis: The Administrative Procedure Act exempts interpretive rules from its notice and comment requirements. 5 U.S.C. 553(b)(3)(A). The term is not defined in the APA, but the Attorney General's Manual on the APA, often considered to be akin to legislative history, describes them as ''rules or statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.''

Alternatives: Provide guidance to states, tribes, and EPA on evaluating cybersecurity practices during public water system sanitary surveys without issuing an interpretive rule.

Anticipated Cost and Benefits: This action is an interpretation of existing responsibilities under current regulations. It establishes no new regulatory requirements and, hence, has no regulatory costs or benefits.

Risks: The purpose of this action is to reduce the risks associated with cyber-attacks on public water systems. Because this action is not establishing new regulatory requirements, EPA has not quantified costs and benefits for it. Accordingly, EPA has not estimated the current level of risk or the possible reduction in risk due to this action.

Timetable:

Action	Date	FR Cite
Final Rule	04/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Undetermined.

Additional Information:

Sectors Affected: 924110 Administration of Air and Water Resource and Solid Waste Management Programs.

Agency Contact: Stephanie Flaharty, Environmental Protection Agency, Office of Water, 4601M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–5072, *Email: flaharty.stephanie@epa.gov*.

RIN: 2040–AG20

EPA—OW

Long-Term Actions

168. National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions

Priority: Other 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: None.

Abstract: The Environmental Protection Agency (EPA) published the final Lead and Copper Rule Revision (LCRR) on January 15, 2021. EPA is currently considering revising this rulemaking. This action is consistent with presidential directives issued on January 20, 2021, to the heads of Federal agencies to review certain regulations, including the LCRR (E.O. 13990). EPA will complete its review of the rule in accordance with those directives and conduct important consultations with affected parties. This review of the LCRR will be consistent with the policy aims set forth in Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government.

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	To Be Determined	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information:

Agency Contact: Stephanie Flaharty, Environmental Protection Agency, Office of Water, 4601M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–5072, *Email: flaharty.stephanie@epa.gov*.

Related RIN: Related to 2040–AF15, Related to 2040–AG15.

RIN: 2040–AG16

EPA—OW

169. Per- and Polyfluoroalkyl Substances (PFAS): Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) National Primary Drinking Water Regulation Rulemaking

Priority: Other 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 **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). With this action, EPA intends to develop a proposed national primary drinking water regulation for PFOA and PFOS, and as appropriate, take final action. Additionally, EPA will continue to consider other PFAS as part of this action.

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 judgement 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
NPRM	12/00/22	
Final Action	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: Undetermined.

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Additional Information:

Agency Contact: Stephanie Flaharty, Environmental Protection Agency, Office of Water, 4601M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–5072, *Email: flaharty.stephanie@epa.gov*.

RIN: 2040–AG18

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION (GSA)

Regulatory Plan—October 2021

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 providing State and local governments with law enforcement equipment, firefighting and rescue equipment, and disaster recovery products and services.

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.

Later in FY22, GSA expects to update the existing internal guidance and issue a new PBS Order following the release of an E.O. on Federal Sustainability which is likely to be issued in late October or early November.

Office of Government-Wide Policy

OGP sets Government-wide policy in the areas of personal and real property, mail, travel, 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 20 non-regulatory actions in the areas of Climate Risk Management, Resilience, and Adaptation; Environmental Justice; Greenhouse Gas (GHG) Reduction; Clean Energy; Energy Reduction; Water Reduction; Performance Contracting; Waste Reduction; Sustainable Buildings; and Electronics Stewardship & 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 Executive Order 14008 were provided in GSA's Executive Order 13990 90-day response; GSA Climate Change Risk Management Plan and GSA 2021 Sustainability Plan. More specifics will be known on the Sustainability Plan when feedback is obtained from the Council on Environmental Quality (CEQ) and Office of Management and Budget (OMB).

OGP's Office of Government wide Policy, Office of Asset and Transportation Management and Office of Acquisition Policy are prioritizing rulemaking focused on initiatives that:

- Tackle the climate change emergency.
- 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.

Office of Asset and Transportation Management

The Fall 2021 Unified Agenda consists of fourteen (14) active Office of Asset and Transportation Management (MA) agenda items, of which four (4) active actions are included in the Federal Travel Regulation (FTR) and ten (10) active actions are included in the Federal Management Regulation (FMR).

The Federal Travel Regulation (FTR) enumerates the travel and relocation policy for all title 5 Executive Agency employees. The Code of Federal Regulations (CFR) is available at *https://ecfr.federalregister.gov/.* Each version is updated as official changes are published in the **Federal Register** (FR).

The FTR is the regulation contained in title 41 of the CFR, chapters 300 through 304, that implements statutory requirements and Executive branch policies for travel by Federal civilian employees and others authorized to travel at Government expense. The FTR presents policies in a clear manner to both agencies and employees to assure that official travel is performed responsibly.

The Federal Management Regulation (FMR) establishes policy for Federal aircraft management, mail management, transportation, personal property, real property, and committee management.

MA Rulemaking That Tackles Climate Change

FTR Case 2020–301–1, Definition for ''Fuel'', Rental Car Policy Updates and Clarifications, replaces the word ''gasoline'' where appropriate and replaces it with the term ''fuel'' to acknowledge the use of alternative fuels, such as electricity.

FTR Case 2021–301–1, Removal Reservation of part 300–90-Telework Travel Expenses Test Programs and appendix E to chapter 301-Suggested Guidance for Conference Planning, supports sustainability by reducing the number of paper pages required for publication in the Code of Federal Regulations.

MA Rulemaking That Supports Equity and Underserved Communities

FTR Case 2020–302–01, Taxes on Relocation Expenses, Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) Eligibility, creates equity among all Federal Government employees by authorizing agencies to reimburse new hires and others previously not eligible for relocation benefits afforded to employees transferred in the interest of the Government.

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.

MA 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 (FSL) of III, IV, or V) in accordance with the Secure Federal LEASEs Act (Pub. L. 116–276).

Office of Acquisition Policy

The Fall 2021 Unified Agenda consists of nineteen (19) 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

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. 585. The GSAR implements contract clauses, solicitation provisions, and standard forms that control the relationship between GSA and contractors and prospective contractors.

MV Rulemaking That Promotes Economic Resilience

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 Department of Labor regulations at 29 CFR part 23.

MV Rulemaking That Supports Equity and Underserved Communities

GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules, will clarify the requirements for use of Federal Supply Schedules 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.

GSAR Case 2021–G529, Updates to References to Individuals with Disabilities, will provide more inclusive acquisition guidance for underserved communities by updating references from ''handicapped individuals'' to ''individuals with disabilities'', pursuant to Section 508 of the Rehabilitation Act.

Rulemaking That Supports National Security

GSAR Case 2016–G511, Contract Requirements for GSA Information Systems, will streamline and update requirements for contracts that involve GSA information systems. GSA's policies on cybersecurity and other information technology requirements have been previously issued and communicated by the Office of the Chief Information Officer through the GSA public website. By incorporating these requirements into the GSAR, the GSAR will provide centralized guidance to ensure consistent application across the organization.

GSAR Case 2020–G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions, will protect national security by prohibiting procurement from certain covered entities using covered equipment and services in lease acquisitions pursuant to Section 889 of the National Defense Authorization Act for Fiscal Year 2019. The regulatory changes will implement the Section 889 requirements in lease acquisitions by requiring inclusion of the related Federal Acquisition Regulation (FAR) provisions and clauses.

GSAR Case 2021–G522, Contract Requirements for High-Security Leased Space, will 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.

GSAR Case 2021–G527, Immediate and Highest-Level Owner for High-Security Leased Space, addresses the risks of foreign ownership of Government-leased real estate and requires the disclosure of immediate and highest-level ownership information for high-security space leased to accommodate a Federal agency.

Dated: September 8, 2021.

Name: Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

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 2018 Strategic Plan. The Agency's mission is to ''Lead an innovative and sustainable program of exploration with commercial and international partners to enable human expansion across the solar system and bring new knowledge and opportunities back to Earth. Support growth of the Nation's economy in space and aeronautics, increase understanding of the universe and our place in it, work with industry to improve America's aerospace technologies, and advance American leadership.'' The FY 2018 Strategic Plan (available at *https://www.nasa.gov/sites/default/files/atoms/files/nasa_2018_strategic_plan.pdf*) 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:* Address national challenges and catalyze economic growth.
- *Strategic Goal 4:* Optimize capabilities and operations.

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 CFR chapter 1 contains procurement regulations that apply to NASA and other Federal agencies. Pursuant to 41 U.S.C. 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 their several statutory authorities.

NASA is also mindful of the importance of international regulatory cooperation, consistent with domestic law and U.S. trade policy, as noted in Executive Order 13609, ''Promoting International Regulatory Cooperation'' (May 1, 2012). 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 has also 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 one priority in this agenda and a short summary is provided below.

Procedures for Implementing the National Environmental Policy Act (NEPA)

NASA is revising its policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) regulations. These proposed amendments would update procedures

contained in the Agency's current regulation at 14 CFR subpart 1216.3, Procedures for Implementing the National Environmental Policy Act, to incorporate updates based on the Agency's review of its Categorical Exclusions and streamline the NEPA process to better support NASA's evolving mission.

BILLING CODE 7510–13–P

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 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.

NARA's regulatory priority for fiscal year 2022 is included in The Regulatory Plan. This priority is a multi-year project to update our entire set of records management regulations (36 CFR 1220–1239) to reflect an overall change for the Federal Government from paper to electronic records, account for updates in processes and technologies, and streamline these regulations.

Changes to 44 U.S.C. 3302 require NARA to issue standards for digital reproductions of records with an eye toward allowing agencies to then dispose of the original source records. Changes to 44 U.S.C. 2904 require NARA to promulgate regulations requiring all Federal agencies to transfer records to the National Archives of the United States in digital or electronic form to the greatest extent possible. In addition, our Strategic Plan for 2018–2022 establishes that we will no longer accept paper records from agencies by the end of 2022.

As a result of these deadlines, agencies have begun major digitization projects and will be doing more in the future so that they can meet deadlines and requirements for electronic records and reduce the storage and cost burdens involved with managing paper records. Under the statutory provisions in 44 U.S.C. 3302, however, agencies may not dispose of original source records due to having digitized them (prior to the disposal authority date established in a records schedule), unless they have digitized the records according to standards established by NARA. So, the first priority for our overarching records management project was to initiate two rulemaking actions in FY 2019 and FY2020 to establish digitizing standards for Federal records. Both actions add new subparts to 36 CFR 1236, Electronic Records Management. The first regulatory action focused on digitizing temporary records (records of short-term, temporary value that are not appropriate for preservation in the National Archives of the United States) and was issued as a final rule effective on May 10, 2019. We began developing the second action during FY 2019 as well, focused on digitizing permanent records (permanently valuable and appropriate for preservation in the National Archives of the United States), and we expect to publish it as a final rule in the winter of 2021, depending upon the scope and range of agency comments.

We are also revising 36 CFR 1224, Records Disposition Programs, and 36 CFR 1225, Scheduling Records, during FY 2022 to incorporate more regular review and assessment of records. These changes include a requirement for agencies to periodically review established records schedules to ensure they remain viable and up to date. This will help agencies as they manage records and set priorities for digitizing projects.

We are also revising 36 CFR 1222, Creation and Maintenance of Federal Records, to incorporate requirements in the Electronic Messages Preservation Act (EMPA), passed in January 2021. Although our regulations at 36 CFR 1236 already include requirements for preserving electronic messages that are records, these requirements are general requirements for all electronic records, so we are also adding them to 36 CFR 1222 to comply with the new law.

During FY 2021 we also worked on extensive revisions to all the records management regulations, which will continue during FY 2022 and FY 2023.

BILLING CODE 7515–01–P

U.S. OFFICE OF PERSONNEL MANAGEMENT

Statement of Regulatory and Deregulatory Priorities Fall 2021 Unified Agenda

- Mission and Overview

OPM works in several broad categories to recruit, retain and honor a world-class workforce for the American people.

- We manage Federal job announcement postings at *USAJOBS.gov,* and set policy on governmentwide hiring procedures.
- We uphold and defend the merit systems in Federal civil service, making sure that the Federal workforce uses fair practices in all aspects of personnel management.
- We manage pension benefits for retired Federal employees and their families. We also administer health and other insurance programs for Federal employees and retirees.
- We provide training and development programs and other management tools for Federal employees and agencies.
- In many cases, we take the lead in developing, testing and implementing new governmentwide policies that relate to personnel issues.

Altogether, we work to make the Federal government America's model employer for the 21st century.

- Statement of Regulatory and Deregulatory Priorities Management Priorities

OPM is required to amend the regulations to implement statutory and policy initiatives. OPM prioritization is focused on initiatives that:

- Actions that advance equity and support underserved, vulnerable and marginalized communities;
- Actions that counter the COVID–19 public health emergency and expand access to healthcare;.
- Actions that create and sustain good jobs with a free and fair choice to join a union and promote economic resilience in general.

Rulemaking That Supports Equity

- *Elijah E. Cummings Federal Employee Anti-Discrimination Act of 2020*

3206–AO26

The Office of Personnel Management (OPM) is issuing proposed regulations governing implementation of the Elijah E. Cummings Federal Employee Discrimination Act of 2020, which became law on January 1, 2021. OPM is proposing to conform its regulations to the Act, which amends existing or adds new requirements to the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002. The proposed regulations, among other things, establish a new requirement to post findings of discrimination that have been made, establish new electronic format reporting requirements for Agencies, and establish new disciplinary action reporting requirements for Agencies.

• *The Fair Chance Act*

3206–AO00

The Fair Chance Act prohibits agencies from making inquiries or soliciting information concerning job applicant's criminal history record information prior to receipt of conditional offer. It requires OPM to publish regulations by December 20, 2020, covering the entire Executive civil service. Regulations must include position specific exceptions and a process for receiving and investigating complaints against Federal employees by applicants and specifies adverse actions for founded violations.

Rulemaking That Addresses Covid–19 Related Issues and Expand Access to Healthcare

• *Requirements Related to Surprise Billing; Part I*

3206–AO30

This interim final rule with comment would implement certain protections against surprise medical bills under the No Surprises Act.

• *Requirements Related to Surprise Billing; Part II*

3206–AO29

This joint interim final rule with comment with the Departments of Health and Human Services, Labor, and Treasury would implement additional protections against surprise medical bills under the No Surprises Act, including provisions related to the independent dispute resolution processes.

• *FEDVIP: Extension of Eligibility to Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules; Enrollment Clarifications and Qualifying Life Events*

3206–AN91

The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to expand eligibility for enrollment in the Federal Employees Dental and Vision Insurance Program (FEDVIP) to additional categories of Federal employees. This proposed rule expands eligibility for FEDVIP to certain Federal employees on temporary appointments and certain employees on seasonal and intermittent schedules that became eligible for Federal Employees Health Benefits (FEHB) enrollment beginning in 2015.This rule also expands access to FEDVIP benefits to certain firefighters on temporary appointments and intermittent emergency response personnel who became eligible for FEHB coverage in 2012. These additions will align FEDVIP with FEHB Program eligibility requirements. This proposed rule also updates the provisions on enrollment for active duty service members who become eligible for FEDVIP as uniformed service retirees pursuant to the National Defense Authorization Act of 2017 (FY17 NDAA), Public Law 108–496. In addition, this rule proposes to add qualifying life events (QLEs) for enrollees who may become eligible for and enroll in dental and/or vision services from the Department of Veterans Affairs, since this issue may impact TRICARE-eligible individuals (TEIs) and other enrollees.

Rulemaking That Creates and Sustains Good Jobs With a Free and Fair Choice To Join a Union and Promote Economic Resilience in General

• *Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions*

3206–AO23

The Office of Personnel Management (OPM) is issuing regulations governing probation on initial appointment to a competitive position, performance-based reduction in grade and removal actions, and adverse actions. The rule rescinds certain regulatory changes made in an OPM final rule published at 85 FR 65940 on November 16, 2020 per E.O. 14003 on Protecting the Federal Workforce. This rule also proposes new requirements for procedural and appeal rights for dual status National Guard technicians for certain adverse actions. Elements of the November 16, 2020, rule due to statutory changes will remain in effect, such as procedures for disciplinary action against supervisors who retaliate against whistleblowers and the inclusion of appeals rights information in proposal notices for adverse actions.

• *Hiring Authority for College Graduates*

3206–AO23

The U.S. Office of Personnel Management (OPM) is issuing an interim rule to amend its career and career-conditional employment regulations. The revision is necessary to implement section 1108 of Public Law 115–232, John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, which requires OPM to issue regulations establishing hiring authorities for certain college graduates to positions in the competitive service under 5 U.S.C. 3115. The intended effect of the authority is to provide additional flexibility in recruiting and hiring eligible and qualified individuals from all segments of society. This authority may also be a useful tool in helping agencies implement Agency Diversity, Equity, Inclusion, and Accessibility Strategic Plans as required by E.O. 14035.

• *Pathways Programs*

3206–AO25

The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to modify the Pathways Internship program (IP) to allow agencies greater flexibility when making appointments. OPM is proposing these changes to improve and enhance the effectiveness of the IP consistent with E.O. 13562, which requires OPM to support agency internship needs, and E.O 14035, which requires OPM to support and promote agency use of paid internships.

BILLING CODE 3280–F5–P

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 guarantee the payment of pension benefits earned by over 33 million workers and retirees in private-sector defined benefit plans. PBGC administers two insurance programs—one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension 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) 2021, PBGC paid over $6.4 billion in benefits to nearly 970,000 retirees. 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 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 FY 2021, PBGC paid $230 million in financial assistance to 109 multiemployer plans. Operations under the multiemployer program generally are financed by insurance premiums and investment income. In addition, the American Rescue Plan Act of 2021 (ARP) added section 4262 of ERISA, which requires PBGC to provide special financial assistance (SFA) to certain financially troubled multiemployer plans upon application for assistance, which is funded by general tax revenues.

While risks remain, the financial status of the single-employer program improved to a positive net financial position of $30.9 billion at the end of FY 2021. Due to enactment of ARP, the net financial position of the multiemployer program improved dramatically during FY 2021 from a negative net position of $63.7 billion at the end of FY 2020 to a positive net position of $481 million at the end of FY 2021. 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 program, 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 with the goal that net cost impact on the public is zero or less overall.

American Rescue Plan

The American Rescue Plan Act of 2021 (ARP) added a new section 4262 of ERISA to create a program to enhance retirement security for more than 3 million Americans by providing special financial assistance (SFA) to certain financially troubled multiemployer plans. In turn, the SFA program improves the financial condition of PBGC's multiemployer insurance program. For plans that adopted a benefit suspension under the Multiemployer Pension Reform Act of 2014 (MPRA), and for certain insolvent plans that suspended benefits upon insolvency, the SFA includes make-up payments of suspended benefits for participants and beneficiaries who are in pay status at the time SFA is paid, and prospective reinstatement of suspended benefits for all participants and beneficiaries.

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 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 also released instructions and guidance on assumptions used for determining eligibility and the amount of SFA. PBGC held two webinars related to the interim final rule on the SFA application and review process; restrictions, conditions, and reporting; agency guidance; and program resources. The public comment period on the interim final rule ended on August 12, 2021, and PBGC expects to publish a final rule in January 2022.

Multiemployer Plans

In other multiemployer plan rulemakings, PBGC plans to publish a proposed rule prescribing 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.

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's regulatory review identified a need to improve PBGC's recoupment of benefit overpayment rules (''Improvements to Rules on Recoupment of Benefit Overpayments,'' RIN 1212–AB47). The ''Benefit Payments'' rulemaking (RIN 1212–AB27) would make clarifications and codify policies in PBGC's benefit payments and valuation regulations

involving payment of lump sums, changes to benefit form, partial benefit distributions, and valuation of plan assets. 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).

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 Increased Public Participation

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 also encourages comments on an ongoing basis as it continues to look for ways to further improve the agency's regulations. Efforts to reduce regulatory burden in the projects discussed above are in substantial part a response to public comments.

PBGC

Final Rule Stage

170. Special Financial Assistance by PBGC

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 29 U.S.C. 1432; 29 U.S.C. 1302(b)(3)

CFR Citation: 29 CFR 4262.

Legal Deadline: Other, Statutory, July 9, 2021, 120 days after date of enactment (March 11, 2021).

Section 4262(c) as added to the Employee Retirement Income Security Act of 1974 (ERISA) by section 9704 of Subtitle H of the American Rescue Plan Act of 2021, requires that within 120 days of the date of enactment of this section, PBGC shall issue regulations or guidance setting forth requirements for special financial assistance (SFA) applications under this section.

Abstract: This final rule implements section 9704 of the American Rescue Plan Act by setting forth the requirements for plan sponsors of financially troubled multiemployer defined benefit pension plans to apply for special financial assistance from the Pension Benefit Guaranty Corporation, and related requirements.

Statement of Need: This final rule is needed to implement section 9704 of the American Rescue Plan Act and set forth the requirements for plan sponsors of financially troubled multiemployer defined benefit pension plans to apply for special financial assistance from the Pension Benefit Guaranty Corporation, and related requirements.

Anticipated Cost and Benefits: In its fiscal year (FY) 2020 Projections Report, published in September 2021, PBGC estimated a range of possible outcomes for the total amount of SFA payments under the provisions of the interim final rule. PBGC used the mean value in that range—$97.2 billion—to estimate the transfer impacts of the SFA program, and estimated the average annual information collection, including application, cost of the SFA program will be about $2 million. The SFA program is expected to assist plans covering more than 3 million participants and beneficiaries, including the provision of funds to reinstate suspended benefits of participants and beneficiaries.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/12/21	86 FR 36598
Interim Final Rule Effective.	07/12/21	
Interim Final Rule Comment Period End.	08/11/21	
Final Action	01/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Hilary Duke, Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, *Phone:* 202 229–3839, *Email: duke.hilary@pbgc.gov.*

RIN: 1212–AB53

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) is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses, and by assisting in the physical and economic recovery of communities after disasters. In accomplishing this mission, SBA strives to improve the economic environment for small businesses, including: those in rural areas, 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 those starting or growing a small business. For example, the Agency serves as a guarantor of loans made to small businesses by lenders that participate in SBA's programs. The Agency also 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 funds various training and mentoring programs to help small businesses, particularly businesses owned by women, veterans, minorities, and other historically underrepresented groups, gain access to Federal government contracting opportunities. The Agency also provides management and technical assistance to existing or potential small business owners through various grants, cooperative agreements, or contracts. Finally, as a vital part of its purpose, SBA also provides direct financial assistance to homeowners, renters, and businesses to repair or replace their property in the aftermath of a disaster.

Reducing Burden on Small Businesses

SBA's regulatory policy reflects a commitment to developing regulations that reduce or eliminate the burden on the public, in particular 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 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 routinely solicits comments on its regulations, even those that are not subject to the public notice and comment requirement under the Administrative Procedure Act. Where appropriate, SBA also conducts hearings, webinars, and other public events as part of its regulatory process.

Regulatory Framework

The SBA Strategic Plan serves as the foundation for the regulations that the Agency will develop during the next twelve months. This Strategic Plan provides a framework for strengthening, streamlining, and simplifying SBA's programs; and leverages collaborative relationships with other agencies and the private sector to maximize the tools small business owners and entrepreneurs need to drive American innovation and strengthen the economy. The plan sets out four Strategic Goals: (1) Support small business revenue and job growth; (2) build healthy entrepreneurial ecosystems and create business friendly environments; (3) restore small businesses and communities after disasters; and (4) strengthen SBA's ability to serve small businesses. The regulations reported in SBA's semi-annual Regulatory Agenda and Plan are intended to facilitate achievement of these goals and objectives.

Over the past 18 months, SBA's regulatory activities focused primarily on rulemakings that were necessary to implement the Paycheck Protection Program and the Economic Injury Disaster Loan program, which made it possible for millions of businesses, sole proprietors, independent contractors, certain non-profits, and veterans' organizations, among other entities, to receive financial assistance to alleviate the economic crisis caused by the COVID–19 pandemic. Over the next 12 months, SBA will take further regulatory action if necessary to tweak requirements for the programs to further advance the country's economic recovery.

Administration's Priorities

To the extent possible and consistent with the Agency's statutory purpose, SBA will also take steps to support the Administration's priorities highlighted in *Fall 2021 Data Call for the Unified Agenda of Federal Regulatory and Deregulatory Action* (08/16/2021), namely: (1) Actions that advance the country's economic recovery and continue to address any additional necessary COVID-related issues; (2) actions that tackle the climate change emergency; (3) actions that advance equity and support underserved, vulnerable and marginalized communities; and (4) actions that create and sustain good jobs with a free and fair choice to join a union and promote economic resilience in general.

Advancing the Country's Economic Recovery and Addressing Additional COVID-Related Issues

As small businesses across multiple industries continue to face economic uncertainties, SBA will continue to provide financial assistance consistent with existing statutory authorities to help alleviate the financial burdens still facing small businesses. SBA will take steps, including regulatory action where necessary, to modify requirements for its various COVID-related assistance programs to alleviate burdens on eligible program recipients and further advance the country's economic recovery. For example, the interim final rule (RIN: 3245–AH80) included in SBA's Fall Regulatory Agenda expands the number of small businesses, nonprofit organizations, qualified agricultural businesses, and independent contractors within various sectors of the economy that are eligible for a loan under the COVID–EIDL program and also expands the eligible uses of loan proceeds. These and other program amendments made by the rule will increase the flow of funds to the businesses and put them in a better position to recover from the economic losses caused by the pandemic, sustain their operations and retain or hire employees. SBA's other currently available COVID financial assistance programs do not require regulations; however, the Agency is committed to ensuring that they are executed in a manner that are as impactful as the loan program.

Advancing Equity and Supporting Underserved, Vulnerable, and Marginalized Communities

As evidenced by SBA's equity assessment report, the Agency has made great strides in identifying potential barriers facing underserved and marginalized communities and ways in which SBA can help to overcome those barriers. The responsive actions identified to date do not require regulations for implementation and include the following: Promoting greater access for small businesses to all our programs including addressing language and cultural differences and social economic factors; targeting lending groups that work with underserved communities; improving outreach through technology and addressing digital/technological divide. To help identify gaps and develop a more targeted outreach effort, SBA will continue to revise information collection instruments and enter into agreements with federal statistical agencies to gather demographic data on recipients of its programs and services.

Tackling the Climate Change Emergency and Promoting Economic Resilience

To help combat the climate change crisis, SBA is implementing a multi-year priority goal to help prepare and rebuild resilient communities by enhancing communication efforts for mitigation. SBA's regulations in 13 CFR part 123 contain the legal framework for financing projects specifically targeted for pre-disaster and post-disaster mitigation projects. Proceeds from other SBA financing programs can also be used for mitigating measures. At this point no regulations are necessary to implement any of these options; therefore, SBA will focus its efforts on educating the public on the benefits of investing in mitigation and resilience projects and also on increasing awareness of SBA loan programs that can be used for renovating, retrofitting, or purchasing buildings and equipment to reduce greenhouse gas emissions; improving energy efficiency; or enabling the development of innovative solutions that support the green economy.

Regulatory Plan Rule

In the context of its Regulatory Agenda, SBA plans to prioritize the regulations that are necessary to implement new authority for SBA to take over responsibility from the Department of Veterans Affairs (VA) for certifying veteran-owned small businesses (VOSBs) and service-disabled veteran-owned small businesses (SDVOSBs) for sole source and set-asides contracts. Section 862 of the NDAA FY 2021 requires transfer of the program to SBA on January 1, 2023. SBA is prioritizing development of the required rulemaking to ensure that the affected public is aware of the regulatory requirements that will govern the VOSB and SDVOSB certification process at SBA and that the Agency is positioned to begin certifications on the transfer date. This statutorily mandated program is consistent with SBA's ongoing efforts to support businesses in underserved markets, including veteran-

owned small businesses. And as businesses struggle to overcome the financial effects of the COVID pandemic, promulgating the rule before the transfer date will also ensure there is no gap in the certification process. Any delay in certification could adversely impact those VOSBs and SDVOSBs seeking access to the billions of dollars in federal government procurement opportunities and could impact their economic recovery.

Title: Service-Disabled Veteran-Owned Small Business Certification (RIN 3245–AH69)

The Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business (SDVOSB) Programs, as managed by the Department of Veterans Affairs (VA) in compliance with 38 U.S.C. 8127, authorize Federal contracting officers to restrict competition to eligible VOSBs and SDVOSBs for VA contracts. There is currently no government wide VOSB set-aside program, and firms seeking to be awarded SDVOSB set-aside contracts with Federal agencies other than the VA are required only to self-certify their SDVOSB status. Section 862 of the National Defense Authorization Act, Fiscal Year 2021, Public Law 116–283, 128 Stat. 3292 (January 1, 2021), amended the VA certification authority and transferred the responsibility for certification of VOSBs and SDVOSBs to SBA and created a government-wide certification requirement for SDVOSBs seeking sole source and set-aside contracts.

Before SBA officially takes over responsibility for the certification on January 1, 2023, the Agency must put in place the regulations and other guidance that will govern the certification program at SBA. As a first step in this process, SBA will publish an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public input on how to implement a program that would best serve the needs of America's veterans who aspire to start or grow their businesses and access the billions of dollars in contracts that Federal agencies award annually. SBA will seek comments on how the certification processes are currently working, how they can be improved, and how best to incorporate those improvements into any new certification program at SBA. Shortly after evaluating the comments received on the ANPRM, SBA will issue a proposed rule to set out how the Agency plans to structure the certification program and to solicit final public comments.

SBA

Prerule Stage

171. Service-Disabled Veteran-Owned Small Business Certification

Priority: Other Significant.

Legal Authority: 15 U.S.C. 634(b)(6); 15 U.S.C. 657f

CFR Citation: 13 CFR 125.

Legal Deadline: None.

Abstract: Section 862 of the Fiscal Year 2021 National Defense Authorization Act, Public Law 116–283, expands Service-Disabled Veteran-Owned Small Businesses verification government-wide and transfers certification authority from the VA to the SBA. This legislation requires SBA to amend 13 CFR 125 to eliminate self-certification and create a government-wide certification program for Veteran-owned Small Businesses (VOSBs) and Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). The certification requirement applies only to participants wishing to compete for set-aside or sole-source contracts. When the program is established (target date January 2023), SDVOSBs that are not certified will not be eligible to compete on set-asides or receive sole-source contracts in the SDVOSB Program. NDAA also created a one-year grace period for SDVOSB firms currently self-certified to apply to SBA for certification.

Statement of Need: Section 862 requires the Administrator to establish procedures necessary to implement the amendments. The Advanced Notice of Proposed Rulemaking (ANPRM) is intended to gather feedback from the public, particularly those VOSBs and SDVOSBS that would seek certification from SBA on how to implement the transferred authority and establish a government-wide certification program for SDVOSBs. In addition to the statutory requirement to establish regulations and procedures to implement the NDAA 2021 amendments, SBA's current regulations are also in conflict with said changes.

Summary of Legal Basis: The legal basis is the mandate in section 862 of the National Defense Authorization Act for Fiscal Year 2021 (NDAA 2021) (Pub. L. 116–283) for SBA to amend its regulations to implement a statutory requirement to certify VOSBs and SDVOSBs and establish a government wide certification program for SDVOSBs.

Alternatives: There are no viable alternatives to implementing regulations. In addition to the statutory requirement to establish regulations and procedures to implement the NDAA 2021 amendments, SBA's current regulations are also in conflict with said changes. Therefore, revised regulations are necessary not only to incorporate the new authority, but also to amend any inconsistencies.

Anticipated Cost and Benefits: SBA's SDVOSB/VOSB certification program ensures that only eligible small businesses receive set-aside contracts from agencies throughout the federal government. Since agencies cannot award to small businesses unless they are certified by SBA, this regulation may reduce an agency's time and costs associated with contract award, protest, and appeal. The statutory requirement for SBA to establish a government-wide certification program for SDVOSBs and certify VOSBs and SDVOSBs imposes a significant program cost burden for the agency that is currently unfunded. There are no financial costs to the applicant other than the time spent preparing and submitting the application.

Risks: There is a risk that SBA's certification program would fail to identify an ineligible entity that would subsequently receive a set-aside contract. This risk is reduced by existing SDVOSB/VOSB protest procedures and periodic eligibility examinations of participant firms.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/21	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Edmund Bender, Small Business Administration, 409 3rd Street SW, Washington, DC 20416, *Phone:* 202 205–6455.

RIN: 3245–AH69

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 and representatives of claimants. 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.

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 expenses as a source of In-Kind Support and Maintenance (RIN 0960–AI60);

B. Revise our regulations to confirm that we will allow a $20 tolerance that prevents us from assessing In-Kind Support and Maintenance if an SSI claimant is close to meeting his or her fair share of expenses (RIN 0960–AI68); and

C. Simplify policies and business processes while assisting vulnerable populations who may need assistance providing their intent to file and recording their protective filing. We would also allow third parties who are assisting the potential claimants to submit a written statement regardless of whether the written inquiry is signed, which will protect claimants who are unable to provide the information by themselves (RIN 0960–AI69).

II. Regulations in the Proposed Rule Stage

Two of our regulations target changes to the In-Kind Support and Maintenance policy in our SSI program. They would simplify a specific policy within the SSI program by no longer considering food expenses as a source of ISM (RIN 0960–AI60) and would revise our regulations to confirm that we will allow a $20 tolerance that prevents us from assessing In-Kind Support and Maintenance if an SSI claimant is close to meeting his or her fair share of expenses (RIN 0960–AI68).

In addition, our proposed regulations would simplify policies and business processes while assisting vulnerable populations who may need assistance providing their intent to file and recording their protective filing. The proposed regulation would allow third parties who are assisting the potential claimants to submit a written statement regardless of whether the written inquiry is signed, which will protect claimants who are unable to provide the information by themselves (RIN 0960–AI69).

III. Regulations in the Final Rule Stage

We are not including any of our regulations in the final rule stage in this statement of regulatory priorities.

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

Proposed Rule Stage

172. Omitting Food From In-Kind Support and Maintenance Calculations

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

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.

Legal Deadline: None.

Abstract: We propose to change the definition of In-Kind Support and Maintenance (ISM) to no longer consider food expenses as a source of ISM. Instead, ISM would only be derived from 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 present definition of ISM is used across several regulations and this regulatory change would necessitate minor changes to other related regulations.

Statement of Need: This change would remove food cost when we determine ISM. By doing so, it streamlines the ISM policy and resulting SSI program complexity.

Anticipated Cost and Benefits: To be provided with publication of the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

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

173. • $20 Tolerance Rule To Establish That the Individual Meets the Pro-Rata Share of Household Expenses When Living in the Household of Another

Priority: Other Significant.

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 416.1133.

Legal Deadline: None.

Abstract: When SSI claimants live in another person's household, their benefits may be reduced because they could receive in-kind support and maintenance from that household. However, their benefits will not be reduced if they demonstrate that they are paying their pro-rata share of the household's expenses. If SSI claimants do not contribute their pro-rata share of household expenses, but they do contribute an amount that is within $20 of their share of household expenses, we treat the situation as if the claimants pay their pro-rata share under our tolerance policy. In this situation, we would not reduce a claimant's benefit because of in-kind support and maintenance. This proposed rule seeks to codify this policy.

Statement of Need: This change would reinforce a tolerance that prevents SSA from assessing ISM if a claimant is within a specific dollar amount of meeting their fair share when living in the home on another.

Anticipated Cost and Benefits: This is a new draft regulation proposal and we have not completed the regulation specifications. We are unable to formally project costs and benefits.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

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–AI68

SSA

174. • Inquiry About SSI Eligibility at Application Filing Date Which Will Remove the Requirement for a Signed Written Statement and Will Expand Protective Filing

Priority: Other Significant.

Legal Authority: 42 U.S.C. 902 (a)(5)

CFR Citation: 20 CFR 416.340; 20 CFR 416.345.

Legal Deadline: None.

Abstract: Under current regulations, a protective filing may be established only if the claimant, the claimant's spouse, or a person who may sign an application on the claimant's behalf (20 CFR 416.340(b), 416.345(b)) submits a signed written statement expressing intent to file, or makes an oral inquiry. Under our regulations, people who may sign such an application include parents or caregivers of claimants who are minor children or mentally incompetent (20 CFR 416.315). However, the regulations do not authorize other third parties to sign an application or otherwise establish a protective filing date, unless the situation meets the regulatory exception. The exception only allows considering a protective filing from a third party if it prevents a loss of benefits due to a delay in filing when there is a good reason why the claimant cannot sign an application.

Revising the regulations and combining them to provide one set of rules for both situations will simplify policies and business processes while assisting vulnerable populations who may need assistance providing their intent to file and recording their protective filing.

Amending both regulations to allow third parties who are assisting the potential claimants to submit a written statement regardless of whether the written inquiry is signed will protect claimants who are unable to provide the information by themselves.

Statement of Need: We need these revisions in order to simplify policies and business processes while assisting vulnerable populations who may need assistance providing their intent to file and recording their protective filing. Amending both regulations to allow third parties who are assisting the potential claimants to submit a written statement regardless of whether the written inquiry is signed will protect claimants who are unable to provide the information by themselves.

Anticipated Cost and Benefits: We cannot quantify costs and benefits at this time, but this change would allow SSA technicians to schedule appointments from the information submitted by the third party without first having to contact the potential claimant to confirm their intent to file nor developing for a good reason why the third party is providing us with the claimant's intent to file. We see benefits here in terms of work hours for SSA employees and in terms of protective filings established for vulnerable populations requiring assistance.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Organizations.

Government Levels Affected: None.

Agency Contact: Crystal Ors, Policy Analyst, Social Security Administration, ORDP/OISP/OAESP, 6401 Social Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 866 931–7110, *Email: crystal.ors@ssa.gov*.

RIN: 0960–AI69

BILLING CODE 4191–02–P

FEDERAL ACQUISITION REGULATION (FAR)

The Federal Acquisition Regulation (FAR) was established to codify uniform policies for acquisition of supplies and services by executive agencies. It is issued and maintained jointly under the statutory authorities granted to the Secretary of Defense, Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, known as the Federal Acquisition Regulatory Council (FAR Council). Overall statutory authority is found at chapters 11 and 13 of title 41 of the United States Code.

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 provide notice about the FAR Council's proposed regulatory and deregulatory actions within the Executive Branch. The Fall 2021 Unified Agenda consists of forty-seven (48) active agenda items.

Rulemaking Priorities

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:

- Promote the country's economic resilience, including addressing COVID-related issues.
- Tackle the climate change emergency.
- Support equity and underserved communities; and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

Rulemaking That Promotes Economic Resilience

FAR Case 2021–021, ''Ensuring Adequate COVID–19 Safety Protocols for Federal Contractors,'' will promote economy and efficiency in procurement by implementing the safeguard requirements of Executive Order 14042, ''Ensuring Adequate COVID–19 Safety Protocols for Federal Contractors'' dated September 9, 2021, and the guidance published by the Safer Federal Workforce Task Force. Contracting with sources that provide adequate safeguards to their workers will decrease worker absence, reduce labor costs and therefore, improve the efficiency of contractors and subcontractors performing on Federal procurements.

FAR Case 2021–014, ''Increasing the Minimum Wage for Contractors,'' will increase efficiency and cost savings in the work performed by parties who contract 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 Department of Labor regulations at 29 CFR part 23.

FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements, will strengthen the impact of the Buy American Act through amendments, such as increasing the domestic content threshold and enhancing price preference for critical domestic products, in accordance with section 8 of Executive Order 14005, ''Ensuring the

Future is Made in All of America by All of America's Workers.''

Rulemaking That Tackles Climate Change

FAR Case 2021–015, ''Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk,'' will consider requiring 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 consider amendments to ensure major agency procurements minimize the risk of climate change and require consideration of the social cost of greenhouse gas emissions in procurement decisions per section 5(b)(ii) of Executive Order 14030, ''Climate-Related Financial Risk.''

Rulemaking That Supports Equity and Underserved Communities

FAR Case 2021–010, ''Subcontracting to Puerto Rican and Other Small Businesses,'' will provide contracting incentives to mentors that subcontract to protege firms that are Puerto Rican businesses in accordance with section 861 of the National Defense Authorization Act of Fiscal Year 2019 as implemented in the Small Business Administration final rule published October 16, 2020.

FAR Case 2021–012, 8(a) Program, will implement regulatory changes made to the 8(a) Business Development Program by the Small Business Administration, in its final rule published in the **Federal Register** on October 16, 2020, which provided clarifications on offer and acceptance, certificate of competency and follow-on requirements.

FAR Case 2020–013, ''Certification of Women-Owned Small Businesses,'' will implement the statutory requirement for certification of women-owned and economically disadvantaged women-owned small businesses participating in the Women-Owned Small Business Program, as implemented by the Small Business Administration in its final rule published May 11, 2020.

FAR Case 2019–007, ''Update of Historically Underutilized Business Zone Program,'' will implement SBA's regulatory changes issued in its final rule published on November 26, 2019. The regulatory changes are intended to reduce the regulatory burden associated with the Historically Underutilized Business Zone (HUBZone) Program.

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 per sections 2(b), (c), and (g)(i) 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 per sections 2(i) and 8(b) of Executive Order 14028, Improving the Nation's Cybersecurity.

FAR Case 2020–011, ''Implementation of Issued Exclusion and Removal Orders,'' will implement authorities authorized by section 2020 of the SECURE Technology Act for the Federal Acquisition Security Council (FASC), the Secretary of Homeland Security, the Secretary of Defense and the Director of National Intelligence to issue exclusion and removal orders. These exclusions and removal orders are issued to protect national security by excluding certain covered products, services, or sources from the Federal supply chain.

Dated: September 8, 2021.

Name: 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 when other efforts are inadequate to address a safety hazard, or 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 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 taking action in the next 12 months on one rule, table saws (RIN 3041–AC31), which would constitute a ''significant regulatory action'' under the definition of that term in Executive Order 12866.

BILLING CODE 6355–01–P

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

The Federal Trade Commission is an independent agency charged with rooting out unfair methods of competition and unfair or deceptive acts or practices. This mission is vital to our national interest because, when markets are fair and competitive, honest businesses and consumers alike reap the rewards. The Commission is committed to deploying all its tools to realize this mission.

I. New Circumstances Facing the Commission

In 2021, a number of changed circumstances caused the Commission to consider deploying new tools to advance its mission. First, the Supreme Court decided that the Commission cannot invoke its authority under Section 13(b) of the FTC Act to seek restitution or disgorgement in federal court.[3] Second, the Commission, after

[3] *See AMG Capital Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341, 1352 (2021). The Commission has called on Congress to restore its ability to seek disgorgement and restitution. The Consumer Protection and Recovery Act, which would fix the adverse court

Continued

careful study, streamlined its own Rules of Practice, eliminating extra bureaucratic steps and unnecessary formalities by returning to the statutory text Congress enacted in section 18 of the FTC Act, which will make new consumer-protection rulemakings more feasible and efficient while still preserving robust public participation.[4] As the Supreme Court noted in its decision, consumer redress remains available for cases that involve a consumer-protection rule violation.[5] Third, the case-by-case approach to promoting competition, while necessary, has proved insufficient, leaving behind a hyper-concentrated economy whose harms to American workers, consumers, and small businesses demand new approaches. Accordingly, the Commission in the coming year will consider developing both unfair-methods-of-competition rulemakings as well as rulemakings to define with specificity unfair or deceptive acts or practices.

The Commission is particularly focused on developing rules that allow the agency to recover redress for consumers who have been defrauded and seek penalties for firms that engage in data abuses. The Commission's recent action to prohibit Made in USA labeling fraud offers a model for how the agency can deter the worst abuses without imposing burdens on honest businesses.[6]

Among the many pressing issues consumers confront in the modern economy, the abuses stemming from surveillance-based business models are particularly alarming. The Commission is considering whether rulemaking in this area would be effective in curbing lax security practices, limiting intrusive surveillance, and ensuring that algorithmic decision-making does not result in unlawful discrimination. Importantly, it is not only consumers that are threatened by surveillance-based business models but also competition.

Over the coming year, the Commission will also explore whether rules defining certain ''unfair methods of competition'' prohibited by section 5 of the FTC Act would promote competition and provide greater clarity to the market. A recent Executive Order encouraged the Commission to consider competition rulemakings relating to non-compete clauses, surveillance, the right to repair, pay-for-delay pharmaceutical agreements, unfair competition in online marketplaces, occupational licensing, real-estate listing and brokerage, and industry-specific practices that substantially inhibit competition.[7] The Commission will explore the benefits and costs of these and other competition rulemaking ideas.

Recently, the Commission published in the **Federal Register** a ''Request for Public Comment Regarding Contract Terms that May Harm Fair Competition,'' which included for reference two public petitions for competition rulemaking the Commission has received.[8] One of those petitions was to curtail the use of non-compete clauses, and the other was to limit exclusionary contracting by dominant firms, but the Commission also solicited additional examples of unfair terms. Members of the public filed thousands of comments, which the Commission's staff are carefully reviewing.

II. Updates on 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.[9] Under the Commission's program, rules and guides are reviewed on a 10-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.'' [10] 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

On July 2, 2021, the Commission issued an updated ten-year review schedule.[11] Since the publication of the 2020 Regulatory Plan, the Commission has initiated or announced plans to initiate periodic reviews of the following rules and guides:

Business Opportunity Rule, 16 CFR 437. During the latter part of 2021, the Commission plans to initiate periodic review of the Business Opportunity Rule as part of the Commission's systematic review of all current Commission rules and guides. The Commission plans to seek 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. Effective in 2012, the Rule requires business-opportunity sellers to furnish prospective purchasers 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

ruling and restore the Commission's powers, passed the U.S. House of Representatives on July 20, 2021. *See Congress.gov, H.R. 2668—Consumer Protection and Recovery Act, https://www.congress.gov/bill/117th-congress/house-bill/2668/actions.*

[4] *See* Fed. Trade Comm'n, *Statement of the Commission Regarding the Adoption of Revised Section 18 Rulemaking Procedures* (July 9, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1591786/p210100commnstmtsec18rulesofpractice.pdf.*

[5] *See AMG Capital,* 141 S. Ct. at 1352.

[6] *See* Fed. Trade Comm'n, *Made in USA Labeling Rule,* 86 FR 37022, 37032–33 (July 14, 2021) (codified at 16 CFR 323.2).

[7] *See* Office of the President of the United States, *Executive Order or Promoting Competition in the American Economy,* section 5(g), (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/.*

[8] *See Regulations.gov*, Request for Public Comment Regarding Contract Terms that May Harm Fair Competition, No. FTC–2021–0036, *https://www.regulations.gov/docket/FTC-2021-0036.*

[9] 58 FR 51735 (Sept. 30, 1993).

[10] 5 U.S.C. 610.

[11] 86 FR 35239 (July 2, 2021).

purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR 432. On December 18, 2020, the Commission initiated periodic review of the Amplifier Rule (officially Power Output Claims for Amplifiers Utilized in Home Entertainment Products Rule).[12] 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. Staff anticipates submitting a recommendation for further action to the Commission by February 2022. The Amplifier Rule establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of amplifier-equipment performance attributes.

Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR 801–803. On December 1, 2020, the Commission initiated the periodic review of the Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules (HSR Rules) as part of the Commission's systematic review of all current Commission rules and guides.[13] The comment period closed on February 1, 2021, and staff is now reviewing the comments. The HSR Rules and the Antitrust Improvements Act Notification and Report Form (HSR Form) were adopted pursuant to section 7(A) 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 before consummating the transaction.

During the first quarter of 2022, staff anticipates that the Commission will propose a rulemaking to update the HSR Form and Instructions to the new cloud-based, e-filing system, which will eliminate paper filings.

Guides. During the calendar year of 2022, the Commission plans to initiate periodic review of the Guides Against Deceptive Pricing, 16 CFR 233, the Guides, 16 CFR 238, the Guide Concerning Use of the Word ''Free'' and Similar Representations, 16 CFR 251, and the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.

(2) Ongoing Periodic Reviews of Rules and Guides

The following proceedings for the retrospective review of Commission rules and guides described in the 2020 Regulatory Plan are ongoing:

Children's Online Privacy Protection Rule, 16 CFR 312. On July 25, 2019, the Commission issued a request for public comment on its Children's Online Privacy Protection Rule (COPPA Rule).[14] 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.[15] 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.

Endorsement Guides, 16 CFR 255. On February 21, 2020, the Commission initiated a periodic review of the Endorsement Guides.[16] The comment period, as extended, closed on June 22, 2020.[17] FTC staff is currently reviewing the comments received. The Guides are designed to assist businesses and others in conforming their endorsement and testimonial advertising practices to the requirements of the FTC Act. Among other things, the Endorsement Guides provide that if there is a connection between an endorser and the marketer that consumers would not expect and it would affect how consumers evaluate the endorsement, that connection should be disclosed. The advertiser must also possess and rely on adequate substantiation to support claims made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly.

Franchise Rule, 16 CFR 436. On March 15, 2019, the Commission initiated periodic review of the Franchise Rule (officially titled, Disclosure Requirements and Prohibitions Concerning Franchising).[18] 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.[19] 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.

Funeral Rule, 16 CFR 453. On February 14, 2020, the Commission initiated a periodic review of the Funeral Industry Practices Rule (Funeral Rule).[20] The comment period as extended closed on June 15, 2020.[21] Commission staff is reviewing the comments received and anticipates submitting a recommendation for further action to the Commission by early 2022. The Rule, which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit a funeral home.

Health Breach Notification Rule, 16 CFR 318. On May 22, 2020, the Commission initiated a periodic review of the Health Breach Notification Rule.[22] The comment period closed on August 20, 2020. Commission staff has reviewed the comments and intends to submit a recommendation to the Commission by January 2022. 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 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 681. In December 2018, the Commission initiated a periodic review of the

[12] 85 FR 82391 (Dec. 18, 2020).
[13] 85 FR 77042 (Dec. 1, 2020).
[14] 84 FR 35842 (July 25, 2019).
[15] 84 FR 56391 (Oct. 22, 2019).
[16] 85 FR 10104 (Feb. 21, 2020).
[17] 85 FR 19709 (Apr. 8, 2020).
[18] 84 FR 9051 (Mar. 13, 2019).
[19] 85 FR 55850 (Sept. 10, 2020).
[20] 85 FR 8490 (Feb. 14, 2020).
[21] 85 FR 20453 (Apr. 13, 2020).
[22] 85 FR 31085 (May 22, 2020).

Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule.[23] FTC staff is reviewing the comments received and anticipates sending a recommendation to the Commission by January 2022. 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 24. On March 6, 2019, the Commission initiated periodic review of the Leather Guides, formally known as the Guides for Select Leather and Imitation Leather Products.[24] The comment period closed on April 22, 2019, and staff anticipates submitting a recommendation for further action to the Commission by December 2021. 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 425. On October 2, 2019, the Commission issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking public comment on the effectiveness and impact of the Trade Regulation Rule on Use of Prenotification Negative Option Plans (Negative Option Rule).[25] The Negative Option Rule helps consumers avoid recurring payments for products and services they did not intend to order and to allow them to cancel such payments without unwarranted obstacles. The Commission is studying various options, but the next expected action is undetermined.

Telemarketing Sales Rule (TSR), 16 CFR 310. On August 11, 2014, the Commission initiated a periodic review of the TSR as set out on the 10-year review schedule.[26] The comment period as extended closed on November 13, 2014.[27] Staff anticipates making a recommendation to the Commission by November 2021.

b. Proposed Rules

Since the publication of the 2020 Regulatory Plan, the Commission has initiated or plans to take further steps as described below in the following rulemaking proceedings:

Care Labeling Rule, 16 CFR 423. On July 23, 2020, the Commission issued a Supplemental Notice of Proposed Rulemaking seeking comment on a proposed repeal of the Rule.[28] On July 21, 2021, the Commission voted to retain the Care Labeling Rule (officially the Rule on Care Labeling of Textile Apparel and Certain Piece Goods as Amended) to ensure American consumers continue to get accurate information on how to take care of their fabrics and extend the life of their clothes. In a public statement, the Commission also indicated that it would continue to consider ways to improve the Rule to the benefit of families and businesses. Promulgated in 1971, the Care Labeling Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating what regular care is needed for the ordinary use of the product. The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions and allows the use of approved care symbols in lieu of words to disclose care instructions.

Energy Labeling Rule, 16 CFR 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. Staff anticipates sending the Commission a recommendation to update comparability ranges for 16 CFR 305.12 by April 2022.[29]

Eyeglass Rule, 16 CFR 456. As part of the systematic review process, the Commission issued a **Federal Register** notice seeking public comments about the Trade Regulation Rule on Ophthalmic Practice Rules (Eyeglass Rule) on September 3, 2015.[30] The comment period closed on October 26, 2015. Commission staff has completed the review of 831 comments on the Eyeglass Rule and anticipates sending a recommendation for further Commission action by November 2021. 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.

Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR 314. The FTC's Safeguards Rule, which was issued under the Gramm-Leach-Bliley Act, requires each financial institution subject to the FTC's jurisdiction to assess risks and develop a written information security program that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue. On October 27, 2021, the Commission announced the issuance of a Supplemental Notice of Proposed Rulemaking that proposes to further 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. The comment period closes 60 days after publication in the **Federal Register**.[31]

c. Final Actions

Since the publication of the 2020 Regulatory Plan, the Commission has issued the following final agency actions in rulemaking proceedings:

Energy Labeling Rule, 16 CFR 305. On February 12, 2021, the Commission published a final rule that establishes EnergyGuide labels for portable air conditioners and requires manufacturers to label portable air conditioner units produced after October 1, 2022.[32] The Commission also updated the Rule in conformity with new DoE energy descriptors for central air conditioner units that will become effective on January 1, 2023. Additionally, on October 20, 2021, the Commission issued a final rule updating the comparability ranges and sample labels

[23] 83 FR 63604 (Dec. 11, 2018).

[24] 84 FR 8045 (Mar. 6, 2019).

[25] 84 FR 52393 (Oct. 2, 2019).

[26] 79 FR 46732 (Aug. 11, 2014).

[27] 79 FR 61267 (Oct. 10, 2014).

[28] 85 FR 44485 (July 23, 2020).

[29] *See Final Actions* below for information about a separate completed rulemaking proceeding for the Energy Labeling Rule.

[30] 80 FR 53274 (Sept. 3, 2015).

[31] *See Final Actions* below for information about a separate completed rulemaking proceeding for the Safeguards Rule.

[32] 86 FR 9274 (Feb. 12, 2021).

for central air conditioners.[33] The amendments are effective on January 1, 2023.[34]

Fair Credit Reporting Act Rules, 16 CFR 640–642, 660, and 680. On September 8, 2021, the Commission announced final rules for each of these Rule reviews that included revisions to the Rules to correspond to changes to the Fair Credit Reporting Act made by the Dodd-Frank Act. The final rules were effective 30 days after publication in the **Federal Register**. These rules include: Duties of Creditors Regarding Risk-Based Pricing, 16 CFR 640[35]; Duties of Users of Consumer Reports Regarding Address Discrepancies, 16 CFR 641[36]; Prescreen Opt-Out Notice, 16 CFR 642[37]; Duties of Furnishers of Information to Consumer Reporting Agencies, 16 CFR 660[38]; and Affiliate Marketing, 16 CFR 680.[39]

Made in USA Labeling Rule, 16 CFR 323. On July 14, 2021, the Commission issued a final rule that codified the FTC's longstanding enforcement policy statement regarding U.S.-origin claims.[40] The rule was effective on August 13, 2021. The Rule prohibits marketers from making unqualified MUSA claims on labels unless final assembly or processing of the product occurs in the United States; all significant processing that goes into the product occurs in the United States; and all or virtually all ingredients or components of the product are made and sourced in the United States. The rule does not impose any new requirements on businesses. By codifying this guidance into a formal rule, the Commission can increase deterrence of Made in USA fraud and seek restitution for victims. The final rule included a provision allowing marketers to seek exemptions if they have evidence showing their unqualified Made-in-USA claims are not deceptive.

Privacy of Consumer Financial Information Rule, 16 CFR 313. The Privacy of Consumer Financial Information Rule (Rule) requires, among other things, that certain motor vehicle dealers provide an annual disclosure of their privacy policies to their customers by hand delivery, mail, electronic delivery, or through a website, but only with the consent of the consumer. On October 27, 2021, the Commission announced the issuance of a final rule to, among other changes, revise the Rule's scope, modify the Rule's definitions of ''financial institution'' and ''federal functional regulator,'' and update the Rule's annual customer privacy notice requirement.[41] This action was necessary to conform the Rule to the current requirements of the Gramm-Leach-Bliley Act. The amendments will be effective 30 days after publication in the **Federal Register**.

The Prohibition of Energy Market Manipulation Rule, 16 CFR 317. On March 2, 2021, the Commission completed its regulatory review and issued a **Federal Register** Notice confirming that the Rule was being retained without modification.[42]

Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR 314. The FTC's Safeguards Rule, which was issued under the Gramm-Leach-Bliley Act, requires each financial institution subject to the FTC's jurisdiction to assess risks and develop a written information security program that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue. On October 27, 2021, the Commission announced the issuance of a final rule that, among other amendments, provides additional requirements for financial institutions' information security programs. The final rule also expands the definition of ''financial institution'' to include entities that are significantly engaged in activities that are incidental to financial activities, so that the rules would cover ''finders''—for example, companies that serve as lead generators for payday loan companies or mortgage companies. Certain provisions of the amendments, set forth in section 314.5 of the final rule, will be effective one year after the publication of the final rule in the **Federal Register**. The remainder of the amendments are effective 30 days after **Federal Register** publication.[43]

d. Significant Regulatory Actions

The Commission has no proposed rule that would be a ''significant regulatory action'' under the definition in Executive Order 12866. The Commission also 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

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

In 1988, Congress adopted the Indian Gaming Regulatory Act (IGRA) (Pub L. 100–497, 102 Stat. 2475) with a primary purpose of providing ''a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.'' IGRA established the National Indian Gaming Commission (NIGC or the Commission) to protect such gaming, amongst other things, as a means of generating tribal revenue for strengthening tribal governance and tribal communities.

At its core, Indian gaming is a function of sovereignty exercised by tribal governments. In addition, the Federal government maintains a government-to-government relationship with the tribes—a responsibility of the NIGC. Thus, while the Agency is committed to strong regulation of Indian gaming, the Commission is equally committed to strengthening government-to-government relations by engaging in meaningful consultation with tribes to fulfill IGRA's intent. The NIGC's vision is to adhere to principles of good government, including transparency to promote agency accountability and fiscal responsibility, to operate consistently to ensure fairness and clarity in the administration of IGRA, and to respect the responsibilities of each sovereign in order to fully promote tribal economic development, self-sufficiency, a strong workforce, and strong tribal governments.

[33] Final Rule, 86 FR 57985 (Oct. 20, 2021); NPRM, 86 FR 29533 (June 2, 2021).

[34] *See* (2) *Ongoing Periodic Reviews of Rules and Guides (b) Proposed Rules* for information about a separate and ongoing rulemaking under the Energy Labeling Rule.

[35] Final Rule (16 CFR 640), 86 FR 51795 (Sept. 17, 2021); NPRM, 85 FR 63462 (Oct. 8, 2020).

[36] Final Rule (16 CFR 641), 86 FR 51817 (Sept. 17, 2021); NPRM, 85 FR 57172 (Sept. 15, 2020).

[37] Final Rule (16 CFR 642), 86 FR 50848 (Sept. 13, 2021); NPRM, 85 FR 59226 (Sept. 21, 2020).

[38] Final Rule (16 CFR 660), 86 FR 51819 (Sept. 17, 2021); NPRM, 85 FR 61659 (Sept. 30, 2020).

[39] Final Rule (16 CFR 680), 86 FR 51609 (Sep. 16, 2021); NPRM, 85 FR 59466 (Sept. 22, 2020).

[40] 86 FR 37022 (July 14, 2021).

[41] Final Rule, 86 FR —— (—— —, 2021); NPRM, 84 FR 13150 (Apr. 4, 2019).

[42] 86 FR 12091 (Mar. 2, 2021).

[43] *See* (2) *Ongoing Periodic Reviews of Rules and Guides (b) Proposed Rules* for information about a separate and ongoing rulemaking under the Safeguards Rule.

Retrospective Review of Existing Regulations

As an independent regulatory agency, the NIGC has been performing a retrospective review of its existing regulations. The NIGC recognizes the importance of Executive Order 13563, issued on January 18, 2011, and its regulatory review is being conducted in the spirit of Executive Order 13563, to identify those regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with input from the public. In addition, as required by Executive Order 13175, issued on November 6, 2000, the Commission has been conducting government-to-government consultations with tribes regarding each regulation's relevancy, consistency in application, and limitations or barriers to implementation, based on the tribes' experiences. The consultation process is also intended to result in the identification of areas for improvement and needed amendments, if any, new regulations, and the possible repeal of outdated regulations.

The following Regulatory Identifier Numbers (RINs) have been identified as associated with the review:

RIN	Title
3141–AA32	Definitions.
3141–AA70	Class II Minimum Internal Control Standards.
3141–AA58	Management Contracts.
3141–AA69	Class II Minimum Technical Standards.
3141–AA71	Background and Licensing.
3141–AA68	Audit Regulations.
3141–AA72	Self-Regulation of Gaming Activities.
3141–AA73	Gaming Ordinance Submission Requirements.
3141–AA74	Substantial Violations List.
3141–AA75	Appeals to Commission.
3141–AA76	Facility License Notifications and Submissions.
3141–AA77	Fees.
3141–AA79	Suspensions of Gaming Licenses for Key Employees and Primary Management Officials.
3141–AA80	Fee Rate Assessment, Reporting, and Calculation Guidelines for Self Regulated Tribes.
3141–AA81	Orders of Temporary Closure.

More specifically, the NIGC is currently considering promulgating new regulations in the following areas: (i) Amendments to its regulatory definitions to conform to the newly-promulgated rules; (ii) updates or revisions to its management contract regulations to address the current state of the industry; (iii) updates or revisions to the existing audit regulations to reduce cost burdens for small or charitable gaming operations; (iv) the review and revision of the minimum technical standards for Class II gaming; (v) the review and revision of the minimum internal control standards (MICS) for Class II gaming; (vi) background and licensing; (vii) self-regulation of Class II gaming activities; (viii) gaming ordinance submission requirements; (ix) substantial violations; (x) appeals to the Commission; (xi) facility license notification and submission; (xii) fees; (xiii) updating its regulations concerning suspension of licenses issued to Key Employees and Primary Management Officials who the NIGC determines are not eligible for employment; (xiv) amending its regulations concerning fee rate assessment, carry over status reporting process, budget commitments for maintaining transition funds, and fee rate calculation guidelines for self-regulated tribes; (xv) amending a substantial violations identified in its regulations to provide that closure for a tribe's failure to construct and operate its gaming operation in a manner that adequately protects the environment, public health, and safety includes issues related to cyber-security.

NIGC is committed to staying up-to-date on developments in the gaming industry, including best practices and emerging technologies. Further, the Commission aims to continue reviewing its regulations to determine whether they are overly burdensome to tribes and industry stakeholders, including smaller or rural operations. The NIGC anticipates that the ongoing consultations with tribes will continue to play an important role in the development of the NIGC's rulemaking efforts.

BILLING CODE 7565–01–P

U.S. NUCLEAR REGULATORY COMMISSION

Statement of Regulatory Priorities for Fiscal Year 2022

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 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 plants; 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 to review existing regulations to determine whether the requirements imposed are still necessary.

Our regulatory priorities for fiscal year (FY) 2022 reflect our safety and security mission and will enable us to achieve our two strategic goals described in NUREG–1614, Volume 7, ''Strategic Plan: Fiscal Years 2018–2022'' (*https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v7/*) (1) to ensure the safe use of radioactive materials, and (2) to ensure the secure use of radioactive materials.

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 2022. The NRC's high-priority rulemaking titled ''Risk-Informed, Technology Inclusive Regulatory Framework for Advanced Reactors (RIN 3150–AK31; NRC–2019–0062)'' is not included in this report due to the timeframe for reporting, as the agency will not be publishing it in proposed or final form during FY 2022. The proposed rule is expected to be published in FY 2023. For additional information on NRC rulemaking activities and on a broader spectrum of our upcoming regulatory actions, see our portion of the Unified Agenda of Regulatory and Deregulatory Actions. We also provide additional information on planned rulemaking and petition for rulemaking activities, including priority and schedule, on our website at *https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html.*

A. NRC's Priority Rulemakings

Proposed Rules

Advanced Nuclear Reactor Generic Environmental Impact Statement (RIN 3150–AK55; NRC–2020–0101): This rule would amend the regulations that govern the NRC's environmental reviews under National Environmental Policy Act (NEPA) by codifying the findings of the advanced nuclear reactor generic environmental impact statement.

Alternative Physical Security Requirements for Advanced Reactors (RIN 3150–AK19; NRC–2017–0227): This rule would amend the NRC's physical security requirements for small modular reactors and other advanced reactor technologies.

Cyber Security for Fuel Facilities (RIN 3150–AJ64; NRC–2015–0179): This rule would amend the NRC's regulations to add cyber security requirements for certain nuclear fuel cycle facility applicants and licensees.

Final Rules

American Society of Mechanical Engineers 2019–2020 Code Editions (RIN 3150–AK22; NRC–2018–0290): This rule will incorporate by reference into the NRC's regulations the 2019 and 2020 Editions of the Boiler and Pressure Vessel Code and the Operations and Maintenance Code.

Emergency Preparedness Requirements for Small Modular Reactors and Other New Technologies (RIN 3150–AJ68; NRC–2015–0225): This rule will amend the regulations to add new emergency preparedness requirements for small modular reactors and other new technologies such as non-light-water reactors and non-power production or utilization facilities.

NuScale Small Modular reactor Design Certification (RIN 3150–AJ98; NRC–2017–0029): This rulemaking will amend the NRC's regulations to incorporate the NuScale small modular reactor standard plant design.

B. Significant Final Rules

The following rulemaking activity meets the requirements of a significant regulatory action in Executive Order 12866, ''Regulatory Planning and Review,'' 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 2022 (RIN 3150–AK44; NRC–2020–0031): This rule will amend the NRC's fee schedules for licensing, inspection, and annual fees charged to its applicants and licensees.

NRC

Proposed Rule Stage

175. Cyber Security at Fuel Cycle Facilities [NRC–2015–0179]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation: 10 CFR 40; 10 CFR 70; 10 CFR 73.

Legal Deadline: None.

Abstract: This rulemaking would amend the NRC's regulations to add cyber security requirements for certain nuclear fuel cycle facility applicants and licensees. The rule would 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. It would affect fuel cycle applicants or licensees that are or plan to be authorized to: (1) Possess greater than a critical mass of special nuclear material and perform activities for which the NRC requires an integrated safety analysis or (2) engage in uranium hexafluoride conversion or deconversion.

Statement of Need: The NRC currently does not have a comprehensive regulatory framework for addressing cyber security at fuel cycle facilities (FCFs). Each FCF licensee is subject to either design basis threats (DBTs) or to the Interim Compensatory Measures (ICM) Orders issued to all FCF licensees subsequent to the events of September 11, 2001. Both the DBTs and the ICM Orders contain a provision that these licensees include consideration of a cyber attack when considering security vulnerabilities. However, the NRC's current regulations do not provide specific requirements or guidance on how to implement these performance objectives. Since the issuance of the ICM Orders and the 2007 DBT rulemaking, the threats to digital assets have increased both globally and nationally. Cyber attacks have increased in number, become more sophisticated, resulted in physical consequences, and targeted digital assets similar to those used by FCF licensees. The rulemaking would establish requirements for FCF licensees to establish, implement, and maintain a cyber security program to detect, protect against, and respond to a cyber attack capable of causing a consequence of concern. The design of this cyber security program would provide flexibility to account for the various types of FCFs, promote common defense and security, and provide reasonable assurance that the public health and safety remain adequately protected against the evolving risk of cyber attacks.

Summary of Legal Basis: The legal basis for the proposed action is 42 U.S.C. 2201 and 42 U.S.C. 5841.

Alternatives: As an alternative to the rulemaking, the NRC staff considered the ''no-action'' alternative. Under this option the NRC would not modify 10 CFR part 73. The NRC considered a number of additional approaches to improving cyber security at FCFs, including issuing generic communications, developing new guidance documents, and revising existing inspection modules or enforcement guidance. Because these approaches would not fully address the regulatory issues, the NRC did not evaluate them as alternatives to the proposed action. Because the Commission had previously rejected the issuance of orders to resolve these regulatory issues, orders were not evaluated as an alternative for this rulemaking.

Anticipated Cost and Benefits: The NRC evaluated the provisions of the proposed rule in the Regulatory Basis and concluded that the provisions provide a substantial increase in the overall protection of public health and safety through effective implementation of the cyber security program to prevent safety consequences of concern. The analysis further demonstrated that the costs for the proposed rule provisions are cost justified for the additional protection provided.

Risks: In the absence of specific NRC requirements, FCF licensees have

implemented limited, ad hoc, voluntary cyber security measures. Voluntary cyber security measures do not include a complete set of controls for digital assets, which leaves facilities susceptible to potential vulnerabilities and the programs may not be enforceable unless licensees incorporate them into their licensing basis. This may result in a cyber security program that is unable to adequately address the evolving cyber security threat confronting FCF licensees.

Timetable:

Action	Date	FR Cite
Draft Regulatory Basis.	09/04/15	80 FR 53478
Draft Regulatory Basis Comment Period End.	10/05/15	
Final Regulatory Basis.	04/12/16	81 FR 21449
NPRM	12/00/21	
Final Rule	10/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: The proposed rule was provided to the Commission on October 4, 2017 (SECY–17–0099), (ADAMS Package Accession No. ML17018A218).

Agency Contact: Irene Wu, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–1951, *Email: irene.wu@nrc.gov*.

RIN: 3150–AJ64

NRC

176. Alternative Physical Security Requirements for Advanced Reactors [NRC–2017–0227]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation: 10 CFR 73.

Legal Deadline: None.

Abstract: This rule would amend the NRC's physical security requirements for small modular reactors and other advanced reactor technologies. This rulemaking would establish voluntary alternative physical security requirements commensurate with the potential consequences to public health and safety and the common defense and security. This rulemaking would provide regulatory stability, predictability, and clarity in the licensing process and minimize or eliminate uncertainty for applicants who might otherwise request exemptions from the regulations.

Statement of Need: Required by NEIMA.

Summary of Legal Basis: Policy Statement on the Regulation of Advanced Reactors, published in the **Federal Register** (FR) on October 14, 2008 (73 FR 60612). Staff Requirements Memorandum (SRM)-SECY–18–0076, dated November 19, 2018, (ADAMS Accession No. ML18324A478), the Commission approved the staff's recommendation to initiate a limited-scope rulemaking.

Alternatives: SECY–18–0076, Options and Recommendation for Physical Security for Advanced Reactors, dated August 1, 2018, (ADAMS Accession No. ML18170A051), presenting alternatives and a recommendation to the Commission on possible changes to the regulations and guidance related to physical security for advanced reactors (light-water small modular reactors and non-light-water reactors). The staff evaluated the advantages and disadvantages of each alternative and recommended a limited-scope rulemaking to further assess and, if appropriate, revise a limited set of NRC regulations. The staff also recommended developing necessary guidance to address performance criteria for which the alternative requirements may be applied for advanced reactor license applicants.

Anticipated Cost and Benefits: The estimated benefits of the proposed action include (1) fewer exemption requests as compared to those made under current regulations, (2) fewer security staff or other security features compared to those currently required by 10 CFR 73.55 commensurate with offsite consequences and radiation risks to public health and safety, (3) consistent regulatory applicability in the review of physical security plans in accordance with 10 CFR part 73, and (4) potential use of a more risk-informed, performance-based physical security framework.

Risks: None.

Timetable:

Action	Date	FR Cite
Regulatory Basis	07/16/19	84 FR 33861
Comment Period End.	08/15/19	
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: NRC is not issuing a final regulatory basis and will address public comments on the regulatory basis (84 FR 33861) in the proposed rule.

Agency Contact: Dennis Andrukat, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–3561, *Email: dennis.andrukat@nrc.gov.*

RIN: 3150–AK19

NRC

177. Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC–2020–0031]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

CFR Citation: 10 CFR 170; 10 CFR 171.

Legal Deadline: NPRM, Statutory, September 30, 2022.

The Nuclear Energy Innovation and Modernization Act (NEIMA) requires the NRC to assess and collect service fees and annual fees in a manner that ensures that, to the maximum extent practicable, the amount assessed and collected approximates the NRC's total budget authority for that fiscal year less the NRC's budget authority for excluded activities. NEIMA requires that the fees for FY 2022 be collected by September 30, 2022.

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 FY 2022 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.

Statement of Need: The NRC, as required by statue conducts an annual rulemaking in order to assess and collect service fees and annual fees in a manner that ensures that, to the maximum extent practicable, the amount assessed and collected approximates the NRC's total budget authority for that fiscal year less the NRC's budget authority for excluded activities. NEIMA requires the NRC to establish through rulemaking a schedule of annual fees that fairly and equitably allocates the aggregate amount of annual fees among licensees and certificate holders. NEIMA states that this schedule may be based on the allocation of the NRC's resources among licensees, certificate holders, or classes of licensees or certificate holders and requires that the schedule of annual fees, to the maximum extent practicable, shall be reasonably related to the cost of providing regulatory services.

Summary of Legal Basis: Effective October 1, 2020, NEIMA puts in place a revised framework for fee recovery by eliminating OBRA–90's approximately 90 percent fee-recovery requirement and requiring the NRC to assess and collect service fees and annual fees in a manner that ensures that, to the maximum extent practicable, the amount assessed and collected approximates the NRC's total budget authority for that fiscal year less the NRC's budget authority for excluded activities.

Alternatives: Because this action is mandated by statute and the fees must be assessed through rulemaking, the NRC did not consider alternatives to this action.

Anticipated Cost and Benefits: The cost to the NRC's licensees is approximately 100 percent of the NRC FY 2022 budget authority less the amounts appropriated for excluded activities.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	
Final Rule	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Local, State.

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–AK44

NRC

178. Advanced Nuclear Reactor Generic Environmental Impact Statement [NRC–2020–0101]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation: 10 CFR 51.

Legal Deadline: None.

Abstract: This rulemaking would amend the NRC's regulations that govern the agency's National Environmental Policy Act (NEPA) reviews. The rulemaking would codify the findings of the Advanced Nuclear Reactor Generic Environmental Impact Statement (ANR GEIS). The ANR GEIS would use a technology-neutral regulatory framework and performance-based assumptions to determine generic environmental impacts for new commercial advanced nuclear reactors. The ANR GEIS would streamline the NEPA reviews for future advanced reactor applicants.

Statement of Need: The NRC is developing a GEIS for advanced nuclear reactors in order to streamline the environmental review process for future advanced nuclear reactor (ANR) environmental reviews. The purpose of an ANR GEIS is to determine which environmental impacts could result in essentially the same (generic) impact for different ANR designs that fit within the parameters set in the GEIS, and which environmental impacts would require a plant-specific analysis. Environmental reviews for advanced nuclear reactor license applications could incorporate the ANR GEIS by reference and provide site-specific information and analyses in a Supplemental Environmental Impact Statement (SEIS), thereby streamlining the environmental review process.

Summary of Legal Basis: 42 U.S.C. 4332, 4334, 4335.

Alternatives: As an alternative to the rulemaking, the NRC staff considered the ''no-action'' alternative. Under this alternative the NRC would not modify 10 CFR part 51 to codify the results of the ANR GEIS. This alternative would not provide the benefits of streamlining the environmental review process. Therefore, rulemaking is the preferred alternative.

Anticipated Cost and Benefits: The anticipated benefits would exceed the costs associated with the proposed regulatory action. The supporting regulatory analysis will provide a detailed analysis of the costs and benefits associated with this action.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Daniel Doyle, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–3748, *Email: daniel.doyle@nrc.gov.*

RIN: 3150–AK55

NRC

Final Rule Stage

179. Emergency Preparedness Requirements for Small Modular Reactors and Other New Technologies [NRC–2015–0225]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation: 10 CFR 50; 10 CFR 52.

Legal Deadline: None.

Abstract: This rulemaking would amend the NRC's regulations to add new emergency preparedness requirements for small modular reactors and other new technologies such as non-light-water reactors and non-power production or utilization facilities. The rule would adopt a scalable plume exposure pathway emergency planning zone approach that is performance-based, consequence-oriented, and technology-inclusive. This rulemaking would affect applicants for new NRC licenses and reduce regulatory burden related to the exemption process.

Statement of Need: Current emergency preparedness (EP) regulations do not sufficiently reflect the advances in designs and more recent safety research, particularly with respect to small modular reactors (SMRs) and other new technologies (ONTs), such as non-light-water reactors (non-LWRs) and medical isotope facilities.

Summary of Legal Basis: None.

Alternatives: None.

Anticipated Cost and Benefits: The proposed rule would be projected to result in a cost-justified change based on a net (*i.e.,* accounting for both costs and benefits) averted cost to the industry that ranges from $4.72 million using a 7-percent discount rate to $7.56 million using a 3-percent discount rate. Relative to the regulatory baseline, the NRC would realize a net averted cost of $1.17 million using a 7-percent discount rate and $2.16 million using a 3-percent discount rate. The proposed rule alternative would result in net averted costs to the industry and the NRC ranging from $5.89 million using a 7-percent discount rate to $9.71 million using a 3-percent discount rate.

Risks: None.

Timetable:

Action	Date	FR Cite
Draft Regulatory Basis.	04/13/17	82 FR 17768
Draft Regulatory Basis Comment Period End.	06/27/17	
Regulatory Basis	11/15/17	82 FR 52862
NPRM	05/12/20	85 FR 28436
NPRM Comment Period End.	07/27/20	

Action	Date	FR Cite
NPRM Comment Period Extended.	07/21/20	85 FR 44025
Comment Period End.	09/25/20	
Final Rule	03/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: The proposed rule was published for public comment on May 12, 2020. Draft regulatory guidance was also published for public comment with the proposed rule. The public comment period ended on September 25, 2020.

Agency Contact: Soly Soto Lugo, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 302 415–7528, *Email: soly.sotolugo@nrc.gov.*

RIN: 3150–AJ68

NRC

180. NuScale Small Modular Reactor Design Certification [NRC–2017–0029]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation: 10 CFR 52.

Legal Deadline: None.

Abstract: This rulemaking would amend the NRC's regulations to incorporate the NuScale small modular reactor (SMR) standard plant design. The rulemaking would add a new appendix for the initial certification of the NuScale SMR standard plant design. This action would allow applicants intending to construct and operate an SMR to reference this design certification rule in future applications.

Statement of Need: This rule would place the NuScale standard design certification, once issued by the Commission, into the Code of Federal Regulations (CFR).

Summary of Legal Basis: The regulations in 10 CFR 52.51 require the NRC to initiate rulemaking after an application is filed under 10 CFR 52.45.

Alternatives: Based on a review of NuScale Power's evaluation, the NRC concludes that: (1) NuScale Power identified a reasonably complete set of potential design alternatives to prevent and mitigate severe accidents for the NuScale design and (2) none of the potential design alternatives appropriate at the design certification stage are justified on the basis of cost/benefit considerations.

Anticipated Cost and Benefits: There is no anticipated increase in costs for consumers, individual industries, or geographical regions as a result of the rulemaking. This action will certify a reactor design; it does not constitute the license for construction of a nuclear power plant at a site.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	07/01/21	86 FR 34999
NPRM Comment Period End.	08/30/21	
NPRM Comment Period Extended.	08/24/21	86 FR 47251
NPRM Comment Extension Period End.	10/14/21	
Final Rule	03/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Yanely Malave-Velez, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–1519, *Email: yanely.malave-velez@nrc.gov.*

RIN: 3150–AJ98

NRC

181. American Society of Mechanical Engineers 2019–2020 Code Editions [NRC–2018–0290]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation: 10 CFR 50.

Legal Deadline: None.

Abstract: This rulemaking would amend the NRC's regulations to authorize the use of recent editions of American Society of Mechanical Engineers (ASME) codes. The rule would incorporate by reference the 2019 Edition of the ASME Boiler and Pressure Vessel Code and the 2020 Edition of the ASME Operations and Maintenance of Nuclear Power Plants Code into the NRC's regulations, with conditions. This action increases consistency across the industry and makes use of current voluntary consensus standards (as required by the National Technology Transfer and Advancement Act), while continuing to provide adequate protection to the public. This rulemaking would affect nuclear power reactor licensees.

Statement of Need: The need for the rulemaking is to update the regulations to incorporate the latest editions of consensus standards.

Summary of Legal Basis: The legal basis for the proposed action is 42 U.S.C. 2201, 42 U.S.C. 5841, and 10 CFR part 2, Agency Rules of Practice and Procedure, ''Subpart H, Rulemaking.''

Alternatives: In the absence of incorporation by the reference of the latest Editions of ASME Codes, licensees will continue to implement Code editions that are currently incorporated by reference in the rule and will not be able to take advantage of the latest advantages of ASME Codes, including relaxation of certain requirements in the proposed rule. Thus, licensees will have to continue to implement the requirements of older Code editions and continue to request exemptions from certain requirements that would otherwise not be needed. This may result in nuclear power plant licensees, who would be the primary beneficiaries, to not be able to apply the latest editions of ASME Codes, and the NRC would not be able to meets its goal of ensuring the protection of public health and safety and the environment by continuing to provide the NRC's approval of ASME Code editions that allow the use of the most current methods and technology and that may decrease the likelihood of an accident and, therefore, decrease the overall risk to public health.

Anticipated Cost and Benefits: The proposed rule would result in a cost-justified change based on a net (*i.e.,* taking into account both costs and benefits) averted cost to the industry ranging from $6.26 million (7-percent net present value (NPV)) to $6.99 million (3-percent NPV). Relative to the regulatory baseline, the NRC would realize a net averted cost ranging from $0.49 million (7-percent NPV) to $0.57 million (3-percent NPV). The total costs and benefits of proceeding with the rule would result in net averted costs to the industry and the NRC ranging from $6.75 million (7-percent NPV) to $7.56 million (3-percent NPV). Other benefits of the proposed rule include the NRC's continued ability to meet its goal of ensuring the protection of public health and safety and the environment through the agency's approval of new editions of the ASME BPV Code and ASME OM Code, which allow the use of the most current methods and technology.

Risks: In the absence of incorporation by the reference of the latest Editions of ASME Codes, licensees will continue to implement Code editions that are currently incorporated by reference in the rule and will not be able to take advantage of the latest advantages of ASME Codes, including relaxation of

certain requirements in the proposed rule. Thus, licensees will have to continue to implement the requirements of older Code editions and continue to request exemptions from certain requirements that would otherwise not be needed. This may result in nuclear power plant licensees, who would be the primary beneficiaries, to not be able to apply the latest editions of ASME Codes, and the NRC would not be able to meets its goal of ensuring the protection of public health and safety and the environment by continuing to provide the NRC's approval of ASME Code editions that allow the use of the most current methods and technology and that may decrease the likelihood of an accident and, therefore, decrease the overall risk to public health.

Timetable:

Action	Date	FR Cite
NPRM	03/26/21	86 FR 16087
NPRM Comment Period End.	05/25/21	
Final Rule	06/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Victoria V. Huckabay, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–5183, *Email: victoria.huckabay@nrc.gov.*

RIN: 3150–AK22

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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 2021

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 12866, ''Regulatory Planning and Review,'' and 13563, ''Improving Regulation and 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 Order 13563.

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 14, 2021.

Michael Poe,

Legislative and Regulatory Staff.

AGRICULTURAL MARKETING SERVICE—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
182	Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008)	0581–AE02

AGRICULTURAL MARKETING SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
183	Dealer Trust; Add Livestock Dealer Regulation and Statement (AMS–FTPP–21–0015)	0581–AE01
184	Poultry Grower Ranking Systems (AMS–FTPP–21–0044) **(Reg Plan Seq No. 1)**	0581–AE03
185	Unfair Practices in Violation of the Packers and Stockyards Act (AMS–FTPP–21–0045) **(Reg Plan Seq No. 3)**.	0581–AE05
186	Organic Livestock and Poultry Standards **(Reg Plan Seq No. 4)**	0581–AE06
187	Natural Grass Sod Promotion, Research, and Information Order (AMS–LP–21–0028)	0581–AE07
188	Wheat Flour Foods Promotion, Research, and Information Order (AMS–LP–20–0024)	0581–AE09

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

AGRICULTURAL MARKETING SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
189	Strengthening Organic Enforcement (AMS–NOP–17–0065)	0581–AD09
190	Dairy Donation Program (AMS–DA–21–0013)	0581–AE00

AGRICULTURAL MARKETING SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
191	National Organic Program—Organic Aquaculture Standards	0581–AD34
192	National Organic Program, Organic Apiculture Practice Standard	0581–AE12
193	National Organic Program, Organic Pet Food Standards	0581–AE13
194	National Organic Program: Organic Mushroom Standards	0581–AE14

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
195	Animal Disease Traceability; Electronic Identification	0579–AE64

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
196	Handling of Animals; Contingency Plans	0579–AC69
197	Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts.	0579–AD10

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
198	Importation of Fresh Citrus Fruit From the Republic of South Africa Into the Continental United States	0579–AD95
199	Horse Protection; Licensing of Designated Qualified Persons and Other Amendments	0579–AE19
200	National List of Reportable Animal Diseases	0579–AE39
201	Requiring Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs.	0579–AE58

FOOD AND NUTRITION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
202	Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions.	0584–AE85

FOOD AND NUTRITION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
203	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
204	Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems	0584–AE37
205	Supplemental Nutrition Assistance Program (SNAP): Electronic Benefits Transfer Requirements for Scanning and Product-Lookup Technology.	0584–AE39
206	Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP)	0584–AE61
207	Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP).	0584–AE71

FOOD AND NUTRITION SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
208	National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010.	0584–AE55

FOOD SAFETY AND INSPECTION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
209	Changing the Labeling Requirements for Processed Products That Contain Nitrate or Nitrite	0583–AD92
210	Foreign Equivalence Regulations	0583–AD93

FOREST SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
211	Special Uses—Communications Uses Rent	0596–AD43

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Prerule Stage

182. Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008)

Legal Authority: 7 U.S.C. 6501 to 6524

Abstract: This Advanced Notice of Proposed Rulemaking (ANPR) requests comments on options for replacing outdated references in USDA's organic regulations to U.S. Environmental Protection Agency (EPA) policy on inert ingredients in pesticides. Inerts, also known as other ingredients, are any substances other than the active ingredient that are intentionally added to pesticide products. The 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	03/00/22	

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–AE02

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Proposed Rule Stage

183. Dealer Trust; Add Livestock Dealer Regulation and Statement (AMS–FTPP–21–0015)

Legal Authority: Pub. L. 116–260, sec. 763

Abstract: The proposed rule would revise the Packers and Stockyards regulations to add provisions for written notifications related to the new livestock dealer trust. The revisions outline 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 require 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.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stuart Frank, Division Director, Packers and Stockyards Division, Department of Agriculture, Agricultural Marketing Service, Federal Building; Room 917, 210 Walnut Street, Des Moines, IA 50309, *Phone:* 515 323–2586, *Email: stuart.frank@usda.gov.*

RIN: 0581–AE01

184. Poultry Grower Ranking Systems (AMS–FTPP–21–0044)

Regulatory Plan: This entry is Seq. No. 1 in part II of this issue of the **Federal Register**.

RIN: 0581–AE03

185. Unfair Practices in Violation of the Packers and Stockyards Act (AMS–FTPP–21–0045)

Regulatory Plan: This entry is Seq. No. 3 in part II of this issue of the **Federal Register**.

RIN: 0581–AE05

186. • Organic Livestock and Poultry Standards

Regulatory Plan: This entry is Seq. No. 4 in part II of this issue of the **Federal Register**.

RIN: 0581–AE06

187. • Natural Grass Sod Promotion, Research, and Information Order (AMS–LP–21–0028)

Legal Authority: 7 U.S.C. 7411 to 7425

Abstract: This proposed rule invites comments on the establishment 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 will conduct research, marketing, and promotion activities that will benefit the entire industry. Primary goals of the program 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 this proposed rule are only attainable through a national research and promotion program for natural grass sod.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Betsy Flores, Director of the Research and Promotion Division, Department of Agriculture, Agricultural Marketing Service, Washington, DC 20024, *Phone:* 202 720–1118, *Email: elizabethr.flores@usda.gov.*

RIN: 0581–AE07

188. • Wheat Flour Foods Promotion, Research, and Information Order (AMS–LP–20–0024)

Legal Authority: 7 U.S.C. 7411 to 7425

Abstract: This proposed rule invites comments on the establishment of an industry-funded promotion, research, and information program for wheat flour used to produce grain foods. The proposed Wheat Flour Foods Promotion, Research, and Information Order was submitted to the U.S. Department of Agriculture by the Grain Foods Foundation (GFF), a group of baking and milling industries and allied suppliers. The proposed Order submitted by GFF is intended to increase sales by reversing the current decline in wheat flour consumption, improving the perception of bread, and producing research to strengthen the industry's promotion of bread through: (a) Consumer Media; (b) Retail Channel Development; (c) Food Service Channel Development; and (d) Science/Nutrition Research. The proposed order submitted by GFF intends to improve consumption

of grain foods, ensure that benefits to the entire industry are paid for by the entire industry, and allow for consistent funding to maximize promotion and research efforts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Betsy Flores, Director of the Research and Promotion Division, Department of Agriculture, Agricultural Marketing Service, Washington, DC 20024, *Phone:* 202 720–1118, *Email: elizabethr.flores@usda.gov.*

RIN: 0581–AE09

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Final Rule Stage

189. Strengthening Organic Enforcement (AMS–NOP–17–0065)

Legal Authority: 7 U.S.C. 6501

Abstract: The Strengthening Organic Enforcement (SOE) rulemaking will address 2018 Farm Bill mandates. In summary, SOE will follow requirements that align with the Farm Bill:

- Limiting the types of operations in the organic supply chain that are not required to obtain organic certification;
- Imported organic products must be accompanied by an electronic import certificate to validate organic status;
- Import certificates will be submitted to the U.S. Customs and Border Protection's Automated Commercial Environment (ACE);
- Certifying agents must notify USDA within 90 days of the opening of any new office that conducts certification activities; and,
- Entities acting on behalf of certifying agents may be suspended when there is noncompliant activity.

Timetable:

Action	Date	FR Cite
Proposed Rule	08/05/20	85 FR 47536
Comment Period End.	10/05/20	
Final Rule	03/00/22	

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–AD09

190. Dairy Donation Program (AMS–DA–21–0013)

Legal Authority: Pub. L. 116–260, sec. 762

Abstract: This rulemaking for the Dairy Donation Program will finalize the program 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.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/01/21	86 FR 48887
Interim Final Rule Comment Period End.	11/01/21	
Final Rule	11/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Erin Taylor, Acting Director, Order Formulation and Enforcement Division, Department of Agriculture, Agricultural Marketing Service, Dairy Program, 1400 Independence Avenue SW, Room 2969–S, Washington, DC 20250, *Phone:* 202 720–7311, *Email: erin.taylor@ams.usda.gov.*

RIN: 0581–AE00

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Long-Term Actions

191. National Organic Program—Organic Aquaculture Standards

Legal Authority: 7 U.S.C. 6501 to 6522

Abstract: This action proposes to 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

192. • National Organic Program, Organic Apiculture Practice Standard

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, 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–AE12

193. • National Organic Program, Organic Pet Food Standards

Legal Authority: 7 U.S.C. 6501

Abstract: This action proposes to amend the USDA organic regulations to reflect a recommendation submitted to the Secretary by the National Organic Standards Board (NOSB) to develop organic pet food standards.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

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

194. • National Organic Program: Organic Mushroom Standards

Legal Authority: 7 U.S.C. 6501 to 6524

Abstract: This action proposes to establish standards for the organic production and certification of mushrooms in the USDA organic regulations.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

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–AE14

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Proposed Rule Stage

195. Animal Disease Traceability; Electronic Identification

Legal Authority: 7 U.S.C. 8301 *et seq.*

Abstract: This action would amend APHIS' animal disease traceability regulations, currently codified at 9 CFR part 86. The primary proposed change would require that beginning January 1, 2023, APHIS would only recognize identification devices (*e.g.,* eartags) as official identification for cattle and bison covered by the regulations if the devices have both visual and electronic readability (EID). Other proposed changes are intended to clarify language and requirements in several sections of part 86. These changes would enhance the U.S. traceability system to better achieve goals of rapidly tracing diseased and exposed animals and containing outbreaks.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	

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)

Final Rule Stage

196. Handling of Animals; Contingency Plans

Legal Authority: 7 U.S.C. 2131 to 2159

Abstract: The Animal and Plant Health Inspection Service issued a final rule on December 31, 2012, to establish regulations under which research facilities and dealers, exhibitors, intermediate handlers, and carriers must meet certain requirements for contingency planning and training of personnel. Implementation of the final rule was stayed on July 31, 2013, so that the agency could conduct additional review to further consider the impact of contingency plan requirements on regulated entities. Since that time, we have conducted such a review, and the 2021 Congressional Appropriations Act has required us to lift the stay. We are therefore lifting the stay and making minor revisions to the requirements in order to update compliance dates and clarify intent. The lifting of the stay and revisions will better ensure that entities responsible for animals regulated under the Animal Welfare Act are prepared to safeguard the health and welfare of such animals in the event of possible emergencies or disasters.

Timetable:

Action	Date	FR Cite
NPRM	10/23/08	73 FR 63085
NPRM Comment Period End.	12/22/08	
NPRM Comment Period Extended.	12/19/08	73 FR 77554
NPRM Comment Period Extended End.	02/20/09	
Final Rule	12/31/12	77 FR 76815
Final Rule Effective.	01/30/13	
Final Rule—Stay of Regulations.	07/31/13	78 FR 46255
Final Rule Effective—Stay of Regulations.	07/31/13	
NPRM	06/25/21	86 FR 33567
NPRM Comment Period End.	08/24/21	
Final Rule	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Elizabeth Theodorson, Assistant Deputy Administrator, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 86, Riverdale, MD 20737, *Phone:* 970 494–7473.

RIN: 0579–AC69

197. Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 1622; 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 animals and animal products to revise conditions for the importation of live sheep, goats, and certain other non-bovine ruminants, and products derived from sheep and goats, with regard to transmissible spongiform encephalopathies such as bovine spongiform encephalopathy (BSE) and scrapie. We are removing BSE-related import restrictions on sheep and goats and most of their products and adding import restrictions related to transmissible spongiform encephalopathies for certain wild, zoological, or other non-bovine ruminant species. The conditions we are adopting for the importation of specified commodities are based on internationally accepted scientific literature and will, in general, align our regulations with guidelines established in the World Organization for Animal Health's Terrestrial Animal Health Code.

Timetable:

Action	Date	FR Cite
NPRM	07/18/16	81 FR 46619
NPRM Comment Period End.	09/16/16	
Final Rule	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexandra MacKenzie, Veterinary Medical Officer, Animal Permitting and Negotiating Services, NIES, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737, *Phone:* 301 851–3300.

RIN: 0579–AD10

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Long-Term Actions

198. Importation of Fresh Citrus Fruit From the Republic of South Africa Into the Continental United States

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 21 U.S.C. 136 and 136a

Abstract: This notice will allow the importation of several varieties of fresh citrus fruit, as well as citrus hybrids, into the continental United States from areas in the Republic of South Africa where citrus black spot has been known to occur. As a condition of entry, the fruit will have to be produced in accordance with a systems approach that includes shipment traceability, packinghouse registration and procedures, and phytosanitary treatment. The fruit will also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of South Africa with an additional declaration confirming that the fruit has been produced in accordance with the systems approach. This action will allow for the importation of fresh citrus fruit, including citrus hybrids, from the Republic of South Africa while continuing to provide protection against the introduction of plant pests into the United States. This notice is being issued pursuant to the terms set forth in a September 14, 2018 final rule (83 FR 46627–46639, Docket No. APHIS–2010–0082), which established a notice-based process for authorizing the importation of fruits and vegetables into the United States.

Timetable:

Action	Date	FR Cite
NPRM	08/28/14	79 FR 51273
NPRM Comment Period End.	10/27/14	
Final Notice	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tony Román, *Phone:* 301 851–2242.

RIN: 0579–AD95

199. Horse Protection; Licensing of Designated Qualified Persons and Other Amendments

Legal Authority: 15 U.S.C. 1823 to 1825; 15 U.S.C. 1828

Abstract: We proposed amending the horse protection regulations to provide that the Animal and Plant Health Inspection Service (APHIS) would train and license horse protection inspectors (HPIs) to inspect horses at horse shows, exhibitions, sales, and auctions for compliance with the Horse Protection Act. Those changes to the regulations would strengthen enforcement of the Horse Protection Act and regulations and relieve horse industry organizations or associations of their regulatory burdens and responsibilities. We also proposed establishing a process by which APHIS can deny an application for a HPI license or revoke the license of a HPI who does not meet the minimum requirements, who fails to follow the designated inspection procedures, or who otherwise fails to carry out his or her duties and responsibilities in a satisfactory manner. In addition, we proposed making several changes to the requirements that pertain to the management of any horse show, exhibition, sale, and auction, as well as changes to the list of devices, equipment, substances, and practices that are prohibited to prevent the soring of horses. Finally, we proposed revising the inspection procedures that inspectors are required to perform. These actions would help to protect horses from the cruel and inhumane practice of soring and eliminate unfair competitive advantage that sore horses have over horses that are not sore.

Timetable:

Action	Date	FR Cite
NPRM	07/26/16	81 FR 49111
NPRM Comment Period Extended.	09/22/16	81 FR 65307
NPRM Comment Period End.	10/26/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Aaron Rhyner,*Phone:* 970 494–7484.

RIN: 0579–AE19

200. National List of Reportable Animal Diseases

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 State and 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.

Timetable:

Action	Date	FR Cite
NPRM	04/02/20	85 FR 18471
NPRM Comment Period End.	06/01/20	
NPRM Comment Period Re-opened.	08/18/20	85 FR 50796
NPRM Comment Period Re-opened End.	08/21/20	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jane Rooney, *Phone:* 970 494–7397.

RIN: 0579–AE39

201. Requiring Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs

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.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Elizabeth Theodorson, *Phone:* 970 494–7473.

RIN: 0579–AE58

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE (USDA)

Food and Nutrition Service (FNS)

Proposed Rule Stage

202. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions

Legal Authority: Pub. L. 111–296

Abstract: This rule 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.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael DePiro, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 305–2876, *Email: michael.depiro@usda.gov.*

Maureen Lydon, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE85

DEPARTMENT OF AGRICULTURE (USDA)

Food and Nutrition Service (FNS)

Long-Term Actions

203. National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010

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 (SFAs) 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 supplements reimbursed by the Department of Agriculture must generate revenue at least proportionate to the cost of such foods.

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	
Next Action Undetermined.		

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

204. Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems

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 codify provisions of the 2014 Farm Bill, the 2018 Farm Bill, and respond to 2018 OIG audit findings. The rule will 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 codify waivers that have been granted to State agencies to implement practices that have proven beneficial as the EBT system has developed and matured, address Disaster-SNAP requirements for ongoing households, and update EBT system technical and functional requirements.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, *Phone:* 703 605–0800, *Email: charles.watford@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE37

205. Supplemental Nutrition Assistance Program (SNAP): Electronic Benefits Transfer Requirements for Scanning and Product-Lookup Technology

Legal Authority: Pub. L. 113–79

Abstract: This rule will align program regulations with changes made by section 4002 of the Agricultural Act of 2014 (Pub. L. 113–79, the Farm Bill), which introduced new technical requirements for point-of-sale (POS) devices in the Electronic Benefits Transfer (EBT) system in section 7(h)(2)(C) of the Food and Nutrition Act of 2008 (the FNA). The Food and Nutrition Service (FNS) will propose to revise existing regulations both to codify these statutory requirements as well as to provide for their effective implementation and enforcement through the clarification of the technical specifications and capabilities required of this equipment and by addressing methods for ensuring compliance. In addition, USDA will define what constitutes an area that has significantly limited access to food to determine who is exempt from this requirement.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, *Phone:* 703 605–0800, *Email: charles.watford@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE39

206. Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP)

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. Subsequent annual Agency appropriations bill language prohibited implementation of certain final rule provisions. In response, this change will provide some retailers participating in SNAP as authorized food stores with more flexibility in meeting the enhanced SNAP eligibility requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/05/19	84 FR 13555

Action	Date	FR Cite
NPRM Comment Period End.	06/04/19	
NPRM Comment Period Re-opened.	06/14/19	84 FR 27743
NPRM Comment Period Reopen End.	06/20/19	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, *Phone:* 703 605–0800, *Email: charles.watford@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE61

207. Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP)

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).

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, *Phone:* 703 605–0800, *Email: charles.watford@usda.gov.*

Maureen Lydon, *Phone:* 703 457–7713, *Email: maureen.lydon@usda.gov.*

RIN: 0584–AE71

DEPARTMENT OF AGRICULTURE (USDA)

Food and Nutrition Service (FNS)

Completed Actions

208. National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger–Free Kids Act of 2010

Legal Authority: Pub. L. 111–296

Abstract: This rule codifies a provision of the Healthy, Hunger-Free Kids Act (Pub. L. 111–296; the Act) under 7 CFR parts 210 and 220. Section 208 requires the Secretary to promulgate regulations to establish science-based nutrition standards for all foods sold in schools. The nutrition standards apply to all food sold outside the school meal programs, on the school campus, and at any time during the school day. However, FNS determined that this final rule is not necessary since this provision is in effect as an interim final rule (0584–AE09), and other regulatory provisions for foods sold in school were finalized in 2016.

Completed:

Reason	Date	FR Cite
Withdrawn	08/30/21	

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–AE55

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE (USDA)

Food Safety and Inspection Service (FSIS)

Proposed Rule Stage

209. • Changing the Labeling Requirements for Processed Products That Contain Nitrate or Nitrite

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.*

Abstract: The Food Safety and Inspection Service (FSIS) is proposing to amend its labeling requirements for processed meat and poultry products to establish new definitions for Cured and Uncured. Additionally, FSIS is proposing to remove from the regulations the chart listing approved uses of food ingredients and sources of radiation at 9 CFR 424.21(c) and to instead list approved uses online and in FSIS Directive 7120.1, *Safe and Suitable Ingredients Used in the Production of Meat, Poultry and Egg Products.* FSIS is proposing these changes in response to a petition. Finally, FSIS is proposing to rescind the regulations at 9 CFR 424.22(b)(1)(i) and (ii)(C) that require FSIS to collect samples of pumped bacon from producing establishments and analyze them for nitrosamines because FSIS no longer conducts this testing.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Matthew Michael, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, Office of Policy and Program Development, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–0345, *Fax:* 202 690–0486, *Email: matthew.michael@usda.gov.*

RIN: 0583–AD92

210. • Foreign Equivalence Regulations

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.;* 21 U.S.C. 1031 *et seq.*

Abstract: The Food Safety and Inspection Service (FSIS) is proposing to update and combine into a new part the criteria FSIS uses to evaluate whether a foreign country is eligible to export meat (including Siluriformes fish), poultry, or egg products to the United States.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Matthew Michael, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, Office of Policy and Program Development, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–0345, *Fax:* 202 690–0486, *Email: matthew.michael@usda.gov.*

RIN: 0583–AD93

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE (USDA)

Forest Service (FS)

Long-Term Actions

211. Special Uses—Communications Uses Rent

Legal Authority: 43 U.S.C. 1761 to 1771.

Abstract: Consistent with the requirement in title V, section 504(g) of the Federal Land Policy and Management Act, the proposed rule would update the Forest Service's rental fee schedule for communications uses based on market value. Updated rental fees that exceed 100 percent of current rental fees would be phased in over a 3-year period. USDA is coordinating development of the information base to support this rulemaking with the Department of the Interior.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edwina Howard–Agu, *Phone:* 202 205–1419, *Email: edwina.howard-agu@usda.gov.*

RIN: 0596–AD43

[FR Doc. 2021–27969 Filed 1–28–22; 8:45 am]

BILLING CODE 3410–11–P

FEDERAL REGISTER

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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 2021 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 2021 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 2021 regulatory agenda includes regulatory activities that are expected to be conducted during the period November 1, 2021, through October 31, 2022.

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 Asha Mathew, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230, telephone: 202–482–3151.

SUPPLEMENTARY INFORMATION: Commerce hereby publishes its fall 2021 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 August 16, 2021, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the fall 2021 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 2021 regulatory agenda follows.

Leslie Kiernan,

General Counsel.

GENERAL ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
212	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.
213	Concrete Masonry Products Research, Education, and Promotion	0605–AA53

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
214	Comprehensive Fishery Management Plan for Puerto Rico, Comprehensive Fishery Management Plan for St. Croix, Comprehensive Fishery Management Plan for St. Thomas/St. John.	0648–BD32
215	International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing With Respect to U.S. Territories.	0648–BF41
216	International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty.	0648–BG04
217	Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act.	0648–BG11
218	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
219	Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management.	0648–BI10
220	Establish National Insurance Requirements for Observer Providers	0648–BJ33
221	Amendment 23 to the Northeast Multispecies Fishery Management Plan	0648–BK17
222	Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan	0648–BK68
223	West Coast Vessel Monitoring Exemptions	0648–BK73
224	Conservation and Management Measures for Tropical Tunas in the Eastern Pacific Ocean for 2022 and Beyond.	0648–BK84
225	Silky Shark Regulations in the Eastern Pacific Ocean in 2022 and Beyond	0648–BK87
226	Emergency Purse Seine Observer Waivers in the Eastern Pacific Ocean	0648–BK88
227	Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule	0648–BI88
228	Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act.	0648–BK04

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
229	Generic Amendment to the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region.	0648–BH72
230	Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood.	0648–BH87
231	Atlantic Highly Migratory Species: Amendment 13 on Bluefin Tuna Management	0648–BI08
232	Designation of Critical Habitat for the Arctic Ringed Seal	0648–BC56
233	Amendment and Updates to the Pelagic Longline Take Reduction Plan	0648–BF90
234	Designation of Critical Habitat for the Threatened Caribbean Corals	0648–BG26
235	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–BJ09
236	Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals	0648–BJ52
237	Designation of Critical Habitat for the Beringia Distinct Population Segment of the Bearded Seal	0648–BJ65
238	Monterey Bay National Marine Sanctuary Regulations and Management Plan	0648–BI01

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
239	Implementation of a Program for Transshipments by Large Scale Fishing Vessels in the Eastern Pacific Ocean.	0648–BD59

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
240	International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements to Safeguard Fishery Observers.	0648–BG66
241	Omnibus Deep-Sea Coral Amendment	0648–BH67
242	Amendment 111 to the Fishery Management Plan for Groundfish of the Gulf of Alaska to Reauthorize the Central Gulf of Alaska Rockfish Program.	0648–BJ73
243	2021 Pacific Whiting Harvest Specifications Including Interim Tribal Allocation; Pacific Coast Groundfish	0648–BK25
244	Reducing Disturbances to Hawaiian Spinner Dolphins From Human Interactions	0648–AU02
245	Revision to Critical Habitat Designation for Endangered Southern Resident Killer Whales	0648–BH95
246	Wisconsin-Lake Michigan National Marine Sanctuary Designation	0648–BG01

PATENT AND TRADEMARK OFFICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
247	Changes To Implement Provisions of the Trademark Modernization Act of 2020 **(Reg Plan Seq No. 15)**	0651–AD55

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

212. Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures

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	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joe Bartles, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, *Phone:* 202 482–3084, *Email: jbartles@doc.gov.*

RIN: 0605–AA60

DEPARTMENT OF COMMERCE (DOC)

General Administration (ADMIN)

Final Rule Stage

213. Concrete Masonry Products Research, Education, and Promotion

Legal Authority: 15 U.S.C. 8701 *et seq.*

Abstract: The Concrete Masonry Products Research, Education, and Promotion Act of 2018 (Act) (15 U.S.C. 8701 *et seq.*) authorizes the establishment of an orderly program for a program of research, education, and promotion, including funds for marketing and market research activities, that is designed to promote the use of concrete masonry products in construction and building (a checkoff program). The Act allows industry to submit a proposed order establishing such a program. If the Secretary determines that such a proposed order is consistent with and will effectuate the purpose of the Act, the Secretary is directed to publish the proposed order in the **Federal Register** not later than 90 days after receiving the order.

Timetable:

Action	Date	FR Cite
NPRM	08/24/20	85 FR 52059
NPRM Comment Period End.	10/08/20	
Final Action	09/15/21	86 FR 51456
Final Action Effective.	11/29/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Asha Mathew, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, *Phone:* 202 306–0487, *Email: amathew@doc.gov.*

RIN: 0605–AA53

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Proposed Rule Stage

National Marine Fisheries Service

214. Comprehensive Fishery Management Plan for Puerto Rico, Comprehensive Fishery Management Plan for St. Croix, Comprehensive Fishery Management Plan for St. Thomas/St. John

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

Abstract: In response to a recommendation of the Caribbean Fishery Management Council, this action would establish three new Fishery Management Plans (FMPs) (Puerto Rico FMP, St. Thomas/St. John FMP and St. Croix FMP) and repeal and replace the existing U.S. Caribbean-wide FMPs (the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI), the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI, the FMP for Queen Conch Resources of Puerto Rico and the USVI, and the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI). For each of the Puerto Rico, St. Thomas/St. John, and St. Croix FMPs, the action would also modify the composition of the stocks to be managed; organize those stocks for effective management; establish status determination criteria, management reference points, and accountability measures for managed stocks; identify essential fish habitat for stocks new to management; and establish framework measures.

Timetable:

Action	Date	FR Cite
Notice of Availability.	06/26/20	85 FR 38350
Comment Period End.	08/25/20	
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew J. Strelcheck, Acting 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–BD32

215. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing With Respect to U.S. Territories

Legal Authority: 16 U.S.C. 6901 *et seq.*

Abstract: This action would establish rules and/or procedures to address the treatment of U.S.-flagged purse seine vessels and their fishing activities in regulations issued by the National Marine Fisheries Service that implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission), of which the United States is a member. Under the Western and Central Pacific Fisheries Convention Implementation Act, the National Marine Fisheries Service exercises broad discretion when determining how it implements Commission decisions, such as purse seine fishing restrictions. The National Marine Fisheries Service intends to examine the potential impacts of the domestic implementation of Commission decisions, such as purse seine fishing restrictions, on the economies of the U.S. territories that participate in the Commission, and examine the connectivity between the activities of U.S.-flagged purse seine fishing vessels and the economies of the territories. Based on that and other information, the National Marine Fisheries Service might propose regulations that mitigate adverse economic impacts of purse seine fishing restrictions on the U.S. territories and/or that, in the context of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), recognize that one or more of the U.S. territories have their own purse seine fisheries that are distinct from the purse seine fishery of the United States and that are consequently subject to special provisions of the Convention and of Commission decisions.

Timetable:

Action	Date	FR Cite
ANPRM	10/23/15	80 FR 64382
ANPRM Comment Period End.	11/23/15	
NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Tosatto, 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: michael.tosatto@noaa.gov.*

RIN: 0648–BF41

216. International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty

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	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Tosatto, 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: michael.tosatto@noaa.gov.*

RIN: 0648–BG04

217. Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act

Legal Authority: Pub. L. 114–81

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.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexa Cole, Director, Office of International Affairs and Seafood Inspection, 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

218. 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

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

Abstract: The proposed action would implement 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 is intended to increase operational flexibility and reduce monitoring costs for the fleet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231–6266, *Email: barry.thom@noaa.gov.*

RIN: 0648–BH70

219. Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management

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.

Timetable:

Action	Date	FR Cite
NPRM	09/00/22	

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

220. Establish National Insurance Requirements for Observer Providers

Legal Authority: 16 U.S.C. 1855(d)

Abstract: NMFS is proposing to establish uniform, nationally applicable minimum insurance requirements for companies that provide observer or at-sea monitor services for federally managed fisheries subject to monitoring requirements. This action would supersede outdated or inappropriate regulatory insurance requirements thereby easing the regulatory and cost burden for observer/at-sea monitor providers. Additionally, this action would mitigate potential liability risks associated with observer and at-sea monitor deployments for vessel owners and shore side processors that are subject to monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Evan Howell, Director, Office of Science and Technology, National Marine Fisheries Service, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8100, *Email: evan.howell@noaa.gov.*

RIN: 0648–BJ33

221. Amendment 23 to the Northeast Multispecies Fishery Management Plan

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

Abstract: This action proposes measures recommended by the New England Fishery Management Council in Amendment 23 to the Northeast Multispecies Fishery Management Plan. The Council developed this action to implement measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is a precise and accurate representation of catch (landings and discards). The purpose of this action is to adjust the existing industry-funded monitoring program to improve accounting and accuracy of collected catch data. Specifically, this action would set a fixed target coverage rate as a percentage of fishing trips to replace the current annual method for calculating a coverage target. This action would exclude from the monitoring requirement all trips in geographic areas with low groundfish catch; allow for increased coverage when federal funding is available to reimburse industry's costs; set a baseline coverage target for which there is no reimbursement for industry's costs in the absence of federal funding; approve electronic monitoring technologies as an alternative to human at-sea monitors; require periodic evaluation of the monitoring program; allow for waivers from monitoring for good cause; and grant authority to the Northeast Regional Administrator to streamline industry's reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

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–BK17

222. • Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan

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

Abstract: The New England Fishery Management Council developed

Amendment 21 to allow for more controlled access to the scallop resource by the limited access and limited access general category (LAGC) fleets and increase monitoring in ways that support a growing directed scallop fishery in Federal waters, including the Northern Gulf of Maine (NGOM). Additionally, Amendment 21 considers adjusting the LAGC individual fishing quota (IFQ) program to support overall economic performance while allowing for continued participation in the LAGC fishery at varying levels. This action would: (1) Change the Annual Catch Limit flow chart to account for biomass in NGOM as part of Overfishing Limit and the Acceptable Biological Catch to be consistent with other portions of scallop resource management; (2) Develop landings limits for all permit categories in NGOM and establish an 800,000-pound NGOM Set-Aside trigger for the NGOM directed fishery with a sharing agreement for access by all permit categories for allocation above the trigger. Pounds above the trigger would be split 5 percent for the NGOM fleet and 95 percent for limited access and LAGC IFQ fleets; (3) Expand the Scallop Industry Funded Observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs; (4) Allocate 25,000 pounds of the NGOM allocation to increase the overall Scallop Research Set-Aside (RSA) and support Scallop RSA compensation fishing; (5) Increase the LAGC IFQ possession limit to 800 pounds per trip only for access area trips; (6) Prorate the daily observer compensation rate in 12-hour increments for observed LAGC IFQ trips longer than one day; and (7) Allow for temporary transfers of IFQ from limited access vessels with IFQ to LAGC IFQ-only vessels.

Timetable:

Action	Date	FR Cite
NPRM	10/05/21	86 FR 54903
NPRM Comment Period End.	11/04/21	
Final Action	12/00/21	

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–BK68

223. • West Coast Vessel Monitoring Exemptions

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

Abstract: On June 11, 2020, NMFS published the final rule (85 FR 35594) Vessel Movement, Monitoring, and Declaration Management for the Pacific Coast Groundfish Fishery to revise monitoring provisions. This revision increased the position transmission rate for vessels participating in the limited entry groundfish fishery, (''limited entry A'' endorsed permit), any vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl) in the Exclusive Economic Zone (EEZ), and any vessels that use open access gear to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheepshead trap). This action would address an omission in the June 11, 2020, rulemaking that inadvertently left out the exemption for the pink shrimp trawl fishery from the position transmission rate increase that was included in the Pacific Fishery Management Council's recommendation for action. In April 2016, the Council recommended that vessels in the pink shrimp trawl fishery be exempt from increasing position transmission rates from once every hour to once every 15 minutes. This fishery is not subject to Rockfish Conservation Area restrictions, therefore additional monitoring for participating vessels is not necessary. This rulemaking would add this exemption into the regulations as well as make other minor, non-substantive clarifications in the regulations that were implemented in the June 11, 2020, rule.

Timetable:

Action	Date	FR Cite
NPRM	10/26/21	86 FR 59109
NPRM Comment Period End.	11/26/21	
Final Action	01/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231–6266, *Email: barry.thom@noaa.gov.*

RIN: 0648–BK73

224. • Conservation and Management Measures for Tropical Tunas in the Eastern Pacific Ocean for 2022 and Beyond

Legal Authority: 16 U.S.C. 951; 16 U.S.C. 952; 16 U.S.C. 953; 16 U.S.C. 954; . . .

Abstract: The Inter-American Tropical Tuna Commission (IATTC) is expected to adopt by consensus a Resolution for *Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean* in October 2021. The Resolution is binding for IATTC member nations, and under the Tuna Conventions Act, 16 U.S.C. 951 *et seq.* NMFS must implement the Resolution domestically. This proposed rule would implement the provisions for tropical tuna for 2022 and beyond. In addition to rolling over measures from the 2021 Resolution, this Resolution may include an increase in purse seine closure days, changes to force majeure provisions, updates to fish aggregating device measures. The Resolution is intended to prevent overfishing of tropical tuna (bigeye, yellowfin, and skipjack) in the eastern Pacific Ocean. The following provisions that would be included in the proposed rule were also in the regulations implemented for 2021. The rule will continue to prohibit purse seine vessels of class sizes 4–6 (carrying capacity greater than 182 mt) from fishing for tropical tuna in the EPO for a period of at least 72 days. The rule would continue to require a closure of the fishery for yellowfin, bigeye, and skipjack tunas by purse-seine vessels within the area of 96W and 110W and between 4° N and 3° S from 0000 hours on 9 October to 2400 hours on 8 November. The rule would carry over all provisions included in the Measures of the Longline Fishery and Other Provisions section of the Resolution. As of August 23, 2021, 17 U.S. purse seine vessels of class size 4–6 are registered to fish in the IATTC Convention Area that would be impacted by these measures. Owners and operators of these vessels are familiar with these measures. In addition to sending professional representatives and lobbyists, many personally attended the June and August IATTC Meetings and were closely involved in briefings and discussions with State Department and NMFS leadership and staff. The action is necessary for the United States to satisfy its international obligations as a Member of the IATTC. This rule is not expected to trigger either opposition from any sector of the public or congressional interest. NMFS has considered this action under E.O. 12866. Based on that review, this action

is not expected to have an annual effect on the economy of $100 million or more, or have an adverse effect in a material way on the economy. Furthermore, this action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231–6266, *Email: barry.thom@noaa.gov.*

RIN: 0648–BK84

225. • Silky Shark Regulations in the Eastern Pacific Ocean in 2022 and Beyond

Legal Authority: 16 U.S.C. 951 *et seq.*

Abstract: The National Marine Fisheries Service (NMFS) intends to maintain existing regulations on silky shark for 2022 and beyond, implemented under the Inter-American Tropical Tuna Commission (IATTC) Resolution on silky shark, under the authority of the Tuna Conventions Act. The IATTC Resolution on silky shark is expected to be adopted at the October 2021 session of the 98th Meeting of the IATTC. This proposed rule would maintain existing domestic implementing regulations pertaining to the prohibition on retention, transshipment, storing, and landing any part or whole carcass of silky shark on U.S. purse seine and longline vessels, as well as the specified exceptions to this prohibition for purse seine vessels. These existing regulations in the proposed rule would apply to United States purse seine and longline vessels authorized to fish in the eastern Pacific Ocean, and would not impose additional burden. These regulations on silky shark have not been and are not expected to be opposed by domestic commercial fishing interests. The action is necessary for the United States to satisfy its international obligations as a Member of the IATTC. This rule is not expected to trigger either opposition from any sector of the public or congressional interest. NMFS has considered this action under E.O. 12866. Based on that review, this action is not expected to have an annual effect on the economy of $100 million or more, or have an adverse effect in a material way on the economy. Furthermore, this action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231–6266, *Email: barry.thom@noaa.gov.*

RIN: 0648–BK87

226. • Emergency Purse Seine Observer Waivers in the Eastern Pacific Ocean

Legal Authority: 16 U.S.C. 951; 16 U.S.C. 952; 16 U.S.C. 953; 16 U.S.C. 954; 16 U.S.C. 955; 16 U.S.C. 956; 16 U.S.C. 957; 16 U.S.C. 958; 16 U.S.C. 959; 16 U.S.C. 960; 16 U.S.C. 961; 16 U.S.C. 962

Abstract: On March 27, 2020, NMFS published a temporary rule for an emergency action in response to the COVID–19 Pandemic (85 FR 17285), that provides the authority to waive observer coverage requirements implemented under certain statutes, including the Marine Mammal Protection Act and Tuna Conventions Act. That temporary rule was extended and is currently in effect until March 26, 2022 (86 FR 16307), or until the Secretary of Health and Human Services determines that the COVID–19 Pandemic is no longer a public health emergency, whichever is earlier. Pursuant to the emergency rule, and in accordance with exemption procedures adopted by the Inter-American Tropical Tuna Commission (IATTC), NMFS WCR established procedures, subject to revocation or extension as circumstances warrant, for issuing temporary exemptions on an individual basis to the observer requirements under 50 CFR 216.24(e) and 50 CFR 300.25(e)(4)(iv). With travel restrictions continuing to be enforced at American Samoa and other port states where observers embark on United States flagged purse seine vessels, placement of observers is not always possible. If the temporary rule expires in March 2022, and is not renewed, NMFS will no longer possess the emergency authority to issue observer waivers in these cases. With the potential for travel restrictions that prevent the placement of observers continuing beyond March 2022, NMFS is proposing to implement an emergency waiver provision to allow NMFS to issue temporary written waivers from the observer requirements, on a case-by-case basis, in accordance with IATTC exemption procedures. NMFS is undertaking this action under the authority of the Tuna Conventions Act and the Marine Mammal Protection Act to satisfy the obligations of the United States as a Member of the IATTC. This rule is not expected to trigger either opposition from any sector of the public or congressional interest. NMFS has considered this action under E.O. 12866. Based on that review, this action is not expected to have an annual effect on the economy of $100 million or more, or have an adverse effect in a material way on the economy. Furthermore, this action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231–6266, *Email: barry.thom@noaa.gov.*

RIN: 0648–BK88

227. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

Legal Authority: 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 *et seq.*

Abstract: NMFS has completed a review of the North Atlantic right whale vessel speed rule (per 50 CFR 224.105; 78 FR 73726, December 9, 2013). Through this action, NMFS invites comment on the report as well as information that may inform potential revisions to existing management strategies and regulations to further reduce the risk of vessel strikes of North Atlantic right whales.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

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–BI88

228. Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act

Legal Authority: 16 U.S.C. 1382 *et seq.*

Abstract: This rulemaking action under the Marine Mammal Protection Act (MMPA) proposes to 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	02/00/22	

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

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Final Rule Stage

National Marine Fisheries Service

229. Generic Amendment to the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region

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

Abstract: This action, recommended by the Gulf of Mexico Fishery Management Council, would modify data reporting for owners or operators of federally permitted for-hire vessels (charter vessels and headboats) in the Gulf of Mexico, requiring them to declare the type of trip (for-hire or other) prior to departing for any trip, and electronically submit trip-level reports prior to off-loading fish at the end of each fishing trip. The declaration would include the expected return time and landing location. Landing reports would include information about catch and effort during the trip. The action would also require that these reports be submitted via approved hardware that includes a global positioning system attached to the vessel that is capable, at a minimum, of archiving global positioning system locations. This requirement would not preclude the use of global positioning system devices that provide real-time location data, such as the currently approved vessel monitoring systems.

Timetable:

Action	Date	FR Cite
Notice of Availability.	06/21/18	83 FR 28797
NPRM	10/26/18	83 FR 54069
Correction	11/08/18	83 FR 55850
Comment Period Extended.	11/20/18	83 FR 58522
NPRM Comment Period End.	11/26/18	
Comment Period Extended End.	01/09/19	
Final Rule	07/21/20	85 FR 44005
Final Rule Effective.	01/05/21	
Final Action; Announcement of Effectiveness for Delayed Provisions.	09/14/21	86 FR 51014
Delay of Effective Date.	11/02/21	86 FR 60374
Delay of Effective Date Effective.	12/13/21	
Final Action Effective.	12/13/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew J. Strelcheck, Acting 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–BH72

230. Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood

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 would 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	

Action	Date	FR Cite
Final Action	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexa Cole, Director, Office of International Affairs and Seafood Inspection, 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–BH87

231. Atlantic Highly Migratory Species: Amendment 13 on Bluefin Tuna Management

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

Abstract: NOAA/NMFS proposes to revise the management measures for Atlantic bluefin tuna fisheries. Potential management measures could include modifications to pelagic longline and purse seine fisheries as well as other bluefin tuna fisheries, which would increase flexibility for fishery participants.

Timetable:

Action	Date	FR Cite
NPRM	05/21/21	86 FR 27686
NPRM Comment Period End.	07/20/21	
NPRM Comment Period Extended.	07/20/21	86 FR 38262
NPRM Comment Period Extended End.	09/09/21	
Final Action	06/00/22	

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–BI08

232. Designation of Critical Habitat for the Arctic Ringed Seal

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: The National Marine Fisheries Service published a final rule to list the Arctic ringed seal as a threatened species under the Endangered Species Act (ESA) in December 2012. The ESA requires designation of critical habitat at the time a species is listed as threatened or endangered, or within one year of listing if critical habitat is not then determinable. This rulemaking would designate critical habitat for the Arctic ringed seal. The critical habitat designation would be in the northern Bering, Chukchi, and Beaufort seas within the current range of the species.

Timetable:

Action	Date	FR Cite
NPRM	12/03/14	79 FR 71714
Proposed Rule	12/09/14	79 FR 73010
Notice of Public Hearings.	01/13/15	80 FR 1618
Comment Period Extended.	02/02/15	80 FR 5498
Proposed Rule 2	01/08/21	86 FR 1452
Proposed Rule 2 Comment Period End.	03/09/21	
Public Hearing	02/01/21	86 FR 7686
Public Hearing Comment Period End.	03/09/21	
Comment Period Extended 2.	03/09/21	86 FR 13517
Comment Period Extended 2 End.	04/08/21	
Final Action	03/00/22	

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–BC56

233. Amendment and Updates to the Pelagic Longline Take Reduction Plan

Legal Authority: 16 U.S.C. 1361 *et seq.*

Abstract: Serious injury and mortality of the Western North Atlantic short-finned pilot whale stock incidental to the Category I Atlantic pelagic longline fishery continues at levels exceeding their Potential Biological Removal. This proposed action would examine a number of management measures to amend the Pelagic Longline Take Reduction Plan to reduce the incidental mortality and serious injury of short-finned pilot whales taken in the Atlantic Pelagic Longline fishery to below Potential Biological Removal. Potential management measures may include changes to the current limitations on mainline length, new requirements to use weak hooks (hooks with reduced breaking strength), and non-regulatory measures related to determining the best procedures for safe handling and release of marine mammals. The need for the proposed action is to ensure the Pelagic Longline Take Reduction Plan meets its Marine Mammal Protection Act mandated short- and long-term goals.

Timetable:

Action	Date	FR Cite
NPRM	12/15/20	85 FR 81168
NPRM Comment Period End.	02/16/21	
Final Action	12/00/21	

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–BF90

234. Designation of Critical Habitat for the Threatened Caribbean Corals

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, U.S. 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

Action	Date	FR Cite
NPRM Comment Period End.	01/26/21	
Final Rule	06/00/22	

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

235. 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

Legal Authority: 16 U.S.C. 1387 *et seq.*

Abstract: In response to recent recommendations from the Atlantic Large Whale Take Reduction Team (TRT) to reduce the risk of North Atlantic right whale entanglement in commercial trap/pot fisheries along the U.S. East Coast, the National Marine Fisheries Service (NMFS) intends to propose regulations to amend the Atlantic Large Whale Take Reduction Plan (Plan).

Timetable:

Action	Date	FR Cite
NPRM	12/31/20	85 FR 86878
NPRM Comment Period End.	03/01/21	
Final Action	09/17/21	86 FR 51970
Final Action Effective.	10/18/21	
Correction	12/00/21	

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–BJ09

236. Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: On September 10, 2014, NMFS listed 20 species of reef-building corals as threatened under the Endangered Species Act, 15 in the Indo-Pacific and five in the Caribbean. Of the 15 Indo-Pacific species, seven occur in U.S. waters of the Pacific Islands Region, including in American Samoa, Guam, the Commonwealth of the Mariana Islands, and the Pacific Remote Island Areas. This proposed rule would designate critical habitat for the seven species in U.S. waters (*Acropora globiceps, Acropora jacquelineae, Acropora retusa, Acropora speciosa, Euphyllia paradivisa, Isopora crateriformis,* and *Seriatopora aculeata*). A separate proposed rule will designate critical habitat for the listed Caribbean coral species. The proposed designation may cover coral reef habitat around 13 island or atoll units in the Pacific Islands Region, including three in American Samoa, one in Guam, seven in the Commonwealth of the Mariana Islands, and two in Pacific Remote Island Areas, containing essential features that support reproduction, growth, and survival of the listed coral species. 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 will determine whether to propose to exclude any areas based on national security 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	
Final Rule	06/00/22	

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

237. Designation of Critical Habitat for the Beringia Distinct Population Segment of the Bearded Seal

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: NMFS published a final rule to list the Beringia Distinct Population Segment (DPS) of bearded seals as a threatened species under the Endangered Species Act (ESA) in December 2012, thereby triggering the requirement under section 4 of the ESA to designate critical habitat for the Beringia DPS to the maximum extent prudent and determinable. NMFS has already initiated rulemaking to establish critical habitat for Arctic ringed seals, which were also listed as threatened under the ESA in December 2012, and that action is proceeding separately. This rulemaking action proposes to designate critical habitat in areas occupied by bearded seals in U.S. waters over the continental shelf in the northern Bering, Chukchi, and Beaufort Seas. Impacts from the designation of critical habitat for Beringia DPS bearded seals would stem from the statutory requirement that Federal agencies consult with NMFS under section 7 of the ESA to ensure that any action they carry out, authorize, or fund is not likely to result in the destruction or adverse modification of bearded seal critical habitat. Federal agencies are already required to consult with NMFS under section 7 of the ESA to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of the Beringia DPS of bearded seals.

Timetable:

Action	Date	FR Cite
NPRM	01/08/21	86 FR 1433
NPRM Comment Period End.	03/09/21	
Public Hearing	02/01/21	86 FR 7686
Public Hearing Comment Period End.	03/09/21	
Comment Period Extended.	03/09/21	86 FR 13518
Comment Period Extended End.	04/08/21	
Final Action	03/00/22	

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–BJ65

NOS/ONMS

238. Monterey Bay National Marine Sanctuary Regulations and Management Plan

Legal Authority: 16 U.S.C. 1431 *et seq.*

Abstract: The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan and revised regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary). The proposed regulations would revise and provide greater clarity to existing regulations, and make minor technical corrections.

Timetable:

Action	Date	FR Cite
NPRM	07/06/20	85 FR 40143
NPRM Comment Period End.	09/04/20	
Final Action	11/00/21	

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:* 240 533–0647.

RIN: 0648–BI01

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Long-Term Actions

National Marine Fisheries Service

239. Implementation of a Program for Transshipments by Large Scale Fishing Vessels in the Eastern Pacific Ocean

Legal Authority: 16 U.S.C. 951 *et seq.;* 16 U.S.C. 971 *et seq.*

Abstract: This rule would implement the Inter-American Tropical Tuna Commission program to monitor transshipments by large-scale tuna fishing vessels, and would govern transshipments by U.S. large-scale tuna fishing vessels and carrier, or receiving, vessels. The rule would establish: criteria for transshipping in port; criteria for transshipping at sea by longline vessels to an authorized carrier vessel with an Inter-American Tropical Tuna Commission observer onboard and an operational vessel monitoring system; and require the Pacific Transshipment Declaration Form, which must be used to report transshipments in the Inter-American Tropical Tuna Commission Convention Area. This rule is necessary for the United States to satisfy its international obligations under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna, to which it is a Contracting Party.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barry Thom, *Phone:* 503 231–6266, *Email: barry.thom@noaa.gov.*

RIN: 0648–BD59

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Completed Actions

240. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements To Safeguard Fishery Observers

Legal Authority: 16 U.S.C. 6901 *et seq.*

Abstract: This rule would establish requirements to enhance the safety of fishery observers on highly migratory species fishing vessels. This rule would be issued under the authority of the Western and Central Pacific Fisheries Convention Implementation Act, and pursuant to decisions made by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. This action is necessary for the United States to satisfy its obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, to which it is a Contracting Party.

Timetable:

Action	Date	FR Cite
NPRM	10/20/20	85 FR 66513
NPRM Comment Period End.	11/19/20	
Final Action	07/07/21	86 FR 35653
Final Action Effective.	08/06/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Tosatto, 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: michael.tosatto@noaa.gov.*

RIN: 0648–BG66

241. Omnibus Deep-Sea Coral Amendment

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

Abstract: This action would implement the New England Fishery Management Council's Omnibus Deep-Sea Coral Amendment. The Amendment would implement measures that reduce impacts of fishing gear on deep-sea corals in the Gulf of Maine and on the outer continental shelf. In doing so, this action would prohibit the use of mobile bottom-tending gear in two areas in the Gulf of Maine (Mount Desert Rock and Outer Schoodic Ridge), and it would prohibit the use of all gear (with an exception for red crab pots) along the outer continental shelf in waters deeper than a minimum of 600 meters.

Timetable:

Action	Date	FR Cite
Notice of Availability.	08/26/19	84 FR 44596
NPRM	01/03/20	85 FR 285
NPRM Comment Period End.	02/18/20	
Final Action	06/25/21	86 FR 33553
Final Action Effective.	07/26/21	

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–BH67

242. Amendment 111 to the Fishery Management Plan for Groundfish of the Gulf of Alaska To Reauthorize the Central Gulf of Alaska Rockfish Program

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 111 to the Fishery Management Plan for the Gulf of Alaska. This action would reauthorize the Central Gulf of Alaska (CGOA) Rockfish Program (RP) fisheries and modify specific implementing regulations to improve program effectiveness and efficiency. This action includes the following revisions to the RP: Remove the RP sunset date; authorize NMFS to reallocate unharvested RP Pacific cod and unused rockfish incidental catch allowances; remove specific harvesting limits created under the Crab Rationalization Program prior to the implementation of

the RP; and remove or modify equipment and reporting requirements to improve operational efficiency, clarify regulations and remove unnecessary requirements. This action allows for the continued existence of the successful CGOA RP and maintains the benefits realized under the program. This action also builds upon the existing benefits of the RP by implementing minor regulatory changes that improve clarity, consistency and removes unnecessary regulatory requirements.

Timetable:

Action	Date	FR Cite
Notice of Availability.	07/28/20	85 FR 45367
NPRM	09/04/20	85 FR 55243
NPRM Comment Period End.	10/05/20	
Final Action	03/01/21	86 FR 11895
Final Action Effective.	03/31/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BJ73

243. 2021 Pacific Whiting Harvest Specifications Including Interim Tribal Allocation; Pacific Coast Groundfish

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

Abstract: This rule would establish the 2021 adjusted U.S. Total Allowable Catch (TAC) level, interim tribal and non-tribal allocations, allocations for three commercial whiting sectors, and research and bycatch set-asides. Through this rulemaking, NMFS sets the U.S. TAC 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, called the non-tribal allocation, and set asides for research and bycatch. As in prior years, the tribal allocation is an interim allocation that is not intended to set precedent for future years. The harvest specifications that would be implemented by this action would be in effect in time for the Pacific Whiting fishery that opens May 15, 2021 through December 31, 2021.

Timetable:

Action	Date	FR Cite
NPRM	02/16/21	86 FR 9473
NPRM Comment Period End.	03/18/21	
Revised Proposed Rule.	05/04/21	86 FR 23659
Revised Proposed Rule Comment Period End.	05/19/21	
Final Action	06/23/21	86 FR 32804
Final Action Effective.	06/23/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231–6266, *Email: barry.thom@noaa.gov.*

RIN: 0648–BK25

244. Reducing Disturbances to Hawaiian Spinner Dolphins From Human Interactions

Legal Authority: 16 U.S.C. 1361 *et seq.*

Abstract: This action implements regulatory measures under the Marine Mammal Protection Act to protect Hawaiian spinner dolphins that are resting in protected bays from take due to close approach interactions with humans.

Timetable:

Action	Date	FR Cite
ANPRM	12/12/05	70 FR 73426
ANPRM Comment Period End.	01/11/06	
NPRM	08/24/16	81 FR 57854
NPRM Comment Period End.	10/23/16	
NPRM Comment Period Reopened.	11/16/16	81 FR 80629
NPRM Comment Period Reopened End.	12/01/16	
Final Action	09/28/21	86 FR 53818
Final Action Effective.	10/28/21	

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–AU02

245. Revision to Critical Habitat Designation for Endangered Southern Resident Killer Whales

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: The proposed action would revise the designation of critical habitat for the endangered Southern Resident killer whale distinct population segment, pursuant to section 4 of the Endangered Species Act. Critical habitat for this population is currently designated within inland waters of Washington. In response to a 2014 petition, NMFS is proposing to expand the designation to include areas occupied by Southern Resident killer whales in waters along the U.S. West Coast. Impacts from the designation would stem mainly from Federal agencies' requirement to consult with NMFS, under section 7 of the Endangered Species Act, to ensure that any action they carry out, permit (authorize), or fund will not result in the destruction or adverse modification of critical habitat of a listed species. Federal agencies are already required to consult on effects to the currently designated critical habitat in inland waters of Washington, but consultation would be newly required for actions affecting the expanded critical habitat areas. Federal agencies are also already required to consult within the Southern Resident killer whales' range (including along the U.S. West Coast) to ensure that any action they carry out, permit, or fund will not jeopardize the continued existence of the species; this requirement would not change with a revision to the critical habitat designation.

Timetable:

Action	Date	FR Cite
NPRM	09/19/19	84 FR 49214
NPRM Comment Period End.	12/18/19	
Final Action	08/02/21	86 FR 41668
Final Action Effective.	09/01/21	

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–BH95

246. Wisconsin-Lake Michigan National Marine Sanctuary Designation

Legal Authority: 16 U.S.C. 1431 *et seq.*

Abstract: On December 2, 2014, pursuant to section 304 of the National

Marine Sanctuaries Act and the Sanctuary Nomination Process (79 FR 33851), a coalition of community groups submitted a nomination asking NOAA to designate an area of Wisconsin's Lake Michigan waters as a national marine sanctuary. The area is a region that includes 875 square miles of Lake Michigan waters and bottomlands adjacent to Manitowoc, Sheboygan, and Ozaukee counties and the cities of Port Washington, Sheboygan, Manitowoc, and Two Rivers. It includes 80 miles of shoreline and extends 9 to 14 miles from the shoreline. The area contains an extraordinary collection of submerged maritime heritage resources (shipwrecks) as demonstrated by the listing of 15 shipwrecks on the National Register of Historic Places. The area includes 39 known shipwrecks, 123 reported vessel losses, numerous other historic maritime-related features, and is adjacent to communities that have embraced their centuries-long relationship with Lake Michigan. NOAA completed its review of the nomination in accordance with the Sanctuary Nomination Process and on February 5, 2015, added the area to the inventory of nominations that are eligible for designation. On October 7, 2015, NOAA issued a notice of intent to begin the designation process and asked for public comment on making this area a national marine sanctuary. Designation under the National Marine Sanctuaries Act would allow NOAA to supplement and complement work by the State of Wisconsin and other Federal agencies to protect this collection of nationally significant shipwrecks.

Timetable:

Action	Date	FR Cite
NPRM	01/09/17	82 FR 2269
NPRM Comment Period End.	03/31/17	
Final Action	06/23/21	86 FR 32737
Final Action Effective.	08/16/21	
Notification of Effective Date of Final Rule.	08/17/21	86 FR 45860

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Russ Green, Department of Commerce, National Oceanic and Atmospheric Administration, 1401 Constitution Avenue, Washington, DC 20230, *Phone:* 989 766–3359, *Email: russ.green@noaa.gov.*

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:* 240 533–0647.

RIN: 0648–BG01

DEPARTMENT OF COMMERCE (DOC)

Patent and Trademark Office (PTO)

Final Rule Stage

247. Changes To Implement Provisions of the Trademark Modernization Act of 2020

Regulatory Plan: This entry is Seq. No. 15 in part II of this issue of the **Federal Register**.

RIN: 0651–AD55

[FR Doc. 2021–28219 Filed 1–28–22; 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 2021 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 or impact the Secretary of Defense's top priorities along with those of the National Defense Strategy to defend the Nation by taking care of our people, building a more lethal force, succeeding through teamwork, reforming business practices, and address the current worldwide pandemic. These include efforts to ensure TRICARE beneficiaries have access to the most up-to-date care required for the diagnosis and treatment of COVID–19. 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**.

This agenda updates the report published on July 30, 2021, and includes regulations expected to be issued and under review over the next 12 months. The next agenda will publish in the spring of 2022.

The complete Unified Agenda will be 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), the Department of Defense'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 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, 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 703–693–9958, 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, 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 571–372–6100, or write to Office of the Under Secretary of Defense for Acquisition and Sustainment, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B941, 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 703–695–6791, 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@mail.mil.*

For general information on Department of the Navy regulations, contact LCDR Jenny Pike, telephone 703–614–7408, 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: *jennifer.m.pike5.mil@us.navy.mil.*

For general information on Department of the Air Force regulations, contact Bao-Anh Trinh, telephone 703–614–8500, 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.

Dated: September 10, 2021.

Joo Y. Chung,

Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense.

OFFICE OF THE SECRETARY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
248	Cybersecurity Maturity Model Certification (CMMC) Framework	0790–AL49

DEFENSE ACQUISITION REGULATIONS COUNCIL—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
249	Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043) **(Reg Plan Seq No. 19)**.	0750–AK84
250	Reauthorization and Improvement of Mentor-Protege Program (DFARS Case 2020–D009) **(Reg Plan Seq No. 20)**.	0750–AK96

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEFENSE ACQUISITION REGULATIONS COUNCIL—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
251	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041)	0750–AK81

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
252	TRICARE: Chiropractic and Acupuncture Treatment Under the TRICARE Program	0720–AB77

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
253	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)

Long-Term Actions

248. • Cybersecurity Maturity Model Certification (CMMC) Framework

Legal Authority: 5 U.S.C. 301; Pub. L. 116–92, sec. 1648

Abstract: This rule will establish cybersecurity requirements that must be met for Defense Industrial Base (DIB) contractors to obtain requisite Cybersecurity Maturity Model Certification status. DIB contractors may need CMMC certification to qualify for award of designated future DoD contracts. The impact of the CMMC requirements, in conjunction with DFARS clause 252.204–7021, Cybersecurity Maturity Model Certification Requirements, will be a higher level of assurance that Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) will be protected at the level commensurate with the risk from cybersecurity threats, including Advanced Persistent Threats.

DoD implemented a two-pronged approach to assess and verify the DIB's ability to protect FCI and CUI. This rule implements:

- The National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 DoD Assessment Methodology employed to assess contractor implementation of the cybersecurity requirements in NIST SP 800–171, *Protecting Controlled Unclassified Information (CUI) in Nonfederal Systems and Organizations,* required by DFARS 252.204–7012. The verification of contractor implementation of NIST SP 800–171 security requirements is addressed under DFARS provision 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirements, and DFARS clause 252.204–7020, NIST SP 800–171 DoD Assessment Requirements.
- The Cybersecurity Maturity Model Certification (CMMC) Framework. CMMC is a new DoD certification process to measure a DIB contractor's adherence to processes and implementation of cybersecurity practices to address and mitigate the threats posed by Advanced Persistent Threats—adversaries with sophisticated levels of expertise and significant resources.

This rule is related to DFARS clause 252.204–7021, Cybersecurity Maturity Model Certification Requirements, which specifies the requirement for assessing that DIB contractors meet CMMC requirements. This rule will specify the CMMC requirements for which the DIB contractors will be assessed.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

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

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Proposed Rule Stage

249. Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043)

Regulatory Plan: This entry is Seq. No. 19 in part II of this issue of the **Federal Register**.

RIN: 0750–AK84

250. Reauthorization and Improvement of Mentor-Protege Program (DFARS Case 2020–D009)

Regulatory Plan: This entry is Seq. No. 20 in part II of this issue of the **Federal Register**.

RIN: 0750–AK96

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Long-Term Actions

251. Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041)

Legal Authority: 41 U.S.C 1303; Pub. L. 116–92, sec. 1648

Abstract: DoD is finalizing an interim rule to implement the following methodology and framework in order to protect against the theft of intellectual property and sensitive information from the Defense Industrial Base (DIB) sector:

- *The National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 DoD Assessment Methodology.* A standard methodology to assess contractor implementation of the cybersecurity requirements in NIST SP 800–171, Protecting Controlled Unclassified Information (CUI) In Nonfederal Systems and Organizations.
- *The Cybersecurity Maturity Model Certification (CMMC) Framework.* A DoD certification process that measures a company's institutionalization of processes and implementation of cybersecurity practices. See RIN 0790–AL49 for information on a rule amending title 32 of the Code of Federal Regulations with regard to CMMC, which will inform the DFARS final rule.

This rule provides the Department with: (1) The ability to assess at a corporate level a contractor's implementation of NIST SP 800–171 security requirements, as required by DFARS clause 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; and (2) 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.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/29/20	85 FR 48513
Interim Final Rule Effective.	11/30/20	
Final Action	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Johnson, *Phone:* 571 372–6100, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK81

DEPARTMENT OF DEFENSE (DOD)

Office of Assistant Secretary for Health Affairs (DODOASHA)

Proposed Rule Stage

252. TRICARE: Chiropractic and Acupuncture Treatment Under the TRICARE Program

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch. 55

Abstract: Under the current regulations, TRICARE excludes chiropractors as TRICARE-authorized providers whether or not their services would be eligible as medically necessary care if furnished by any other authorized provider. In addition, the current regulation excludes acupuncture treatment whether used as a therapeutic agent or as an anesthetic. This proposed rule seeks to eliminate these exclusions and to add benefit coverage of chiropractic and acupuncture treatment when deemed medically necessary for specific conditions. This rule proposes to add licensed Doctors of Chiropractic (DCs) and Licensed Acupuncturists (LACs) who meet established qualifications as TRICARE-authorized providers and will establish reimbursement rates and cost-sharing provisions for covered chiropractic and acupuncture treatment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joy Mullane, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 E Centretech Parkway, Aurora, CO 80011–9066, *Phone:* 303 676–3457, *Fax:* 303 676–3579, *Email: joy.mullane.civ@mail.mil.*

RIN: 0720–AB77

DEPARTMENT OF DEFENSE (DOD)

Office of Assistant Secretary for Health Affairs (DODOASHA)

Final Rule Stage

253. TRICARE Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch. 55

Abstract: The Department of Defense, Defense Health Agency, is revising 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 title 10 of the U.S.C., section 1079(i)(2) 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 will: (1) Adopt Medicare's payment methodology for Ambulatory Surgery Centers (ASC) and (2) adopt Medicare's payment methodology for outpatient services provided in Cancer and Children's Hospitals (CCHs). Although Medicare's reimbursement methods for ASC and CCHs are different, it is prudent to adopt both the Medicare ASC system and to adopt the Outpatient Prospective Payment System (OPPS) 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 makes 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	03/00/22	

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. 2021–27967 Filed 1–28–22; 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 Jackie Collins, Program Specialist, Leslie Carter, Program Specialist, Levon Schlichter, Attorney, or Lynn Mahaffie, Assistant General Counsel, Division of Regulatory Services, Department of Education, Room 6E231, 400 Maryland Avenue SW, Washington, DC 20202–2241; telephone: Jackie Collins (202) 453–6688, Leslie Carter (202) 401–5939, Levon Schlichter (202) 453–6387, or Lynn Mahaffie (202) 453–7862. Individuals who use a telecommunications device for the deaf or a text telephone may call the Federal Relay Service at 1–800–877–8339.

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 POSTSECONDARY EDUCATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
254	Gainful Employment **(Reg Plan Seq No. 36)**	1840–AD57

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEPARTMENT OF EDUCATION (ED)

Office of Postsecondary Education (OPE)

Proposed Rule Stage

254. Gainful Employment

Regulatory Plan: This entry is Seq. No. 36 in part II of this issue of the **Federal Register**.

RIN: 1840–AD57

[FR Doc. 2022–00822 Filed 1–28–22; 8:45 am]

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FEDERAL REGISTER

Vol. 87 Monday,
No. 20 January 31, 2022

Part VII

Department of Energy

Semiannual Regulatory Agenda

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Fall 2021 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 semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda), including its Regulatory Plan (Plan), pursuant to Executive Order 12866, ''Regulatory Planning and 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 of 1975, 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 2021 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—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
255	Energy Conservation Standards for General Service Lamps	1904–AD09
256	Energy Conservation Standards for Residential Conventional Cooking Products	1904–AD15
257	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces.	1904–AD20
258	Energy Conservation Standards for Commercial Water Heating-Equipment **(Reg Plan Seq No. 40)**	1904–AD34

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

ENERGY EFFICIENCY AND RENEWABLE ENERGY—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
259	Test Procedures for Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems	1904–AE46

DEPARTMENT OF ENERGY (DOE)

Energy Efficiency and Renewable Energy (EE)

Proposed Rule Stage

255. Energy Conservation Standards for General Service Lamps

Legal Authority: 42 U.S.C. 6295(i)(6)(A)

Abstract: The U.S. Department of Energy (DOE) will issue a Supplemental Notice of Proposed Rulemaking that includes a proposed determination with respect to whether to amend or adopt standards for general service light-emitting diode (LED) lamps and that may include a proposed determination with respect to whether to amend or adopt standards for compact fluorescent lamps.

Timetable:

Action	Date	FR Cite
Framework Document Availability; Notice of Public Meeting.	12/09/13	78 FR 73737
Framework Document Comment Period End.	01/23/14	
Framework Document Comment Period Extended.	01/23/14	79 FR 3742
Framework Document Comment Period Extended End.	02/07/14	
Preliminary Analysis and Notice of Public Meeting.	12/11/14	79 FR 73503
Preliminary Analysis Comment Period Extended.	01/30/15	80 FR 5052
Preliminary Analysis Comment Period Extended End.	02/23/15	
Notice of Public Meeting; Webinar.	03/15/16	81 FR 13763
NPRM	03/17/16	81 FR 14528
NPRM Comment Period End.	05/16/16	
Notice of Public Meeting; Webinar.	10/05/16	81 FR 69009
Proposed Definition and Data Availability.	10/18/16	81 FR 71794
Proposed Definition and Data Availability Comment Period End.	11/08/16	
Final Rule Adopting a Definition for GSL.	01/19/17	82 FR 7276
Final Rule Adopting a Definition for GSL Effective.	01/01/20	
Final Rule Adopting a Definition for GSL Including IRL.	01/19/17	82 FR 7322
Final Rule Adopting a Definition for GSL Including IRL Effective.	01/01/20	

Action	Date	FR Cite
Final Rule; Withdrawal of Definition for GSL (Reported as 1904–AE26).	09/05/19	84 FR 46661
Final Rule; Withdrawal of Definition for GSL Effective.	10/07/19	
Supplemental NPRM.	01/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephanie Johnson, General Engineer, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Building Technologies Office, EE5B, Washington, DC 20585, *Phone:* 202 287–1943, *Email: stephanie.johnson@ee.doe.gov.*

RIN: 1904–AD09

256. Energy Conservation Standards for Residential Conventional Cooking Products

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), requires the Secretary to determine whether updating the statutory energy conservation standards for residential conventional cooking products would yield a significant savings in energy use and is technologically feasible and economically justified. The U.S. Department of Energy (DOE) is reviewing the current standards to make such determination.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	02/12/14	79 FR 8337
RFI Comment Period End.	03/14/14	
RFI Comment Period Extended.	03/03/14	79 FR 11714
RFI Comment Period Extended End.	04/14/14	
NPRM and Public Meeting.	06/10/15	80 FR 33030
NPRM Comment Period Extended.	07/30/15	80 FR 45452
NPRM Comment Period Extended End.	09/09/15	
Supplemental NPRM.	09/02/16	81 FR 60784
SNPRM Comment Period Extended.	09/30/16	81 FR 67219
SNPRM Comment Period Extended End.	11/02/16	
Notice of Proposed Determination and Request for Comment.	12/14/20	85 FR 80982
Notice of Proposed Determination Comment Period End.	03/01/21	
Second SNPRM ..	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephanie Johnson, General Engineer, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Building Technologies Office, EE5B, Washington, DC 20585, *Phone:* 202 287–1943, *Email: stephanie.johnson@ee.doe.gov.*

RIN: 1904–AD15

257. Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces

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 residential furnaces. 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. DOE is considering amendments to its energy conservation standards for residential non-weatherized gas furnaces and mobile home gas furnaces pursuant to a court-ordered remand of DOE's 2011 rulemaking for these products.

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	03/00/22	

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

258. Energy Conservation Standards for Commercial Water Heating-Equipment

Regulatory Plan: This entry is Seq. No. 40 in part II of this issue of the **Federal Register**.

RIN: 1904–AD34

DEPARTMENT OF ENERGY (DOE)

Energy Efficiency and Renewable Energy (EE)

Final Rule Stage

259. Test Procedures for Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems

Legal Authority: 42 U.S.C. 6314(a)(4)

Abstract: Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as amended, the U.S. Department of Energy (DOE) is seeking to establish a Federal test procedure for dehumidifying direct-expansion dedicated outdoor air systems (DDX–DOASes) under 10 CFR 431.96. For covered equipment addressed in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1, the DOE test procedure must be based upon

the generally accepted industry testing procedure referenced in that industry consensus standard (42 U.S.C. 6314(a)(4)(A)). The statute further requires that each time the referenced industry test procedure is updated, DOE must amend the Federal test procedure to be consistent with the amended industry test procedure, unless there is clear and convincing evidence that the update would not be representative of an average use cycle or would be unduly burdensome to conduct (42 U.S.C. 6314(a)(4)(B)). Independent of that test procedure review obligation, EPCA also includes a 7-year-lookback review provision for covered commercial and industrial equipment that requires DOE to conduct an evaluation of each class of covered equipment to determine whether amended test procedures would more accurately or fully comply with the requirements that the Federal test procedure be representative of an average use cycle and not be unduly burdensome to conduct (42 U.S.C. 6314(a)(1)). In this test procedure rulemaking for DDX–DOASes, DOE is acting under its authority at 42 U.S.C. 6314(a)(4), and accordingly, it will propose and adopt a new Federal test procedure for this equipment. (The NOPR for this rule was mistakenly published in the **Federal Register** as RIN 1904–AD93 on July 7, 2021).

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	07/25/17	82 FR 34427
RFI Comment Period Ends.	08/24/17	
NPRM (Incorrectly Published as 1904–AD93).	07/07/21	86 FR 36018
NPRM Comment Period End.	09/07/21	
Final Rule	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Catherine Rivest, General Engineer, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Building Technologies Office, EE–5B, Washington, DC 20585, *Phone:* 202 586–7335, *Email: catherine.rivest@ee.doe.gov.*

RIN: 1904–AE46

[FR Doc. 2022–00284 Filed 1–28–22; 8:45 am]

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FEDERAL REGISTER

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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: Karuna Seshasai, 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 tackling the coronavirus disease 2019 (COVID–19) pandemic, building and expanding access to affordable health care, addressing health disparities and promoting equity, and boosting the 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.*

Karuna Seshasai,

Executive Secretary to the Department.

OFFICE OF THE SECRETARY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
260	Limiting the Effect of Exclusions Implemented Under the Social Security Act **(Rulemaking Resulting From a Section 610 Review)**.	0991–AC11

OFFICE FOR CIVIL RIGHTS—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
261	Rulemaking on Discrimination on the Basis of Disability in Critical Health and Human Services Programs or Activities **(Rulemaking Resulting From a Section 610 Review) (Reg Plan Seq No. 45)**.	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—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
262	Treatment of Opioid use Disorder With Extended Take Home Doses of Methadone **(Reg Plan Seq No. 50)**.	0930–AA39

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CENTERS FOR DISEASE CONTROL AND PREVENTION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
263	Control of Communicable Diseases; Foreign Quarantine	0920–AA75

FOOD AND DRUG ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
264	National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers	0910–AH11
265	Nicotine Toxicity Warnings	0910–AH24
266	Certain Requirements Regarding Prescription Drug Marketing (203 Amendment)	0910–AH56
267	Medication Guide; Patient Medication Information	0910–AH68
268	Requirements for Tobacco Product Manufacturing Practice	0910–AH91

FOOD AND DRUG ADMINISTRATION—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
269	Administrative Detention of Tobacco Products	0910–AI05
270	Nutrient Content Claims, Definition of Term: Healthy **(Reg Plan Seq No. 53)**	0910–AI13
271	Revocation of Uses of Partially Hydrogenated Oils in Foods	0910–AI15
272	Tobacco Product Standard for Characterizing Flavors in Cigars **(Reg Plan Seq No. 56)**	0910–AI28
273	Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies **(Reg Plan Seq No. 57)**.	0910–AI57
274	Additional 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

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.
275	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
276	Sunlamp Products; Amendment to the Performance Standard	0910–AG30
277	Mammography Quality Standards Act	0910–AH04
278	General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products	0910–AH14
279	Laboratory Accreditation for Analyses of Foods	0910–AH31
280	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

FOOD AND DRUG ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
281	Requirements For Additional Traceability Records For Certain Foods	0910–AI44
282	Postmarketing Safety Reporting Requirements, Pharmacovigilance Plans, and Pharmacovigilance Quality Systems for Human Drug and Biological Products.	0910–AI61

CENTERS FOR MEDICARE & MEDICAID SERVICES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
283	Administrative Simplification: Modifications to NCPDP Retail Pharmacy Standards (CMS–0056)	0938–AU19
284	Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS–4198)	0938–AU59
285	CY 2023 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1770) **(Section 610 Review)**.	0938–AU81
286	CY 2023 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1772) **(Section 610 Review)**.	0938–AU82
287	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2023 Rates (CMS–1771–P) **(Section 610 Review)**.	0938–AU84
288	Transitional Coverage for Emerging Technologies (CMS–3421)	0938–AU86
289	Requirements for Rural Emergency Hospitals (CMS–3419) **(Section 610 Review) (Reg Plan Seq No. 66)**	0938–AU92

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CENTERS FOR MEDICARE & MEDICAID SERVICES—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
290	Durable Medical Equipment Fee Schedule, Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Non-Competitive Bidding Areas (CMS–1687) **(Section 610 Review)**.	0938–AT21
291	Requirements Related to Surprise Billing; Part II (CMS–9908)	0938–AU62
292	Omnibus COVID–19 Health Care Staff Vaccination (CMS–3415) **(Section 610 Review) (Reg Plan Seq No. 69)**.	0938–AU75

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CENTERS FOR MEDICARE & MEDICAID SERVICES—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
293	Most Favored Nation (MFN) Model (CMS–5528) **(Section 610 Review)**	0938–AT91
294	Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Policy Issues and Level II of the Healthcare Common Procedure Coding System (HCPCS) (CMS–1738) **(Section 610 Review)**.	0938–AU17
295	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2022 Rates (CMS–1752) **(Section 610 Review)**.	0938–AU44

CENTERS FOR MEDICARE & MEDICAID SERVICES—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
296	Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Increased Safety (CMS–3347) **(Completion of a Section 610 Review)**.	0938–AT36
297	CY 2022 Home Health Prospective Payment System Rate Update, Home Infusion Therapy Services, and Quality Reporting Requirements (CMS–1747) **(Completion of a Section 610 Review)**.	0938–AU37
298	FY 2022 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS–1750) **(Completion of a Section 610 Review)**.	0938–AU40
299	CY 2022 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1751) **(Completion of a Section 610 Review)**.	0938–AU42
300	CY 2022 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1753) **(Completion of a Section 610 Review)**.	0938–AU43
301	Requirements Related to Surprise Billing; Part I (CMS–9909)	0938–AU63

ADMINISTRATION FOR CHILDREN AND FAMILIES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
302	Updating Native Employment Works Requirements **(Rulemaking Resulting From a Section 610 Review)**.	0970–AC83

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office of the Secretary (OS)

Proposed Rule Stage

260. Limiting the Effect of Exclusions Implemented Under the Social Security Act (Rulemaking Resulting From a Section 610 Review)

Legal Authority: 5 U.S.C. 301; 31 U.S.C. 6101

Abstract: Exclusions implemented under the Social Security Act prevent individuals convicted of certain crimes or individuals whose health care licenses have been revoked from participating in Federal health care programs. Instead of only being barred from participating in all Federal healthcare programs, certain regulatory provisions have resulted in these type of exclusion actions being given an overly broad government-wide effect, and excluded parties have been barred from participating in all Federal procurement and non-procurement actions. However, because Social Security Act exclusions are not issued under an agency's suspension and debarment authority, they do not stop individuals from participating in all Federal procurement and non-procurement actions. For an agency to bar individuals from participating in all procurement and non-procurement activities, it must exercise its suspension and debarment authority under the Federal Acquisition Regulation or the Nonprocurement Common Rule. This rulemaking would remove the regulatory provisions at issue, in order to align the regulation with the intent of the Social Security Act and current practice.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Tiffani Redding, Program Analyst, Department of Health and Human Services, Office of the Secretary, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 202 205–4321,

RIN: 0991–AC11

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office for Civil Rights (OCR)

Proposed Rule Stage

261. Rulemaking on Discrimination on the Basis of Disability in Critical Health and Human Services Programs or Activities (Rulemaking Resulting From a Section 610 Review)

Regulatory Plan: This entry is Seq. No. 45 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)

Proposed Rule Stage

262. • Treatment of Opioid Use Disorder With Extended Take Home Doses of Methadone

Regulatory Plan: This entry is Seq. No. 50 in part II of this issue of the **Federal Register**.

RIN: 0930–AA39

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention (CDC)

Final Rule Stage

263. Control of Communicable Diseases; Foreign Quarantine

Legal Authority: 42 U.S.C. 264; 42 U.S.C. 265

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.

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	09/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ashley C. Altenburger JD, Public Health 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

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Proposed Rule Stage

264. National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers

Legal Authority: Pub. L. 113–54

Abstract: The rulemaking, once finalized, will establish standards for State licensing of prescription drug wholesale distributors and third-party logistics providers. The rulemaking will also establish 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	12/00/21	

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

265. Nicotine Toxicity Warnings

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) that are made or derived from tobacco and 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	10/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Samantha LohCollado, 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–AH24

266. Certain Requirements Regarding Prescription Drug Marketing (203 Amendment)

Legal Authority: Pub. L. 113–54

Abstract: The Food and Drug Administration (FDA) is amending the 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). In this proposed rulemaking, the Agency is amending 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	01/00/22	

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

267. Medication Guide; Patient Medication Information

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 proposed rule would amend FDA medication guide regulations to require a new form of patient labeling, 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 proposed rule would include requirements for Patient Medication Information development and distribution. The proposed rule would 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	02/00/22	

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

268. Requirements for Tobacco Product Manufacturing Practice

Legal Authority: 21 U.S.C. 371; 21 U.S.C. 387b; 21 U.S.C. 387f

Abstract: The rule is proposing to establish tobacco product manufacturing practice (TPMP) requirements for manufacturers of finished and bulk tobacco products. This proposed rule, if finalized, would

set forth requirements for the manufacture, pre-production design validation, packing, and storage of a tobacco product. This proposal would help prevent the manufacture and distribution of contaminated and otherwise nonconforming tobacco products. This proposed rule provides manufacturers with flexibility in the manner in which they comply with the proposed 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	03/00/22	

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

269. Administrative Detention of Tobacco Products

Legal Authority: 21 U.S.C. 334; 21 U.S.C. 371

Abstract: FDA is proposing regulations to establish requirements for the administrative detention of tobacco products. This proposal would allow FDA to administratively detain tobacco products encountered during inspections that an officer or employee 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.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nathan Mease, 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.*

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–AI05

270. Nutrient Content Claims, Definition of Term: Healthy

Regulatory Plan: This entry is Seq. No. 53 in part II of this issue of the **Federal Register**.

RIN: 0910–AI13

271. Revocation of Uses of Partially Hydrogenated Oils in Foods

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), we 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. We are now proposing to update our regulations to remove all mention of partially hydrogenated oils from FDA's GRAS regulations and as an optional ingredient in standards of identity. We are also proposing to revoke all prior sanctions for uses of PHOs in food.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ellen Anderson, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS–265, 4300 River Road, College Park, MD 20740, *Phone:* 240 402–1309, *Email: ellen.anderson@fda.hhs.gov.*

RIN: 0910–AI15

272. Tobacco Product Standard for Characterizing Flavors in Cigars

Regulatory Plan: This entry is Seq. No. 56 in part II of this issue of the **Federal Register**.

RIN: 0910–AI28

273. Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies

Regulatory Plan: This entry is Seq. No. 57 in part II of this issue of the **Federal Register**.

RIN: 0910–AI57

274. • Additional 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)

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 (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 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	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexandria Fujsaki, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5169, Center for Drug Evaluation and Research, Silver Spring, MD 20993, *Phone:* 240 402–4078.

RIN: 0910–AI70

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Final Rule Stage

275. Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, Neutral Manner in Advertisements in Television and Radio Format

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 drugs in television or radio format, the major statement relating to side effects and contraindications of an advertised prescription 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	09/00/22	

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

276. Sunlamp Products; Amendment to the Performance Standard

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 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	05/00/22	

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

277. Mammography Quality Standards Act

Legal Authority: 21 U.S.C. 360i; 21 U.S.C. 360nn; 21 U.S.C. 374(e); 42 U.S.C. 263b

Abstract: FDA is amending its regulations governing mammography. The amendments will update the regulations issued under the Mammography Quality Standards Act of 1992 (MQSA) and the Federal Food, Drug, and Cosmetic Act (FD&C Act). FDA is taking this action to address changes in mammography technology and mammography processes that have occurred since the regulations were published in 1997 and to address breast density reporting to patient and healthcare providers.

Timetable:

Action	Date	FR Cite
NPRM	03/28/19	84 FR 11669
NPRM Comment Period End.	06/26/19	
Final Rule	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jean M. Olson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 66, Room 5506, Silver Spring, MD 20993, *Phone:* 301 796–6579, *Email: jean.olson@fda.hhs.gov.*

RIN: 0910–AH04

278. General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products

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	05/00/22	

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–AH14

279. Laboratory Accreditation for Analyses of Foods

Legal Authority: 21 U.S.C. 350k; 21 U.S.C. 371(a); . . .

Abstract: This rule will enable FDA to recognize accreditation bodies that will accredit laboratories to perform analyses of food under certain circumstances to help ensure appropriate use of equipment, personnel, and procedures to conduct reliable analyses. A program for accredited laboratories will increase

the number of qualified laboratories eligible to perform testing of food, which will help FDA improve the safety of the U.S. food supply.

Timetable:

Action	Date	FR Cite
NPRM	11/04/19	84 FR 59452
NPRM Comment Period End.	03/03/20	
NPRM Comment Period Extended.	02/28/20	85 FR 11893
NPRM Comment Period Extended.	04/06/20	85 FR 19114
NPRM Comment Period End.	07/06/20	
Final Rule	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stacie Hammack, Chemist, Department of Health and Human Services, Food and Drug Administration, Office of Regulatory Affairs, Food and Feed Laboratory Operations, 60 8th Street NE, Atlanta, GA 30309, *Phone:* 301 796–5817, *Email: stacie.hammack@fda.hhs.gov.*

RIN: 0910–AH31

280. 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

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 five additional bulk drug substances on the list. FDA has also identified 26 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 a future rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	09/05/19	84 FR 46688
NPRM Comment Period End.	12/04/19	
Final Rule	03/00/22	

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Long-Term Actions

281. Requirements for Additional Traceability Records for Certain Foods

Legal Authority: Sec. 204 of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) (21 U.S.C. 2223(d)); sec. 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)); sec. 361 of the Public Health Service Act (42 U.S.C. 264)

Abstract: This rule will establish additional recordkeeping requirements for facilities that manufacture, process, pack, or hold foods that are designated as high-risk foods.

Timetable:

Action	Date	FR Cite
NPRM	09/23/20	85 FR 59984
NPRM Comment Period End.	01/21/21	
NPRM Comment Period Extended.	12/18/20	85 FR 82393
NPRM Comment Period End.	02/22/21	
Final Rule	11/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Katherine Vierk, Director, Division of Public Health Informatics and Analytics, Department of Health and Human Services, Food and Drug Administration, 5001 Campus Drive, CPK1, Room 2B014, HFS–005, College Park, MD 20740, *Phone:* 240 402–2122, *Email: katherine.vierk@fda.hhs.gov.*

RIN: 0910–AI44

282. • Postmarketing Safety Reporting Requirements, Pharmacovigilance Plans, and Pharmacovigilance Quality Systems for Human Drug and Biological Products

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	03/00/23	

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)

Centers for Medicare & Medicaid Services (CMS)

Proposed Rule Stage

283. Administrative Simplification: Modifications to NCPDP Retail Pharmacy Standards (CMS–0056)

Legal Authority: 42 U.S.C. 1320d to 1320d–9

Abstract: This proposed rule seeks to modify the currently adopted National Council for Prescription Drug Programs (NCPDP) standards to the Telecommunications Standard Implementation Guide Version F6 (F6); Batch Standard Implementation Guide version 15; and Batch Standard Subrogation Implementation Guide version 10.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Geanelle Herring, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Burden Reduction and Health Informatics, MS: S2–26–17, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4466, *Email: geanelle.herring@cms.hhs.gov.*

RIN: 0938–AU19

284. Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS–4198)

Legal Authority: 42 U.S.C. 1395w

Abstract: This proposed rule would codify long-established Medicare Advantage and Part D payment policies that are outside the scope of the annual Advance Notice/Rate Announcement.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Shapiro, Director, Medicare Plan Payment Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C1–13–18, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–7407, *Email: jennifer.shapiro@cms.hhs.gov.*

RIN: 0938–AU59

285. • CY 2023 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1770) (Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

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, 2023. Additionally, this rule proposes updates to the Quality Payment Program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	

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–AU81

286. • CY 2023 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1772) (Section 610 Review)

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	06/00/22	

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–AU82

287. • Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2023 Rates (CMS–1771–P) (Section 610 Review)

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	04/00/22	

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–AU84

288. • Transitional Coverage for Emerging Technologies (CMS–3421)

Legal Authority: 42 U.S.C. 263a; 42 U.S.C. 405(a); 42 U.S.C. 1302; 42 U.S.C. 1320b–12; . . .

Abstract: This proposed rule would establish the criteria for an expedited coverage pathway to provide Medicare beneficiaries with faster access to innovative and beneficial technologies.

Timetable:

Action	Date	FR Cite
NPRM	10/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lori Ashby, Senior Technical Advisor, 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:* 410 786–6322, *Email: lori.ashby@cms.hhs.gov.*

RIN: 0938–AU86

289. • Requirements for Rural Emergency Hospitals (CMS–3419) (Section 610 Review)

Regulatory Plan: This entry is Seq. No. 66 in part II of this issue of the **Federal Register**.

RIN: 0938–AU92

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Final Rule Stage

290. Durable Medical Equipment Fee Schedule, Adjustments To Resume the Transitional 50/50 Blended Rates To Provide Relief in Non-Competitive Bidding Areas (CMS–1687) (Section 610 Review)

Legal Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l)); Pub. L. 114–255, sec. 5004(b), 16007(a) and 16008

Abstract: This final rule responds to public comments on the interim final rule that published May 11, 2018 and extended the end of the transition period from June 30, 2016, to December 31, 2016 for phasing in adjustments to the fee schedule amounts for certain durable medical equipment (DME) and enteral nutrition paid in areas not subject to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP). In addition, the interim rule amended the regulation to resume the transition period for items furnished from August 1, 2017, through December 31, 2018. The interim rule also made technical amendments to existing regulations for DMEPOS items and services to exclude infusion drugs used with DME from the DMEPOS CBP.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/11/18	83 FR 21912
Interim Final Rule Comment Period End.	07/09/18	
Continuation Notice.	04/26/21	86 FR 21949
Final Action to be Merged With 0938–AU38 and 0938–AU17.	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexander Ullman, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5–07–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9671, *Email: alexander.ullman@cms.hhs.gov.*

RIN: 0938–AT21

291. Requirements Related to Surprise Billing; Part II (CMS–9908)

Legal Authority: Pub. L. 116–260, Division BB, title I and title II

Abstract: This interim final rule with comment would implement additional protections against surprise medical bills under the No Surprises Act, including provisions related to the independent dispute resolution processes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/07/21	86 FR 55980
Interim Final Rule Effective.	10/07/21	
Interim Final Rule Comment Period End.	12/06/21	
Reviewing Comments.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Deborah Bryant, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, MS: W08–134, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 493–4293, *Email: deborah.bryant@cms.hhs.gov.*

RIN: 0938–AU62

292. • Omnibus COVID–19 Health Care Staff Vaccination (CMS–3415) (Section 610 Review)

Regulatory Plan: This entry is Seq. No. 69 in part II of this issue of the **Federal Register**.

RIN: 0938–AU75

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Long-Term Actions

293. Most Favored Nation (MFN) Model (CMS–5528) (Section 610 Review)

Legal Authority: Social Security Act, sec. 1115A

Abstract: This final rule rescinds the Most Favored Nation Model interim final rule with comment period that appeared in the November 27, 2020, **Federal Register**.

Timetable:

Action	Date	FR Cite
ANPRM	10/30/18	83 FR 54546
ANPRM Comment Period End.	12/31/18	
Interim Final Rule	11/27/20	85 FR 76180
Interim Final Rule Effective.	11/27/20	
Interim Final Rule Comment Period End.	01/26/21	
NPRM	08/10/21	86 FR 43618
NPRM Comment Period End.	10/12/21	
Final Action	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lara Strawbridge, Director, Division of Ambulatory Payment Models, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare and Medicaid Innovation, 7500 Security Boulevard, MS: WB–06–05, Baltimore, MD 21244, *Phone:* 410 786–7400, *Email: mfn@cms.hhs.gov.*

RIN: 0938–AT91

294. Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Policy Issues and Level II of the Healthcare Common Procedure Coding System (HCPCS) (CMS–1738) (Section 610 Review)

Legal Authority: 42 U.S.C. 1395l; 42 U.S.C. 1395m; 42 U.S.C. 1395u; 42 U.S.C. 1395w–3

Abstract: This final rule responds to public comments on the proposed rule that published November 4, 2020, and establishes regulations for policy and program issues. Among the issues under consideration for this final rule are methodologies for adjusting the Medicare DMEPOS fee schedule amounts using information from the Medicare DMEPOS competitive bidding program for items furnished on the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Social Security Act; establishing procedures for making benefit category and payment determinations for new items and services that are durable medical equipment (DME), prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations under Medicare Part B; classifying continuous glucose monitors (CGMs) as DME under Medicare Part B and establishing fee schedule amounts for these items and related supplies and accessories; and other issues in the proposed rule and interim final rules with comment period (IFC) that CMS issued on May 11, 2018 and May 8, 2020.

Timetable:

Action	Date	FR Cite
NPRM	11/04/20	85 FR 70358
NPRM Comment Period End.	01/04/21	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joel Kaiser, Director, Division of DMEPOS Policy, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5–07–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6506, *Email: joel.kaiser@cms.hhs.gov.*

RIN: 0938–AU17

295. Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2022 Rates (CMS–1752) (Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

Abstract: This rule finalizes the three remaining policies proposed for the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. These policies include implementation of sections 126, 127, and 131 of the Consolidated Appropriations Act of 2020; changes in treatment of Medicaid Section 1115 waiver days for purposes of Medicare Disproportionate Share Hospital payments; and organ acquisition payment policies.

Timetable:

Action	Date	FR Cite
NPRM	05/10/21	86 FR 25070
NPRM Comment Period End.	06/28/21	
Final Action	08/13/21	86 FR 44774
Final Action Effective.	10/01/21	
Final Action Correction.	10/20/21	86 FR 58019
2nd Final Action	05/00/24	

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–AU44

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Completed Actions

296. Requirements for Long-Term Care Facilities: Regulatory Provisions To Promote Increased Safety (CMS–3347) (Completion of a Section 610 Review)

Legal Authority: Secs. 1819 and 1919 of the Social Security Act; sec. 1819(d)(4)(B) and 1919(d)(4)(B) of the Social Security Act; sec. 1819(b)(1)(A) and 1919 (b)(1)(A) of the Social Security Act

Abstract: This final rule reforms the requirements that long-term care facilities must meet to participate in the Medicare and Medicaid programs in order to support the provision of safe care and preserve access to care.

Timetable:

Action	Date	FR Cite
NPRM	07/18/19	84 FR 34737
NPRM Comment Period End.	09/16/19	
Withdrawn	08/04/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Diane Corning, Health Insurance Specialist, 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:* 410 786–8486, *Email: diane.corning@cms.hhs.gov.*

RIN: 0938–AT36

297. CY 2022 Home Health Prospective Payment System Rate Update, Home Infusion Therapy Services, and Quality Reporting Requirements (CMS–1747) (Completion of a Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395(hh)

Abstract: This annual final rule updates the home health prospective payment system payment rates and wage index. This rule also updates the home infusion therapy services payment rates. In addition, this rule implements changes to the Home Health Value-Based Purchasing Model and to the Home Health Quality Reporting Program.

Timetable:

Action	Date	FR Cite
NPRM	07/07/21	86 FR 35874
NPRM Comment Period End.	08/27/21	
Final Action	11/09/21	86 FR 62240
Final Action Effective.	01/01/22	

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–AU37

298. FY 2022 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS–1750) (Completion of a Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395f; 42 U.S.C. 1395g; 42 U.S.C. 1395hh; 42 U.S.C. 1395ww(s)

Abstract: This annual final rule updates the prospective payment rates for inpatient psychiatric facilities (IPF) with discharges beginning on October 1, 2021. The rule also includes updates to the IPF Quality Reporting Program.

Timetable:

Action	Date	FR Cite
NPRM	04/13/21	86 FR 19480
NPRM Comment Period End.	06/07/21	
Final Action	08/04/21	86 FR 42608
Final Action Effective.	10/01/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sherlene Jacques, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5–04–27, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–0510, *Email: sherlene.jacques@cms.hhs.gov.*

RIN: 0938–AU40

299. CY 2022 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1751) (Completion of a Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

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. These changes apply to services furnished beginning January 1, 2022. Additionally, this rule

finalizes updates to the Quality Payment Program.

Timetable:

Action	Date	FR Cite
NPRM	07/23/21	86 FR 39104
NPRM Comment Period End.	09/13/21	
Final Action	11/19/21	86 FR 64996
Final Action Effective.	01/01/22	

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–AU42

300. CY 2022 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1753) (Completion of a Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

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 finalizes 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	08/04/21	86 FR 42018
NPRM Comment Period End.	09/17/21	
Final Action	11/16/21	86 FR 63458
Final Action Effective.	01/01/22	

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–AU43

301. Requirements Related to Surprise Billing; Part I (CMS–9909)

Legal Authority: Pub. L. 116–260, Division BB, title I and title II

Abstract: This interim final rule with comment implements certain protections against surprise medical bills under the No Surprises Act.

Completed:

Reason	Date	FR Cite
Interim Final Rule With Comment.	07/13/21	86 FR 36872
Interim Final Rule Comment Period End.	09/07/21	
Interim Final Rule Effective.	09/13/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lindsey Murtagh, *Phone:* 301 492–4106, *Email: lindsey.murtagh@cms.hhs.gov.*

RIN: 0938–AU63

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration for Children and Families (ACF)

Proposed Rule Stage

302. Updating Native Employment Works Requirements (Rulemaking Resulting From a Section 610 Review)

Legal Authority: 42 U.S.C. 612

Abstract: The rule would update NEW regulations at 45 CFR part 287 to avoid inconsistencies and reflect the changes that have been made to the NEW statute and Administration for Children and Families (ACF) grant policy and procedures since the current regulation's publication on February 18, 2000. In particular, the regulations need to address changes made in section 404(e) of the Social Security Act as amended in 1999, Uniform Administrative Requirements, Cost Principles, and Audit Requirement for HHS Awards (45 CFR part 75)—Part 75 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, Public Law 106–107, the ''Federal Financial Assistance Management, Improvement Act of 1999'' (Nov. 20, 1999), and various minor technical changes. While some of these changes have been addressed and communicated to the public and grantees via program instructions and information memoranda, the regulations themselves are now inconsistent with current law and policy.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Tonya Ann Davis, Program Specialist, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3020, Washington, DC 20201, *Phone:* 202 401–4851, *Email: tonya.davis@acf.hhs.gov.*

RIN: 0970–AC83

[FR Doc. 2021–27956 Filed 1–28–22; 8:45 am]

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Part IX

Department of Homeland Security

Semiannual Regulatory Agenda

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chapters 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 11, 2021, at *http://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.

Dated: September 10, 2021.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

OFFICE OF THE SECRETARY—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
303	Homeland Security Acquisition Regulation: Privacy Training (HSAR Case 2015–003)	1601–AA79

OFFICE OF THE SECRETARY—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
304	Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Information (HSAR Case 2015–001).	1601–AA76
305	Homeland Security Acquisition Regulation: Information Technology Security Awareness Training (HSAR Case 2015–002).	1601–AA78

OFFICE OF THE SECRETARY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
306	Homeland Security Acquisition Regulation, Enhancement of Whistleblower Protections for Contractor Employees.	1601–AA72

U.S. CITIZENSHIP AND IMMIGRATION SERVICES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
307	U.S. Citizenship and Immigration Services Fee Schedule **(Reg Plan Seq No. 80)**	1615–AC68

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
308	Requirements for Filing Motions and Administrative Appeals	1615–AB98

U.S. CITIZENSHIP AND IMMIGRATION SERVICES—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
309	Removing H–4 Dependent Spouses From the Classes of Noncitizens Eligible for Employment Authorization.	1615–AC15

U.S. COAST GUARD—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
310	Claims Procedures Under the Oil Pollution Act of 1990 (USCG–2004–17697)	1625–AA03
311	Lifejacket Approval Harmonization	1625–AC62

U.S. COAST GUARD—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
312	Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation	1625–AB85

U.S. COAST GUARD—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
313	Financial Responsibility—Vessels; Superseded Pollution Funds (USCG–2017–0788)	1625–AC39

U.S. CUSTOMS AND BORDER PROTECTION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
314	Importer Security Filing and Additional Carrier Requirements (**Section 610 Review**)	1651–AA70
315	Implementation of the Guam-CNMI Visa Waiver Program **(Section 610 Review)**	1651–AA77

TRANSPORTATION SECURITY ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
316	Security Training for Surface Transportation Employees	1652–AA73

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
317	Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media.	1653–AA78

CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
318	Ammonium Nitrate Security Program **(Reg Plan Seq No. 98)**	1670–AA00

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
319	Chemical Facility Anti-Terrorism Standards (CFATS)	1670–AA01

DEPARTMENT OF HOMELAND SECURITY (DHS)

Office of the Secretary (OS)

Prerule Stage

303. Homeland Security Acquisition Regulation: Privacy Training (HSAR Case 2015–003)

Legal Authority: 5 U.S.C. 301 and 302; 41 U.S.C. 1303, 1702 and 1707

Abstract: This Homeland Security Acquisition Regulation (HSAR) rule would require contractors to complete training that addresses the protection of privacy, in accordance with the Privacy Act of 1974, and the handling and safeguarding of Personally Identifiable Information and Sensitive Personally Identifiable Information. DHS is withdrawing this regulatory action, because privacy training is covered by the Federal Acquisition Regulation final rule titled Privacy Training (81 FR 93476, Dec. 20, 2016) and DHS FAR Class Deviation Number 17–03.

Timetable:

Action	Date	FR Cite
NPRM	01/19/17	82 FR 6425
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	
Notice of Withdrawal.	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Candace Lightfoot, Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, Room 3636–15, 301 7th Street SW, Washington, DC 20528, *Phone:* 202 447–0082, *Email: candace.lightfoot@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–AA79

DEPARTMENT OF HOMELAND SECURITY (DHS)

Office of the Secretary (OS)

Final Rule Stage

304. Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Information (HSAR Case 2015–001)

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 would implement 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 would define key terms, outline security requirements and inspection provisions for contractor information technology (IT) systems that store, process or transmit CUI, institute incident notification and response procedures, and identify 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	04/00/22	

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

305. Homeland Security Acquisition Regulation: Information Technology Security Awareness Training (HSAR Case 2015–002)

Legal Authority: 5 U.S.C. 301 and 302; 41 U.S.C. 1707, 1302 and 1303

Abstract: This Homeland Security Acquisition Regulation (HSAR) rule would standardize information technology security awareness training and DHS Rules of Behavior requirements for contractor and subcontractor employees who access DHS information systems and information resources or contractor-owned and/or operated information systems and information resources capable of collecting, processing, storing, or transmitting controlled unclassified information (CUI).

Timetable:

Action	Date	FR Cite
NPRM	01/19/17	82 FR 6446
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	04/00/22	

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–AA78

DEPARTMENT OF HOMELAND SECURITY (DHS)

Office of the Secretary (OS)

Long-Term Actions

306. Homeland Security Acquisition Regulation, Enhancement of Whistleblower Protections for Contractor Employees

Legal Authority: Sec. 827 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013, (Pub. L. 112–239, enacted January 2, 2013); 41 U.S.C. 1302(a)(2) and 1707

Abstract: The Department of Homeland Security (DHS) is proposing to amend its Homeland Security Acquisition Regulation (HSAR) parts 3003 and 3052 to implement section 827 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013) for the United States Coast Guard (USCG). Section 827 of the NDAA for FY 2013 established enhancements to the Whistleblower Protections for Contractor Employees for all agencies subject to section 2409 of title 10, United States Code, which includes the USCG.

Timetable:

Action	Date	FR Cite
NPRM	11/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: 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–AA72

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Citizenship and Immigration Services (USCIS)

Proposed Rule Stage

307. U.S. Citizenship and Immigration Services Fee Schedule

Regulatory Plan: This entry is Seq. No. 80 in part II of this issue of the **Federal Register**.

RIN: 1615–AC68

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Citizenship and Immigration Services (USCIS)

Long-Term Actions

308. Requirements for Filing Motions and Administrative Appeals

Legal Authority: 5 U.S.C. 552 and 552a; 8 U.S.C. 1101, 1103 and 1304; 6 U.S.C. 112

Abstract: The Department of Homeland Security (DHS) is proposing this rule to improve the administration of U.S. Citizenship and Immigration Services (USCIS) appeals, motions, and certifications. The proposed changes would update and restructure the regulations in order to clarify and streamline the administrative review process, increase efficiency, and reflect the establishment of DHS and its components.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William K. Renwick, Jr., Branch Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Administrative Appeals Office, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 202 721–3000.

RIN: 1615–AB98

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Citizenship and Immigration Services (USCIS)

Completed Actions

309. Removing H–4 Dependent Spouses From the Classes of Noncitizens Eligible for Employment Authorization

Legal Authority: 6 U.S.C. 112; 8 U.S.C. 1103(a), 1184(a)(1) and 1324a(H)(3)(B)

Abstract: On February 25, 2015, DHS published a final rule that amended DHS regulations to extend eligibility for employment authorization to certain H–4 dependent spouses of H–1B nonimmigrant workers who are seeking employment-based lawful permanent resident (LPR) status. DHS previously indicated that it would propose to rescind or change that final rule. DHS no longer intends to issue such a proposed rule.

Timetable:

Action	Date	FR Cite
Withdrawn	08/25/21	

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–AC15

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Proposed Rule Stage

310. Claims Procedures Under the Oil Pollution Act of 1990 (USCG–2004–17697)

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	09/00/22	

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

311. Lifejacket Approval Harmonization

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 proposes to amend the lifejacket approval requirements and follow-up program requirements by incorporating three new bi-national standards. At the same time, the Coast Guard proposes to 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 state-of-the-art and are intended to replace the legacy standards. The proposed amendments will 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. These proposed changes are expected to promote economic relief. The proposed rule is expected to promote economic relief 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 creating a new market in PFDs with a lower buoyancy rating.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	

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

312. Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation

Legal Authority: 46 U.S.C. 4502 and 5103; Pub. L. 111–281

Abstract: The Coast Guard proposes to implement those requirements of 2010 and 2012 legislation that pertain to uninspected commercial fishing industry vessels and that took effect upon enactment of the legislation but that, to be implemented, require amendments to Coast Guard regulations affecting those vessels. The applicability of the regulations is being changed, and new requirements are being added 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.	10/19/16	
NPRM Comment Period Extended End.	12/18/16	
Final Rule	To Be Determined	

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)

U.S. Coast Guard (USCG)

Completed Actions

313. Financial Responsibility—Vessels; Superseded Pollution Funds (USCG–2017–0788)

Legal Authority: 33 U.S.C. 2704; 33 U.S.C. 2716 and 2716a; 42 U.S.C. 9607 to 9609; 6 U.S.C. 552; E.O. 12580; sec. 7(b), 3 CFR, 1987; Comp., p. 193; E.O. 12777, secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, sec. 89, 3; 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, sec. 1, 3 CFR, 2014 Comp., p. 227; Department of Homeland; Security Delegation Nos. 0170.1 and 5110, Revision 01

Abstract: The Coast Guard has proposed to amend its rule on vessel financial responsibility to include tank vessels greater than 100 gross tons, to clarify and strengthen the rule's reporting requirements, to conform its rule to current practice, and to remove two superseded regulations. This rulemaking will ensure the Coast Guard has current information when there are significant changes in a vessel's operation, ownership, or evidence of financial responsibility, and reflect current best practices in the Coast Guard's management of the Certificate of Financial Responsibility Program. This rulemaking will also promote the Coast Guard's missions of maritime stewardship, maritime security, and maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	05/13/20	85 FR 28802
NPRM Comment Period End.	08/11/20	
Final Rule	12/01/21	86 FR 68123
Final Action Effective.	01/03/22	

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–AC39

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Customs and Border Protection (USCBP)

Long-Term Actions

314. Importer Security Filing and Additional Carrier Requirements (Section 610 Review)

Legal Authority: Pub. L. 109–347, sec. 203; 5 U.S.C. 301; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1433 and 1434; 19 U.S.C. 1624; 19 U.S.C. 2071 (note); 46 U.S.C. 60105

Abstract: This final rule implements the provisions of section 203 of the Security and Accountability for Every

Port Act of 2006. On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule (CBP Dec. 08–46) in the **Federal Register** (73 FR 71730), that finalized most of the provisions proposed in the Notice of Proposed Rulemaking. It requires carrier and importers to provide to CBP, via a CBP approved electronic data interchange system, certain advance information pertaining to cargo brought into the United States by vessel to enable CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. The interim final rule did not finalize six data elements that were identified as areas of potential concern for industry during the rulemaking process and, for which, CBP provided some type of flexibility for compliance with those data elements. CBP solicited public comment on these six data elements and also invited comments on the revised Regulatory Assessment and Final Regulatory Flexibility Analysis. (See 73 FR 71782–85 for regulatory text and 73 CFR 71733–34 for general discussion.)

Timetable:

Action	Date	FR Cite
NPRM	01/02/08	73 FR 90
NPRM Comment Period End.	03/03/08	
NPRM Comment Period Extended.	02/01/08	73 FR 6061
NPRM Comment Period Extended End.	03/18/08	
Interim Final Rule	11/25/08	73 FR 71730
Interim Final Rule Effective.	01/26/09	
Interim Final Rule Comment Period End.	06/01/09	
Correction	07/14/09	74 FR 33920
Correction	12/24/09	74 FR 68376
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Sale, Branch Chief, Manifest & Conveyance Security Division, Cargo & Conveyance, Office of Field Operation, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, *Phone:* 202 325–3338, *Email: brian.a.sale@cbp.dhs.gov; ofo-manifestbranch@cbp.dhs.gov.*

RIN: 1651–AA70

315. Implementation of the Guam-CNMI Visa Waiver Program (Section 610 Review)

Legal Authority: Pub. L. 110–229, sec. 702

Abstract: The interim final rule amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. This rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver Program. Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), subject to a transition period, extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and/or the CNMI. On January 16, 2009, the Department of Homeland Security (DHS), Customs and Border Protection (CBP), issued an interim final rule in the **Federal Register** replacing the then-existing Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. As of November 28, 2009, the Guam-CNMI Visa Waiver Program is operational. This program allows nonimmigrant visitors from eligible countries to seek admission for business or pleasure for entry into Guam and/or the CNMI without a visa for a period of authorized stay not to exceed 45 days. This rulemaking would finalize the January 2009 interim final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/09	74 FR 2824
Interim Final Rule Effective.	01/16/09	
Interim Final Rule Comment Period End.	03/17/09	
Technical Amendment; Change of Implementation Date.	05/28/09	74 FR 25387
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Neyda I. Yejo, Program Manager, Electronic System for Travel Authorization, Office of Field Operations, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, *Phone:* 202 344–2373, *Email: neyda.i.yejo@cbp.dhs.gov.*

RIN: 1651–AA77

DEPARTMENT OF HOMELAND SECURITY (DHS)

Transportation Security Administration (TSA)

Completed Actions

316. • Security Training for Surface Transportation Employees

Legal Authority: 49 U.S.C. 114; Pub. L. 110–53, secs. 1405, 1408, 1501, 1512, 1517, 1531, and 1534

Abstract: This action was previously reported as 1652–AA55. TSA published a Security Training Final Rule on March 23, 2020. This rule required owner/operators of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, and over-the-road bus companies, to provide TSA-approved security training to employees performing security-sensitive functions. On May 1, 2020, TSA delayed the effective date of the final rule to September 21, 2020, in recognition of the potential impact of the COVID–19 public health crisis and related strain on resources for owner/operators required to comply with the regulation. TSA revised all compliance dates within the rule to reflect the new effective date. On October 26, 2020, TSA extended certain compliance dates from December 21, 2020, to March 22, 2021. On May 4, 2021, TSA extended the compliance deadline for submission of the required security training program from March 22, 2021, to no later than June 21, 2021.

Timetable:

Action	Date	FR Cite
Notice; Request for Comment.	06/14/13	78 FR 35945
Notice; Comment Period End.	07/15/13	
NPRM	12/16/16	81 FR 91336
NPRM Comment Period End.	03/16/17	
Final Rule	03/23/20	85 FR 16456
Final Rule Effective.	06/22/20	

Action	Date	FR Cite
Final Rule; Delay of Effective Date.	05/01/20	85 FR 25315
Final Rule	10/26/20	85 FR 67681
Final Rule	05/04/21	86 FR 23629
Final Rule Effective.	06/21/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chandru (Jack) Kalro, Deputy Director, Surface Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–1145, *Email: surfacefrontoffice@tsa.dhs.gov.*

Alex Moscoso, 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:* 571 227–5839, *Email: alex.moscoso@tsa.dhs.gov.*

Traci Klemm, Assistant Chief 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:* 571 227–3596, *Email: traci.klemm@tsa.dhs.gov.*

RIN: 1652–AA73

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Immigration and Customs Enforcement (USICE)

Completed Actions

317. Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media

Legal Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1182 and 1184

Abstract: DHS originally proposed modifying the period of authorized stay for certain categories of nonimmigrants traveling to the United States by eliminating the availability of ''duration of status'' and by providing a maximum period of authorized stay with options for extensions for each applicable visa category. DHS has withdrawn this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/25/20	85 FR 60526
NPRM Comment Period End.	10/26/20	
Notice of Withdrawal.	07/06/21	86 FR 35410

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sharon Hageman, Acting Deputy Assistant Director, Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Mail Stop 5006, Washington, DC 20536, *Phone:* 202 732–6960, *Email: ice.regulations@ice.dhs.gov.*

RIN: 1653–AA78

DEPARTMENT OF HOMELAND SECURITY (DHS)

Cybersecurity and Infrastructure Security Agency (CISA)

Proposed Rule Stage

318. Ammonium Nitrate Security Program

Regulatory Plan: This entry is Seq. No. 98 in part II of this issue of the **Federal Register**.

RIN: 1670–AA00

DEPARTMENT OF HOMELAND SECURITY (DHS)

Cybersecurity and Infrastructure Security Agency (CISA)

Long-Term Actions

319. Chemical Facility Anti-Terrorism Standards (CFATS)

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	
Next Action Undetermined.		

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. 2021–27977 Filed 1–28–22; 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 2021 and Fall 2022. 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.
320	Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions.	1014–AA52

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
321	Revisions to Decommissioning Requirements on the OCS	1014–AA53

ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
322	Risk Management, Financial Assurance and Loss Prevention—Decommissioning Activities and Obligations.	1082–AA02

UNITED STATES FISH AND WILDLIFE SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
323	Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations	1018–BF07
324	Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations	1018–BF64

UNITED STATES FISH AND WILDLIFE SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
325	Importation, Exportation and Transportation of Wildlife; Updates to the Regulations	1018–BF16

UNITED STATES FISH AND WILDLIFE SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
326	Migratory Bird Hunting; 2021–22 Migratory Game Bird Hunting Regulations	1018–BE34

BUREAU OF OCEAN ENERGY MANAGEMENT—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
327	Air Quality Rule	1010–AE09

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Safety and Environmental Enforcement (BSEE)

Proposed Rule Stage

320. Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions

Legal Authority: Not Yet Determined

Abstract: This rulemaking would revise 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 ShelfBlowout 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 plans to propose updates to Subparts D and G of 30 CFR part 250 to ensure operations are conducted safely and in an environmentally responsible manner.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	
NPRM Comment Period End.	08/00/22	

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)

Bureau of Safety and Environmental Enforcement (BSEE)

Long-Term Actions

321. • Revisions to Decommissioning Requirements on the OCS

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	11/00/22	
NPRM Comment Period End.	01/00/23	

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–AA53

DEPARTMENT OF THE INTERIOR (DOI)

Assistant Secretary for Land and Minerals Management (ASLM)

Final Rule Stage

322. Risk Management, Financial Assurance and Loss Prevention—Decommissioning Activities and Obligations

Legal Authority: 43 U.S.C. 1334(a)

Abstract: On October 12, 2020, the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) published the joint proposed rule in the **Federal Register** (85 FR 65904). BSEE will continue to pursue this rulemaking as a BSEE-only final rule to revise policies and procedures concerning compliance with decommissioning obligations for Outer Continental Shelf (OCS) oil and gas. The final rule will clarify and streamline specific regulatory requirements associated with the operational and procedural aspects of applicable decommissioning responsibilities of OCS lessees and grant holders. BOEM will continue to evaluate and develop a comprehensive set of regulations to manage the risks and financial obligations associated with industry activities on the OCS and pursue these actions in a separate rulemaking under RIN 1010–AE14.

Timetable:

Action	Date	FR Cite
NPRM	10/16/20	85 FR 65904
NPRM Comment Period End.	12/15/20	
Final Action	12/00/21	
Final Action Effective.	01/00/22	

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.*, Bivan Patnaik, Deputy Director of Regulatory Affairs, Department of the Interior, Washington, DC 20240, *Phone:* 202 208–4582, *Email: bivan_patnaik@ios.doi.gov.*

RIN: 1082–AA02

DEPARTMENT OF THE INTERIOR (DOI)

United States Fish and Wildlife Service (FWS)

Proposed Rule Stage

323. Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations

Legal Authority: 16 U.S.C. 703 to 712; 16 U.S.C. 742a–j

Abstract: This proposed rule would establish annual hunting regulations for certain migratory game birds for the 2022–23 hunting season. The FWS annually prescribes outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, describes the proposed regulatory alternatives for the 2022–23 duck hunting seasons, and requests proposals from Indian Tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands.

Timetable:

Action	Date	FR Cite
Notice of Meeting	03/25/21	86 FR 15957
Meeting	04/06/21	
NPRM	08/31/21	86 FR 48649
NPRM Comment Period End.	09/30/21	
NPRM—Proposed Frameworks.	12/00/21	
NPRM—Proposed Tribal Regulations.	01/00/22	
Final Action—Final Frameworks.	02/00/22	
Final Action—Final Tribal Regulations.	04/00/22	
Final Action—Season Selections.	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

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–BF07

324. Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations

Legal Authority: 16 U.S.C. 703 *et seq.;* 16 U.S.C. 742a–j

Abstract: This proposed rule would establish annual hunting regulations for certain migratory game birds. The U.S. Fish and Wildlife Service 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 may select season dates, bag limits, and other regulatory options for their hunting seasons.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Eric L. Kershner, Chief, Branch 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)

United States Fish and Wildlife Service (FWS)

Long-Term Actions

325. Importation, Exportation and Transportation of Wildlife; Updates to the Regulations

Legal Authority: 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. 33 8(d)–(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 rewrite FWS's regulations governing the importation and exportation of wildlife to make these regulations easier to understand. In addition, FWS proposes to revise the inspection fees associated with the importation and exportation of wildlife and to update the list of species that qualify as domesticated species, for which FWS inspection and clearance is not required. The current inspection fees have been in effect since 2012. The establishment of these fees is consistent with the Independent Offices Appropriations Act of 1952 and OMB Circular No. A–25, which provide that services provided by Federal agencies are to be self-sustaining to the extent possible and that fees assessed should be sufficient to recover the full cost to the Federal Government of providing the service and are based on market prices.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

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

DEPARTMENT OF THE INTERIOR (DOI)

United States Fish and Wildlife Service (FWS)

Completed Actions

326. Migratory Bird Hunting; 2021–22 Migratory Game Bird Hunting Regulations

Legal Authority: 16 U.S.C. 703 to 712; 16 U.S.C. 742a–j

Abstract: This rule established hunting regulations for certain migratory game birds for the 2021–2022 hunting season. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions. The FWS annually prescribes outside limits (frameworks) within which States may select hunting seasons. The FWS also works with Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands.

Timetable:

Action	Date	FR Cite
NPRM	10/09/20	85 FR 64097
NPRM Comment Period End.	11/09/20	
NPRM—Proposed Frameworks.	02/22/21	86 FR 10622
NPRM Comment Period End.	03/24/21	
NPRM—Proposed Tribal Regulations.	05/04/21	86 FR 23641
NPRM Comment Period End.	06/03/21	
Final Action—Final Frameworks.	07/16/21	86 FR 37854
Final Action Effective—Final Frameworks.	07/16/21	

Action	Date	FR Cite
Final Action—Final Tribal Regulations.	08/17/21	86 FR 45909
Final Action Effective—Final Tribal Regulations.	08/17/21	
Final Action—Season Selections.	08/31/21	86 FR 48569
Final Action Effective—Season Selections.	08/31/21	

Regulatory Flexibility Analysis Required: Yes.

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–BE34

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Ocean Energy Management (BOEM)

Long-Term Actions

327. Air Quality Rule

Legal Authority: OCSLA sec. 5(a)(8)

Abstract: This proposed rule would identify opportunities for clarifying air quality regulations.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Peter Meffert, Regulatory Specialist, 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–AE09

[FR Doc. 2021–27978 Filed 1–28–22; 8:45 am]

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FEDERAL REGISTER

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Part XI

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: Laura M. Dawkins, 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.

Martin J. Walsh,

Secretary of Labor.

WAGE AND HOUR DIVISION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
328	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees **(Reg Plan Seq No. 114)**.	1235–AA39

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

EMPLOYMENT AND TRAINING ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
329	Temporary Employment of H–2B Foreign Workers in Certain Itinerant Occupations in the United States	1205–AB93

EMPLOYEE BENEFITS SECURITY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
330	Requirements Related to Surprise Billing, Part 1 **(Reg Plan Seq No. 122)**	1210–AB99

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
331	Process Safety Management and Prevention of Major Chemical Accidents	1218–AC82
332	Emergency Response	1218–AC91
333	Prevention of Workplace Violence in Health Care and Social Assistance **(Reg Plan Seq No. 126)**	1218–AD08

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
334	Infectious Diseases **(Reg Plan Seq No. 128)**	1218–AC46
335	Communication Tower Safety	1218–AC90

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
336	Tree Care Standard	1218–AD04

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DEPARTMENT OF LABOR (DOL)

Wage and Hour Division (WHD)

Proposed Rule Stage

328. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

Regulatory Plan: This entry is Seq. No. 114 in part II of this issue of the **Federal Register**.

RIN: 1235–AA39

DEPARTMENT OF LABOR (DOL)

Employment and Training Administration (ETA)

Proposed Rule Stage

329. Temporary Employment of H–2B Foreign Workers in Certain Itinerant Occupations in the United States

Legal Authority: 8 U.S.C. 1184; 8 U.S.C. 1103

Abstract: The United States Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division, and the United States Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services, are jointly proposing to amend H–2B non-immigrant visa program regulations at 20 CFR part 655, subpart A, and 8 CFR 214. The Notice of Proposed Rulemaking (NPRM) would establish standards and procedures for employers seeking to hire foreign temporary nonagricultural workers for certain itinerant job opportunities, including entertainers and carnivals and utility vegetation management.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

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–AB93

DEPARTMENT OF LABOR (DOL)

Employee Benefits Security Administration (EBSA)

Final Rule Stage

330. Requirements Related to Surprise Billing, Part 1

Regulatory Plan: This entry is Seq. No. 122 in part II of this issue of the **Federal Register**.

RIN: 1210–AB99

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Prerule Stage

331. Process Safety Management and Prevention of Major Chemical Accidents

Legal Authority: 29 U.S.C. 655; 29 U.S.C. 657

Abstract: The Occupational Safety and Health Administration (OSHA) issued a Request for Information (RFI) on December 9, 2013 (78 FR 73756). The RFI identified issues related to modernization of the Process Safety Management standard and related standards necessary to meet the goal of preventing major chemical accidents. OSHA completed SBREFA in August 2016.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	12/09/13	78 FR 73756
RFI Comment Period Extended.	03/07/14	79 FR 13006
RFI Comment Period Extended End.	03/31/14	
Initiate SBREFA	06/08/15	
SBREFA Report Completed.	08/01/16	
Stakeholder Meeting.	01/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew Levinson, Deputy 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–AC82

332. Emergency Response

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657; 5 U.S.C. 609

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.

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	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew Levinson, Deputy 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

333. Prevention of Workplace Violence in Health Care and Social Assistance

Regulatory Plan: This entry is Seq. No. 126 in part II of this issue of the **Federal Register**.

RIN: 1218–AD08

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

334. Infectious Diseases

Regulatory Plan: This entry is Seq. No. 128 in part II of this issue of the **Federal Register**.

RIN: 1218–AC46

335. Communication Tower Safety

Legal Authority: 29 U.S.C. 655(b); 5 U.S.C. 609

Abstract: While the number of employees engaged in the communication tower industry remains small, the fatality rate is very high. Over the past 20 years, this industry has experienced an average fatality rate that greatly exceeds that of the construction industry. Due to recent FCC spectrum auctions and innovations in cellular technology, there will be a very high level of construction activity taking place on communication towers over the next few years. A similar increase in the number of construction projects needed to support cellular phone coverage triggered a spike in fatality and injury rates years ago. Based on information collected from an April 2016 Request for Information (RFI), OSHA concluded that current OSHA requirements such as those for fall protection and personnel hoisting, may not adequately cover all hazards of communication tower construction and maintenance activities. OSHA will use information collected from a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to identify effective work practices and advances in engineering technology that would best address industry safety and health concerns. The Panel carefully considered the issue of the expansion of the rule beyond just communication towers. OSHA will continue to consider also covering structures that have telecommunications equipment on or attached to them (*e.g.,* buildings, rooftops, water towers, billboards).

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	04/15/15	80 FR 20185
RFI Comment Period End.	06/15/15	
Initiate SBREFA ..	01/04/17	
Initiate SBREFA ..	05/31/18	
Complete SBREFA.	10/11/18	
NPRM	10/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Scott Ketcham, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, Room N–3468, FP Building, Washington, DC 20210, *Phone:* 202 693–2020, *Fax:* 202 693–1689, *Email: ketcham.scott@dol.gov.*

RIN: 1218–AC90

336. Tree Care Standard

Legal Authority: Not Yet Determined

Abstract: There is no OSHA standard for tree care operations; the agency currently applies a patchwork of standards to address the serious hazards in this industry. The tree care industry previously petitioned the agency for rulemaking and OSHA issued an ANPRM (September 2008). OSHA completed a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel in May 2020, collecting information from affected small entities on a potential standard, including the scope of the standard, effective work practices, and arboricultural specific uses of equipment to guide OSHA in developing a rule that would best address industry safety and health concerns. Tree care continues to be a high-hazard industry.

Timetable:

Action	Date	FR Cite
Stakeholder Meeting.	07/13/16	
Initiate SBREFA ..	01/10/20	
Complete SBREFA.	05/22/20	
NPRM	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew Levinson, Deputy 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–AD04

[FR Doc. 2021–28220 Filed 1–28–22; 8:45 am]

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Part XII

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, DOT.

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 actions of the Department of Transportation. The intent of the Agenda is to provide the public with information about the Department of Transportation's regulatory activity planned for the next 12 months. It is expected that this information will enable the public to participate more effectively in the Department's regulatory process. The public is also invited to submit comments on any aspect of this Agenda.

FOR FURTHER INFORMATION CONTACT:

General

You should direct all comments and inquiries on the Agenda in general to Daniel Cohen, Assistant General Counsel for Regulation, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366–4702.

Specific

You should direct all comments and inquiries on items in the Agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in appendix B.

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SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Transportation (Department or DOT) issues regulations to ensure that the United States transportation system is the safest in the world and address other urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID–19) pandemic, job creation, equity, and climate change. These issues are addressed, in part, by encouraging innovation, thereby ensuring that the Department's regulations keep pace with the latest developments and reflect its top priorities.

To help the Department achieve its goals and in accordance with Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' (58 FR 51735; Oct. 4, 1993), the Department prepares a semiannual Agenda. The Agenda summarizes all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected to begin during the next 12 months or for which action has been completed since the publication of the last Agenda in July 2021.

The Department's actions are also governed by several recent executive orders issued by the President, which direct agencies to utilize all available regulatory tools to address current national challenges. On January 20, 2021, the President signed Executive Order 13992, Revocation of Certain Executive Orders Concerning Federal Regulation. This Executive Order directs Federal agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies that would hamper the agencies' flexibility to use robust regulatory action to address national priorities. On January 20, the President also issued Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis. This Executive Order directs Federal agencies to review all regulatory actions issued in the previous Administration and revise or rescind any of those actions that do not adequately respond to climate change, protect the environment, advance environmental justice, or improve public health. Section 2(a)(ii) of Executive Order 13990 specifically requires the Department of Transportation to review ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,'' 84 FR 51310 (September 27, 2019) (SAFE I Rule) and ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,'' 85 FR 24174 (April 30, 2020) (SAFE II Rule).

On July 9, 2021, the President signed Executive Order 14036, Promoting Competition in the American Economy. Among other things, this Executive Order requires the Department to enhance consumer access to airline flight information and ensure that consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may constitute an unfair or deceptive practice or an unfair method of competition. This Executive Order also requires the Department to: (1) Publish a notice of proposed rulemaking (NPRM) requiring airlines to refund baggage fees when a passenger's luggage is substantially delayed and other ancillary fees when passengers pay for a service that is not provided; and (2) consider initiating a rulemaking to ensure that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees,'' at the time of ticket purchase.

On August 5, 2021, the President signed Executive Order 14037, Strengthening American Leadership in Clean Cars and Trucks. This Executive Order requires that the Department consider beginning work on a rulemaking to establish new fuel economy standards for passenger cars and light-duty trucks beginning with model year 2027 and extending through and including at least model year 2030. This Executive Order also requires the Department to consider beginning work on a rulemaking to establish new fuel efficiency standards for heavy-duty pickup trucks and vans beginning with model year 2028 and extending through and including at least model year 2030. Finally, this Executive Order requires the Department to consider beginning work on a rulemaking to establish new fuel efficiency standards for medium- and heavy-duty engines and vehicles to begin as soon as model year 2030.

In response to Executive Order 13992, in April 2021, the Department issued a final rule revising the regulations governing its regulatory process to ensure that it has the maximum flexibility necessary to quickly respond to the urgent challenges facing our Nation. Following implementation of the final rule, in June 2021, the

Secretary of Transportation signed a Departmental Order strengthening the Department's internal rulemaking procedures and revitalizing the partnership between Operating Administrations and the Office of the Secretary in promulgating regulations to better achieve the Department's goals and priorities. As part of this critical overhaul, a Regulatory Leadership Group was established, led by the Deputy Secretary of Transportation, which provides vital legal and policy guidance on the Department's regulatory agenda.

In response to Executive Order 13990, in May 2021, the Department issued a notice of proposed rulemaking (NPRM) proposing to repeal the SAFE I Rule and associated guidance documents. In August 2021, the Department issued a Supplemental Notice of Proposed Rulemaking inviting comments on the appropriate path forward regarding civil penalties imposed for violations of DOT's vehicle emissions rules. Finally, in September 2021, the Department issued an NPRM proposing more stringent vehicle emission limits than those set by the SAFE II Rule.

In response to Executive Orders 14036 and 14037, the Department is considering the following rulemakings: (1) Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided; (2) Airline Ticket Refunds; (3) Amendments to Department's Procedures in Regulating Unfair and Deceptive Practices; and (4) fuel economy standards for passenger cars, light-duty trucks, heavy-duty pickup trucks, and vans.

The Department is also providing rapid response to, and emergency review of legal and operational challenges presented by COVID–19 within the transportation network. Since the beginning of this Administration, our efforts have focused on ensuring compliance with the mask requirements issued by the Centers for Disease Control and Prevention and the Transportation Security Administration. These requirements help reduce the spread of the COVID–19 disease within the transportation sector and among the traveling public. DOT is also addressing regulatory compliance made impracticable by the COVID–19 public health emergency due to office closures, personnel shortages, and other restrictions.

In addition to the pressing national concerns discussed above, the Department's regulatory activities are directed toward the fundamental priority of protecting public safety. Safety is our North Star; the Department remains focused on managing safety risks and ensuring that the United States has the safest transportation system in the world. Our planned regulatory actions reflect a careful balance that emphasizes the Department's robust response to the challenges facing our Nation while at the same time maintaining a safe, reliable, and sustainable transportation system that boosts our economic productivity and global competitiveness and enhances the quality of life for all Americans.

Explanation of Information in the Agenda

An Office of Management and Budget memorandum, dated August 16, 2021, establishes the format for this Agenda.

First, the Agenda is divided by initiating office. Then, the Agenda is divided into five categories: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) long-term actions; and (5) completed actions. For each entry, the Agenda provides the following information: (1) Its ''significance''; (2) a short, descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (*e.g.,* NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for when a rulemaking document may publish; (8) whether the rulemaking will affect small entities and/or levels of Government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (with minor exceptions, DOT requires an economic analysis for all its rulemakings); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the Agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act.

To keep the operational requirements, current for nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the ''Timetable'' column, we use abbreviations to indicate the documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have decided to issue a document; it is the earliest date on which a rulemaking document may publish. In addition, these dates are based on current schedules. Information received after the issuance of this Agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the Agenda for the first time.

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. However, a portion of the Agenda is published in the **Federal Register** because the Regulatory Flexibility Act (5 U.S.C. 602) mandates publication for the regulatory flexibility agenda.

Accordingly, DOT's printed Agenda entries include only:

1. The agency's Agenda preamble.

2. 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

3. 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. These elements are: Sequence Number; Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). Additional information (for detailed list, see section heading ''Explanation of Information on the Agenda'') on these entries is available in the Unified Agenda published on the internet.

Request for Comments

General

DOT's 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 Agenda easier to use. We would like you, the public, to make suggestions or comments on how the Agenda could be further improved.

Regulatory Flexibility Act

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.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (sec. 610 Review) appears at the end of the title for these reviews. Please see appendix D for the Department's section 610 review plans.

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.

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. This should enable the public to be more aware of the Department's regulatory activity 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 Agenda. Regulatory action, in addition to the items listed, is not precluded.

Dated: September 13, 2021.

Peter Paul Montgomery Buttigieg,

Secretary of Transportation.

Appendix A—Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the Agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most, if not all, such documents, including the Semiannual Regulatory Agenda, are available through the internet at *http://www.regulations.gov.* See appendix C for more information.

Appendix B—General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

FAA—Timothy R. Adams, Acting Executive Director, Office of Rulemaking, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–9677.

FHWA—Jennifer Outhouse, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–0761.

FMCSA—Steven J. LaFreniere, Regulatory Ombudsman, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–0596.

NHTSA—Dee Fujita, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–2992.

FRA—Amanda Maizel, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 493–8014.

FTA—Chaya Koffman, Office of Chief Counsel, 1200 New Jersey Avenue E, Washington, DC 20590; telephone (202) 366–3101.

GLS—Carrie Mann Lavigne, Chief Counsel, 180 Andrews Street, Massena, NY 13662; telephone (315) 764–3200.

PHMSA—Robert Ross, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 768–1365.

MARAD—Gabriel Chavez, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–2621.

OST—Daniel Cohen, Assistant General Counsel for Regulation, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–4723.

Appendix C—Public Rulemaking Dockets

All comments submitted via the internet are submitted through the Federal Docket Management System (FDMS) at the following address: *http://www.regulations.gov.* The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced internet address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at or deliver comments on proposed rulemakings to the Dockets Office at 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, 1–800–647–5527. Working Hours: 9:00 a.m. to 5:00 p.m.

Appendix D—Review Plans for Section 610 and Other Requirements

Part I—The Plan

General

The Department of Transportation 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. 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 fall-to-fall schedule for publication of the 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? Any comments concerning the plan or analyses should be submitted to the regulatory contacts listed in appendix B, General Rulemaking Contact Persons.

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 Technical Corrections'' (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: The definition of ''service animal'' contained in 49 CFR 39.3 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). And under 28 CFR 35.136(i), reasonable modifications in policy and practices must be made where necessary to accommodate miniature horses as service animals. As such, failure to update this regulation will leave the passenger vessel industry subject to accommodating unusual service animals, such as reptiles and primates. On the other hand, updating the definition of ''service animal'' under 49 CFR 39.3 will ensure consistency across Federal regulations, which is essential to removing the confusion that results for individuals with service animals when different standards apply to different public facilities and modes of transportation. OST has already recognized the need to update the ''service animal'' definition contained in 49 CFR 37.3 for the aforementioned reasons and is in the process of developing a rulemaking titled: ''Transportation for Individuals with Disabilities; Service Animals and Technical Corrections'' (RIN 2105–AF08) in order to make the necessary change.

In addition, 49 CFR 39.31 addresses the ability of passenger vessel owners or operators to limit access to or use of their vessels because a passenger has a communicable disease. The regulation permits owners or operators to limit access or use where: (1) A U.S. or international public health authority has determined that persons with a particular condition should not be permitted to travel or should travel only under specified conditions; or (2) an individual has a condition that is both readily transmissible by casual contact in the context of traveling on or using a passenger vessel and has serious health consequences. The regulation provides examples of conditions that passengers may have (*e.g.,* a common cold, HIV/AIDS, SARS, or a norovirus) and the appropriate actions (if any) that passenger vessel owners or operators may take in response. However, the regulation does not address how passenger vessel owners or operators should handle passengers with the novel Coronavirus Disease 2019 (COVID–19). Given the ubiquity of the virus and its likely presence and impact in the future, the regulation should be revised to expressly address COVID–19 in the example section.

As a result, OST will need 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.

It is also worth noting 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 is exploring initiating 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.

Year 1 (Fall 2018) List of Rules That Are Under Ongoing Analysis

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: Since the rule was enacted, the DOT Operating Administrations have changed. As a result, the agencies listed at 49 CFR 92.5(g)—Definitions should be revised 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 be conducting a rulemaking to make these revisions. 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 93—Aircraft Allocation
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: Since the rule was enacted, the U.S. Department of Transportation's organizational structure changed, and as a result the list of DOT Operating Administrations (OAs) listed in 49 CFR 98.2 must be updated to reflect the current listing of DOT OAs. The following changes are needed in 49 CFR 89.2(a): (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 changes are needed 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.

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
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 2 (Fall 2019) List of Rules Analyzed and Summary of Results

48 CFR parts 1227 through 1253 and new parts and subparts
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

DOT has determined that updates need to be made to the regulations identified under Year 2. The regulations will be updated as part of RIN 2105–AE26 (Revisions to the Transportation Acquisition Regulations).

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.

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 141 through 147 and parts 170 through 187.

2. Identification and analysis of all amendments to parts 141 through 147 and parts 170 through 187 since July 2010 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 2 (Fall 2021) List of Rules Analyzed

14 CFR part 1—Definitions and abbreviations
14 CFR part 3—General requirements
14 CFR part 11—General rulemaking procedures
14 CFR part 13—Investigative and enforcement procedures
14 CFR part 14—Rules implementing the Equal Access to Justice Act of 1980
14 CFR part 15—Administrative claims under Federal Tort Claims Act
14 CFR part 16—Rules of practice for Federally-assisted airport enforcement proceedings
14 CFR part 189—Use of Federal Aviation Administration communications system
14 CFR part 193—Protection of voluntarily submitted information
14 CFR part 198—Aviation insurance

Year 1 (Fall 2020) List of Rules Analyzed and Summary of Results

14 CFR part 141—Pilot Schools
14 CFR part 142—Training Centers
14 CFR part 143—Reserved
14 CFR part 144—Does not exist
14 CFR part 145—Repair Stations
14 CFR part 146—Does not exist
14 CFR part 147—Aviation Maintenance Technician Schools
14 CFR part 170—Establishment and Discontinuance Criteria for Air Traffic Control Services and Navigational Facilities
14 CFR part 171—Non-Federal Navigation Facilities
14 CFR part 172—through 182 Does not exist
14 CFR part 183—Representatives of the Administrator
14 CFR part 184—Does not exist

Year 1 (2020) List of Rules Analyzed and Summary of Results

14 CFR part 141—Pilot Schools

• Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed.

14 CFR part 142—Training Centers

• Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed.

14 CFR part 145—Repair Stations

• Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed.

14 CFR part 147—Aviation Maintenance Technician Schools

• Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed.

14 CFR part 170—Establishment and Discontinuance Criteria for Air Traffic Control Services and Navigational Facilities

• Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed.

14 CFR part 171—Non-Federal Navigational Facilities

• Section 610: The agency conducted a Section 610 review of this part and found no amendments to 14 CFR 185 since July 2010. Thus, no SEISNOSE exists in this part.

• General: No changes are needed.

14 CFR part 183—Representatives of the Administrator

• Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed.

14 CFR part 185—Testimony by Employees and Production of Records in Legal Proceedings, and Service of Legal Process and Pleadings

• Section 610: The agency conducted a section 610 review of this part and found no amendments to 14 CFR 185 since July 2010. Thus, no SEISNOSE exists in this part.

• General: No changes are needed.

14 CFR part 187—Fees

• Section 610: The agency conducted a section 610 review of this part and found no SEISNOSE.

• General: No changes are needed.

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 3 (Fall 2020) List of Rules Analyzed and a Summary of the Results

23 CFR part 420—Planning and research program administration

• 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 450—Planning assistance and standards

• 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 450 regulations under RIN 2125–AF98 and RIN 2125–AG09. FHWA's plain language review of the regulations indicates no need for substantial revision.

23 CFR part 460—Public road mileage for apportionment of highway safety funds

• 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 470—Highway systems

• 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 4 (Fall 2021) List of Rules That Will Be Analyzed During the Next Year

23 CFR part 500—Management and Monitoring Systems

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 2 (2019) List of Rules With Ongoing Analysis

49 CFR part 386—Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings

• Section 610: FMCSA analyzed 49 CFR part 386 and found no SEISNOSE. 49 CFR part 386 is a permissive set of rules that establish procedures for respondents, petitioners, and others seeking relief from a determination of non-compliance with Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations. The rule also provides recourse for commercial drivers to report employer harassment or coercion to violate rules.

• General: There is no need for substantial revision. These regulations provide necessary/clear guidance to industry and drivers. The regulations are written consistent with plain language guidelines, are cost effective, and impose the least economic burden to industry.

49 CFR part 385—Safety Fitness Procedures

• Section 610: FMCSA analyzed 49 CFR part 385 and found no SEISNOSE. 49 CFR part 385 provides guidance on safety fitness procedures including monitoring, new entrants, intermodal equipment, and hazardous materials safety permits. The rule addresses safety initiatives whose cost are required by 49 CFR parts 360, 367, 387, and 390. These rules do not result in a SEISNOSE, because they do not introduce new costs to small carriers.

• General: There is no need for substantial revision as these regulations provide necessary guidance to the industry. The regulations are written consistent with plain language guidelines and impose the least economic burden to industry.

Year 3 (2020) List of Rules With Ongoing Analysis

49 CFR part 382—Controlled Substances and Alcohol Use and Testing

• Section 610: FMCSA analyzed 49 CFR part 382 but found no SEIOSNOSE. 49 CFR part 382 requires carriers to establish a drug and alcohol program. Primary costs are fees to participate in a drug and alcohol consortium that facilitates drug and alcohol testing. Ancillary costs include a loss of productivity due to employees taking time away from their primary responsibilities to take periodic drug and alcohol tests and receive education on controlled substances. The rule also drives modest record keeping and drug and alcohol clearing house access costs.

• General: There is no need for substantial revision. These regulations provide necessary/clear guidance to industry employers and drivers. The regulations are written consistent with plain language guidelines, are cost effective, and impose the least economic burden to the industry.

49 CFR part 383—Commercial Driver's License Standards; Requirements and Penalties

• Section 610: FMCSA analyzed 49 CFR part 383 and found no SEISNOSE. 49 CFR part 383 establishes minimum standards for employers to comply with regulations that ensure drivers are qualified to operate a commercial motor vehicle (CMV) and retain only one CMV license. The rule also communicates the circumstances that disqualify a CMV driver. The rule presents minimal costs to small carriers. Most of these costs are beyond the Agency's discretion as they are predominately mandated by statute and represent sound business practices in support of driver safety.

• General: There is no need for substantial revision as these regulations provide necessary guidance to the industry. The regulations are written consistent with plain language guidelines and impose the least economic burden to carriers.

Year 3 (2021) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 380—Special Training Requirements

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 3 (Fall 2019–2021) List of Rules With Ongoing Analysis

49 CFR part 571.213—Child Restraint Systems

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 575—Consumer Information
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

Year 4 (Fall 2022) List of Rules That Will Be Analyzed During Next Year

49 CFR part 571.131—School Bus Pedestrian Safety Devices
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

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 3 (Fall 2020) List of Rules Analyzed and a Summary of Results

49 CFR part 216—Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment

- Section 610: There is no SEISNOSE.
- General: Part 216 provides safety and security for railroad employees and the public through special notices for repairs of railroad freight car, locomotive, passenger equipment, and track class, as well as for the issuance and review of emergency orders for removing dangerously substandard track from service. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 217—Railroad Operating Rules

- Section 610: There is no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 218—Railroad Operating Practices

- Section 610: There is no SEIOSNOSE.
- General: The rule prescribes minimum requirements for railroad operating rules and practices. No changes are needed. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 219—Control of Alcohol and Drug Use

- Section 610: There is no SEISNOSE.
- General: No changes are needed. This rule is cost effective and imposes the least burden. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 220—Railroad Communications

- Section 610: This rule has significant economic impacts on a substantial number of small entities. However, the actual burden on most of these railroads varies because of their different operating characteristics. Entities that are not subject to this rule include railroads that do not operate on the general railroad system of transportation. The communication requirements of this rule have been designed to minimize the impact on small railroads. For instance, while large railroads are required to have a working radio and wireless communication redundancy in every train, small railroads are only required to comply with this standard for trains used to transport passengers. As part of the rulemaking process, FRA conducted a review of the impact that this rulemaking could have on small businesses and whether any opportunities may exist to reduce the burdens on small railroads without compromising safety. FRA's plain language review of this rule indicates no need for substantial revision.
- General: The rule prescribes minimum requirements governing the use of wireless communications in connection with railroad operations. Uniform standard communications procedures and requirements throughout the railroad industry are necessary to ensure the protection and safety of railroad employees and the public, and to minimize potential casualties.

Year 4 (Fall 2021) List of Rules(s) That Will Be Analyzed During This Year

49 CFR part 221—Rear End Marking Device—Passenger, Commuter and Freight Trains
49 CFR part 222—Use of Locomotive Horns at Public Highway-Rail Grade Crossings
49 CFR part 223—Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses
49 CFR part 224—Reflectorization of Rail Freight Rolling Stock
49 CFR part 225—Rail Accidents/Incidents: Reports Classification, and Investigations

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 3 (2020) List of Rules Analyzed and Summary of Results

49 CFR part 633—Project Management Oversight

• Section 610: FTA conducted a Section 610 review of 49 CFR part 633 and determined that it would not result in a SEISNOSE within the meaning of the RFA. The regulation implements statutorily required procedures for project management oversight of major capital public transportation projects.

• General: No changes are needed. FTA amended the Project Management Oversight regulation in 2020 (85 FR 59672) to make it consistent with statutory changes and to modify the scope and applicability of project management oversight. FTA estimated the costs and projected benefits of the rule and determined that it would result in an overall burden reduction by reducing recipients' labor hours for oversight procedures.

Year 4 (2021) List of Rules To Be Analyzed This Year

49 CFR part 611—Major Capital Investment Projects

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 221, 298, 308, and 309	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 1 (2018) List of Rules With Ongoing Analysis

46 CFR part 201—Rules of Practice and Procedure

46 CFR part 202—Procedures relating to review by Secretary of Transportation of actions by Maritime Subsidy Board

46 CFR part 203—Procedures relating to conduct of certain hearings under the Merchant Marine Act, 1936, as amended

46 CFR part 205—Audit Appeals; Policy and Procedure

46 CFR part 315—Agency Agreements and Appointment of Agents

46 CFR part 317—Bonding of Ship's Personnel

46 CFR part 324—Procedural Rules for Financial Transactions Under Agency Agreements

46 CFR part 325—Procedure to Be Followed by General Agents in Preparation of Invoices and Payment of Compensation Pursuant to Provisions of NSA Order No. 47

46 CFR part 326—Marine Protection and Indemnity Insurance Under Agreements with Agents

46 CFR part 327—Seamen's Claims; Administrative Action and Litigation

46 CFR part 328—Slop Chests

46 CFR part 329—Voyage Data

46 CFR part 330—Launch Services

46 CFR part 332—Repatriation of Seamen

46 CFR part 335—Authority and Responsibility of General Agents to Undertake Emergency Repairs in Foreign Ports

46 CFR part 336—Authority and Responsibility of General Agents to Undertake in Continental United States Ports Voyage Repairs and Service Equipment of Vessels Operated for the Account of The National Shipping Authority Under General Agency Agreement

46 CFR part 337—General Agent's Responsibility in Connection with Foreign Repair Custom's Entries

46 CFR part 338—Procedure for Accomplishment of Vessel Repairs Under National Shipping Authority Master Lump Sum Repair Contract—NSA-Lumpsumrep

46 CFR part 339—Procedure for Accomplishment of Ship Repairs Under National Shipping Authority Individual Contract for Minor Repairs—NSA-Workmanship

46 CFR part 340—Priority Use and Allocation of Shipping Services, Containers and Chassis, and Port Facilities and Services for National Security and National Defense Related Operations

46 CFR part 345—Restrictions Upon the Transfer or Change in Use or In Terms Governing Utilization of Port Facilities

46 CFR part 346—Federal Port Controllers

46 CFR part 347—Operating Contract

46 CFR part 381—Cargo Preference—U.S.-Flag Vessels

46 CFR part 382—Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Preference

Cargoes on U.S.-Flag Commercial Vessels

Year 1 (2018) List of Rules Analyzed and a Summary of Results

46 CFR part 204—Claims against the Maritime Administration under the Federal Tort Claims Act

• Section 610: There is no SEIOSNOSE.

• General: The purpose of this rule is to prescribe the requirements and procedures for administrative claims against the United States involving the Maritime Administration under the Federal Tort Claims Act. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD's plain language review of this rule indicates no need of substantial revision.

Year 2 (2019) List of Rules Analyzed and a Summary of Results

46 CFR part 221 Regulated Transactions Involving Documented Vessels and Other Maritime Interests

• Section 610: There is no SEIOSNOSE.

• General: The purpose of this rule is to govern practice and procedure in regulating interest in or control of Documented Vessels owned by Citizens of the United States to Noncitizens and transactions involving certain maritime interests in time of war or national emergency. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD's plain language review of this rule indicates no need of substantial revision.

46 CFR 232 Uniform Financial Reporting Requirements

• Section 610: There is no SEIOSNOSE.

• General: The purpose of this rule is to govern practice and procedure to all participants in financial assistance programs administered by the Maritime Administration. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD's plain language review of this rule indicates no need of substantial revision.

Year 3 (2020) List of Rules That Will Be Analyzed During the Year

46 CFR part 249—Approval of Underwriters for Marine Hull Insurance

46 CFR part 272—Requirements and Procedures for Conducting Condition Surveys and Administering Maintenance and Repair Subsidy

46 CFR part 277—Domestic and Foreign Trade; Interpretations

46 CFR part 287—Establishment of Construction Reserve Funds

46 CFR part 289—Insurance of Construction-Differential Subsidy Vessels, Operating-Differential Subsidy Vessels and of Vessels Sold or Adjusted Under the Merchant Ship Sales Act of 1946

46 CFR part 295—Maritime Security Program

46 CFR part 296—Maritime Security Program

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 3 (Fall 2021) List of Rules Analyzed and a Summary of Results

49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans

49 CFR part 175—Carriage by Aircraft

• 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 to revise portions of parts 172 and 175. 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–AF46) 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–AF46 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.

Year 4 (Fall 2022) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 171—Sections 171.15 and 171.16—Incident Reporting

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—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
337	+Enhancing Transparency of Airline Ancillary Service Fees **(Reg Plan Seq No. 131)**	2105–AF10

+DOT-designated significant regulation.
References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

OFFICE OF THE SECRETARY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
338	+Air Transportation Consumer Protection Requirements for Ticket Agents **(Section 610 Review)**	2105–AE57

+DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
339	+Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States.	2120–AK09

+DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
340	+Airport Safety Management System	2120–AJ38
341	+Registration and Marking Requirements for Small Unmanned Aircraft **(Reg Plan Seq No. 132)**	2120–AK82

+DOT-designated significant regulation.
References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

FEDERAL AVIATION ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
342	+ Regulation Of Flight Operations Conducted By Alaska Guide Pilots	2120–AJ78
343	+ Applying the Flight, Duty, and Rest Requirements to Ferry Flights that Follow Commuter or On-Demand Operations (FAA Reauthorization).	2120–AK26
344	+ Aircraft Registration and Airmen Certification Fees	2120–AK37
345	+ Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization)	2120–AK57
346	Requirements to File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects **(Section 610 Review)**.	2120–AK77

+ DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
347	+ Pilot Records Database (HR 5900)	2120–AK31

+ DOT-designated significant regulation.

FEDERAL HIGHWAY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
348	Incorporating Safety Into Federal-aid Programs and Projects **(Section 610 Review)**	2125–AG08

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
349	+ Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States.	2126–AA35

+ DOT-designated significant regulation.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
350	Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Downgrade of Commercial Driver's License **(Completion of a Section 610 Review)**.	2126–AC11

FEDERAL RAILROAD ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
351	+ Train Crew Staffing **(Reg Plan Seq No. 139)**	2130–AC88

+ DOT-designated significant regulation.
References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
352	Seaway Regulations and Rules: Periodic Update, Various Categories **(Rulemaking Resulting From a Section 610 Review)**.	2135–AA51
353	Tariff of Tolls **(Rulemaking Resulting From a Section 610 Review)**	2135–AA52

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
354	+ Pipeline Safety: Gas Pipeline Leak Detection and Repair	2137–AF51

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
355	+ Pipeline Safety: Safety of Gas Distribution Pipelines	2137–AF53

+ DOT-designated significant regulation.

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
356	+ Pipeline Safety: Amendments to Parts 192 and 195 to require Valve installation and Minimum Rupture Detection Standards.	2137–AF06
357	+ Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft (FAA Reauthorization Act of 2018).	2137–AF20

+ DOT-designated significant regulation.

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
358	+ Pipeline Safety: Pipeline Operational Status	2137–AF52

+ DOT-designated significant regulation.

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary (OST)

Proposed Rule Stage

337. • +Enhancing Transparency of Airline Ancillary Service Fees

Regulatory Plan: This entry is Seq. No. 131 in part II of this issue of the **Federal Register**.

RIN: 2105–AF10

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary (OST)

Long-Term Actions

338. +Air Transportation Consumer Protection Requirements for Ticket Agents (Section 610 Review)

Legal Authority: 49 U.S.C. 41712; FAA Reauthorization Act of 2018, sec. 427

Abstract: This rulemaking would address a number of proposals to enhance protections for air travelers and to improve the air travel environment. Specifically, this rulemaking would enhance airline passenger protections by addressing whether to codify in regulation a definition of the term ''ticket agent.'' The rulemaking would also consider whether to require large travel agents to adopt minimum customer service standards and prohibit the unfair and deceptive practice of post-purchase price increases. These issues, previously part of a rulemaking known as Airline Pricing Transparency and Other Consumer Protection Issues, (2105–AE11) have been separated into this proceeding.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: No.

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@ost.dot.gov*.

RIN: 2105–AE57

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Proposed Rule Stage

339. +Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States

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 action is necessary to increase the level of safety of the flying public. 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	07/00/22	

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

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Final Rule Stage

340. +Airport Safety Management System

Legal Authority: 49 U.S.C. 44706; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701 to 44706; 49 U.S.C. 44709; 49 U.S.C. 44719

Abstract: This rulemaking would require certain airport certificate holders to develop, implement, maintain, and adhere to a safety management system (SMS) for its aviation related activities. 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.

Timetable:

Action	Date	FR Cite
NPRM	10/07/10	75 FR 62008
NPRM Comment Period Extended.	12/10/10	75 FR 76928
NPRM Comment Period End.	01/05/11	
End of Extended Comment Period.	03/07/11	
Second Extension of Comment Period.	03/07/11	76 FR 12300
End of Second Extended Comment Period.	07/05/11	
Second NPRM	07/14/16	81 FR 45871
Second NPRM Comment Period End.	09/12/16	
Analyzing Comments.	12/00/21	
Final Rule	01/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Schroeder, Office of Airport Safety and Standards, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–4974, *Email: james.schroeder@faa.gov*.

RIN: 2120–AJ38

341. +Registration and Marking Requirements for Small Unmanned Aircraft

Regulatory Plan: This entry is Seq. No. 132 in part II of this issue of the **Federal Register**.

RIN: 2120–AK82

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Long-Term Actions

342. +Regulation of Flight Operations Conducted by Alaska Guide Pilots

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; Pub. 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

343. +Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Commuter or On-Demand Operations (FAA Reauthorization)

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:

Action	Date	FR Cite
ANPRM	11/00/22	

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

344. +Aircraft Registration and Airmen Certification Fees

Legal Authority: 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. 1095

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
NPRM	12/00/22	

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

345. +Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization)

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, 801 Pennsylvania Avenue NW, Washington, DC 20024, *Phone:* 202 267–4552, *Email: chris.holliday@faa.gov*.

RIN: 2120–AK57

346. Requirements To File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects (Section 610 Review)

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	12/00/22	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Sheri Edgett–Baron, Air Traffic Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–9354, *Email: sheri.edgett-baron@faa.gov*.

RIN: 2120–AK77

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Completed Actions

347. +Pilot Records Database (HR 5900)

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 1155; 49 U.S.C. 40103; 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 40120; 49 U.S.C. 41706; 49 U.S.C. 44101; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44705; 49 U.S.C. 44709 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315; 49 U.S.C. 46316; 49 U.S.C. 46504; 49 U.S.C. 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531

Abstract: This rulemaking would implement a Pilot Records Database as required by Public Law 111–216 (Aug. 1, 2010). Section 203 amends the Pilot Records Improvement Act by requiring the FAA to create a pilot records database that contains various types of pilot records. These records would be provided by the FAA, air carriers, and other persons who employ pilots, and used by potential employers prior to making hiring decisions. The FAA must maintain these records until it receives notice that a pilot is deceased.

Timetable:

Action	Date	FR Cite
NPRM	03/30/20	85 FR 17660
NPRM Comment Period End.	06/29/20	
NPRM Comment Period End.	06/29/20	
Final Rule	06/10/21	86 FR 31006
Correction	06/17/21	86 FR 32185
Final Rule Effective.	08/09/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christopher Morris, Department of Transportation, Federal Aviation Administration, 6500 S MacArthur Boulevard, Oklahoma City, OK 73169, *Phone:* 405 954–4646, *Email: christopher.morris@faa.gov*.

RIN: 2120–AK31

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Highway Administration (FHWA)

Proposed Rule Stage

348. • Incorporating Safety Into Federal-Aid Programs and Projects (Section 610 Review)

Legal Authority: 23 U.S.C. 109

Abstract: This rulemaking would establish new FHWA regulations to require safety integration across all Federal-aid highway programs and necessary mitigation on some or all Federal-aid highway projects. The new regulations would assist State agencies in making meaningful safety investments to save lives and reduce injuries on the Nation's highways.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Phillip Bobitz, Department of Transportation, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 717–221–4574, *Email: phillip.bobitz@dot.gov*.

RIN: 2125–AG08

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Motor Carrier Safety Administration (FMCSA)

Long-Term Actions

349. +Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States

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.

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: Sarah Stella, Division Chief, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 493–0192, *Email: sarah.stella@dot.gov*.

RIN: 2126–AA35

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Motor Carrier Safety Administration (FMCSA)

Completed Actions

350. Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Downgrade of Commercial Driver's License (Completion of a Section 610 Review)

Legal Authority: 49 U.S.C. 31136(a); 49 U.S.C. 31305(a)

Abstract: FMCSA is amending its regulations to establish requirements for State Driver's Licensing Agencies (SDLAs) to access and use information obtained through the Drug and Alcohol Clearinghouse (DACH or Clearinghouse), an FMCSA-administered database containing driver-specific controlled substance (drug) and alcohol records. SDLAs must not issue, renew, upgrade, or transfer a commercial driver's license (CDL), or commercial learner's permit (CLP), as applicable, for any individual prohibited under FMCSA's regulations from performing safety-sensitive functions, including driving a commercial motor vehicle (CMV), due to one or more drug and alcohol program violations.

Further, SDLAs must remove the CLP or CDL privilege from the driver's license of an individual subject to the CMV driving prohibition, which would result in a downgrade of the license until the driver complies with return-to-duty (RTD) requirements. This rule also requires States receiving Motor Carrier Safety Assistance Program (MCSAP) grant funds to adopt a compatible CMV driving prohibition applicable to CLP and CDL holders who violate FMCSA's drug and alcohol program requirements, and makes clarifying and conforming changes to current regulations. The final rule will help keep unsafe drivers off the road by increasing compliance with the CMV driving prohibition.

Timetable:

Action	Date	FR Cite
NPRM	04/28/20	85 FR 23670
Final Rule	10/07/21	86 FR 55718
Final Rule; Correction.	10/29/21	86 FR 59871
Final Rule Effective.	11/08/21	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Gian Marshall, Management and Program Analyst, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–0928, *Email: gian.marshall@dot.gov*.

RIN: 2126–AC11

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Railroad Administration (FRA)

Proposed Rule Stage

351. +Train Crew Staffing

Regulatory Plan: This entry is Seq. No. 139 in part II of this issue of the **Federal Register**.

RIN: 2130–AC88

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION (DOT)

Saint Lawrence Seaway Development Corporation (SLSDC)

Proposed Rule Stage

352. • Seaway Regulations and Rules: Periodic Update, Various Categories (Rulemaking Resulting From a Section 610 Review)

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
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Michal Chwedczuk, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–0091, *Email: michal.chwedczuk@dot.gov*.

RIN: 2135–AA51

353. • Tariff Of Tolls (Rulemaking Resulting From a Section 610 Review)

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 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
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Michal Chwedczuk, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–0091, *Email: michal.chwedczuk@dot.gov*.

RIN: 2135–AA52

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION (DOT)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Proposed Rule Stage

354. +Pipeline Safety: Gas Pipeline Leak Detection and Repair

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.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sayler Palabrica, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, District of Columbia, DC 20590, *Phone:* 202–366–0559, *Email: sayler.palabrica@dot.gov*.

RIN: 2137–AF51

355. +Pipeline Safety: Safety of Gas Distribution Pipelines

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	07/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ashlin Bollacker, Technical Writer, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington DC, DC 20590, *Phone:* 202–366–4203, *Email: ashlin.bollacker@dot.gov*.

RIN: 2137–AF53

DEPARTMENT OF TRANSPORTATION (DOT)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Final Rule Stage

356. +Pipeline Safety: Amendments to Parts 192 and 195 To Require Valve Installation and Minimum Rupture Detection Standards

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: This rulemaking action would revise the Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore natural gas transmission and hazardous liquid pipelines to improve rupture mitigation and shorten pipeline segment isolation times. The rulemaking action would define ''notification of potential rupture'' and outline certain performance standards related to rupture identification and pipeline segment isolation. This rulemaking action also would require specific valve maintenance and inspection requirements, and 9–1–1 notification requirements to help operators achieve better rupture response and mitigation.

Timetable:

Action	Date	FR Cite
NPRM	02/06/20	85 FR 7162
NPRM Comment Period End.	04/06/20	
Final Rule	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Robert Jagger, Technical Writer, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, Washington, DC 20590, *Phone:* 202–366–4595, *Email: robert.jagger@dot.gov*.

RIN: 2137–AF06

357. +Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft (FAA Reauthorization Act of 2018)

Legal Authority: 49 U.S.C. 44701; 49 U.S.C. 5103(b); 49 U.S.C. 5120(b)

Abstract: This rulemaking amends the Hazardous Materials Regulations (HMR) to (1) prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) limit the use of alternative provisions for small lithium cell or battery to one package per consignment. The amendments do not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, or restrict the air transport of lithium ion cells or batteries when packed with or contained in equipment. To accommodate persons in areas potentially not serviced daily by cargo aircraft, PHMSA provides a limited exception for not more than two replacement lithium cells or batteries specifically used for medical devices to be transported by passenger aircraft and at a state of charge greater than 30 percent, under certain conditions and as approved by the Associate Administrator. This rulemaking is necessary to meet the FAA Reauthorization Act of 2018, address a safety hazard, and harmonize the HMR with emergency amendments to the 2015–2016 edition of the International Civil Aviation Organization's Technical

Instructions for the Safe Transport of Dangerous Goods by Air.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/19	84 FR 8006
Interim Final Rule Effective.	03/06/19	
Interim Final Rule Comment Period End.	05/06/19	
Final Rule	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Shelby Geller, Transportation Regulations Specialist, Transportation & Security, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–8553, *Email: shelby.h.geller@omb.eop.gov*.

RIN: 2137–AF20

DEPARTMENT OF TRANSPORTATION (DOT)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Long-Term Actions

358. +Pipeline Safety: Pipeline Operational Status

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	04/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sayler Palabrica, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, District of Columbia, DC 20590, *Phone:* 202–366–0559, *Email: sayler.palabrica@dot.gov*.

RIN: 2137–AF52

[FR Doc. 2021–27948 Filed 1–28–22; 8:45 am]

BILLING CODE 4910–60–P

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Part XIII

Department of the Treasury

Semiannual Regulatory Agenda

DEPARTMENT OF THE TREASURY

31 CFR Subtitles A and B

Semiannual Agenda and Regulatory Plan

AGENCY: Department of the Treasury.

ACTION: Semiannual Regulatory Agenda and annual regulatory plan.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order (E.O.) 12866 (''Regulatory Planning and Review''), which require the publication by the Department of a semiannual agenda of regulations. E.O. 12866 also requires the publication by the Department of a regulatory plan for the upcoming fiscal year. The purpose of the agenda is to provide advance information about pending regulatory activities and encourage public participation in the regulatory process.

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. For this edition of the regulatory agenda, the most important significant regulatory 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 **Federal Register** publication that includes the Unified Agenda.

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 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.

The Department has listed in this agenda all regulations and regulatory reviews pending at the time of publication, except for technical, minor, and routine actions. On occasion, a regulatory matter may be inadvertently left off of the agenda or an emergency may arise that requires the Department to initiate a regulatory action not yet on the agenda. There is no legal significance to the omission of an item from this agenda. For most entries, Treasury includes a projected date for the next rulemaking action; however, the date is an estimate and is not a commitment to publish on the projected date. In addition, some agenda entries are marked as ''withdrawn'' when there has been no publication activity. Withdrawal of a rule from the agenda does not necessarily mean that a rule will not be included in a future agenda but may mean that further consideration is warranted and that the regulatory action is unlikely in the next 12 months.

Public participation in the rulemaking process is the foundation of effective regulations. For this reason, the Department invites comments on all regulatory and deregulatory items included in the agenda and invites input on items that should be included in the semiannual agenda.

Michael Briskin,

Deputy Assistant General Counsel for General Law and Regulation.

FINANCIAL CRIMES ENFORCEMENT NETWORK—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
359	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
360	Section 6403. Corporate Transparency Act	1506–AB49
361	Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts.	1506–AB50
362	Section 6212. Pilot Program on Sharing of Information Related to Suspicious Activity Reports Within a Financial Group.	1506–AB51
363	Section 6101. Establishment of National Exam and Supervision Priorities	1506–AB52

FINANCIAL CRIMES ENFORCEMENT NETWORK—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
364	Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets	1506–AB47

FINANCIAL CRIMES ENFORCEMENT NETWORK—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
365	Amendments of the Definition of Broker or Dealer in Securities (Crowd Funding)	1506–AB36

FINANCIAL CRIMES ENFORCEMENT NETWORK—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
366	Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States.	1506–AB48

CUSTOMS REVENUE FUNCTION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
367	Enforcement of Copyrights and the Digital Millennium Copyright Act	1515–AE26

INTERNAL REVENUE SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
368	MEPs and the Unified Plan Rule	1545–BO97
369	Requirements Related to Surprise Billing, Part 2	1545–BQ02
370	Information Reporting of Health Insurance Coverage and Other Issues Under Sections 6055 and 6056	1545–BQ11

INTERNAL REVENUE SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
371	Guidance on the Elimination of Interbank Offered Rates	1545–BO91
372	Section 42 Low-Income Housing Credit Average Income Test Regulations	1545–BO92
373	Requirements Related to Surprise Billing, Part 1	1545–BQ01
374	Requirements Related to Surprise Billing, Part 1 (Temporary Regulation)	1545–BQ04
375	Requirements Related to Surprise Billing, Part 2 (Temporary Regulation)	1545–BQ05

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Proposed Rule Stage

359. Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 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	03/00/22	
Second NPRM Comment Period End.	05/00/22	

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–AB41

360. Section 6403. Corporate Transparency Act

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: On April 5, 2021, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) entitled ''Beneficial Ownership Information Reporting Requirements,'' relating to the Corporate Transparency Act (Sections 6401–6403 of the Anti-Money Laundering Act of 2020 (the AML Act)), and intends to issue a Notice of Proposed Rulemaking. Section 6403 amends the Bank Secrecy Act by adding new Section 5336 to title 31 of the United States Code. New Section 5336 requires FinCEN to issue rules requiring: (i) Reporting companies to submit certain information about the individuals who are beneficial owners of those entities and the individuals who formed or registered those entities; (ii) establishing a mechanism for issuing FinCEN identifiers to entities and individuals that request them; (iii) requiring FinCEN to maintain the information in a confidential, secure non-public database; and (iv) authorizing FinCEN to disclose the information to certain government agencies and financial institutions for purposes specified in the legislation and subject to protocols to protect the confidentiality of the information. Section 5336 requires that the first of these requirements, notably the

beneficial ownership information reporting regulation for legal entities (the ''reporting regulation''), be published in final form by January 1, 2022. The ANPRM solicited comments on a wide range of questions having to do with the possible shape of the reporting regulation, as well as questions that concern the interaction of the requirements of this regulation and the shape and functionality of the database that will be populated with the information reported under Section 5336.

Timetable:

Action	Date	FR Cite
ANPRM	04/05/21	86 FR 17557
ANPRM Comment Period End.	05/05/21	
NPRM	02/00/22	
NPRM Comment Period End.	04/00/22	

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–AB49

361. Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: On September 24, 2021, FinCEN issued an Advance Notice of Proposed Rulemaking in order 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	06/00/22	

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–AB50

362. Section 6212. Pilot Program on Sharing of Information Related to Suspicious Activity Reports Within a Financial Group

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a Notice of Proposed Rulemaking 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	03/00/22	
NPRM Comment Period End.	05/00/22	

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–AB51

363. Section 6101. Establishment of National Exam and Supervision Priorities

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 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 6101 of the Anti-Money Laundering Act of 2020 (the AML Act). That section, among other things, amends section 5318(h) to title 31 of the United States Code to: (1) Require financial institutions to establish countering the financing of terrorism (CFT) in addition to AML programs; (2) require FinCEN to establish national AML/CFT priorities and, as appropriate, promulgate implementing regulations within 180 days of the issuance of those priorities; and (3) provide that the duty to establish, maintain, and enforce a Bank Secrecy Act AML/CFT program remains the responsibility of, and must be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator. Additionally, FinCEN intends to propose other changes, including regulatory amendments to establish that all financial institutions subject to an AML/CFT program requirement must maintain an effective and reasonably designed AML/CFT program, and that such a program must include a risk assessment process.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	
NPRM Comment Period End.	06/00/22	

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

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Final Rule Stage

364. Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN is proposing to amend 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	09/00/22	

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–AB47

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Long-Term Actions

365. Amendments of The Definition of Broker or Dealer in Securities (Crowd Funding)

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 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. 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	11/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB36

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Completed Actions

366. Threshold for the Requirement To Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: In October 2020, the Board of Governors of the Federal Reserve System and FinCEN (collectively, the ''Agencies'') issued a proposed rule to modify the threshold in the rules implementing the Bank Secrecy Act requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds. The modification would reduce this threshold from $3,000 for certain funds transfers and transmittals of funds. At the same time, FinCEN likewise issued a proposal to reduce from $3,000 the threshold in the rule requiring financial institutions to transmit to other financial institutions in the payment chain information on certain funds transfers and transmittals of funds. The public comment period for the proposed rulemaking expired on November 27, 2020. The Agencies are working to develop a rule in light of the comments received from the public.

Completed:

Reason	Date	FR Cite
Withdrawn	09/03/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: FinCEN Regulatory Support Section, *Phone:* 800 767–2825, *Email: frc@fincen.gov.*

RIN: 1506–AB48

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY (TREAS)

Customs Revenue Function (CUSTOMS)

Final Rule Stage

367. Enforcement of Copyrights and the Digital Millennium Copyright Act

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	08/00/22	

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)

Proposed Rule Stage

368. MEPS and the Unified Plan Rule

Legal Authority: 26 U.S.C. 7805; 26 U.S.C. 413

Abstract: These proposed regulations provide guidance relating to the tax qualification of multiple employer plans (MEPs) described in section 413(e) of the Internal Revenue Code (Code). The proposed regulations would provide an exception, if certain requirements are met, to the application of the ''unified plan rule'' for section 413(e) MEPs in the event of a failure by one or more participating employers to take actions required of them to satisfy the requirements of section 401(a) or 408 of the Code. The regulations affect participants in MEPs, MEP sponsors and administrators, and employers maintaining MEPs.

Timetable:

Action	Date	FR Cite
NPRM	07/03/19	84 FR 31777
NPRM Comment Period End.	10/01/19	
Second NPRM	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jamie Dvoretzky, Attorney, Department of the Treasury,

Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, *Phone:* 202 317–4102, *Fax:* 855 604–6087, *Email:jamie.l.dvoretzky@irscounsel.treas.gov*.

RIN: 1545–BO97

369. Requirements Related to Surprise Billing, Part 2

Legal Authority: 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II

Abstract: This notice of proposed rulemaking would implement additional protections against surprise medical bills under the No Surprises Act and certain provisions related to Title II of Division BB of the Consolidated Appropriations Act, by cross-reference to temporary regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/07/21	86 FR 55980
NPRM Comment Period End.	12/06/21	
Final Action	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:* 202 317–5500, *Email:kari.l.dicecco@irscounsel.treas.gov*.

RIN: 1545–BQ02

370. • Information Reporting of Health Insurance Coverage and Other Issues Under Sections 6055 and 6056

Legal Authority: 26 U.S.C. 7805; 26 U.S.C. 5000A; 26 U.S.C. 6056

Abstract: These regulations revise notice and filing requirements under sections 6055 and 6056 of the Internal Revenue Code. The regulations are needed to provide health coverage reporters an extension of time in which to furnish certain statements and an alternative manner of allowing certain health coverage reporters to provide information to covered individuals.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gerald Semasek, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20024, *Phone:* 202 317–7006, *Fax:* 855 576–2339, *Email: gerald.semasek@irscounsel.treas.gov*.

RIN: 1545–BQ11

DEPARTMENT OF THE TREASURY (TREAS)

Internal Revenue Service (IRS)

Final Rule Stage

371. Guidance on the Elimination of Interbank Offered Rates

Legal Authority: 26 U.S.C. 1001b 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 whether a modification to a debt instrument or other financial contract to accommodate the elimination of the relevant IBOR will be treated as a realization event for federal income tax purposes.

Timetable:

Action	Date	FR Cite
NPRM	10/09/19	84 FR 54068
NPRM Comment Period End.	11/25/19	
Final Action	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Caitlin Holzem, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 3547, Washington, DC 20224, *Phone:* 202 317–7036, *Fax:* 855 574–9023, *Email: caitlin.i.holzem@irscounsel.treas.gov.*

RIN: 1545–BO91

372. Section 42 Low–Income Housing Credit Average Income Test Regulations

Legal Authority: 26 U.S.C. 7805; 26 U.S.C. 42

Abstract: The Consolidated Appropriations Act of 2018 added a new applicable minimum set-aside test under section 42(g) of the Internal Revenue Code known as the average income test. This proposed regulation will implement requirements related to the average income test.

Timetable:

Action	Date	FR Cite
NPRM	10/30/20	85 FR 68816
NPRM Comment Period End.	12/29/20	
NPRM; Correction and Notice of Public Hearing.	02/03/21	86 FR 8271
Public Hearing	03/24/21	
Final Action	07/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dillon J. Taylor, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5107, Washington, DC 20224, *Phone:* 202 317–4137, *Fax:* 855 591–7867, *Email: dillon.j.taylor@irscounsel.treas.gov*.

RIN: 1545–BO92

373. Requirements Related to Surprise Billing, Part 1

Legal Authority: 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II

Abstract: This notice of proposed rulemaking would implement the protections against surprise medical bills under the No Surprises Act, by cross-reference to temporary regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/13/21	86 FR 36870
NPRM Comment Period End.	09/13/21	
Final Action	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:* 202 317–5500, *Email: kari.l.dicecco@irscounsel.treas.gov*.

RIN: 1545–BQ01

374. Requirements Related to Surprise Billing, Part 1 (Temporary Regulation)

Legal Authority: 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II

Abstract: This temporary regulation implements the protections against surprise medical bills under the No Surprises Act.

Timetable:

Action	Date	FR Cite
Temporary Regulation.	07/13/21	86 FR 36872
Temporary Regulation Effective.	09/13/21	
Removal of Temporary Action.	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:* 202 317–5500, *Email: kari.l.dicecco@irscounsel.treas.gov*.

RIN: 1545–BQ04

375. Requirements Related to Surprise Billing, Part 2 (Temporary Regulation)

Legal Authority: 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II

Abstract: This temporary regulation would implement additional protections against surprise medical bills under the No Surprises Act and certain provisions related to Title II of Division BB of the Consolidated Appropriations Act.

Timetable:

Action	Date	FR Cite
Temporary Rule ..	10/07/21	86 FR 55980
Temporary Rule Effective.	10/07/21	
Temporary Rule Comment Period End.	12/06/21	
Reviewing Comments.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:* 202 317–5500, *Email: kari.l.dicecco@irscounsel.treas.gov*.

RIN: 1545–BQ05

[FR Doc. 2021–27949 Filed 1–28–22; 8:45 am]

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FEDERAL REGISTER

Vol. 87 Monday,
No. 20 January 31, 2022

Part XIV

Committee for Purchase From People Who Are Blind or Severely Disabled

Semiannual Regulatory Agenda

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Chapter 51

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This agenda announces the proposed regulatory actions that the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) plans for the next 12 months. This agenda is issued in accordance with Executive Order 12866, ''Regulatory Planning and Review'', as amended, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'', and E.O. 13563, ''Improving Regulation and Regulatory Review''. The Committee's purpose for publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. The Committee 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 not included in this agenda.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Shelly Hammond, Director, Contracting and Policy, Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, VA, 22202; (703) 603–2127.

Dated: September 10, 2021.

Shelly Hammond,

Director of Contracting & Policy.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
376	AbilityOne Program, Department of Defense Section 898, Contracting Oversight, Accountability and Integrity Panel **(Rulemaking Resulting From a Section 610 Review)**.	3037–AA14

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED (CPBSD)

Prerule Stage

376. AbilityOne Program, Department of Defense Section 898, Contracting Oversight, Accountability and Integrity Panel (Rulemaking Resulting From a Section 610 Review)

Legal Authority: 41 U.S.C. 85

Abstract: The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) is seeking comment to incorporate specific recommendations from the Section 898 panel review mandated by the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328) into the Committee's regulation at 41 CFR part 51. The mission of the Panel is to assess the overall effectiveness and internal controls of the AbilityOne Program related to Department of Defense contracts and provide recommendations for changes in business practices. The proposed revisions to the Committee's regulation address: Responsibilities and procedures associated with authorization/de-authorization of nonperforming nonprofit agencies; transfer of work within the AbilityOne Program; and broadening the methodologies used for the review of and/or negotiation of initial fair market prices and revised fair market prices for products and services on the AbilityOne Program Procurement List.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/22	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Shelly Hammond, Director, Policy and Programs, Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street NW, Washington, DC 20319, *Phone:* 571 457–9468, *Email: shammond@abilityone.gov.*

RIN: 3037–AA14

[FR Doc. 2021–28526 Filed 1–28–22; 8:45 am]

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FEDERAL REGISTER

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Part XV

Environmental Protection Agency

Semiannual Regulatory Agenda

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL 8993–01–OA; EPA–HQ–OAR–2019–0168; EPA–HQ–OAR–2021–0152]

Fall 2021 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 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 and is announcing the completion of one review in fall 2021.

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:

- 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).

Not only must EPA comply with environmental laws, but also 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); 12898, ''Environmental Justice'' (59 FR 7629, Feb. 16, 1994); 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); 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 that 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 process. 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; 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); 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 Section 610 review ongoing and is announcing the completion of one review in this Agenda.

B. How is the e-Agenda organized?

Online, you can choose how to sort the agenda entries 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. Prerule Stage—EPA's prerule actions generally are intended to determine whether the agency should initiate rulemaking. Prerulemakings may include anything that influences or leads to rulemaking; this would include Advance Notices of Proposed Rulemaking (ANPRMs), studies 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 urge 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 2021 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 five following categories:

a. Economically Significant: Under Executive Order 12866, a rulemaking that may have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

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 novel legal or policy issues arising out of legal mandates, 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 ''Economically Significant'' 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 sections 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 or 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 05/00/22 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 State, local, tribal, or Federal.

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, if available, 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 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 data transmission.

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. 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, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities. Currently, EPA has one Section 610 review ongoing and is announcing the completion of one review.

Review title	RIN	Docket ID No.	Status
Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Coal-and Oil-Fired Electric Utility Steam Generating Units.	2060–AV08	EPA–HQ–OAR–2021–0152	Ongoing.
Section 610 Review of Renewable Fuels Standard Program	2060–AU44	EPA–HQ–OAR–2019–0168	Completed.

EPA has established public dockets for these Section 610 reviews. While comments for these ongoing and completed reviews are no longer accepted, submitted comments can be viewed at *https://www.regulations.gov/,* dockets EPA–HQ–OAR–2019–0168 and EPA–HQ–OAR–2021–0152.

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 information about the Agency's policy and practice with respect to implementing the RFA/SBREFA, please visit EPA's RFA/SBREFA website at *https://www.epa.gov/reg-flex.*

IV. Thank You for Collaborating With Us

Finally, 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. Collaborative efforts such as EPA's open rulemaking process are a valuable tool for addressing the problems we face, and the regulatory agenda is an important part of that process.

Victoria Arroyo,

Associate Administrator, Office of Policy.

10—Clean Air Act—Prerule Stage

Sequence No.	Title	Regulation Identifier No.
377	Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units **(Section 610 Review)**.	2060–AV08

10—Clean Air Act—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
378	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations **(Reg Plan Seq No. 144)**.	2060–AU37
379	Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review **(Reg Plan Seq No. 150)**.	2060–AV16

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

10—Clean Air Act—Completed Actions

Sequence No.	Title	Regulation Identifier No.
380	Section 610 Review of Renewable Fuels Standard Program **(Section 610 Review)**	2060–AU44

35—TSCA—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
381	1-Bromopropane; Rulemaking Under TSCA Section 6(a)	2070–AK73

ENVIRONMENTAL PROTECTION AGENCY (EPA)

10—Clean Air Act

Prerule Stage

377. Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units (Section 610 Review)

Legal Authority: 42 U.S.C. 7412 Clean Air Act; 42 U.S.C. 7607(d)(7)(B)

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 emissions from new and existing coal- and oil-fired electric utility steam generating units located at both major and area sources of hazardous air pollutant emissions. 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. This review's Docket ID number is EPA–HQ–OAR–2021–0152.

Timetable:

Action	Date	FR Cite
Final Rule	02/16/12	77 FR 9303
Begin Review	07/30/21	86 FR 41276
End Review	02/00/22	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Nick Hutson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243–01, Research Triangle Park, NC 27711, *Phone:* 919 541–2968, *Fax:* 919 541–4991, *Email: hutson.nick@epa.gov.*

Melanie King, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243–01, Research Triangle Park, NC 27711, *Phone:* 919 541–2469, *Email: king.melanie@epa.gov.*

RIN: 2060–AV08

ENVIRONMENTAL PROTECTION AGENCY (EPA)

10—Clean Air Act

Proposed Rule Stage

378. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations

Regulatory Plan: This entry is Seq. No. 144 in part II of this issue of the **Federal Register**.

RIN: 2060–AU37

379. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review

Regulatory Plan: This entry is Seq. No. 150 in part II of this issue of the **Federal Register**.

RIN: 2060–AV16

ENVIRONMENTAL PROTECTION AGENCY (EPA)

10—Clean Air Act

Completed Actions

380. Section 610 Review of Renewable Fuels Standard Program (Section 610 Review)

Legal Authority: 5 U.S.C. 610

Abstract: The rulemaking ''Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program'' was finalized by EPA in March 2010 (75 FR 14669, March 26, 2010). The final regulations made a number of changes to the existing Renewable Fuel Standard program while retaining many elements of the compliance and trading system already in place. The final rule also implemented the revised statutory definitions and criteria, most notably the greenhouse gas emission thresholds for renewable fuels and new limits on renewable biomass feedstocks. 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). As part of this review, EPA considered 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. See EPA's report summarizing the results of this review in the docket EPA–HQ–OAR–2019–0168. This docket can be access at *www.regulations.gov.*

Timetable:

Action	Date	FR Cite
Final Rule	03/26/10	75 FR 14669
Begin Review	06/24/19	84 FR 29689
Comment Period Extended.	08/27/19	84 FR 44804
End Review	10/29/21	

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–AU44

ENVIRONMENTAL PROTECTION AGENCY (EPA)

35—TSCA

Proposed Rule Stage

381. 1-Bromopropane; Rulemaking Under TSCA Section 6(a)

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

Abstract: 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. Following a risk evaluation for 1-bromopropane carried out under the authority of TSCA section 6, EPA initiated rulemaking to address unreasonable risks of injury to health identified in the final risk evaluation. EPA's risk evaluation for 1-bromopropane, describing the conditions of use and presenting EPA's determinations of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0235, with additional information in docket EPA–HQ–OPPT–2016–0741.

Timetable:

Action	Date	FR Cite
NPRM	10/00/22	

Action	Date	FR Cite
Final Rule	05/00/24	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ana Corado, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Mail Code 7408M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–0140, *Email: corado.ana@epa.gov.*

Joel Wolf, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, *Phone:* 202 564–0432, *Email: wolf.joel@epa.gov.*

RIN: 2070–AK73

[FR Doc. 2021–27970 Filed 1–28–22; 8:45 am]

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Part XVI

General Services Administration

Semiannual Regulatory Agenda

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 101, 102, 105, 300, 301, 302, and 304

48 CFR Chapter 5

Semiannual Regulatory Agenda

AGENCY: General Services Administration (GSA).

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by GSA in accordance with Executive Order 12866 ''Regulatory Planning and Review,'' and Executive Order 13563 ''Improving Regulation and Regulatory Review.'' 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. Published proposed rules may be reviewed in their entirety at the Government's rulemaking website at *http://www.regulations.gov*.

Additional information on these entries may be reviewed in their entirety at the Government's rulemaking website at *http://www.regulations.gov* and will continue to be printed in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001, 202–501–2735.

Dated: September 8, 2021.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

GENERAL SERVICES ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
382	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements.	3090–AK09
383	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G502, Increasing Order Level Competition for Federal Supply Schedules.	3090–AK15
384	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G503, Increasing Order Level Competition for Indefinite-Delivery, Indefinite-Quantity Contracts.	3090–AK16
385	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G504, Federal Supply Schedule Catalog Management.	3090–AK17
386	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G505, Clarify Commercial Products and Services Contract Terms and Conditions.	3090–AK18
387	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment.	3090–AK20
388	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules.	3090–AK21
389	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions.	3090–AK29
390	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G522, Contract Requirements for High-Security Leased Space.	3090–AK39
391	General Services Administration Acquisition Regulations (GSAR); GSAR 2021–G520, Economic Price Adjustment for Deregulated Electric Supplies.	3090–AK48
392	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G530, Extension of Federal Minimum Wage to Lease Acquisitions.	3090–AK51

GENERAL SERVICES ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
393	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2016–G511, Contract Requirements for GSA Information Systems.	3090–AJ84
394	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G509, Extending Federal Supply Schedule Orders Beyond the Contract Term.	3090–AK19
395	General Services Administration Acquisition Regulation (GSAR); GSAR 2021–G527, Immediate and Highest-Level Owner for High-Security Leased Space.	3090–AK44

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Proposed Rule Stage

382. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements

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.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	
NPRM Comment Period End.	04/00/22	

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–AK09

383. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G502, Increasing Order Level Competition for Federal Supply Schedules

Legal Authority: 40 U.S.C. 121(c); Pub. L. 115–232 sec. 876

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) as it relates to Federal Supply Schedule contracts. Section 876 amended 41 U.S.C. 3306(c) by providing an exception to the requirement to consider price as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity contracts and Federal Supply Schedule contracts. A separate case, GSAR Case 2020–G503, will address the implementation of Section 876 in relation to other indefinite-delivery, indefinite-quantity contracts.

Timetable:

Action	Date	FR Cite
ANPRM	08/19/20	85 FR 50989
ANPRM Comment Period End.	09/18/20	
NPRM	03/00/22	
NPRM Comment Period End.	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Procurement 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–AK15

384. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G503, Increasing Order Level Competition for Indefinite-Delivery, Indefinite-Quantity Contracts

Legal Authority: 40 U.S.C. 121(c); Pub. L. 115–232, sec. 876

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) as it relates to certain indefinite-delivery, indefinite-quantity contracts. Section 876 amended 41 U.S.C. 3306(c) by providing an exception to the requirement to consider price as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity contracts and Federal Supply Schedule contracts. A separate case, GSAR Case 2020–G502, will address the implementation of section 876 in relation to Federal Supply Schedule contracts.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	
NPRM Comment Period End.	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Procurement 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–AK16

385. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G504, Federal Supply Schedule Catalog Management

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 consolidate all terms related to Federal Supply Schedule catalog management, which are currently spread across multiple clauses, into one consolidated clause.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	
NPRM Comment Period End.	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Procurement 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–AK17

386. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G505, Clarify Commercial Products and Services Contract Terms and Conditions

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to clarify commercial products and services contract terms and conditions. This rule will update GSAR Clause 552.212–4 to clarify the prescription and language applicable for the different clause alternates.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	
NPRM Comment Period End.	04/00/22	

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–AK18

387. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment

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 clarify, update, and incorporate Federal Supply Schedule (FSS) program policies and procedures regarding economic price adjustment, including updating related prescriptions and clauses. This rule will provide unique guidance for contracts based on commercial price lists or not, and contracts with data reporting requirements or not.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	
NPRM Comment Period End.	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Procurement 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

388. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules

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	01/00/22	
NPRM Comment Period End.	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Procurement 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

389. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions

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 clause. This rule supports the national security priority.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	
NPRM Comment Period End.	05/00/22	

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

390. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G522, Contract Requirements for High-Security Leased Space

Legal Authority: 40 U.S.C. 121(c); Pub. L. 116–276

Abstract: The General Services Administration (GSA) is proposing to amend 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	12/00/21	
NPRM Comment Period End.	02/00/22	

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

391. • General Services Administration Acquisition Regulations (GSAR); GSAR 2021–G520, Economic Price Adjustment for Deregulated Electric Supplies

Legal Authority: 40 U.S.C. 121(c)

Abstract: The U.S. 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, which are controlled by the Federal Energy Regulatory Commission under section 205 and 206 of the Federal Power Act.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	
NPRM Comment Period End.	03/00/22	

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

392. • General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G530, Extension of Federal Minimum Wage to Lease Acquisitions

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 the related Federal Acquisition Regulation (FAR) clause. Generally, the FAR does not apply to leasehold acquisitions of real property. However, several FAR clauses have been adopted based on requirements through GSAR part 570. The Federal minimum wage requirements apply to Government lease acquisitions where the Davis Bacon Act applies and extension of the FAR requirements will ensure compliance. The Executive order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to $15.00 the hourly minimum wage paid to those contractors. This rule promotes economic resilience, and improves the buying power of U.S. citizens.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	
NPRM Comment Period End.	03/00/22	

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

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Final Rule Stage

393. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2016–G511, Contract Requirements for GSA Information Systems

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to streamline and update requirements for contracts that involve GSA information systems. GSA's policies on cybersecurity and other information technology requirements have been previously issued and communicated by the Office of the Chief Information Officer through the GSA public website. By incorporating these requirements into the GSAR, the GSAR will provide centralized guidance to ensure consistent application across the organization. This rule supports the national security priority.

This rule will require contracting officers to incorporate applicable GSA cybersecurity requirements within the statement of work to ensure compliance with Federal cybersecurity requirements and implement best practices for preventing cyber incidents. Contract requirements for internal information systems, external contractor systems, cloud systems, and mobile systems will be covered by this rule. This rule will also update existing GSAR provision 552.239–70, Information Technology Security Plan and Security Authorization, and GSAR clause 552.239–71, Security Requirements for Unclassified Information Technology Resources, to only require the provision and clause when the contract will involve information or information systems connected to a GSA network.

Timetable:

Action	Date	FR Cite
NPRM	09/10/21	86 FR 50689
NPRM Comment Period End.	11/09/21	
Final Rule	06/00/22	

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–AJ84

394. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G509, Extending Federal Supply Schedule Orders Beyond the Contract Term

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to incorporate existing internal Federal Supply Schedule (FSS) policy concerning the option to extend the term of the contract and performance of orders beyond the term of the base FSS contract.

Timetable:

Action	Date	FR Cite
NPRM	08/31/21	86 FR 48617
NPRM Comment Period End.	11/01/21	
Final Rule	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas O'Linn, Procurement 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–AK19

395. • General Services Administration Acquisition Regulation (GSAR); GSAR 2021–G527, Immediate and Highest-Level Owner for High-Security Leased Space

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
Interim Final Rule Comment Period End.	08/30/21	
Final Rule	06/00/22	

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

[FR Doc. 2021–27965 Filed 1–28–22; 8:45 am]

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Part XVII

Office of Management and Budget

Semiannual Regulatory Agenda

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Chapters 1 and 2

48 CFR Chapter 99

Federal Regulations, Guidance, OFPP Policy Letters, and CASB Cost Accounting Standards Included in the Semiannual Agenda of Federal Activities

AGENCY: Office of Management and Budget.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Office of Management and Budget (OMB) is publishing its semiannual agenda of upcoming activities for Federal regulations, OMB Guidance, Office of Federal Procurement Policy (OFPP) Policy Letters, and Cost Accounting Standards (CAS) Board Cost Accounting Standards.

OMB Guidance and OFPP Policy Letters are published in accordance with OMB's internal procedures for implementing Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)). OMB policy guidelines are issued under authority derived from several sources, including: Subtitles I, II, and V of title 31, U.S. Code; Executive Order 11541; and other specific authority as cited. OMB Guidance and OFPP Policy Letters communicate guidance and instructions of a continuing nature to Executive branch agencies. As such, most OMB Guidance and OFPP Policy Letters are not regulations. Nonetheless, because these issuances are typically of interest to the public, they are generally published in the **Federal Register** at both the proposed (for public comment) and final stages. For this reason, they are presented below in the standard format of ''pre-rule,'' ''proposed rule,'' and ''final rule'' stages.

CASB Cost Accounting Standards are issued under authority derived from 41 U.S.C. 1501 *et seq.* Cost Accounting Standards are rules governing the measurement, assignment, and allocation of costs to contracts entered with the United States Government.

For purposes of this agenda, we have excluded directives that outline procedures to be followed in connection with the President's budget and legislative programs, as well as directives that affect only the internal functions, management, or personnel of Federal agencies.

FOR FURTHER INFORMATION CONTACT: See the agency contact person listed for each entry in the agenda, c/o Office of Management and Budget, Washington, DC 20503.

Dated: September 27, 2021.

Shalanda D. Young,

Acting Director.

OFFICE OF MANAGEMENT AND BUDGET—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
396	Federal Acquisition Security Council Implementing Regulation	0348–AB83

OFFICE OF MANAGEMENT AND BUDGET (OMB)

Completed Actions

396. Federal Acquisition Security Council Implementing Regulation

Legal Authority: Pub. L. 115–390 sec. 202(c)

Abstract: This interim final rule will implement subchapter III of chapter 13 of title 41, United States Code. Subchapter III creates the Federal Acquisition Security Council, and identifies a number of functions to be performed by the Council. The FASC is chaired by a designated OMB Senior-Level official, and Public Law 115–390 requires that the FASC publish an interim final rule to implement these functions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/01/20	85 FR 54263
Interim Final Rule Effective.	09/01/20	
Interim Final Rule Comment Period End.	11/02/20	
Final Rule	08/26/21	86 FR 47581
Final Rule Effective.	09/27/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christopher S. Keller, Office of Management and Budget, 725 15th Street NW, Washington, DC 20500, *Phone:* 202 881–8295, *Email: christopher.s.keller@omb.eop.gov*.

RIN: 0348–AB83

[FR Doc. 2021–27971 Filed 1–28–22; 8:45 am]

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Part XVIII

Office of Personnel Management

Semiannual Regulatory Agenda

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Regulatory Agenda

AGENCY: Office of Personnel Management.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The following Office of Personnel Management (OPM) regulations are scheduled for development or review during the next year. This agenda carries out OPM's responsibilities to publish a semiannual agenda under Executive Order 12866, ''Regulatory Planning and Review,'' and the Regulatory Flexibility Act (5 U.S.C. chapter 6). This publication does not impose a binding obligation on OPM with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

FOR FURTHER INFORMATION CONTACT: Alexys Stanley, (202) 606–1000.

Stephen Hickman,

Federal Register Liaison, U.S. Office of Personnel Management.

OFFICE OF PERSONNEL MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
397	Requirements Related to Surprise Billing; Part II	3206–AO29

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Final Rule Stage

397. Requirements Related to Surprise Billing; Part II

Legal Authority: Pub. L. 116–260, Division BB, title I and title II

Abstract: This joint interim final rule with comment with the Departments of Health and Human Services, Labor, and Treasury would implement additional protections against surprise medical bills under the No Surprises Act, including provisions related to the independent dispute resolution processes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/07/21	86 FR 55980
Interim Final Rule Effective.	10/07/21	
Interim Final Rule Comment Period End.	12/06/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Padma Shah, Senior Policy Analyst, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, *Phone:* 202 606–0004, *Email: padma.shah@opm.gov.*

RIN: 3206–AO29

[FR Doc. 2021–28224 Filed 1–28–22; 8:45 am]

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Part XIX

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). This summary information is intended to enable 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 K. Bundy, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; (202) 205–6585; *kabundy@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 the rulemaking 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.

Dated: September 29, 2021.

Isabella Casillas Guzman,

Administrator.

SMALL BUSINESS ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
398	Small Business Size Standards; Alternative Size Standard for 7(a), 504, and Disaster Loan Programs	3245–AG16
399	Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade.	3245–AH09
400	Small Business Size Standards: Calculation of Number of Employees for All Programs and of Average Annual Receipts in Business Loan, Disaster Loan, and Small Business Investment Company Programs.	3245–AH26
401	National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments	3245–AH28

SMALL BUSINESS ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
402	Small Business Timber Set-Aside Program	3245–AG69
403	Small Business Size Standards: Educational Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services.	3245–AG88
404	Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction.	3245–AG89
405	Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing.	3245–AG90
406	Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services.	3245–AG91
407	Small Business Size Standards: Wholesale Trade and Retail Trade	3245–AH10
408	Small Business Size Standards: Adjustment of Monetary Based Size Standards for Inflation	3245–AH17

SMALL BUSINESS ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
409	Small Business Development Center Program Revisions	3245–AE05

SMALL BUSINESS ADMINISTRATION (SBA)

Proposed Rule Stage

398. Small Business Size Standards; Alternative Size Standard for 7(A), 504, and Disaster Loan Programs

Legal Authority: Pub. L. 111–240, sec. 1116

Abstract: SBA will propose amendments 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	09/00/22	

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

399. Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade

Legal Authority: 15 U.S.C. 632(a)

Abstract: The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second 5-year review of size standards under the Jobs Act, in this proposed rule, SBA will evaluate all industries in North American Industry Classification System (NAICS) Sector 31–33 (Manufacturing) and industries with employee-based size standards in other sectors except Wholesale Trade and Retail Trade and make necessary adjustments to their size standards. This is one of a series of proposed rules that will examine groups of NAICS sectors. SBA will apply its revised Size Standards Methodology, which is available on its website at *http://www.sba.gov/size,* to this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	

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–AH09

400. Small Business Size Standards: Calculation of Number of Employees for All Programs and of Average Annual Receipts in Business Loan, Disaster Loan, and Small Business Investment Company Programs

Legal Authority: 15 U.S.C. 632(a)(2); Pub. L. 115–324; Pub. L. 116–283

Abstract: In accordance with section 863 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–238, in this rulemaking SBA proposes to change the averaging period for employee-based size standards from 12 months to 24 months. In addition, the Small Business Runway Extension Act of 2018, Public Law 115–324, amended the Small Business Act to provide for calculation of average annual gross receipts using a 5-year average, rather than the prior 3-year average, in defined circumstances. In RIN 3245–AH16, SBA implemented the Small Business Runway Extension Act in programs other than SBA's loan programs—including SBA's procurement programs—and SBA issued its final rule in that first rulemaking on December 5, 2019 (84 FR 66561). This second rulemaking would consider how to address the Small Business Runway Extension Act in SBA's business loan, disaster loan, and SBIC programs. Specifically, SBA also proposes to permit businesses in its Business Loan, Disaster Loan, and Small Business Investment Company (SBIC) Programs to use a 5-year averaging period, in addition to the existing 3-year averaging period, for the purposes of calculating annual average receipts. These proposed changes will allow larger small businesses to retain their small business size status for longer, and some mid-sized businesses to regain small business status.

Timetable:

Action	Date	FR Cite
NPRM	11/02/21	86 FR 60396
NPRM Comment Period End.	12/02/21	

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–AH26

401. National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments

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.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda J. Fernandez, Analyst, Office of Policy, Planning and Liaison, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7337, *Email: brenda.fernandez@sba.gov*.

RIN: 3245–AH28

SMALL BUSINESS ADMINISTRATION (SBA)

Final Rule Stage

402. Small Business Timber Set-Aside Program

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	09/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: David W. Loines, Director, Office of Government Contracting, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 431–0472, *Email: david.loines@sba.gov*.

RIN: 3245–AG69

403. Small Business Size Standards: Educational Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services

Legal Authority: 15 U.S.C. 632(a)

Abstract: The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated size standards for all industries in North American Industry Classification System (NAICS) Sector 61 (Educational Services), Sector 62 (Health Care and Social Assistance), Sector 71 (Arts, Entertainment and Recreation), Sector 72 (Accommodation and Food Services), and Sector 81 (Other Services) and made necessary adjustments to size standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

Timetable:

Action	Date	FR Cite
NPRM	11/27/20	85 FR 76390
NPRM Comment Period End.	01/26/21	
Final Rule	06/00/22	

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–AG88

404. Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction

Legal Authority: 15 U.S.C. 632(a)

Abstract: The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated each industry that has a receipts-based standard in North American Industry Classification System (NAICS) Sector 11 (Agriculture, Forestry, Fishing and Hunting), Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), Sector 22 (Utilities), and Sector 23 (Construction), and made necessary adjustments to size standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

Timetable:

Action	Date	FR Cite
NPRM	10/02/20	85 FR 62239
NPRM Comment Period End.	12/01/20	
Final Rule	07/00/22	

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–AG89

405. Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing

Legal Authority: 15 U.S.C. 632(a)

Abstract: The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated each industry that has a receipts-based standard in North American Industry Classification System (NAICS) Sector 48–49 (Transportation and Warehousing), Sector 51 (Information), Sector 52 (Finance and Insurance), and Sector 53 (Real Estate and Rental and Leasing) and made necessary adjustments to size standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

Timetable:

Action	Date	FR Cite
NPRM	10/02/20	85 FR 62372
NPRM Comment Period End.	12/01/20	
Final Rule	08/00/22	

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–AG90

406. Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services

Legal Authority: 15 U.S.C. 632(a)

Abstract: The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated each industry that has a receipts-based standard in North American Industry Classification System (NAICS) Sector 54 (Professional, Scientific and Technical Services), Sector 55 (Management of Companies and Enterprises), and Sector 56 (Administrative and Support, Waste Management and Remediation Services) and made necessary adjustments to size standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

Timetable:

Action	Date	FR Cite
NPRM	11/13/20	85 FR 72584
NPRM Comment Period End.	01/12/21	
Final Rule	06/00/22	

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–AG91

407. Small Business Size Standards: Wholesale Trade and Retail Trade

Legal Authority: 15 U.S.C. 632(a)

Abstract: The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second 5-year review of size standards under the Jobs Act, in this proposed rule, SBA will evaluate all industries in North American Industry Classification System (NAICS) Sector 42 (Wholesale Trade) and Sector 44–45 (Retail Trade) and make necessary adjustments to their size standards. This is one of a series of proposed rules that will examine groups of NAICS sectors. SBA will apply its revised Size Standards Methodology, which is available on its website at *http://www.sba.gov/size,* to this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	05/25/21	86 FR 28012
NPRM Comment Period End.	07/26/21	
Final Rule	06/00/22	

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–AH10

408. Small Business Size Standards: Adjustment of Monetary Based Size Standards for Inflation

Legal Authority: 15 U.S.C. 632(a)

Abstract: In this final rule, the U.S. Small Business Administration (SBA or Agency) adjusts all monetary based industry size standards (*i.e.,* receipts, assets, net worth, and net income) for inflation since the last adjustment in 2014. In accordance with its regulations in 13 CFR 121.102(c), SBA is required to review the effects of inflation on its monetary standards at least once every five years and adjust them, if necessary. In addition, the Small Business Jobs Act of 2010 (Jobs Act) also requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. This action will restore the small business eligibility of businesses that have lost that status due to inflation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/18/19	84 FR 34261
Interim Final Rule Effective.	08/19/19	
Interim Final Rule Comment Period End.	09/16/19	
Final Action	07/00/22	

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–AH17

SMALL BUSINESS ADMINISTRATION (SBA)

Long-Term Actions

409. Small Business Development Center Program Revisions

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 amend: (1) Procedures for approving when a new Lead SBDC Center Director is selected; (2) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (3) procedures regarding the determination to affect suspension, termination or non-renewal of an SBDC's cooperative agreement; and (4) provisions regarding the collection and use of the individual SBDC client data.

Timetable:

Action	Date	FR Cite
ANPRM	04/02/15	80 FR 17708
ANPRM Comment Period End.	06/01/15	
NPRM	11/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rachel Newman–Karton, *Phone:* 202 619–1816, *Email: rachel.newman-karton@sba.gov*.

RIN: 3245–AE05

[FR Doc. 2021–27964 Filed 1–28–22; 8:45 am]

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Part XX

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.'' This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process. 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 *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001, 202–501–4755.

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 *http://www.acquisition.gov/far.*

Dated: September 8, 2021.

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.
410	Federal Acquisition Regulation (FAR); FAR Case 2021–016, Minimizing the Risk of Climate Change in Federal Acquisitions.	9000–AO33

DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
411	Federal Acquisition Regulation (FAR); FAR Case 2017–016, Controlled Unclassified Information (CUI)	9000–AN56
412	Federal Acquisition Regulation (FAR); FAR Case 2019–008, Small Business Program Amendments	9000–AN91
413	Federal Acquisition Regulation (FAR); FAR Case 2019–015, Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment.	9000–AN98
414	Federal Acquisition Regulation (FAR); FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts.	9000–AO08
415	Federal Acquisition Regulation (FAR); FAR Case 2020–007, Accelerated Payments Applicable to Contracts With Certain Small Business Concerns.	9000–AO10
416	Federal Acquisition Regulation (FAR); FAR Case 2020–008, Prohibition on Criminal History Inquiries by Contractors Prior to Conditional Offer.	9000–AO11
417	Federal Acquisition Regulation (FAR); FAR Case 2020–010, Small Business Innovation Research and Technology Transfer Programs.	9000–AO12
418	Federal Acquisition Regulation (FAR); FAR Case 2020–013, Certification of Women-Owned Small Businesses.	9000–AO17
419	Federal Acquisition Regulation (FAR); FAR Case 2020–016, Rerepresentation of Size and Socioeconomic Status.	9000–AO18
420	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
421	FAR Acquisition Regulation (FAR); FAR Case 2021–005; Disclosure of Beneficial Owner in Federal Contracting.	9000–AO23
422	Federal Acquisition Regulation (FAR); FAR Case 2021–006, Prohibition on Requiring Disclosure of Political Contributions.	9000–AO24
423	Federal Acquisition Regulation (FAR); FAR Case 2021–009, Protests of Orders Set Aside for Small Business.	9000–AO26
424	Federal Acquisition Regulations (FAR); FAR Case 2021–010, Subcontracting to Puerto Rican and Other Small Businesses.	9000–AO27
425	Federal Acquisition Regulation (FAR); FAR Case 2021–011, Past Performance of First-Tier Subcontractors.	9000–AO28
426	Federal Acquisition Regulation (FAR); FAR Case 2021–012, 8(a) Program	9000–AO29
427	Federal Acquisitions Regulation (FAR); FAR Case 2021–013, Access to Past Performance Information	9000–AO30
428	Federal Acquisition Regulation (FAR); FAR Case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.	9000–AO32
429	Federal Acquisition Regulation (FAR); FAR Case 2021–017, Cyber Threat and Incident Reporting and Information Sharing.	9000–AO34
430	Federal Acquisition Regulation (FAR); FAR Case 2021–019, Standardizing Cybersecurity Requirements for Unclassified Information Systems.	9000–AO35
431	Federal Acquisition Regulations (FAR); FAR Case 2021–020, Limitations on Subcontracting	9000–AO36

DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
432	Federal Acquisition Regulation (FAR); FAR Case 2021–021, Ensuring Adequate COVID–19 Safety Protocols for Federal Contractors.	9000–AO37

DOD/GSA/NASA (FAR)—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
433	Federal Acquisition Regulation: FAR Case 2016–005; Effective Communication Between Government and Industry.	9000–AN29
434	FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance	9000–AN31
435	Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees.	9000–AN32
436	Federal Acquisition Regulation; FAR Case 2016–002, Applicability of Small Business Regulations Outside the United States.	9000–AN34
437	Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 to Encourage Vendor Feedback.	9000–AN43
438	Federal Regulation Acquisition (FAR); FAR Case 2017–019, Policy on Joint Ventures	9000–AN59
439	Federal Acquisition Regulation (FAR); FAR Case 2018–020, Construction Contract Administration	9000–AN78
440	Federal Acquisition Regulation (FAR); FAR Case 2018–017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN83
441	Federal Acquisition Regulation (FAR); FAR Case 2019–003, Substantial Bundling and Consolidation	9000–AN86
442	Federal Acquisition Regulation (FAR); FAR Case 2019–007, Update of Historically Underutilized Business Zone Program.	9000–AN90
443	Federal Acquisition Regulation (FAR); FAR Case 2019–009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN92
444	Federal Acquisition Regulation (FAR); FAR Case 2020–011, Implementation of FASC Exclusion Orders	9000–AO13
445	Federal Acquisition Regulation (FAR); FAR Case 2021–003, Update to Certain Online References in the FAR.	9000–AO21
446	Federal Acquisition Regulation (FAR); FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements.	9000–AO22
447	Federal Acquisition Regulation (FAR); FAR Case 2021–007, Maximum Award Price for Certain Sole Source Manufacturing Contracts.	9000–AO25
448	Federal Acquisition Regulation (FAR); FAR Case 2021–014, Increasing the Minimum Wage for Contractors.	9000–AO31

DOD/GSA/NASA (FAR)—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
449	Federal Acquisition Regulation (FAR); FAR Case 2018–006; Definition of Subcontract	9000–AN66
450	Federal Acquisition Regulation (FAR); FAR Case 2018–012, Rights to Federally Funded Inventions and Licensing of Government-Owned Inventions.	9000–AN71
451	Federal Acquisition Regulation (FAR); FAR Case 2018–013, Exemption of Commercial and COTS Item Contracts From Certain Laws and Regulations.	9000–AN72
452	Federal Acquisition Regulation (FAR); FAR Case 2018–014, Increasing Task-Order Level Competition	9000–AN73

DOD/GSA/NASA (FAR)—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
453	Federal Acquisition Regulation (FAR); FAR Case 2016–011, Revision of Limitations on Subcontracting	9000–AN35
454	Federal Acquisition Regulation (FAR); FAR Case 2017–013, Breaches of Personally Identifiable Information.	9000–AN44
455	Federal Acquisition Regulation (FAR); FAR Case 2017–011, Section 508-Based Standards in Information and Communication Technology.	9000–AN46
456	Federal Acquisition Regulation (FAR); FAR Case 2019–001, Analysis for Equipment Acquisitions	9000–AN84
457	Federal Acquisition Regulation (FAR); FAR Case 2019–004, Good Faith in Small Business Subcontracting.	9000–AN87
458	Federal Acquisition Regulation (FAR); FAR Case 2020–004, Application of the MPT to Certain Task and Delivery Orders.	9000–AO04
459	Federal Acquisition Regulation (FAR); FAR Case 2020–012, Scope of Review by Procurement Center Representatives.	9000–AO16

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Prerule Stage

410. • Federal Acquisition Regulation (FAR); FAR Case 2021–016, Minimizing the Risk of Climate Change in Federal Acquisitions

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 5(b)(ii) of Executive Order 14030, Climate-Related Financial Risk. Section 5(b)(ii) directs the FAR Council to consider amending the FAR to ensure that major agency procurements minimize the risk of climate change and to require consideration of the social cost of greenhouse gas emissions in procurement decisions for major agency procurements.

Timetable:

Action	Date	FR Cite
ANPRM	10/15/21	86 FR 57404
ANPRM Comment Period End.	12/14/21	
NPRM	05/00/22	
NPRM Comment Period End.	07/00/22	

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

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Proposed Rule Stage

411. Federal Acquisition Regulation (FAR); FAR Case 2017–016, Controlled Unclassified Information (CUI)

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement the National Archives and Records Administration (NARA) Controlled Unclassified Information (CUI) program of Executive Order 13556 of November 4, 2010 as implemented in NARA's implementing regulations at 32 CFR 2002, and implement the OMB Memorandum M–17–12, entitled Preparing for and Responding to a Breach of Personally Identifiable Information (PII). This rule will apply the 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.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	
NPRM Comment Period End.	04/00/22	

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

412. Federal Acquisition Regulation (FAR); FAR Case 2019–008, Small Business Program Amendments

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes proposed by the Small Business Administration regarding small business programs. The proposed regulatory changes include the timing of the determination of size status for multiple-award contracts for which price is not evaluated at the contract level; the grounds for size-status protests; and the grounds for socioeconomic status protests.

Timetable:

Action	Date	FR Cite
NPRM	11/00/21	
NPRM Comment Period End.	01/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AN91

413. Federal Acquisition Regulation (FAR); FAR Case 2019–015, Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment

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 proposing to amend the Federal Acquisition Regulation (FAR) to bring the FAR and the Non-procurement Common Rule (NCR) procedures on suspension and debarment into closer alignment. The FAR covers procurement matters and the NCR covers other transactions, such as grants, cooperative agreements, contracts of assistance, loans and loan guarantees.

The Government uses suspension and debarment procedures to exercise business judgment. These 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	06/00/22	
NPRM Comment Period End.	08/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov.*

RIN: 9000–AN98

414. Federal Acquisition Regulation (FAR); FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 874 of the NDAA for FY 2020. For awards of certain task or delivery orders, section 874 provides unsuccessful offerors the opportunity to request in writing an explanation as to why their offer was unsuccessful. Contracting offers are required to provide a brief explanation, including the rationale for award and an evaluation of the significant weak or deficient factors in the offeror's offer.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	

Action	Date	FR Cite
NPRM Comment Period End.	06/00/22	

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

415. Federal Acquisition Regulation (FAR); FAR Case 2020–007, Accelerated Payments Applicable to Contracts With Certain Small Business Concerns

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 proposing to amend the Federal Acquisition Regulation (FAR) to establish an accelerated payment date for small business contractors, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. For contractors that subcontract with small businesses, the proposed rule, to the fullest extent permitted by law, establishes an accelerated payment date, with a goal of 15 days after receipt of a proper invoice, if: (1) A specific payment date is not established by contract, and (2) the contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor. This change implements section 873 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92). Section 873 amends 31 U.S.C. 3903(a).

Timetable:

Action	Date	FR Cite
NPRM	09/29/21	86 FR 53923
NPRM Comment Period End.	11/29/21	
Final Rule	07/00/22	

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–AO10

416. Federal Acquisition Regulation (FAR); FAR Case 2020–008, Prohibition on Criminal History Inquiries by Contractors Prior to Conditional Offer

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 1123 of the NDAA for FY 2020 (Pub. L. 116–92), which added at 41 U.S.C. 4714 and 10 U.S.C. 2339 prohibitions related to criminal history inquiries on individuals competing for or applying to work on Federal contracts. Per the statute, a contractor may not request criminal history record information on an applicant for a position related to work under a contract before the contractor has extended a conditional offer to the applicant for that position. In addition, the Federal Government may not request criminal history record information on an individual or sole proprietor who is competing on a Federal Government contract, unless that individual is the apparently successful offeror. This proposed rule implements the statutory prohibition and the associated procedures and exceptions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	
NPRM Comment Period End.	02/00/22	

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–AO11

417. Federal Acquisition Regulation (FAR); FAR Case 2020–010, Small Business Innovation Research and Technology Transfer Programs

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the U.S. Small Business Administration (SBA) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Policy Directive issued (May 2, 2019). The proposed changes include updating FAR 27 to add reference to the STTR program, revise: Definitions, allocation of rights, protection period, SBIR/STTR rights notice, data rights marking provisions, and add language to FAR 6.302–5(b) to acknowledge the unique competition requirements for SBIR/STTR Phase III contracts permitted by the Small Business Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	
NPRM Comment Period End.	07/00/22	

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

418. Federal Acquisition Regulation (FAR); FAR Case 2020–013, Certification of Women-Owned Small Businesses

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: The purpose of this FAR case is to implement the statutory requirement for certification of women-owned and economically disadvantaged women-owned small businesses participating in the Women-Owned Small Business Program (section 825 of the National Defense Authorization Act for Fiscal Year 2015), as implemented by the Small Business Administration in its final rule published May 11, 2020. This rule promotes equity in Federal procurement.

Timetable:

Action	Date	FR Cite
NPRM	10/07/21	86 FR 55769
NPRM Comment Period End.	12/06/21	
Final Rule	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AO17

419. Federal Acquisition Regulation (FAR); FAR Case 2020–016, Rerepresentation of Size and Socioeconomic Status

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 proposing to amend the FAR to implement statutory requirements as implemented by the Small Business Administration's final rule published October 16, 2020 (85 FR 66146), requiring contractors to rerepresent its size and economic status for all set-aside orders issued under full and open multiple-award contract. Additionally, rerepresentation is required for orders issued under a small business set-aside

MAC 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 FSS are exempt from the requirement to rerepresent size and or socioeconomic status.

Timetable:

Action	Date	FR Cite
NPRM	04/00/22	
NPRM Comment Period End.	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO18

420. 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

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 proposing to amend the Federal Acquisition Regulation to increase flexibilities and efficiencies regarding certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This would streamline certain essential contracting procedures.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	
NPRM Comment Period End.	09/00/22	

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

421. FAR Acquisition Regulation (FAR); FAR Case 2021–005; Disclosure of Beneficial Owner in Federal Contracting

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement sections 885 and 6403 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. Section 885 requires that the Federal Awardee Performance and Integrity Information System include identifying information on the beneficial owner of a Federal contractor that is a corporation. Paragraph (c) of section 6403 directs the FAR to be changed to require certain offerors to disclose beneficial ownership information in their offers for contracts over the simplified acquisition threshold.

Timetable:

Action	Date	FR Cite
NPRM	06/00/22	
NPRM Comment Period End.	08/00/22	

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

422. Federal Acquisition Regulation (FAR); FAR Case 2021–006, Prohibition on Requiring Disclosure of Political Contributions

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 735 of Division E of title VII of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) which prohibits the Government from recommending or requiring an offeror on a Federal contract to disclose as a condition of its offer any payments the offeror has made to a candidate for election for Federal office or to a political committee.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	
NPRM Comment Period End.	07/00/22	

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–AO24

423. • Federal Acquisition Regulation (FAR); FAR Case 2021–009, Protests of Orders Set Aside for Small Business

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement the requirements in SBA's final rule issued on October 16, 2020 regarding size protests on set-aside orders under multiple-award contracts that were not set-aside; socioeconomic status protests on set-aside orders where the required status differs from that of the underlying multiple-award contract; and the authority for SBA's Associate General Counsel for Procurement Law to initiate size protest.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	
NPRM Comment Period End.	09/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO26

424. • Federal Acquisition Regulations (FAR); FAR Case 2021–010, Subcontracting to Puerto Rican and Other Small Businesses

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 861 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), as implemented by the Small Business Administration's final rule published October 16, 2020 (85 FR 66146). Section 861 of the NDAA for FY 2019 provides contracting incentives to mentors that subcontract to protege firms that are Puerto Rican businesses. Specifically, a mentor that provides a subcontract to a protégé that has its principal office located in the Commonwealth of Puerto Rico may receive positive consideration for the mentor's past performance evaluation, and apply costs incurred for providing training to such protege toward the subcontracting goals contained in the subcontracting plan of the mentor. This FAR case also implements SBA's final rule which added clarifying language to recognize that prime contractors may rely on the

self-certifications of their subcontractors provided they do not have a reason to doubt any specific self-certification. Lastly, this FAR case implements changes to SBA's regulations at 13 CFR 125.3(b)(2) which clarify that an Alaska Native Corporation (ANC) owned firm that does not individually qualify as small but counts as a small business or a small disadvantaged business for subcontracting goaling purposes under 43 U.S.C. 1626(e)(4)(B) is not currently required to submit a subcontracting plan. This rule promotes equity in Federal procurement.

Timetable:

Action	Date	FR Cite
NPRM	05/00/22	
NPRM Comment Period End.	07/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AO27

425. • Federal Acquisition Regulation (FAR); FAR Case 2021–011, Past Performance of First-Tier Subcontractors

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement the statutory requirements (15 U.S.C. 644(e)(4)(B)(i)) and (15 U.S.C. 644(q)(1)(B)) as implemented by the Small Business Administration's final rule published October 16, 2020 (85 FR 66146). 15 U.S.C. 644(e)(4)(B)(i) requires contracting officers to consider the capabilities and past performance of first tier subcontractors for bundled or consolidated contracts, and 15 U.S.C. 644(q)(1)(B) requires contracting officers to consider the capabilities and past performance of first tier subcontractors for multiple award contracts valued above the substantial bundling threshold of the Federal agency. SBA's final rule also gives contracting officers discretion to consider past performance and experience of first-tier subcontractors for other procurements as appropriate where the first-tier subcontractors are specifically identified in the proposal, and the capabilities and past performance of the small business prime do not independently demonstrate capabilities and past performance necessary for award.

Timetable:

Action	Date	FR Cite
NPRM	07/00/22	
NPRM Comment Period End.	09/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AO28

426. • Federal Acquisition Regulation (FAR); FAR Case 2021–012, 8(a) Program

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the SBA, in its final rule published in the **Federal Register** on October 16, 2020, to the 8(a) Business Development Program to eliminate or reduce unnecessary or excessive burdens on 8(a) Participants. This rule promotes equity in Federal procurement.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	
NPRM Comment Period End.	05/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AO29

427. • Federal Acquisitions Regulation (FAR); FAR Case 2021–013, Access to Past Performance Information

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 proposing to amend the Federal Acquisition Regulation (FAR) to clarify language at FAR 42.1503(d) regarding restrictions on the release of past performance information in the Contractor Performance Assessment Reporting System (CPARS) 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	04/00/22	
NPRM Comment Period End.	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov.*

RIN: 9000–AO30

428. • Federal Acquisition Regulation (FAR); FAR Case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 5(b)(i) of Executive Order 14030, Climate-Related Financial Risk. Section 5(b)(i) directs the FAR Council to consider amending the FAR to require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets.

Timetable:

Action	Date	FR Cite
NPRM	03/00/22	
NPRM Comment Period End.	05/00/22	

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

429. • Federal Acquisition Regulation (FAR); FAR Case 2021–017, Cyber Threat and Incident Reporting and Information Sharing

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 proposing to amend the Federal Acquisition Regulation (FAR) to increase the sharing of information about cyber threats and incident information between the Government and certain providers, pursuant to OMB recommendations, in accordance with section 2(b)–(c), and Department of Homeland Security recommendations,

in accordance with section 8(b), of Executive Order 14028, Improving the Nation's Cybersecurity. In addition, requires certain contractors to report cyber incidents to the Federal Government to facilitate effective cyber incident response and remediation, pursuant to Department of Homeland Security recommendations in accordance with sections 2(g)(i) of Executive Order 14028.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	
NPRM Comment Period End.	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov.*

RIN: 9000–AO34

430. • Federal Acquisition Regulation (FAR); FAR Case 2021–019, Standardizing Cybersecurity Requirements for Unclassified Information Systems

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 proposing to amend the Federal Acquisition Regulation (FAR) to standardize common cybersecurity contractual requirements across Federal agencies for unclassified information systems, pursuant to Department of Homeland Security recommendations in accordance with sections 2(i) and 8(b) of Executive Order 14028, Improving the Nation's Cybersecurity.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	
NPRM Comment Period End.	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov.*

RIN: 9000–AO35

431. • Federal Acquisition Regulations (FAR); FAR Case 2021–020, Limitations on Subcontracting

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement Small Business Administration (SBA) changes to the limitations on subcontracting in SBA's final rules published on November 29, 2019, and October 16, 2020, which implemented sections of the National Defense Authorization Acts (NDAA) for fiscal years 2016 and 2017, and the Recovery Improvements for Small Entities After Disaster Act of 2015 (RISE Act). Generally this rule will clarify matters related to the limitations on subcontracting for small businesses. Changes will be made in areas such as: Exclusions of other direct costs from the limitations on subcontracting for services; similarly situated entities and the treatment of independent contractors; applicability of the Nonmanufacturer rule to 541519 when using the Information Technology Value Added Reseller (ITVAR) exception; the multiple item rule; mixed contracts; and CO discretion to ask for compliance information.

Timetable:

Action	Date	FR Cite
NPRM	08/00/22	
NPRM Comment Period End.	10/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AO36

432. • Federal Acquisition Regulation (FAR); FAR Case 2021–021, Ensuring Adequate Covid–19 Safety Protocols for Federal Contractors

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021. The Executive Order requires a clause to be included in certain contracts to ensure contractors are adequately protected from COVID–19 by requiring certain contractor and subcontractor compliance with all guidance for contractor and subcontractor workplace locations published by the Safer Federal Workforce Task Force. The rule will promote economy and efficiency in procurement by contracting with sources that provide adequate safeguards to their workers which will decrease worker absence, reduce labor costs and therefore, improve contractor and subcontractor performance on Federal procurements.

Timetable:

Action	Date	FR Cite
NPRM	01/00/22	
NPRM Comment Period End.	03/00/22	

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–AO37

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Final Rule Stage

433. Federal Acquisition Regulation: FAR Case 2016–005; Effective Communication Between Government and Industry

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 issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 887 of the NDAA for FY 2016 (Pub. L. 114–92). This law provides that Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. This change will permit and encourage Government acquisition personnel to engage in responsible and constructive exchanges with industry as part of market research as long as those exchanges are consistent with existing laws and regulations and promote a fair competitive environment.

Timetable:

Action	Date	FR Cite
NPRM	11/29/16	81 FR 85914
NPRM Comment Period End.	03/02/17	
Final Rule	06/00/22	

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–AN29

434. FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement policies addressing the effective use of reverse auctions. Reverse auctions involve offerors lowering their pricing over multiple rounds of bidding in order to win Federal contracts. This change incorporates guidance from the Office of Federal Procurement Policy (OFPP) memorandum, ''Effective Use of Reverse Auctions,'' which was issued in response to recommendations from the GAO report, *Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings* (GAO–14–108). Reverse auctions are one tool used by Federal agencies to increase competition and reduce the cost of certain items. 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 change to the FAR will include guidance that will standardize agencies' use of reverse auctions to help agencies maximize competition and savings when using reverse auctions.

Timetable:

Action	Date	FR Cite
NPRM	12/07/20	85 FR 78815
NPRM Comment Period End.	02/05/21	
Final Rule	06/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov*.

RIN: 9000–AN31

435. Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement 41 U.S.C. 4712, ''Enhancement of Contractor Protection From Reprisal for Disclosure of Certain Information,'' and makes the pilot program permanent. The pilot was enacted on January 2, 2013, by section 828 of the National Defense Authorization Act (NDAA) for fiscal year (FY) 2013. The rule clarifies that contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing to any of the entities such as agency Inspector Generals and Congress information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract; a gross waste of Federal funds; an abuse of authority relating to a Federal contract; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract.) This rule enhances whistleblower protections for contractor employees by making permanent the protection for disclosure of the aforementioned information and ensuring that the prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to both contractors and subcontractors.

Timetable:

Action	Date	FR Cite
NPRM	12/26/18	83 FR 66223
NPRM Comment Period End.	02/25/19	
Final Rule	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov*.

RIN: 9000–AN32

436. Federal Acquisition Regulation; FAR Case 2016–002, Applicability of Small Business Regulations Outside the United States

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to support SBA's policy of including overseas contracts in agency small business contracting goals. SBA revised its regulation at 13 CFR 125.2, as finalized in its rule ''Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation'' issued on October 2, 2013, to clarify that overseas contracting is not excluded from agency responsibilities to foster small business participation.

In its final rule, SBA has clarified that, as a general matter, its small business contracting regulations apply regardless of the place of performance. In light of these changes, there is a need to amend the FAR, both to support the changes to SBA's regulation, and to give agencies the tools they need, especially the ability to use set-asides to maximize opportunities for small businesses overseas.

Timetable:

Action	Date	FR Cite
NPRM	08/12/19	84 FR 39793
NPRM Comment Period End.	10/11/19	
Final Rule	03/00/22	

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–AN34

437. Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 To Encourage Vendor Feedback

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 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.

Timetable:

Action	Date	FR Cite
ANPRM	07/23/18	83 FR 34820
ANPRM Comment Period End.	09/21/18	
NPRM	09/15/20	85 FR 57177
NPRM Comment Period End.	11/16/20	
Final Rule	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov*.

RIN: 9000–AN43

438. Federal Regulation Acquisition (FAR); FAR Case 2017–019, Policy on Joint Ventures

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA), Small Business Mentor Protégé Programs, published on July 25, 2016 (81 FR 48557), regarding joint ventures and to clarify policy on 8(a) joint ventures. The regulatory changes provide industry with a new way to compete for small business or socioeconomic set-asides using a joint venture made up of a mentor and a protégé. The 8(a) joint venture clarification prevents confusion on an 8(a) joint venture's eligibility to compete for an 8(a) competitive procurement.

Timetable:

Action	Date	FR Cite
NPRM	06/05/20	85 FR 34561
NPRM Comment Period End.	08/04/20	
Final Rule	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov*.

RIN: 9000–AN59

439. Federal Acquisition Regulation (FAR); FAR Case 2018–020, Construction Contract Administration

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement section 855 of the NDAA for FY 2019 (Pub. L. 115–232). Section 855 requires, for solicitations for construction contracts anticipated to be awarded to a small business, notification to prospective offerors regarding agency policies or practices in complying with FAR requirements relating to the timely definitization of requests for equitable adjustment and agency past performance in definitizing such requests.

Timetable:

Action	Date	FR Cite
NPRM	04/01/20	85 FR 18181
NPRM Comment Period End.	06/01/20	
Final Rule	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana L. Bowman, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov*.

RIN: 9000–AN78

440. Federal Acquisition Regulation (FAR); FAR Case 2018–017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA amended the Federal Acquisition Regulation (FAR) to implement section 889 (a)(1)(A) of the National Defense Authorization Act (NDAA) for FY 19 (Pub. L. 115–232). Section 889(a)(1)(A) 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. Provisions have been added to the FAR which 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 is needed to protect U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and services.

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	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kevin Funk, Supply Chain Risk Management Expert, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 357–5805, *Email: kevin.funk@gsa.gov*.

RIN: 9000–AN83

441. Federal Acquisition Regulation (FAR); FAR Case 2019–003, Substantial Bundling and Consolidation

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 amending the Federal Acquisition Regulation (FAR) to implement section 863 of the National Defense Authorization Acts (NDAA) for FY 2016 and the Small Business Administration (SBA) implementing regulations requiring public notification of an agency's determination to substantially bundle or consolidate contract requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/27/20	85 FR 23299
NPRM Comment Period End.	06/26/20	
Final Rule	11/04/21	86 FR 61038
Final Rule Effective.	12/06/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR) DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov*.

RIN: 9000–AN86

442. Federal Acquisition Regulation (FAR); FAR Case 2019–007, Update of Historically Underutilized Business Zone Program

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 amending the Federal Acquisition Regulation (FAR) to implement regulatory changes issued in a final rule on November 26, 2019, by the Small Business Administration regarding the Historically Underutilized Business Zone (HUBZone) Program. The regulatory changes are intended to reduce the regulatory burden associated with the HUBZone Program. This rule promotes equity in Federal procurement.

Timetable:

Action	Date	FR Cite
NPRM	06/14/21	86 FR 31468

Action	Date	FR Cite
NPRM Comment Period End.	08/13/21	
Final Rule	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov*.

RIN: 9000–AN90

443. Federal Acquisition Regulation (FAR); FAR Case 2019–009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment

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 amending the Federal Acquisition Regulation (FAR) to implement paragraph (a)(1)(B) of section 889 of the National Defense Authorization Act (NDAA) for FY 19 (Pub. L. 115–232). Beginning two years from the enacted date, paragraph (a)(1)(B) of section 889 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 is needed to protect U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and services. Paragraph (a)(1)(A) of section 889 is being implemented separately through FAR Case 2018–017.

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	03/00/22	

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

444. Federal Acquisition Regulation (FAR); FAR Case 2020–011, Implementation of FASC Exclusion Orders

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: This rule will amend the Federal Acquisition Regulation (FAR) to address implementation of issued exclusion orders authorized by section 202 of the SECURE Technology Act (115 Pub. L. 390), which amends 41 U.S.C. 1323 by creating the Federal Acquisition Security Council (FASC) and authorizing the Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence to issue exclusion orders, upon the recommendation of the FASC. These orders are issued to protect national security by excluding certain covered products, services, or sources from the Federal supply chain.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/22	
Interim Final Rule Comment Period End.	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kevin Funk, Supply Chain Risk Management Expert, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405. *Phone:* 202 357–5805, *Email: kevin.funk@gsa.gov*.

RIN: 9000–AO13

445. Federal Acquisition Regulation (FAR); FAR Case 2021–003, Update to Certain Online References in the FAR

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 issuing a final rule amending the Federal Acquisition Regulation (FAR) to replace FAR references to Federal Business Opportunities (*FBO.gov*) and Wage Determinations Online (*WDOL.gov*) with the System for Award Management (*SAM.gov*), because of their integration with and increased functionality of *SAM.gov*.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov*.

RIN: 9000–AO21

446. Federal Acquisition Regulation (FAR); FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements

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 amending the Federal Acquisition Regulation (FAR) to implement section 8 of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Section 8 requires the Federal Acquisition Regulatory Council to strengthen the impact of the Buy American Act. In pursuit of the goals of section 8, the proposed rule would provide for (1) an increase to the domestic content threshold, a schedule for future increases, and a fallback threshold that would allow for products meeting a specific lower domestic content threshold to qualify as domestic products under certain circumstances; (2) a framework for application of an enhanced price preference for a domestic product that is considered a critical product or made up of critical components; and (3) a postaward domestic content reporting requirement for contractors.

Timetable:

Action	Date	FR Cite
NPRM	07/30/21	86 FR 40980
NPRM Comment Period End.	09/28/21	
Final Rule	02/00/22	

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–AO22

447. Federal Acquisition Regulation (FAR); FAR Case 2021–007, Maximum Award Price for Certain Sole Source Manufacturing Contracts

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 amending the Federal Acquisition Regulation (FAR) to implement section 864 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. Section 864 amends the Small Business Act by modifying the maximum award price for sole source manufacturing contracts to $7 million for the 8(a), Women-Owned

Small Business (WOSB), Historically Underutilized Business Zone (HUBZone), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs. This rule will change the current FAR thresholds for the 8(a) and HUBZone programs from $7.5 million to the statutory threshold of $7 million. The thresholds for the WOSB and SDVOSB programs will remain unchanged at the current FAR $7 million threshold.

Timetable:

Action	Date	FR Cite
Final Rule	11/04/21	86 FR 61040
Final Rule Effective.	12/06/21	

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–AO25

448. • Federal Acquisition Regulation (FAR); FAR Case 2021–014, Increasing the Minimum Wage for Contractors

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA will amend the Federal Acquisition Regulation (FAR) to implement Executive Order 14026, Increasing the Minimum Wage for Federal Contractors, dated April 27, 2021, and Department of Labor regulations (29 CFR part 23). The Executive order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to $15.00 the hourly minimum wage paid to those contractors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/22	
Interim Final Rule Comment Period End.	03/00/22	

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

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Long-Term Actions

449. Federal Acquisition Regulation (FAR); FAR Case 2018–006; Definition of Subcontract

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 820 of the National Defense Authorization Act (NDAA) for FY 2018. Section 820 amends 41 U.S.C. 1906(c)(1) to change the definition of ''subcontract'' for the procurement of commercial items to exclude agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Federal Government and other parties and are not identifiable to any particular contract.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	
NPRM Comment Period End.	02/00/23	

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–AN66

450. Federal Acquisition Regulation (FAR); FAR Case 2018–012, Rights to Federally Funded Inventions and Licensing of Government-Owned Inventions

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 proposing to amend the FAR to implement the changes to 37 CFR parts 401 and 404, ''Rights to Federally Funded Inventions and Licensing of Government-Owned Inventions,'' dated May 14, 2018. The changes reduce regulatory burdens on the public, but increase burdens on the Government, provide greater clarity to large businesses by codifying the applicability of Bayh-Dole as directed in Executive Order 12591, and provide greater clarity to all Federal funding recipients by updating regulatory provisions to align with provisions of the Leahy-Smith America Invents Act in terms of definitions and timeframes.

Timetable:

Action	Date	FR Cite
NPRM	11/00/22	
NPRM Comment Period End.	01/00/23	

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–AN71

451. Federal Acquisition Regulation (FAR); FAR Case 2018–013, Exemption of Commercial and COTS Item Contracts From Certain Laws and Regulations

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 839 of the John S. McCain National Defense Authorization Act for fiscal year 2019 which requires the FAR Council to review each past determination made not to exempt contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf (COTS) items from certain laws when these contracts would otherwise have been exempt under 41 U.S.C. 1906(d) or 41 U.S.C. 1907(b). A new determination is to be made whether to provide exemptions from those certain laws and if so, propose revisions to the FAR to reflect those exemptions. The law also requires the FAR Council to review the FAR to assess every regulation not based on law or Executive order that requires a specific clause in contracts for commercial products or commercial service sand propose to eliminate those regulations unless the FAR Council makes a new determination not to do so. It also requires an assessment of every regulation that requires a prime contractor to include a specific clause in subcontracts for commercially available off-the-shelf items, unless the clause is required by law or Executive order. Paragraph (c) also requires that revisions to the FAR be proposed to eliminate those regulations unless the FAR Council decides not to do so.

Timetable:

Action	Date	FR Cite
NPRM	11/00/22	
NPRM Comment Period End.	01/00/23	

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

452. Federal Acquisition Regulation (FAR); FAR Case 2018–014, Increasing Task-Order Level Competition

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 proposing to amend the Federal Acquisition Regulation (FAR) to implement section 876 of the John S. McCain National Defense Authorization Act for fiscal year 2019, which would provide civilian agencies with an exception to the existing statutory requirement to include price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals for all contracts. The exception would only apply to IDIQ contracts and to Federal Supply Schedule contracts for services that are priced at an hourly rate. Furthermore, the exception would only apply in those instances where the Government intends to make a contract award to all qualifying offerors, thus affording maximum opportunity for effective competition at the task order level. An offeror would be qualified only if it is a responsible source and submits a proposal that conforms to the requirements of the solicitation, meets any technical requirements, and is otherwise eligible for award.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	
NPRM Comment Period End.	02/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov.*

RIN: 9000–AN73

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Completed Actions

453. Federal Acquisition Regulation (FAR); FAR Case 2016–011, Revision of Limitations on Subcontracting

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to revise and standardize the limitations on subcontracting, including the nonmanufacturer rule, that apply to small business concerns under FAR part 19 procurements. This rule incorporates the Small Business Administration's (SBA) final rule that implemented the statutory requirements of section 1651 of the National Defense Authorization Act (NDAA) for fiscal year 2013. This action is necessary to meet the Congressional intent of clarifying the limitations on subcontracting with which small businesses must comply, as well as the ways in which they can comply. The rule will benefit both small businesses and Federal agencies. The rule will allow small businesses to take advantage of subcontracts with similarly situated entities. As a result, these small businesses will be able to compete for larger contracts, which would positively affect their potential for growth as well as that of their potential subcontractors.

Completed:

Reason	Date	FR Cite
Final Rule	08/11/21	86 FR 44233
Final Rule Effective.	09/10/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AN35

454. Federal Acquisition Regulation (FAR); FAR Case 2017–013, Breaches of Personally Identifiable Information

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. The requirements of this case have been added into FAR case 2017–016, Controlled Unclassified Information.

Completed:

Reason	Date	FR Cite
Withdrawn	10/20/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AN44

455. Federal Acquisition Regulation (FAR); FAR Case 2017–011, Section 508-Based Standards in Information and Communication Technology

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to incorporate recent revisions and updates to accessibility standards issued by the U.S. Access Board pursuant to section 508 of the Rehabilitation Act of 1973. This FAR change incorporates the U.S. Access Board's final rule, ''Information and Communication Technology (ICT) Standards and Guidelines,'' which published on January 18, 2017. This rule updates the FAR to ensure that the updated accessibility standards are appropriately considered in Federal ICT acquisitions.

Completed:

Reason	Date	FR Cite
Final Rule	08/11/21	86 FR 44229
Final Rule Effective.	09/10/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AN46

456. Federal Acquisition Regulation (FAR); FAR Case 2019–001, Analysis for Equipment Acquisitions

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 amending the FAR by implementing section 555 of the Federal Aviation Administration (FAA) Reauthorization Act for FY 2018 (Pub. L. 115–254), which requires equipment to be acquired using the method of acquisition most advantageous to the Government based on a case-by-case analysis of costs and other factors. Section 555 requires the methods of acquisition to be compared in the analysis to include, at a minimum: (1) Purchase; (2) long-term lease or rental; (3) short-term lease or rental; (4) interagency acquisition; or, (5) acquisition agreements with a State or local government. Section 555 exempts certain acquisitions from this required analysis.

Completed:

Reason	Date	FR Cite
Final Rule	06/10/21	86 FR 31070
Final Rule Effective.	07/12/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AN84

457. Federal Acquisition Regulation (FAR); FAR Case 2019–004, Good Faith in Small Business Subcontracting

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 issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement section 1821 of the National Defense Authorization Act (NDAA) for FY 2017 and the Small Business Administration regulatory changes relating to small business subcontracting plans. Per section 1821, the final rule provides examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. The rule also requires prime contractors with commercial subcontracting plans to include indirect costs, with some exceptions, in their subcontracting plan goals.

Completed:

Reason	Date	FR Cite
Final Rule	08/11/21	86 FR 44249
Final Rule Effective.	09/10/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana L. Bowman, *Phone:* 202 803–3188, *Email: dana.bowman@gsa.gov.*

RIN: 9000–AN87

458. Federal Acquisition Regulation (FAR); FAR Case 2020–004, Application of the MPT to Certain Task and Delivery Orders

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 amending the FAR by implementing section 826 of the NDAA for FY 2020 (Pub. L. 116–92) which increases the threshold for requiring fair opportunity on orders under multiple-award contracts from $3,500 to the micro-purchase threshold, unless an exception applies. This change applies the word-based threshold to ensure continued alignment with any future changes to the thresholds.

Completed:

Reason	Date	FR Cite
Final Rule	06/10/21	86 FR 31073
Final Rule Effective.	07/12/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, *Phone:* 202 208–4949, *Email: michaelo.jackson@gsa.gov.*

RIN: 9000–AO04

459. Federal Acquisition Regulation (FAR); FAR Case 2020–012, Scope of Review by Procurement Center Representatives

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: The purpose of this FAR case is to implement section 1811 of the National Defense Authorization Act for Fiscal Year 2017 (15 U.S.C. 644(l)(9)(A)), as implemented by the Small Business Administration's final rule published November 29, 2019 (84 FR 65647). 15 U.S.C. 644(l)(9)(A) allows procurement center representatives to review solicitations without regard to whether the contract or order is set aside for small business, or reserved in the case of a multiple-award contract, or whether the solicitation would result in a bundled or consolidated contract or order.

Completed:

Reason	Date	FR Cite
Final Rule	08/11/21	86 FR 44247
Final Rule Effective.	09/10/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Malissa Jones, *Phone:* 703 605–2815, *Email: malissa.jones@gsa.gov.*

RIN: 9000–AO16

[FR Doc. 2021–27966 Filed 1–28–22; 8:45 am]

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Part XXI

Bureau of Consumer Financial Protection

Semiannual Regulatory Agenda

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Semiannual Regulatory Agenda

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing this agenda as part of the Fall 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau reasonably anticipates having the regulatory matters identified below under consideration during the period from November 1, 2021 to October 31, 2022. The next agenda will be published in Spring 2022 and will update this agenda through Spring 2023. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DATES: This information is current as of November 1, 2021.

ADDRESSES: Bureau of Consumer Financial Protection, 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 Bureau is publishing its Fall 2021 Agenda as part of the Fall 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda lists the regulatory matters that the Bureau reasonably anticipates having under consideration during the period from November 1, 2021 to October 31, 2022, as described further below.[1] The complete Unified Agenda is available to the public at the following website: *http://www.reginfo.gov.*

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (Dodd-Frank Act), the Bureau has rulemaking, supervisory, enforcement, consumer education, and other authorities relating to consumer financial products and services. These authorities include the authority to issue regulations under more than a dozen Federal consumer financial laws, which transferred to the Bureau from seven Federal agencies on July 21, 2011. The Bureau's general purpose, as specified in section 1021(a) of the Dodd-Frank Act, is to implement and enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

In addition, section 1021 of the Dodd-Frank Act specifies the objectives of the Bureau, including ensuring that, with respect to consumer financial products and services, consumers are provided with timely and understandable information to make responsible decisions about financial transactions; consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; that Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

The Senate recently confirmed the Bureau's new permanent Director. In this regulatory agenda the Bureau is prioritizing the continuation of certain ongoing rulemakings that further the Bureau's consumer financial protection mission and help to advance the country's economic recovery from the financial crisis related to the COVID–19 pandemic. The Bureau also continues to prioritize work that promotes racial and economic equity and supports underserved, vulnerable and marginalized communities by, among other things, facilitating access to fair and affordable credit. The Bureau expects that its new Director, will assess what regulatory actions the Bureau should prioritize to best further its consumer protection mission and that the Spring 2022 Agenda will reflect his priorities.

Continuation of Bureau Regulatory Efforts in Various Consumer Markets

The Bureau is continuing to work on a number of rulemakings to address important consumer protection issues in a wide variety of markets for consumer financial products and services, including mortgages, small business lending, and consumers' access to their own financial information, among others. The Bureau is mindful of how critically important these rulemakings are in light of the dire financial circumstances so many Americans continue to find themselves, particularly in light of the ongoing COVID–19 pandemic and the resulting financial crisis, which has affected the financial well-being of millions of consumers and small businesses. The Bureau is also mindful that the data show that these hardships fall disproportionately on individuals, families, and small businesses in communities of color.

For example, section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. Congress enacted section 1071 for the purpose of (1) Facilitating enforcement of fair lending laws and (2) enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

Bureau research shows that small businesses play a key role in fostering community development and fueling economic growth. It also shows that women-owned and minority-owned small businesses, in particular, play an important role in supporting their local communities. To contribute meaningfully to the U.S. economy and to their local community, small businesses—and especially women-owned and minority-owned small businesses—need access to credit to smooth business cash flows from current operations and to allow entrepreneurs to take advantage of opportunities for growth. This access to credit will be especially important as the nation works to rebuild the economy in light of the COVID–19 pandemic and resulting economic impacts. The Bureau's section 1071 rule, if finalized, would be critical to enabling the Bureau to protect small business owners, including from unlawful discrimination, in their access to and use of credit.

The Bureau has been working on this important and complex rulemaking for a number of years, including through research, supervisory work, policy development, and engagement seeking comment and information from the public, small business lenders, and small businesses themselves, including minority- and women-owned small businesses. The Bureau made significant progress on implementing section 1071

[1] The listing does not include certain routine, frequent, or administrative matters. The Bureau is reporting information for this Unified Agenda in a manner consistent with past practice.

since the Spring 2021 Unified Agenda was published. On October 8, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** which, if finalized as proposed, would, among other things, require financial institutions to report the amount and type of small business credit applied for, and extended, demographic information about small business credit applicants, and key elements of the price of the credit offered. The Bureau's next action for the section 1071 rulemaking is to review and consider the comments submitted in response to the proposed rule.

The Bureau is also working on a rulemaking to address the availability of consumer financial account data in electronic form, which has helped consumers understand their finances and make better-informed financial decisions in a variety of ways. Research has indicated that the availability of certain consumer financial account data may improve underwriting and expand access to credit. At the same time, the means by which these data are accessed, transmitted, stored, and used by financial institutions of all kinds can implicate significant privacy, security, racial equity, and other consumer financial protection concerns. Furthermore, consumer access to their own financial data can foster improved transparency in credit decisions that affect consumers, including small and very small businesses relying on consumer credit access, and provide some protection against poor credit ratings based on serious errors in credit reports. This ability of consumers to access this information is particularly important at a time when financial institutions are increasingly using ''alternative data'' in making credit decisions. The Bureau supports innovation and believes that appropriate implementation of section 1033 can lead to competitive, consumer-friendly markets, while recognizing the importance of ensuring the safety and security of consumer account data. Section 1033 of the Dodd-Frank Act provides that, subject to rules prescribed by the Bureau, covered persons must make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from a covered person. Section 1033 also states that the Bureau shall prescribe by rule standards to promote the development and use of standardized formats for information made available to consumers. The Bureau has taken a number of steps to gather information and perspectives from the public, financial institutions, consumer advocacy groups, and others concerning current practices with respect to financial data access and data sharing and to learn more about this complex and rapidly-changing market. Most recently, in November 2020, the Bureau published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the implementation of section 1033, and accepted comments until February 2021. The Bureau is reviewing comments received in response to the ANPRM and is considering those comments, as well as ongoing market monitoring efforts, as it assesses potential next steps, including whether a Small Business Review Panel is required pursuant to the Regulatory Flexibility Act.

Next, the Bureau is continuing its work to implement section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), which amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to ''Property Assessed Clean Energy'' (PACE) financing. PACE financing is a tool for consumers to finance certain improvements to residential real property. It is authorized by State and local governments and is typically available for projects promoting energy and water conservation, among other public policy goals identified in state statute. PACE is a hybrid product, with characteristics of both home equity lending and real property taxes. Like home equity loans, PACE obligations arise through a voluntary contract and are secured by real property. But, under State law, they are billed and repaid as special property tax assessments and typically secured by a lien with equal priority to real property taxes. As defined by EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. EGRRCPA section 307 states that the Bureau's PACE regulations shall carry out the purposes of TILA's ability-to-repay (ATR) requirements for residential mortgage loans and apply TILA's general civil liability provision for violations of the ATR requirements. The regulations must ''account for the unique nature'' of PACE financing. Section 307 of the EGRRCPA also specifically authorizes the collection of data and information necessary to support a PACE rulemaking. In March 2019, the Bureau released an ANPRM and is continuing to engage with stakeholders and collect information for the rulemaking, including by collecting quantitative data on the effect of PACE on consumers' financial outcomes.

The Bureau is also participating in interagency rulemaking processes with the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency to develop regulations to implement the amendments made by the Dodd-Frank Act 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). These standards are designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. The Agencies will continue to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.

The Bureau will be bringing to a close its rulemaking to address the anticipated expiration of the LIBOR index, which the UK Financial Conduct Authority has stated that it cannot guarantee publication beyond June 2023. This rulemaking is important for millions of consumers who have adjustable-rate mortgages, credit cards, student loans, reverse mortgages, home equity lines of credit (HELOCs), or other consumer products that are tied to the LIBOR index. When final, the rulemaking would help to ensure that any changes to an index underlying these loans as a result of the transition to a different index due to the discontinuation of LIBOR are done by industry in an orderly, transparent, and fair manner. The Bureau's work is designed to facilitate compliance by open-end and closed-end creditors and to lessen the financial impact to consumers by providing examples of replacement indices that meet Regulation Z requirements. For creditors for HELOCs, including reverse mortgages, and card issuers for credit card accounts, the rule would facilitate the transition of existing accounts to an alternative index, beginning around April 2022, well in advance of LIBOR's anticipated expiration. The rule also would address change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to the

transition away from LIBOR, to ensure that consumers are informed of the replacement index and any adjusted margin. To facilitate compliance by card issuers, the rule would address how the rate re-evaluation provisions applicable to credit card accounts apply to the transition from LIBOR to a replacement index. The Bureau issued an NPRM in June 2020 and, expects to issue a final rule in January 2022.

Planning for Future Rulemakings

The Bureau is actively reviewing existing regulations. Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law and publish a report of each assessment not later than five years after the effective date of the subject matter or order. The Bureau has decided to conduct an assessment of a rule implementing the Home Mortgage Disclosure Act, most of which became effective in January 2018.

The Regulatory Flexibility Act (RFA) also requires the Bureau to consider the effect on small entities of certain rules it promulgates. In May 2019, the Bureau published its plan for conducting reviews, consistent with section 610 of the RFA, of certain regulations which are believed to have a significant impact on a substantial number of small entities. Congress specified that the purpose of these reviews is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of the applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. In August 2020, the Bureau commenced its RFA section 610 review of Regulation Z rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act). Specifically, the Bureau reviewed an interim final rule and three final rules published by the Board from July 2009 to April 2011. After considering the statutory review factors and public comments, the Bureau determined that, within the context of this RFA section 610 review, the CARD Act rules should continue without change at this time. The Bureau found that there is a continued need for the CARD Act rules to protect consumers given Congress's purpose in adopting the CARD Act provisions, and these rules do not overlap with other Federal or State rules. The Bureau also found the CARD Act rules to be complex; however, this complexity likely results from the complexity of the CARD Act provisions themselves and pricing on credit card accounts generally. Additionally, while some commenters requested changes to the CARD Act rules, most of these changes would not reduce the significant economic impact upon a substantial number of small entities (SISNOSE) in a meaningful way. For the requested changes that would likely reduce the SISNOSE, the Bureau found these changes would be inconsistent with the purposes of the CARD Act.

Finally, as required by the Dodd-Frank Act, the Bureau is continuing to monitor markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets. As discussed in a recent report by the Government Accountability Office, the Bureau's Division of Research, Markets, and Regulations and specifically its Markets Office continuously monitor market developments and risks to consumers. The Bureau also has created a number of cross-Bureau working groups focused around specific markets to further advance the Bureau's market monitoring work. The Bureau's market monitoring work assists in identifying issues for potential future rulemaking work.

Dated: September 10, 2021.

Susan M. Bernard,

Assistant Director for Regulations, Bureau of Consumer Financial Protection.

CONSUMER FINANCIAL PROTECTION BUREAU—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
460	Small Business Lending Data Under The Equal Credit Opportunity Act	3170–AA09

CONSUMER FINANCIAL PROTECTION BUREAU—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
461	Debt Collection Rule	3170–AA41

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Proposed Rule Stage

460. Small Business Lending Data Under the Equal Credit Opportunity Act

Legal Authority: 15 U.S.C. 1691c–2

Abstract: Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require, subject to rules prescribed by the Bureau, financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. ECOA is a critical law that protects small business owners, including from unlawful discrimination, in their access to and use of credit. Section 1071 requires that certain data be collected, maintained, and reported to the Bureau, including whether the applicant is a women-owned, minority-owned, or small business; the number of the application and date the application was received; the type and purpose of the loan or credit applied for; the amount of credit applied for and approved; the type of action taken with respect to the application and the date of such action; the census tract of the applicant's principal place of business; the gross annual revenue of the business; and the race, sex, and ethnicity of the principal owners of the business. Section 1071 also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling its statutory purposes. The Bureau may adopt exceptions to any requirement of section 1071 and may exempt any financial institution from its requirements, as the Bureau deems necessary or appropriate to carry out section 1071's purposes. The Bureau has been working on this important and complex rulemaking for a number of years, including through research, supervisory work, policy development, and engagement seeking comment and

information from the public, small business lenders, and small businesses themselves, including minority- and women-owned small businesses. The Bureau made significant progress on implementing section 1071 since the Spring 2021 Unified Agenda was published. On October 8, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** which would, if finalized as proposed, require financial institutions to report the amount and type of small business credit applied for and extended, demographic information about small business credit applicants, and key elements of the price of the credit offered, among other things. If finalized, the rule would also advance the goals of promoting racial and economic equity and supporting underserved, vulnerable, and marginalized communities, in that it would provide comprehensive small business lending data to help protect small business owners, including from unlawful discrimination, in their access to and use of fair and affordable credit. The Bureau's next action for the section 1071 rulemaking is to review and consider the comments submitted in response to the proposed rule.

Timetable:

Action	Date	FR Cite
Request for Information.	05/15/17	82 FR 22318
Request for Information Comment Period End.	09/14/17	
SBREFA Outline	09/15/20	
Pre-rule Activity—SBREFA Report.	12/14/20	
NPRM	10/08/21	86 FR 56356
NPRM Comment Period End.	01/06/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kristine Andreassen, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, *Phone:* 202 435–7700.

RIN: 3170–AA09

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Completed Actions

461. Debt Collection Rule

Legal Authority: 15 U.S.C. 1692l(d)

Abstract: In May 2019, the Bureau issued a Notice of Proposed Rulemaking (NPRM), which would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the Fair Debt Collection Practices Act (FDCPA). The Bureau proposed, among other things, to address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures. The proposal built on the Bureau's research and pre-rulemaking activities regarding the debt collection market, including convening a panel in August 2016 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 Bureau also engaged in testing of time-barred debt disclosures that were not addressed in the May 2019 proposed rule. In early 2020, after completing the testing, the Bureau issued a supplemental NPRM related to time-barred debt disclosures. In October 2020, the Bureau issued a final rule that focused primarily on debt collection communications and addressed a number of other topics, including imposing record retention requirements and prohibiting the sale or transfer of certain types of debt. In December 2020, the Bureau issued a final rule addressing disclosures related to the validation notice, requiring certain outreach by debt collectors before consumer reporting, and barring suits or threats of suit on time-barred debt. Both final rules are scheduled to take effect on November 30, 2021. In April 2021, in light of the continuation well into 2021 of the widespread societal disruption caused by the COVID–19 pandemic, the Bureau issued a NPRM to extend the effective date of both rules by 60 days. After considering the comments received on the NPRM, the Bureau decided not to extend the effective date and published a **Federal Register** notice withdrawing that proposal in September 2021.

Timetable:

Action	Date	FR Cite
ANPRM	11/12/13	78 FR 67847
ANPRM Comment Period Extended.	01/14/14	79 FR 2384
ANPRM Comment Period End.	02/10/14	
ANPRM Comment Period Extended End.	02/28/14	
Pre-Rule Activity—SBREFA Outline.	07/28/16	
NPRM	05/21/19	84 FR 23274
NPRM Comment Period Extended.	08/02/19	84 FR 37806
NPRM Comment Period End.	08/19/19	
NPRM Comment Period Extended End.	09/18/19	
Supplemental NPRM.	03/03/20	85 FR 12672
Supplemental NPRM Comment Period Extended.	03/27/20	85 FR 17299
Supplemental NPRM Comment Period Extended End.	08/04/20	
Final Rule 1	11/30/20	85 FR 76734
Final Rule 2—Disclosures.	01/19/21	86 FR 5766
NPRM—Effective Date Extension.	04/19/21	86 FR 20334
Effective Date Extension Withdrawn.	09/01/21	86 FR 48918

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kristin McPartland, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, *Phone:* 202 435–7700.

RIN: 3170–AA41

[FR Doc. 2021–27972 Filed 1–28–22; 8:45 am]

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Part XXII

Consumer Product Safety Commission

Semiannual Regulatory Agenda

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter 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 regulatory actions that the Commission expects to be under development or review by the agency during the next year. 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 Division of the Secretariat on or before March 2, 2022.

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 Division of the Secretariat, 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 Meridith L. Kelsch, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408, *mkelsch@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. In addition, the regulatory flexibility agenda must contain the name and telephone number of an agency official who is knowledgeable about the items listed. Agencies must attempt to provide notice of their agendas to small entities and solicit their comments, by directly notifying them, or by including the agenda in publications that small entities are likely to obtain.

In addition, Executive Order 12866, *Regulatory Planning and Review* (Sept. 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 the regulatory activities the agency expects to be under development 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 agenda also includes regulatory activities that the Commission listed in the spring 2021 agenda and has completed prior to 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 the development or completion of 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.

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, you should not infer from this agenda a final determination by the Commission or its staff regarding the need for, or the substance of, any rule or regulation.

Dated: September 20, 2021.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

CONSUMER PRODUCT SAFETY COMMISSION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
462	Portable Generators	3041–AC36
463	Furniture Tip Overs: Clothing Storage Units	3041–AD65
464	Safety Standard for Magnets	3041–AD82

CONSUMER PRODUCT SAFETY COMMISSION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
465	Regulatory Options for Table Saws	3041–AC31
466	Petition Requesting Ban for Supplemental Mattresses for Play Yards With Non-Rigid Sides	3041–AD52

CONSUMER PRODUCT SAFETY COMMISSION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
467	Recreational Off-Road Vehicles	3041–AC78

CONSUMER PRODUCT SAFETY COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
468	Flammability Standard for Upholstered Furniture	3041–AB35
469	Standard for Infant Sleep Products	3041–AD45
470	Update to CPSC Rules for Testing and Labeling Pertaining to Product Certification and Requirements Pertaining to Third Party Conformity Assessment Bodies.	3041–AD78
471	Regulatory Flexibility Act Review of the Testing and Labeling Regulations Pertaining to Product Certification of Children's Products, Including Reliance on Component Part Testing.	3041–AD80

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Proposed Rule Stage

462. Portable Generators

Legal Authority: 15 U.S.C. 2051

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 FY 2006, staff awarded a contract to develop a prototype generator engine with reduced CO in the exhaust. Also, in FY 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 FY 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 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. Staff is now executing the modified plan.

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.	03/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janet L. Buyer, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2293, *Email: jbuyer@cpsc.gov*.

RIN: 3041–AC36

463. Furniture Tip Overs: Clothing Storage Units

Legal Authority: 15 U.S.C. 2058

Abstract: Based on direction in the Fiscal Year 2016 Operating Plan, staff submitted a briefing package to the Commission in September 2016, addressing furniture tip overs and focused, specifically, on clothing storage unit (CSU) tip overs. CPSC is aware of fatal and non-fatal incidents involving CSUs tipping over. The majority of incidents involve children. In November 2017, the Commission issued an ANPRM, seeking comments and initiating rulemaking under the Consumer Product Safety Act (15 U.S.C. 2051–2089). In July 2021, staff submitted a notice of proposed rulemaking (NPRM) briefing package to the Commission and is awaiting the Commission's vote on that package.

Timetable:

Action	Date	FR Cite
Staff Sent Briefing Package to Commission.	09/30/16	

Action	Date	FR Cite
Staff Sent ANPRM Briefing Package to Commission.	11/15/17	
Commission Decision on ANPRM.	11/21/17	
ANPRM	11/30/17	82 FR 56752
Comment Period Extended.	01/17/18	83 FR 2382
Comment Period End.	04/14/18	
Staff Sent NPRM Briefing Package to Commission.	07/14/21	
Commission Decision.	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kristen Talcott, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2311, *Email: ktalcott@cpsc.gov.*

RIN: 3041–AD65

464. Safety Standard for Magnets

Legal Authority: 15 U.S.C. 553; 15 U.S.C. 2056; 15 U.S.C. 2058

Abstract: Based on direction in the Fiscal Year 2021 Operating Plan, staff plans to submit a notice of proposed rulemaking (NPRM) briefing package to the Commission in fall 2021 to address the internal interaction hazard associated with small, powerful magnets.

Timetable:

Action	Date	FR Cite
Staff Sends NPRM Briefing Package to Commission.	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephen Harsanyi, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2209, *Email: sharsanyi@cpsc.gov.*

RIN: 3041–AD82

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Final Rule Stage

465. Regulatory Options for Table Saws

Legal Authority: 5 U.S.C. 553(e); 15 U.S.C. 2051

Abstract: In 2006, the Commission granted a petition asking that the Commission issue a rule to prescribe performance standards for an active injury mitigation 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 working on a final rule briefing package.

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	83FR62561
Staff Sends a Status Briefing Package on Table Saws to Commission.	08/28/19	
Commission Decision.	09/10/19	
Staff Sends Final Rule Briefing Package to Commission.	01/00/22	

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–AC31

466. Petition Requesting Ban for Supplemental Mattresses for Play Yards With Non–Rigid Sides

Legal Authority: Pub. L. 110–314, sec. 104

Abstract: The Commission received a petition requesting that the Commission initiate rulemaking under section 8 of the CPSA to ban supplemental mattresses for play yards with non-rigid sides, which are currently marketed to be used with non-full-size cribs, play yards, portable cribs, and playpens. After obtaining comments on the petition, the Commission voted to ''take other action'' on the petition, granting the petition but directing staff to initiate a rulemaking under section 104 of the Consumer Product Safety Improvement Act to promulgate a mandatory standard that will address the risk of injury associated with the use of crib mattresses, as well as supplemental and aftermarket mattresses used in play yards and portable cribs. The Commission will assess the effectiveness of applicable voluntary standards, and in accordance with the Administrative Procedure Act, could promulgate consumer product safety standards that are the same as the voluntary standard, or more stringent than the voluntary standard, if the Commission determines that more stringent standards would further reduce the risk of injury associated with the product. The Commission issued a notice of proposed rulemaking (NPRM) for crib mattresses in October 2020, to address hazards associated with full-size crib mattresses, non-full-size mattresses, and after-market mattresses for play yards and non-full-size crib mattresses. Staff is working toward

sending a final rule briefing package to the Commission before the end of FY2021. Staff is still working with the voluntary standards committee on play yards, to address hazards associated with play yard mattress fit and thickness.

Timetable:

Action	Date	FR Cite
Petition Docketed	07/29/15	
Notice Published in **Federal Register**.	08/11/15	80 FR 48043
Comment Period End.	10/13/15	
Staff Sends Briefing Package to Commission.	05/10/17	
Commission Decision.	05/25/17	
Staff Sends Crib Mattresses NPRM Briefing Package to Commission.	09/30/20	
Commission Publishes Crib Mattresses NPRM in **Federal Register**.	10/26/20	85 FR 67906
NPRM Comment Period End.	01/11/21	
Staff Sends Crib Mattresses Final Rule Briefing Package to Commission.	09/22/21	
Commission Decision.	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hope Nesteruk, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2579, *Email: hnesteruk@cpsc.gov*.

RIN: 3041–AD52

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Long-Term Actions

467. Recreational Off-Road Vehicles

Legal Authority: 15 U.S.C. 2056; 15 U.S.C. 2058

Abstract: The Commission is considering whether recreational off-road vehicles (ROVs) present an unreasonable risk of injury that should be regulated. Staff conducted testing and evaluation programs to develop performance requirements addressing vehicle stability, vehicle handling, and occupant protection. In 2014, the Commission issued an NPRM proposing standards addressing vehicle stability, vehicle handling, and occupant protection. 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 FY 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 rulemaking. On September 22, 2020 the Commission voted 2–2 on this matter. A majority was not reached and no action will be 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

468. Flammability Standard for Upholstered Furniture

Legal Authority: 15 U.S.C. 1193; 5 U.S.C. 801

Abstract: The Commission published a notice of proposed rulemaking (NPRM) to prescribe flammability standards for upholstered furniture under the Flammable Fabrics Act (FFA) to address the risk of fire associated with cigarette and small open-flame ignitions of upholstered furniture. The Commission's proposed rule would require that upholstered furniture have cigarette-resistant fabrics or cigarette

and open flame-resistant barriers. The proposed rule would not require flame-resistant chemicals in fabrics or fillings. Since the Commission published the NPRM, Congress signed into law, ''COVID –19 Regulatory Relief and Work From Home Safety Act,'' Public Law 116–260 (COVID–19 Act). Section 2101 of the COVID–19 Act mandates that, 180 days after the date of enactment of the COVID–19 Act, the standard for upholstered furniture set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117–2013, entitled ''Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,'' originally published June 2013, ''shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).'' In light of the enactment of the COVID–19 Act, on March 30, 2021, the Commission voted to terminate the rulemaking associated with upholstered furniture and directed that a notice announcing the termination of rulemaking be issued in the **Federal Register**. Staff is working on the notice of termination.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/94	59 FR 30735
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame-Retardant Chemicals.	03/17/98	63 FR 13017
Meeting Notice	03/20/02	67 FR 12916
Notice of Public Meeting.	08/27/03	68 FR 51564
Public Meeting	09/24/03	
ANPRM	10/23/03	68 FR 60629
ANPRM Comment Period End.	12/22/03	
Staff Held Public Meeting.	10/28/04	
Staff Held Public Meeting.	05/18/05	
Staff Sent Status Report to Commission.	01/31/06	
Staff Sent Status Report to Commission.	11/03/06	
Staff Sent Status Report to Commission.	12/28/06	
Staff Sent Options Package to Commission.	12/22/07	
Commission Decision to Direct Staff to Prepare Draft NPRM.	12/27/07	
Staff Sent Draft NPRM to Commission.	01/22/08	
Commission Decision to Publish NPRM.	02/01/08	
NPRM	03/04/08	73 FR 11702
NPRM Comment Period End.	05/19/08	
Staff Published NIST Report on Standard Test Cigarettes.	05/19/09	
Staff Publishes NIST Report on Standard Research Foam.	09/14/12	
Notice of April 25 Public Meeting and Request for Comments.	03/20/13	78 FR 17140
Staff Holds Upholstered Furniture Fire Safety Technology Meeting.	04/25/13	
Comment Period End.	07/01/13	
Staff Sends Briefing Package to Commission on California's TB 117–2013.	09/08/16	
Staff Sends Options Package to the Commission.	09/25/19	
Commission Decision.	10/04/19	
Staff Submits Notice of Termination to the Commission.	09/01/21	
Commission Decision.	09/08/21	
Notice of Termination of Rulemaking.	09/16/21	86 FR 51639

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew Lock, Project Manager, Directorate for Laboratory Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2099, *Email: alock@cpsc.gov*.

RIN: 3041–AB35

469. Standard for Infant Sleep Products

Legal Authority: Pub. L. 110–314, sec. 104

Abstract: Section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to issue consumer product safety standards for durable infant or toddler products. The Commission is directed to assess the effectiveness of applicable voluntary standards, and in accordance with the Administrative Procedure Act, promulgate consumer product safety standards that are substantially the same as or more stringent than the voluntary standard if the Commission determines that more stringent standards would further reduce the risk of injury associated with the product. The Commission issued an NPRM and, based on additional infant deaths in the product, also issued a Supplemental NPRM, proposing a mandatory rule with substantial modifications to the voluntary standard, to further reduce the risk of injury. Staff reviewed the comments on the Supplemental NPRM, updated incident data, and submitted a final rule briefing package to the Commission in May 2021. The Commission published a final rule for infant sleep products on June 23, 2021, which becomes effective on June 23, 2022.

Timetable:

Action	Date	FR Cite
Staff Sends NPRM Briefing Package to Commission.	03/22/17	
Commission Decision.	03/28/17	
NPRM	04/07/17	82 FR 16963
NPRM Comment Period End.	06/21/17	
Staff Sends Draft Termination Notice to Commission.	06/12/19	
Staff Sends Supplemental NPRM Briefing Package to Commission.	10/16/19	
Commission Decision.	10/25/19	
Supplemental NPRM.	11/12/19	84 FR 60949
Staff Sent Final Rule Briefing Package to Commission.	05/12/21	
Final Rule	06/23/21	86 FR 33022

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Celestine Kish, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2547, *Email: ckish@cpsc.gov*.

RIN: 3041–AD45

470. Update to CPSC Rules for Testing and Labeling Pertaining to Product Certification and Requirements Pertaining to Third Party Conformity Assessment Bodies

Legal Authority: Pub. L. 110–314, sec. 102

Abstract: In December 2017, the International Organization for Standardization (ISO) issued new versions of the standards, ''ISO/IEC 17025:2017 General Requirements for the Competence of Testing and Calibration Laboratories'' and ''ISO/IEC 17011:2004 Conformity assessment—Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies.'' The CPSC regulation for acceptance of third-party testing laboratories is 16 CFR part 1112. The CPSC regulation for testing and labeling pertaining to product certification is 16 CFR part 1107. In FY 2021, staff submitted a briefing package to the Commission that recommended a direct final rule to amend 16 CFR part 1112 to update the incorporation by reference from ISO/IEC 17025:2005 to ISO/IEC 17025:2017. This rule was approved by the Commission on April 9, 2021. The direct final rule also amends 16 CFR part 1107 to update the incorporation by reference from ISO/IEC 17025:2005 to ISO/IEC 17025:2017 and the incorporation by reference from ISO/IEC 17011:2004 to ISO/IEC 17011:2017.

Timetable:

Action	Date	FR Cite
Staff Sends Direct Final Rule Briefing Package to Commission.	03/31/21	
Direct Final Rule Published.	04/30/21	86 FR 22863

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Scott Heh, Laboratory Accreditation Program Manager, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 504–7646, *Email: sheh@cpsc.gov*.

RIN: 3041–AD78

471. Regulatory Flexibility Act Review of the Testing and Labeling Regulations Pertaining to Product Certification of Children's Products, Including Reliance on Component Part Testing

Legal Authority: 5 U.S.C. 610

Abstract: Under section 610 of the Regulatory Flexibility Act (RFA), CPSC must review within 10 years after their issuance regulations that have a significant economic impact on a substantial number of small entities. CPSC is conducting this review of the regulations for third party testing and certification to demonstrate compliance with safety standards for children's products. CPSC issued the testing and component part regulations in 16 CFR parts 1107 and 1109 in 2011. CPSC will publish notice of this review and seek comments to determine whether, consistent with CPSC's statutory obligations, these regulations should be maintained without change, or modified to minimize the significant impact of the rules on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Staff Sends Notice of Availability to Commission.	07/15/20	
Commission Decision.	07/21/20	
Notice of Availability Published.	08/24/20	85 FR 52078
Comment Period Ends.	10/23/20	
Briefing Package to Commission.	05/19/21	
Commission Decision.	05/25/21	
Notice of Availability Published.	06/07/21	86 FR 30288

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Susan Proper, Directorate for Economic Analysis, Consumer Product Safety Commission, 4330 East-West Hwy., Bethesda, MD 20814, *Phone:* 301 504–7628, *Email: sproper@cpsc.gov*.

RIN: 3041–AD80

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Part XXIII

Federal Communications Commission

Semiannual Regulatory Agenda

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2021

AGENCY: Federal Communications Commission.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act (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: Maura McGowan, Telecommunications Policy Specialist, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, (202) 418–0990.

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 clarify the status of the proceedings included in this report:

Docket Number—assigned 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. 17–289,'' 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)—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rulemaking (NPRM)—issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

Further Notice of Proposed Rulemaking (FNPRM)—issued by the Commission when additional comment in the proceeding is sought.

Memorandum Opinion and Order (MO&O)—issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

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)—issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
472	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278).	3060–AI14
473	Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123).	3060–AI15
474	Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10–51)	3060–AJ42
475	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
476	Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13–24.	3060–AK01
477	Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17–59)	3060–AK62

ECONOMICS—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
478	Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans.	3060–AJ15
479	Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12–268).	3060–AJ82

OFFICE OF ENGINEERING AND TECHNOLOGY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
480	Encouraging the Provision of New Technologies and Services to the Public (GN Docket No. 18–22)	3060–AK80
481	Spectrum Horizon (ET Docket No. 18–21)	3060–AK81
482	Use of the 5.850–5.925 GHz Band (ET Docket No. 19–138)	3060–AK96
483	Allowing Earlier Equipment Marketing and Importation Opportunities; Petition to Expand Marketing Opportunities for Innovative Technologies (ET Docket No. 20–382 & RM–11857) NPRM, 86 FR 2337, January 1.	3060–AL18
484	Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36)	3060–AL22
485	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
486	Wireless Microphones in the TV Bands, 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, 6875–6900 MHz and 7100–7125 MHz.	3060–AL27

INTERNATIONAL BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
487	Update to Parts 2 and 25 Concerning NonGeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. I6–408.	3060–AK59
488	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
489	Further Streamlining Part 25 Rules Governing Satellite Services: IB Docket No. 18–314	3060–AK87
490	Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18–315.	3060–AK89
491	Mitigation of Orbital Debris in the New Space Age: IB Docket No. 18–313	3060–AK90
492	Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16–155).	3060–AL12
493	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

MEDIA BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
494	Revision of EEO Rules and Policies (MM Docket No. 98–204)	3060–AH95
495	Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185).	3060–AI38
496	Preserving Vacant Channels in the UHF Television Band for Unlicensed Use; (MB Docket No. 15–146)	3060–AK43
497	Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard (GN Docket No. 16–142).	3060–AK56
498	2018 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules (MB Docket 18–349).	3060–AK77
499	Equal Employment Opportunity Enforcement (MB Docket 19–177)	3060–AK86
500	Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19–310)	3060–AL19
501	Sponsorship Identification Requirements for Foreign Government-Provided Programming (MB Docket No. 20–299).	3060–AL20
502	FM Broadcast Booster Stations (MB Docket 20–401)	3060–AL21
503	Revisions to Political Programming and Record-Keeping Rules (MB Docket No. 21–93)	3060–AL25
504	Updating Broadcast Radio Technical Rules (MB Docket 21–263)	3060–AL26

OFFICE OF MANAGING DIRECTOR—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
505	Assessment and Collection of Regulatory Fees	3060–AK64

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
506	Wireless E911 Location Accuracy Requirements: PS Docket No. 07–114	3060–AJ52
507	Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206.	3060–AK39

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
508	Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications: PS Docket No. 15–80.	3060–AK40
509	New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35	3060–AK41
510	Wireless Emergency Alerts (WEA): PS Docket No. 15–91	3060–AK54
511	Blue Alert EAS Event Code	3060–AK63

WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
512	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
513	Promoting Technological Solutions to Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13–111.	3060–AK06
514	Promoting Investment in the 3550–3700 MHz Band; GN Docket No. 17–258	3060–AK12
515	Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10–112	3060–AK44
516	Transforming the 2.5 GHz Band, WT Docket No.18–120	3060–AK75
517	Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18–122	3060–AK76
518	Amendment of the Commission's Rules to Promote Aviation Safety: WT Docket No. 19–140	3060–AK92
519	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

WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
520	800 MHz Cellular Telecommunications Licensing Reform; Docket No. 12–40	3060–AK13

WIRELINE COMPETITION BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
521	Local Telephone Networks That LECs Must Make Available to Competitors	3060–AH44
522	Jurisdictional Separations	3060–AJ06
523	Rural Call Completion; WC Docket No. 13–39	3060–AJ89
524	Rates for Inmate Calling Services; WC Docket No. 12–375	3060–AK08
525	Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130)	3060–AK20
526	Restoring Internet Freedom (WC Docket No. 17–108); Protecting and Promoting the Open Internet (GN Docket No. 14–28).	3060–AK21
527	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
528	Numbering Policies for Modern Communications, WC Docket No. 13–97	3060–AK36
529	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060–AK57
530	Toll Free Assignment Modernization and Toll Free Service Access Codes: WC Docket No. 17–192, CC Docket No. 95–155.	3060–AK91
531	Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19–195 and 11–10	3060–AK93
532	Call Authentication Trust Anchor	3060–AL00
533	Implementation of the National Suicide Improvement Act of 2018	3060–AL01
534	Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services	3060–AL02
535	Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges (WC Docket 20–71)	3060–AL03

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Consumer and Governmental Affairs Bureau

Long-Term Actions

472. Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278)

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
Next Action Undetermined.		

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

473. Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123)

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
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

Action	Date	FR Cite
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	
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	
Next Action Undetermined.		

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

474. Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10–51)

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

Action	Date	FR Cite
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
Next Action Undetermined.		

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

475. 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)

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
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Richard D. Smith, Special Counsel, Consumer Policy Division, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW, Washington, DC 20554, *Phone:* 717 338–2797, *Fax:* 717 338–2574, *Email: richard.smith@fcc.gov.*

RIN: 3060–AJ84

476. Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13–24

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	
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	
Next Action Undetermined.		

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

477. Advanced Methods To Target and Eliminate Unlawful Robocalls (CG Docket No. 17–59)

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	
Next Action Undetermined.		

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

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Economics

Long-Term Actions

478. Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to all Americans

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 Report and Order streamlined and reformed the Commission's Form 477 Data Program, which is the Commission's primary tool to collect data on broadband and telephone services.

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
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Suzanne Mendez, Program Analyst, OEA, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0941, *Email: suzanne.mendez@fcc.gov*.

RIN: 3060–AJ15

479. Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12–268)

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.		

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

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Office of Engineering and Technology

Long-Term Actions

480. Encouraging the Provision of New Technologies and Services to the Public (GN Docket No. 18–22)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(3)

Abstract: In this proceeding, the FCC seeks to establish rules describing guidelines and procedures to implement the stated policy goal of section 7 to encourage the provision of new technologies and services to the public. Although the forces of competition and technological growth work together to enable the development and deployment of many new technologies and services to the public, the Commission has at times been slow to identify and take action to ensure that important new technologies or services are made available as quickly as possible. The Commission has sought to overcome these impediments by streamlining many of its processes but all too often regulatory delays can adversely impact newly proposed technologies or services.

Timetable:

Action	Date	FR Cite
NPRM	04/04/18	83 FR 14395
Comment Period End.	05/04/18	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Paul Murray, Attorney Advisor, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–0688, *Fax:* 202 418–7447, *Email: paul.murray@fcc.gov.*

RIN: 3060–AK80

481. Spectrum Horizon (ET Docket No. 18–21)

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 301; 47 U.S.C. 302(a); 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 310; 47 U.S.C. 332; sec. 76 of 1996 Telecom Act, as amended, 47 U.S.C. 302 and sec. 1.411

Abstract: In this proceeding, the FCC seeks to implement a plan to make the spectrum above 95 GHz more readily accessible for new innovative services and technologies. Throughout its history, when the Commission has expanded access to what was thought to be the upper reaches of the usable spectrum, new technological advances have emerged to push the boundary of usable spectrum even further. The frequencies above 95 GHz are today's spectrum horizons. The Notice sought comment on proposed rules to permit licensed fixed point-to-point operations in a total of 102.2 gigahertz of spectrum; on making 15.2 gigahertz of spectrum available for unlicensed use; and on creating a new category of experimental licenses to increase opportunities for entities to develop new services and technologies from 95 GHz to 3 THz with no limits on geography or technology.

Timetable:

Action	Date	FR Cite
NPRM	04/02/18	83 FR 13888
ANPRM Comment Period End.	05/02/18	
R&O	06/14/19	84 FR 25685
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Ha, Deputy Division Chief, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 201 418–2099, *Email: michael.ha@fcc.gov.*

RIN: 3060–AK81

482. Use of the 5.850–5.925 GHz Band (ET Docket No. 19–138)

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	
R&O & Order of Proposed Modification.	05/03/21	86 FR 23281
FNPRM	05/03/21	86 FR 23323
Next Action Undetermined.		

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

483. Allowing Earlier Equipment Marketing and Importation Opportunities; Petition To Expand Marketing Opportunities for Innovative Technologies (ET Docket No. 20–382 & RM–11857) NPRM, 86 FR 2337, January 1

Legal Authority: 47 U.S.C. 154(i), 301, 302a, 303(c), 303(f), and 303(r)

Abstract: In this document, the Commission recognize that our equipment authorization rules have in some ways failed to keep pace with developments in the modern device ecosystem. In particular, our rules limit the ability of device manufacturers to market and import radiofrequency devices in the most efficient and cost-effective ways possible. We therefore take the opportunity here to propose specific rule changes that would allow device manufacturers to take full advantage of modern marketing and importation practices.

Timetable:

Action	Date	FR Cite
NPRM	01/12/21	86 FR 2337
NPRM Comment Period End.	02/11/21	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Thomas Struble, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2470, *Email: thomas.struble@fcc.gov.*

Brian Butler, Attorney, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2702, *Email: brian.butler@fcc.gov.*

RIN: 3060–AL18

484. Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36)

Legal Authority: 47 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	
R&O	01/12/21	86 FR 2278
Next Action Undetermined.		

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

485. • 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

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	
Next Action Undetermined.		

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

486. • Wireless Microphones in the TV Bands, 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, 6875–6900 MHz and 7100–7125 MHz

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.		

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

FEDERAL COMMUNICATIONS COMMISSION (FCC)

International Bureau

Long-Term Actions

487. Update to Parts 2 and 25 Concerning Nongeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. I6–408

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.		

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

488. 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

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.		

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

489. Further Streamlining Part 25 Rules Governing Satellite Services: IB Docket No. 18–314

Legal Authority: 47 U.S.C. secs. 154(i); 47 U.S.C. 161; 47 U.S.C. 303; 47 U.S.C. 316

Abstract: Under the Commission's rules, satellite operators must follow separate application and authorization processes for the satellites and earth stations that make up their networks and have no option for a single, unified network license. In a Notice of Proposed Rulemaking, the FCC proposed to create a new, optional, unified license to include both space stations and earth stations operating in a geostationary-satellite orbit, fixed-satellite service (GSO FSS) satellite network. In addition, the Commission proposed to repeal or modify unnecessarily burdensome rules in Part 25 governing satellite services, such as annual reporting requirements. These proposals would greatly simplify the Commission's licensing and regulation of satellite systems. In a subsequent Report and Order, the Commission streamlined its rules governing satellite services by creating an optional framework for the authorization of blanket-licensed earth stations and space stations in a satellite system through a unified license. The Commission also aligned the build-out requirements for earth stations and space stations and eliminated unnecessary reporting rules.

Timetable:

Action	Date	FR Cite
NPRM	01/31/19	84 FR 638
NPRM Comment Period End.	03/18/19	
NPRM Reply Comment Period End.	04/16/19	
Report & Order	03/01/21	86 FR 11880
Next Action Undetermined.		

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–AK87

490. Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18–315

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.		

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

491. Mitigation of Orbital Debris in the New Space Age: IB Docket No. 18–313

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 2,000 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.

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	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Merissa Velez, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0751, *Email: merissa.velez@fcc.gov*.

RIN: 3060–AK90

492. Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16–155)

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.

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	
Next Action Undetermined.		

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

493. • 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)

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	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sean O'More, Attorney Advisor, International Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 245 418–2453, *Email: sean.omore@fcc.gov*.

RIN: 3060–AL28

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Media Bureau

Long-Term Actions

494. Revision of EEO Rules and Policies (MM Docket No. 98–204)

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 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) requests 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 MVPDs Annual Employment Report. In the Fourth NPRM, comment was sought regarding public access to the data contained in the forms.

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.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brendan Holland, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2486, *Email: brendan.holland@fcc.gov*.

RIN: 3060–AH95

495. Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185)

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 Report and Order adopts definitions and permissible use provisions for digital TV translator and LPTV stations. The Second Report and Order takes steps to resolve the remaining issues in order to complete the low-power television digital transition. The third Notice of Proposed Rulemaking seeks comment on a number of issues related to the potential impact of the incentive auction and the repacking process.

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	
Next Action Undetermined.		

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

496. Preserving Vacant Channels in the UHF Television Band for Unlicensed Use (MB Docket No. 15–146)

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. Petitions for reconsideration are pending.

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
Next Action Undetermined.		

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

497. Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard (GN Docket No. 16–142)

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.

In the 2nd R&O, the Commission provided additional guidance to broadcasters deploying Next Gen TV.

In 2021, the Commission made a technical modification to the rules governing the use of a distribution transmission system by a television station to account for deployment of ATSC 3.0.

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
Next Action Undetermined.		

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

498. 2018 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules (MB Docket 18–349)

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.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brendan Holland, Chief, Industry Analysis Division,

Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2486, *Email: brendan.holland@fcc.gov.*

RIN: 3060–AK77

499. Equal Employment Opportunity Enforcement (MB Docket 19–177)

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.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Radhika Karmarker, Attorney Advisor, 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

500. Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19–310)

Legal Authority: 47 U.S.C. 151. 154(i), 154(j), and 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 contour 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.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jamile Kadre, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2245, *Email: jamile.kadre@fcc.gov.*

RIN: 3060–AL19

501. Sponsorship Identification Requirements for Foreign Government-Provided Programming (MB Docket No. 20–299)

Legal Authority: 47 U.S.C. 151. 154, 155, 301, 303, 307, 309, 310, 334, 336, 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. Petitions for reconsideration are pending.

Timetable:

Action	Date	FR Cite
NPRM	11/24/20	85 FR 74955
R&O	06/17/21	86 FR 32221
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Radhika Karmarker, Attorney Advisor, 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

502. FM Broadcast Booster Stations (MB Docket 20–401)

Legal Authority: 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324

Abstract: In this proceeding, the Commission proposes 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.		

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

503. • Revisions to Political Programming and Record-Keeping Rules (MB Docket No. 21–93)

Legal Authority: 47 U.S.C secs. 151, 154(i), 154(j), 303, 307, 312, 315, 335, and 403

Abstract: This proceeding was initiated to update the political programming and recordkeeping rules for broadcast licensees, cable television system operators, Direct Broadcast Satellite service providers, and Satellite Digital Audio Radio Service licensees. Given the substantial growth of such programming in recent years, the updates under consideration in this proceeding are intended to conform the Commission's rules with statutory amendments, increase transparency, and account for modern campaign practices.

Timetable:

Action	Date	FR Cite
NPRM	09/01/21	86 FR 48942
NPRM Comment Period End.	10/01/21	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Robert Baker, Assistant Division Chief, Policy Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1417, *Email: robert.baker@fcc.gov.*

RIN: 3060–AL25

504. • Updating Broadcast Radio Technical Rules (MB Docket 21–263)

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 will ensure 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	
Next Action Undetermined.		

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

505. Assessment and Collection of Regulatory Fees

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
Next Action Undetermined.		

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

506. Wireless E911 Location Accuracy Requirements: PS Docket No. 07–114

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
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda Boykin, Attorney Advisor, 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

507. Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206

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.		

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

508. Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications: PS Docket No. 15–80

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 section 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.

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
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Robert Finley, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7835, *Email: robert.finley@fcc.gov.*

RIN: 3060–AK40

509. New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35

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.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Robert Finley, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7835, *Email: robert.finley@fcc.gov.*

RIN: 3060–AK41

510. Wireless Emergency Alerts (WEA): PS Docket No. 15–91

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.

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	11/01/16	81 FR 75710
FNPRM	11/08/16	81 FR 78539
Comment Period End.	12/08/16	
Petition for Recon	12/19/16	81 FR 91899
Order on Recon	12/04/17	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	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Wiley, Attorney Advisor, 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

511. Blue Alert EAS Event Code

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 154(o); 47 U.S.C. 301; 47 U.S.C. 303(r) and (v); 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 335; 47 U.S.C. 403; 47 U.S.C.544(g); 47 U.S.C. 606 and 615

Abstract: In 2015, Congress adopted the Blue Alert Act to help the States provide effective alerts to the public and law enforcement when police and other law enforcement officers are killed or are in danger. To ensure that these State plans are compatible and integrated throughout the United States as envisioned by the Blue Alert Act, the Blue Alert Coordinator made a series of recommendations in a 2016 Report to Congress. Among these recommendations, the Blue Alert Coordinator identified the need for a dedicated EAS event code for Blue Alerts, and noted the alignment of the EAS with the implementation of the Blue Alert Act. On June 22, 2017, the FCC released an NPRM proposing to revise the EAS rules to adopt a new event code, which would allow transmission of Blue Alerts to the public over the EAS and thus satisfy the stated need for a dedicated EAS event code. On December 14, 2017, the Commission released an Order adopting a new Blue Alert EAS Code-BLU. EAS participants must be able to implement the BLU code by January 19, 2019. BLU alerts must be available to wireless emergency alerts by July, 2019.

Timetable:

Action	Date	FR Cite
NPRM	06/30/17	82 FR 29811
NPRM Comment Period End.	07/31/17	
NPRM Reply Comment Period End.	08/29/17	
Order	12/14/18	83 FR 2557
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK63

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireless Telecommunications Bureau

Long-Term Actions

512. 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)

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.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jaclyn Rosen, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0154, *Email: jaclyn.rosen@fcc.gov.*

RIN: 3060–AJ87

513. Promoting Technological Solutions To Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13–111

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 FNPRM	08/13/21	86 FR 44681
2nd R&O	08/13/21	86 FR 44635
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	
Final Rules Effective (except for those requiring OMB approval).	09/13/21	
Reply Comment Period End.	10/12/21	
Next Action Undetermined.		

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

514. Promoting Investment in the 3550–3700 MHz Band; GN Docket No. 17–258

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.		

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

515. Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10–112

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	

Action	Date	FR Cite
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.		

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

516. Transforming the 2.5 GHz Band, WT Docket No. 18–120

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 and 302; 47 U.S.C. 304; 47 U.S.C. 307 to 310; 47 U.S.C. 1302

Abstract: The 2.5 GHz band (2496–2690 MHz) constitutes the single largest band of contiguous spectrum below 3 GHz and has been identified as prime spectrum for next generation mobile operations, including 5G uses. Significant portions of this band, however, currently lie fallow across approximately one-half of the United States, primarily in rural areas. Moreover, access to the Educational Broadband Service (EBS) has been strictly limited since 1995, and current licensees are subject to a regulatory regime largely unchanged from the days when educational TV was the only use envisioned for this spectrum. The Commission proposes to allow more efficient and effective use of this spectrum band by providing greater flexibility to current EBS licensees as well as providing new opportunities for additional entities to obtain unused 2.5 GHz spectrum to facilitate improved access to next generation wireless broadband, including 5G. The Commission also seeks comment on additional approaches for transforming the 2.5 GHz band, including by moving directly to an auction for some or all of the spectrum.

Timetable:

Action	Date	FR Cite
NPRM	06/07/18	83 FR 26396
NPRM Comment Period Extended.	06/21/18	83 FR 31515
NPRM Comment Period End.	09/07/18	
Final Rule	10/25/19	84 FR 57343
Dismissal of Petitions for Reconsideration.	02/23/21	86 FR 10839
Next Action Undetermined.		

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–AK75

517. Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18–122

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.		

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

518. Amendment of the Commission's Rules To Promote Aviation Safety: WT Docket No. 19–140

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.		

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

519. • 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)

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.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Georgios Leris, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1994, *Email: georgios.leris@fcc.gov.*

RIN: 3060–AL29

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireless Telecommunications Bureau

Completed Actions

520. 800 MHz Cellular Telecommunications Licensing Reform; Docket No. 12–40

Legal Authority: 47 U.S.C. 151 to 152; 47 U.S.C. 154(i) to 154(j); 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 309; 47 U.S.C. 332

Abstract: The proceeding was launched to revisit and update rules governing the 800 MHz Cellular Radiotelephone Service (Cellular Service). On November 10, 2014, the FCC released a Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM). In the R&O, the FCC eliminated or streamlined numerous regulatory requirements; in the FNPRM, the FCC sought comment on additional reforms of the Cellular rules, including radiated power and other technical rules, to promote flexibility and help foster deployment of new technologies such as LTE. On March 24, 2017, the FCC released a Second Report and Order (2d R&O) and Second Further Notice of Proposed Rulemaking (2d FNPRM). In the 2d R&O, the FCC revised the Cellular radiated power rules to permit compliance with limits based on power spectral density as an option for licensees deploying wideband technologies such as LTE, made conforming revisions to related technical rules, and adopted additional licensing reforms. In the 2d FNPRM, the FCC sought comment on other measures to give Cellular and other part 22 commercial mobile radio service licensees more flexibility and administrative relief, and on ways to consolidate and simplify the rules for the Cellular Service and other geographically licensed wireless services. On July 13, 2018, the FCC released a Third Report and Order (3d R&O) in which it deleted certain part 22 rules that imposed needless recordkeeping and reporting obligations; it also deleted certain Cellular Service-specific and Part 22 rules that are duplicative of other rules and are thus no longer necessary. These revisions reduce regulatory burdens for Cellular and other Part 22 licensees and provide them with enhanced flexibility, thereby freeing up more resources for investment in new technologies and greater spectrum efficiency to meet increasing consumer demand for advanced wireless services. On March 22, 2019, the FCC released an Order on Reconsideration addressing a petition for reconsideration of a rule deletion in the 3d R&O. The FCC denied the petition, thus affirming its decision in the 3d R&O.

Timetable:

Action	Date	FR Cite
NPRM	03/16/12	77 FR 15665
NPRM Comment Period End.	05/15/12	
NPRM Reply Comment Period End.	06/14/12	
R&O	12/05/14	79 FR 72143
FNPRM	12/22/14	79FR 76268
Final Rule Effective (With 3 Exceptions).	01/05/15	
FNPRM Comment Period End.	01/21/15	
FNPRM Reply Comment Period End.	02/20/15	
2nd R&O	04/12/17	82 FR 17570
2nd FNPRM	04/14/17	82 FR 17959
Final Rule Effective (With 9 Exceptions).	05/12/17	
2nd FNPRM Comment Period End.	05/15/17	
2nd FNPRM Reply Comment Period End.	06/14/17	
3rd R&O	08/02/18	83 FR 37760
Final Rule Effective (With 1 Exception).	09/04/18	
Order on Reconsideration.	04/09/19	84 FR 14080

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nina Shafran, Attorney Advisor, Wireless Bureau, Mobility Div., Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–2781, *Email: nina.shafran@fcc.gov.*

RIN: 3060–AK13

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireline Competition Bureau

Long-Term Actions

521. Local Telephone Networks That LECS Must Make Available to Competitors

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

Action	Date	FR Cite
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

522. Jurisdictional Separations

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.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ06

523. Rural Call Completion; WC Docket No. 13–39

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 217; 47 U.S.C. 201; 47 U.S.C. 202; 47 U.S.C. 218; 47 U.S.C. 220; 47 U.S.C. 262; 47 U.S.C. 403(b)(2)(B); 47 U.S.C. 251(a); 47 U.S.C. 225; 47 U.S.C. 620; 47 U.S.C. 251; 47 U.S.C. 251(e); 47 U.S.C. 254(k); 47 U.S.C. 616; 47 U.S.C. 226; 47 U.S.C. 227; 47 U.S.C. 228; 47 U.S.C. 1401–1473

Abstract: The Third RCC Order began implementation of the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act), by adopting rules designed to ensure the integrity of our nation's telephone network and prevent unjust or unreasonable discrimination among areas of the United States in the delivery of telephone service. In particular, the Third RCC Order adopted rules to establish a registry for intermediate providers entities that transmit, but do not originate or terminate, voice calls.

The Order requires intermediate providers to register with the Commission before offering to transmit covered voice communications, and requires covered providers entities that select the initial long-distance route for a large number of lines to use only registered intermediate providers to transmit covered voice communications.

The Fourth RCC Order completed the Commission's implementation of the RCC Act by adopting service quality standards for intermediate providers, as well as an exception to those standards for intermediate providers that qualify for the covered provider safe harbor in our existing rules. The Order also set forth procedures to enforce our intermediate provider requirements. Finally, the Fourth RCC Order adopted provisions to sunset the rural call completion data recording and retention requirements adopted in the First RCC Order one year after the effective date of the new intermediate provider service quality standards.

Timetable:

Action	Date	FR Cite
NPRM	04/12/13	78 FR 21891
Public Notice	05/07/13	78 FR 26572
NPRM Comment Period End.	05/28/13	
R&O and FNPRM	12/17/13	78 FR 76218
PRA 60 Day Notice.	12/30/13	78 FR 79448
FNPRM Comment Period End.	02/18/14	
PRA Comments Due.	03/11/14	
Public Notice	05/06/14	79 FR 25682
Order on Reconsideration.	12/10/14	79 FR 73227
Erratum	01/08/15	80 FR 1007
Public Notice	03/04/15	80 FR 11593
2nd FNPRM	07/27/17	82 FR 34911
2nd FNPRM Comment Period End.	08/28/17	
Reply Comment Period End.	09/25/17	
2nd Order	05/10/18	83 FR 21723
3rd FNPRM	05/11/18	83 FR 21983
3rd FNPRM Comment Period End.	06/04/18	
3rd FNPRM Reply Comment Period End.	06/19/18	
3rd Order	08/13/18	83 FR 47296
4th Order	03/15/19	84 FR 25692
PRA 60 Day Notice.	05/22/18	83 FR 23681
PRA 60 Day Notice.	09/18/18	83 FR 47153
Public Notice	10/24/18	83 FR 53588
Public Notice	04/15/19	84 FR 15124
PRA 60 Day Notice.	05/17/21	86 FR 26722
PRA Comment Period End.	07/16/21	
PRA 60 Day Notice.	08/24/21	86 FR 47307
PRA Comment Period End.	10/25/21	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ89

524. Rates for Inmate Calling Services; WC Docket No. 12–375

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

Abstract: In the Second Report and Order, the Federal Communications 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 purports 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 released a Public Notice seeking to refresh the record on ancillary service charges imposed in connection with inmate calling services.

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 U.S. Court of Appeals for the District of Columbia Circuit and proposing to comprehensively reform rates and charges for the inmate calling services 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 inmate calling services 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 inmate calling services rules consistent with the D.C. Circuit's mandates to reflect that the Commission's rate and fee caps on inmate calling service apply only to interstate and international inmate calling. The Fourth FNPRM proposes 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 FNPRM also proposes to adopt rate caps for international inmate

calling services 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 proposes 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 seeks comment on a further mandatory data collection to continue efforts to reform these rates and fees.

On November 23, 2020, Global Tel*Link Corporation 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 inmate calling services 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 current 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 this time; (3) eliminated separate treatment of collect calls, resulting in a uniform interim interstate rate cap for all types of calls at each facility, as proposed; (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 fair, permanent cost-based rates for facilities of all sizes.

In the Order on Reconsideration, the Commission denied GTL's petition seeking 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 inmate calling services consumers.

In the Fifth Further Notice, the Commission proposed to amend the Commission's 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.

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	
Announcement of Effective Date.	06/20/14	79 FR 33709
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	12/17/20	
Public Notice	01/08/21	
Public Notice	03/03/21	
Inactive per Maura McGowan.	03/31/21	
5th FNPRM	07/28/21	86 FR 40416
3rd R&O	07/28/21	86 FR 40340
Order	08/10/21	86 FR 48952
5th NPRM Comment Period End.	09/27/21	
5th NPRM Reply Comment Period End.	10/27/21	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK08

525. Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130)

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.

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
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK20

526. Restoring Internet Freedom (WC Docket No. 17–108); Protecting and Promoting the Open Internet (GN Docket No. 14–28)

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.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK21

527. 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

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, NOl, 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 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.

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	
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	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK32

528. Numbering Policies for Modern Communications, WC Docket No. 13–97

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 fo not facilitate illegal robocalls, 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	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK36

529. Implementation of the Universal Service Portions of the 1996 Telecommunications Act

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 7, 2020, the Commission launched $20 Billion Rural Digital Opportunity Fund.

On April 2, 2020, the Commission fought COVID–19 with $200M; Adopts Long-Term Connected Care Study.

On July 17, 2020, the Commission integrated provisions of the recently enacted Secure and Trusted Communications Networks Acts of 2019 into the existing supply chain rulemaking.

On March 16, 2021, the Commission sought comments on Emergency Connectivity Fund for Educational Connections and Devices to address the homework gap during the pandemic.

On March 30, 2021, the Commission moved forward with Round 2 of the COVID–19 Telehealth Program.

On May 11, 2021, the Commission launched $7.17 Billion Emergency Connectivity Fund (ECF) Program.

On June 2, 2021, the Commission offered further guidance on the administration of the Connected Care Pilot Program, including guidance on eligible services, competitive bidding, invoicing, and data reporting for selected participants.

On July 22, 2021, the Commission established June 30, 2022, as the ECF service delivery date for equipment and other non-recurring services funding requests filed during the initial application filing window and modifies the certification language for section 54.1710(a)(1)(x).

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
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK57

530. Toll Free Assignment Modernization and Toll Free Service Access Codes: WC Docket No. 17–192, CC Docket No. 95–155

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 toll 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.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK91

531. Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19–195 and 11–10

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: In the Report and Order, the Federal Communications Commission (FCC), moving to better identify gaps in broadband coverage across the nation, initiated a new process for collecting fixed broadband data to better pinpoint where broadband service is lacking. The Report and Order concluded that there is a compelling and immediate need to develop more granular broadband deployment data to meet this goal and, accordingly, created the new Digital Opportunity Data Collection.

The Digital Opportunity Data Collection will collect geospatial broadband coverage maps from fixed broadband internet service providers of areas where they make fixed service available. This geospatial data will facilitate development of granular, high-quality fixed broadband deployment maps, which should improve the FCC's ability to target support for broadband expansion through the agency's Universal Service Fund programs. The Report and Order also adopts a process to collect public input on the accuracy of service providers' broadband maps, facilitated by a crowd-sourcing portal that will gather input from consumers as well as from state, local, and Tribal governments.

The Second Further NPRM sought comment on additional technical standards for fixed broadband providers that could ensure greater precision for the Digital Opportunity Data Collection deployment reporting and on ways the Commission could incorporate crowdsourced and location-specific fixed broadband deployment data into this new data collection. The Second Further NPRM also sought comment on incorporating the collection of accurate, reliable mobile wireless voice and broadband coverage data into the Digital Opportunity Data Collection. In addition, the Second Further NPRM sought comment on sunsetting the Form 477 broadband deployment collection following the creation of the Digital Opportunity Data Collection.

The Second Report and Order established requirements for: (1) Collecting fixed broadband availability and quality of service data; (2) collecting mobile broadband deployment data, including the submission of standardized propagation maps, propagation model details, and infrastructure information; (3) establishing a common dataset of all locations in the United States where fixed broadband service can be installed; (4) verifying the accuracy of broadband availability data; (5) collecting crowdsourced data; (6) enforcing the requirements of the Broadband DATA Act; (7) creating coverage maps from the data submitted; and (8) ensuring the privacy, confidentiality, and security of information submitted by broadband providers.

The Third Further NPRM sought comment on a range of additional measures to implement the requirements of the Broadband DATA Act, including additional processes for verifying broadband availability data

submitted by providers, the development of a challenge process, and FCC Form 477 reforms.

The Third Report and Order specified which fixed and mobile broadband internet access service providers are required to report broadband availability data and expanded the reporting and certification requirements for certain fixed and mobile broadband filers in order to ensure that Commission staff have the necessary tools to assess the quality and accuracy of its broadband coverage maps. The Third Report and Order also adopted standards for collecting verified broadband data from State, local, and Tribal entities and certain third parties and adopted processes for submitting challenges to fixed and mobile coverage map data and data in the location Fabric, along with processes for providers to respond to such challenges. In addition, the Third Report and Order established standards for identifying locations that will be included in the broadband serviceable locations Fabric and for enforcement of the requirements associated with the Digital Opportunity Data Collection.

On July 16, 2021, the Wireless Telecommunications Bureau, Office of Economics and Analytics, and Office of Engineering and Technology 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 (formerly known as the Digital Opportunity Data Collection). Deadlines for filing comments and reply comments have been set for September 10, 2021, and September 27, 2021, respectively.

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	
Public Notice	07/16/21	86 FR 40398
Public Notice Comment Period End.	09/27/21	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK93

532. Call Authentication Trust Anchor

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.

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	

Action	Date	FR Cite
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	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AL00

533. Implementation of the National Suicide Improvement Act of 2018

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.

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	
Next Action Undetermined.		

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

534. Modernizing Unbundling and Resale Requirements in an Era of Next–Generation Networks and Services

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
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michele Berlove, Special Counsel, 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

535. Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges (WC Docket 20–71)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 160; 47 U.S.C. 201 to 203; 47 U.S.C. 214; 47 U.S.C. 225; 47 U.S.C. 251; 47 U.S.C. 254; 47 U.S.C. 303(r); 47 U.S.C. 616

Abstract: The NPRM proposes to deregulate and detariff Telephone Access Charges, which represent the last handful of interstate end-user charges that remain subject to regulation. The Notice also proposes to prohibit all carriers from separately listing these charges on customers' bills given that some Telephone Access Charges are used to calculate contributions to the Federal Universal Service Fund and other federal programs as well as high cost support this Notice also proposes and seeks comment on ways to ensure stability in funding these programs.

Timetable:

Action	Date	FR Cite
NPRM	04/01/20	85 FR 30899
NPRM Comment Period End.	07/06/20	
NPRM Reply Comment Period End.	08/04/20	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Victoria Goldberg, Attorney–Advisor, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7353, *Email: victoria.goldberg@fcc.gov*.

RIN: 3060–AL03

[FR Doc. 2021–28337 Filed 1–28–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

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Part XXIV

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 1, 2021, through April 30, 2022. The next agenda will be published in spring 2022.

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 2021 agenda as part of the Fall 2021 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, as an independent Agency, in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into four sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. The 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. And a fourth section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. 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—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
536	Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R–1429).	7100–AD80

FEDERAL RESERVE SYSTEM—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
537	Source of Strength **(Section 610 Review)**	7100–AE73

FEDERAL RESERVE SYSTEM (FRS)

Final Rule Stage

536. Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R–1429)

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.	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Keisha Patrick, Special Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–3559.

RIN: 7100–AD80

FEDERAL RESERVE SYSTEM (FRS)

Long-Term Actions

537. Source of Strength (Section 610 Review)

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
Next Action Undetermined.	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.

Jay Schwarz, Special 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

[FR Doc. 2021–27950 Filed 1–28–22; 8:45 am]

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Part XXV

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—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
538	Joint Employer	3142–AA21

NATIONAL LABOR RELATIONS BOARD (NLRB)

Proposed Rule Stage

538. • Joint Employer

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.

Timetable:

Action	Date	FR Cite
NPRM	02/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Farah Qureshi, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570, *Phone:* 202 273–1949, *Email: farah.qureshi@nlrb.gov*.

Roxanne Rothschild, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570, *Phone:* 202 273–2917, *Email: roxanne.rothschild@nlrb.gov*.

RIN: 3142–AA21

[FR Doc. 2021–27951 Filed 1–28–22; 8:45 am]

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Part XXVI

Nuclear Regulatory Commission

Semiannual Regulatory Agenda

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2021–0053]

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 since our complete Agenda was issued online at the Office of Management and Budget's website at *https://www.reginfo.gov* on June 11, 2021. This issuance of our Agenda contains 37 active and 17 long-term rulemaking activities: 3 are Economically Significant; 16 represent Other Significant agency priorities; 38 are Substantive, Nonsignificant rulemaking activities; and 4 are Administrative rulemaking activities. In addition, 4 rulemaking activities impact small entities. We are requesting comment on the rulemaking activities as identified in this Agenda. The NRC's last Agenda was issued for public comment on July 30, 2021.

DATES: Submit comments on rulemaking activities as identified in this Agenda by March 2, 2022.

ADDRESSES: Submit comments on any rulemaking activity in the Agenda by the date and methods specified in the **Federal Register** notice for the rulemaking activity. Comments received on rulemaking activities for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before the closure date specified in the **Federal Register** notice. You may submit comments on this Agenda through the Federal Rulemaking website by going to *https://www.regulations.gov* and searching for Docket ID NRC–2021–0053. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.*

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

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 and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0053 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–2021–0053.
- *Attention:* The Public Document Room (PDR), where you may examine, and order copies of public documents is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), 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 2021 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,'' and select ''Nuclear Regulatory Commission'' from drop down menu.

B. Submitting Comments

Please include Docket ID NRC–2021–0053 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into the NRC's Agencywide Documents Access and Management System (ADAMS). The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

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 any action that has occurred on a rulemaking activity since publication of our last

Agenda on July 30, 2021. Specifically, the information in this Agenda has been updated through September 9, 2021. The NRC provides additional information on planned rulemaking and petition for rulemaking activities, including priority and schedule, in 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. At this time, we do not have any rules that have a *significant* economic impact on a *substantial* number of small entities; therefore, we have not included any RFA Section 610 periodic reviews in this edition of the Agenda. 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 NRC Unified Agenda

The comment period on the NRC's last Agenda (published on July 30, 2021 (*https://www.govinfo.gov/content/pkg/FR-2021-07-30/pdf/2021-14887.pdf*)) closed on August 30, 2021. The NRC did not receive any public comment on its Spring 2021 Agenda.

Dated at Rockville, Maryland, this 9th day of September 2021.

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—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
539	Revision to the NRC's Acquisition Regulation (NRCAR) [NRC–2014–0033]	3150–AJ36
540	Items Containing Byproduct Material Incidental to Production [NRC–2015–0017]	3150–AJ54
541	Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC–2020–0031] **(Reg Plan Seq No. 177)**	3150–AK44

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

NUCLEAR REGULATORY COMMISSION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
542	Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024]	3150–AK58

NUCLEAR REGULATORY COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
543	Revision of Fee Schedules: Fee Recovery for FY 2021 [NRC–2018–0292]	3150–AK24

NUCLEAR REGULATORY COMMISSION (NRC)

Proposed Rule Stage

539. Revision to the NRC'S Acquisition Regulation (NRCAR) [NRC–2014–0033]

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 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	03/00/22	
Final Rule	03/00/23	

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

540. Items Containing Byproduct Material Incidental to Production [NRC–2015–0017]

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	04/00/22	
Final Rule	03/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alexa Sieracki, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–7509, *Email: alexa.sieracki@nrc.gov.*

RIN: 3150–AJ54

541. Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC–2020–0031]

Regulatory Plan: This entry is Seq. No. 177 in part II of this issue of the **Federal Register**.

RIN: 3150–AK44

NUCLEAR REGULATORY COMMISSION (NRC)

Long-Term Actions

542. Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024]

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	02/00/23	
Final Rule	05/00/23	

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

NUCLEAR REGULATORY COMMISSION (NRC)

Completed Actions

543. Revision of Fee Schedules: Fee Recovery for FY 2021 [NRC–2018–0292]

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 FY 2021 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	02/22/21	86 FR 10459
NPRM Comment Period End.	03/24/21	
Final Rule	06/16/21	86 FR 32146
Final Rule Effective.	08/16/21	
Final Rule Delay of Effective Date.	08/13/21	86 FR 44594
Final Rule Effective Date.	08/20/21	

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–AK24

[FR Doc. 2021–27962 Filed 1–28–22; 8:45 am]

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FEDERAL REGISTER

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Part XXVII

Securities and Exchange Commission

Semiannual Regulatory Agenda

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33–10995; 34–93258; IA–5885; IC–34393; File No. S7–13–21]

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) (Sep. 19, 1980). The items listed in the Regulatory Flexibility Agenda for Fall 2021 reflect only the priorities of the Chair of the U.S. Securities and Exchange Commission, and do not necessarily reflect the view and priorities of any individual Commissioner.

Information in the agenda was accurate on September 27, 2021, 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 2, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–13–21 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. S7–13–21. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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: October 4, 2021.

Vanessa A. Countryman,

Secretary.

DIVISION OF CORPORATION FINANCE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
544	Listing Standards for Recovery of Erroneously Awarded Compensation	3235–AK99
545	Pay Versus Performance	3235–AL00
546	Mandated Electronic Filings	3235–AM15
547	Rule 144 Holding Period and Form 144 Filings	3235–AM78

DIVISION OF CORPORATION FINANCE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
548	Universal Proxy	3235–AL84
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DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
550	Modernization of Rules and Forms for Compensatory Securities Offerings and Sales	3235–AM38

DIVISION OF INVESTMENT MANAGEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
551	Reporting of Proxy Votes on Executive Compensation and Other Matters	3235–AK67

DIVISION OF INVESTMENT MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
552	Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and ETFs; Fee Information in Investment Company Ads.	3235–AM52

DIVISION OF INVESTMENT MANAGEMENT—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
553	Amendments to the Custody Rules for Investment Advisers	3235–AM32
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DIVISION OF INVESTMENT MANAGEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
556	Amendments to Rule 17a–7 Under the Investment Company Act	3235–AM69

DIVISION OF TRADING AND MARKETS—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
557	Removal of References to Credit Ratings from Regulation M	3235–AL14

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Proposed Rule Stage

544. Listing Standards for Recovery of Erroneously Awarded Compensation

Legal Authority: Pub. L. 111–203, sec. 954; 15 U.S.C. 78j–4

Abstract: The Division is considering recommending that the Commission reopen the comment period on rules to implement section 954 of the Dodd Frank Act, which requires the Commission to adopt rules to direct national securities exchanges to prohibit the listing of securities of issuers that have not developed and implemented a policy providing for disclosure of the issuer's policy on incentive-based compensation and mandating the clawback of such compensation in certain circumstances.

Timetable:

Action	Date	FR Cite
NPRM	07/14/15	80 FR 41144
NPRM Comment Period End.	09/14/15	
NPRM Comment Period Reopened.	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Anne M. Krauskopf, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3500, *Email: krauskopfa@sec.gov.*

RIN: 3235–AK99

545. Pay Versus Performance

Legal Authority: Pub. L. 111–203, sec. 953(a); 15 U.S.C. 78c(b); 15 U.S.C. 78n; 15 U.S.C. 78w(a); 15 U.S.C. 78mm

Abstract: The Division is considering recommending that the Commission reopen the comment period on rules to implement section 953(a) of the Dodd-Frank Act, which added section 14(i) to the Exchange Act to require issuers to disclose information that shows the relationship between executive compensation actually paid and the financial performance of the issuer.

Timetable:

Action	Date	FR Cite
NPRM	05/07/15	80 FR 26329
NPRM Comment Period End.	07/06/15	

Action	Date	FR Cite
NPRM Comment Period Re-opened.	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Steven G. Hearne, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430, *Email: hearnes@sec.gov.*

RIN: 3235–AL00

546. Mandated Electronic Filings

Legal Authority: 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. 77s(a); 15 U.S.C. 78c; 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. 78p; 15 U.S.C. 78w(a); 15 U.S.C. 78ll

Abstract: The Division is considering recommending that the Commission propose amendments to Regulation S–T that would update the mandated electronic submissions requirements to include additional filings.

Timetable:

Action	Date	FR Cite
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Noel Sean Harrison, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3249, *Email: harrisons@sec.gov.*

RIN: 3235–AM15

547. Rule 144 Holding Period and Form 144 Filings

Legal Authority: 12 U.S.C. 5461 *et seq.;* 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. 77s(a); 15 U.S.C. 77z–2; 15 U.S.C. 77z–3; 15 U.S.C. 77sss; 15 U.S.C. 77sss(a); 15 U.S.C. 78a *et seq.;* 15 U.S.C. 78c; 15 U.S.C. 78c(b); 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. 78o(d); 15 U.S.C. 78t; 15 U.S.C. 78u–5; 15 U.S.C. 78w; 15 U.S.C. 78w(a); 15 U.S.C. 78ll; 15 U.S.C. 78ll(d); 15 U.S.C. 78mm; 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–8; 15 U.S.C. 80a–9; 15 U.S.C. 80a–10; 15 U.S.C. 80a–13; 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; 15 U.S.C. 7201 *et seq.;* 18 U.S.C, 1350; 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. 201(a) Pub. L. 112–106, 126 Stat. 313 (2012); sec. 401 Pub. L. 112–106, 126 Stat. 313 (2012); sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted;

. . .

Abstract: The Division is considering recommending that the Commission re-open the comment period on 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, and rule amendments to update the electronic filing requirements applicable to Form 144.

Timetable:

Action	Date	FR Cite
NPRM	01/19/21	86 FR 5063
NPRM Comment Period End.	03/22/21	
NPRM Comment Period Re-opened.	04/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Fieldsend, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430, *Email: fieldsendj@sec.gov.*

RIN: 3235–AM78

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Final Rule Stage

548. Universal Proxy

Legal Authority: 15 U.S.C. 78n; 15 U.S.C. 78w(a)

Abstract: The Division is considering recommending that the Commission adopt amendments to the proxy rules to allow a shareholder voting by proxy to choose among all duly-nominated candidates in a contested election of directors.

Timetable:

Action	Date	FR Cite
NPRM	11/10/16	81 FR 79122
NPRM Comment Period End.	01/09/17	
NPRM Comment Period Re-opened.	05/06/21	86 FR 24364
NPRM Comment Period Re-opened End.	06/07/21	
Final Action	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ted Yu, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3440, *Email: yut@sec.gov.*

RIN: 3235–AL84

549. Filing Fee Disclosure and Payment Methods Modernization

Legal Authority: 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 78c; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78o(d); 15 U.S.C. 78s(a); 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

Abstract: The Division is considering recommending that the Commission adopt amendments that would modernize filing fee disclosure and payment methods.

Timetable:

Action	Date	FR Cite
NPRM	12/27/19	84 FR 71580
NPRM Comment Period End.	02/25/20	
Final Action	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mark W. Green, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–0301, *Phone:* 202 551–3809, *Email: greenm@sec.gov.*

RIN: 3235–AL96

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Completed Actions

550. Modernization of Rules and Forms for Compensatory Securities Offerings and Sales

Legal Authority: 15 U.S.C. 77bb

Abstract: The Division is considering recommending that the Commission adopt rule amendments to Securities Act Rule 701, the exemption from registration for securities issued by non-reporting companies pursuant to compensatory arrangements, and Form S–8, the registration statement for compensatory offerings by reporting companies. This item is being withdrawn.

Timetable:

Action	Date	FR Cite
ANPRM	07/24/18	83 FR 34958

Action	Date	FR Cite
ANPRM Comment Period End.	09/24/18	
NPRM	12/11/20	85 FR 80232
NPRM Comment Period End.	02/09/21	
Withdrawn	09/30/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Anne M. Krauskopf, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3500, *Email: krauskopfa@sec.gov.*

RIN: 3235–AM38

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Proposed Rule Stage

551. Reporting of Proxy Votes on Executive Compensation and Other Matters

Legal Authority: 15 U.S.C. 78m; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 78x; 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. 80a–44; Pub. L. 111–203, sec. 951

Abstract: The Division is considering recommending that the Commission repropose rule amendments to implement section 951 of the Dodd-Frank Act and to enhance the information reported on Form N–PX. The Commission previously proposed amendments to rules and Form N–PX that would require institutional investment managers subject to section 13(f) of the Exchange Act to report how they voted on any shareholder vote on executive compensation or golden parachutes pursuant to sections 14A(a) and (b) of the Exchange Act.

Timetable:

Action	Date	FR Cite
NPRM	10/28/10	75 FR 66622
NPRM Comment Period End.	11/18/10	
NPRM	11/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Pamela Ellis, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3506, *Email: ellisp@sec.gov.*

RIN: 3235–AK67

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Final Rule Stage

552. Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and ETFS; Fee Information in Investment Company Ads

Legal Authority: 15 U.S.C. 77e ; 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s; 15 U.S.C. 78c(b); 15 U.S.C. 77f; 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78mm; 15 U.S.C. 80a–6; 15 U.S.C. 80a–8; 15 U.S.C. 80a–20; 15 U.S.C. 80a–24; 15 U.S.C. 80a–29; 15 U.S.C. 80a–37; 44 U.S.C. 3506; 44 U.S.C. 3507

Abstract: The Division is considering recommending that the Commission adopt a new streamlined shareholder report under the Investment Company Act of 1940. The Division is also considering recommending that the Commission adopt rule and form amendments to improve and modernize certain aspects of the current disclosure framework under the Investment Company Act.

Timetable:

Action	Date	FR Cite
NPRM	11/05/20	85 FR 70716
NPRM Comment Period End.	01/04/21	
Final Action	10/00/22	

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–AM52

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Long-Term Actions

553. Amendments to the Custody Rules for Investment Advisers

Legal Authority: 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–17)(f); 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(a); 15 U.S.C. 80a–30; 15 U.S.C. 80a–31; 15 U.S.C. 80a–36; 15 U.S.C. 80a–37; 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

Abstract: The Division is considering recommending that the Commission propose amendments to existing rules and/or propose 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
Next Action Undetermined.	To Be Determined	

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

554. Amendments to the Custody Rules for Investment Companies

Legal Authority: 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–17(f); 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–31; 15 U.S.C. 80a–36; 15 U.S.C. 80a–37; 15 U.S.C. 80a–37(a)

Abstract: The Division is considering recommending that the Commission propose amendments to rules concerning custody under the Investment Company Act of 1940.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Bradley Gude, Special Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–5590, *Email: gudeb@sec.gov.*

RIN: 3235–AM66

555. Amendments To Improve Fund Proxy System

Legal Authority: 15 U.S.C. 78m; 15 U.S.C. 78w; 15 U.S.C. 78mm; 15 U.S.C. 80a–2; 15 U.S.C. 80a–6; 15 U.S.C. 80a–20; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37

Abstract: The Division is considering recommending that the Commission propose rule and form amendments to address the fund proxy system and the unique challenges that funds as issuers may experience in seeking shareholder approvals.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amanda Wagner, Branch Chief, Investment Company Regulation Office, Securities and Exchange Commission, Division of Investment Management, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6762, *Email: wagnera@sec.gov.*

RIN: 3235–AM73

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Completed Actions

556. Amendments to Rule 17a–7 Under the Investment Company Act

Legal Authority: 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–10(f); 15 U.S.C. 80a–17(d); 15 U.S.C. 80a–37(a)

Abstract: The Division was considering recommending that the Commission propose amendments to rule 17a–7 under the Investment Company Act of 1940 concerning the exemption of certain purchase or sale transactions between an investment company and certain affiliated persons. This item is being withdrawn.

Timetable:

Action	Date	FR Cite
Withdrawn	09/30/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Adam Lovell, Senior Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6637, *Email: lovella@sec.gov.*

RIN: 3235–AM69

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Trading and Markets

Proposed Rule Stage

557. Removal of References to Credit Ratings From Regulation M

Legal Authority: Pub. L. 111–203, sec. 939A

Abstract: Section 939A of the Dodd Frank Act requires the Commission to remove certain references to credit ratings from its regulations and to substitute such standards of creditworthiness as the Commission determines to be appropriate. The Division is considering recommending that the Commission propose to eliminate the exceptions for investment grade non-convertible debt, non-convertible preferred, and asset-backed securities (as rated by at least one Nationally Recognized Statistical Rating Organization) from Rules 101 and 102 of Regulation M.

Timetable:

Action	Date	FR Cite
NPRM	05/06/11	76 FR 26550
NPRM Comment Period End.	07/05/11	
Final Action	01/08/14	79 FR 1522
Final Action Effective.	07/07/14	
NPRM	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Guidroz, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–6439, *Email: guidrozj@sec.gov.*

RIN: 3235–AL14

[FR Doc. 2021–27952 Filed 1–28–22; 8:45 am]

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FEDERAL REGISTER

Vol. 87 Monday,
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Part XXVIII

Surface Transportation Board

Semiannual Regulatory Agenda

SURFACE TRANSPORTATION BOARD

Surface Transportation Board

49 CFR Ch. X

[STB Ex Parte No. 536 (Sub-No. 51)]

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 2021.

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 2021 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: September 10, 2021.

By the Board, Martin J. Oberman.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2021–27963 Filed 1–28–22; 8:45 am]

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