REGULATORY INFORMATION SERVICE CENTER

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2022

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 2022 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 2022 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 2022 Unified Agenda contains the Regulatory Plans of 29 Federal agencies and 67 Federal agency regulatory agendas.

ADDRESSES: Regulatory Information Service Center (MV), General Services Administration, 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the agency contact listed for each entry. To provide comment on or to obtain further information about this publication, contact: Boris Arratia, Director, Regulatory Information Service Center (MV), General Services Administration, 1800 F Street NW, Washington, DC 20405, 703–795–0816. You may also send comments to us by email at: *RISC@gsa.gov*.

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Introduction to the Fall 2022 Regulatory Plan

Agency Regulatory Plans

Cabinet Departments

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

Other Executive Agencies

Corporation for National and Community Service
Environmental Protection Agency
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Science Foundation
Office of Personnel Management
Pension Benefit Guaranty Corporation
Small Business Administration
Social Security Administration
Department of Defense/General Services Administration/National Aeronautics and Space Administration (Federal Acquisition Regulation)

Independent Regulatory Agencies

Consumer Product Safety Commission
Federal Trade Commission
National Indian Gaming Commission
Nuclear Regulatory Commission

Regulatory Flexibility Agendas

Cabinet Departments

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury

Other Executive Agencies

Environmental Protection Agency
General Services Administration
Office of Personnel Management
Small Business Administration

Joint Authority

Department of Defense/General Services Administration/National Aeronautics and Space Administration (Federal Acquisition Regulation)

Independent Regulatory Agencies

Consumer Financial Protection Bureau
Consumer Product Safety Commission
Federal Communications Commission
Federal Reserve System
National Labor Relations Board
Nuclear Regulatory Commission
Securities and Exchange Commission
Surface Transportation Board

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; and (2) a description of the most important significant regulatory and deregulatory actions that the agency reasonably

expects to issue in proposed or final form during the upcoming fiscal year. This edition includes the regulatory plans of 29 agencies.

The Unified Agenda provides information about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983 and has been available online since 1995. The complete Unified Agenda is available to the public at *www.reginfo.gov*. The online Unified Agenda offers flexible search tools and access to the historic Unified Agenda database to1995. 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 2022 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 *http://reginfo.gov*.

The regulatory agendas for agencies not publishing Regulatory flexibility agendas are available to the public at *http://reginfo.gov*.

Cabinet Departments

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
Committee for Purchase From People Who Are Blind or Severely Disabled
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 the Intellectual Property Enforcement Coordinator
Office of Management and Budget
Office of National Drug Control Policy
Peace Corps
Pension Benefit Guaranty Corporation*
Railroad Retirement Board*
Social Security Administration*
U.S. Agency for Global Media
U.S. Commission on Civil Rights

Independent Agencies

Commodity Futures Trading Commission
Farm Credit Administration
Federal Deposit Insurance Corporation
Federal Energy Regulatory Commission
Federal Housing Finance Agency
Federal Maritime Commission
Federal Mine Safety and Health Review Commission
Federal Permitting Improvement Steering Council
Federal Trade Commission*
National Credit Union Administration
National Indian Gaming Commission*
National Transportation Safety Board
Postal Regulatory Commission

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.

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 20, 2022.

Boris Arratia,

Director.

Introduction to the Fall 2022 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 Fall 2022 Regulatory Plan. The regulatory plans and agendas submitted by agencies and included here offer a window into how the Administration plans to continue delivering on the President's agenda to advance economic prosperity and equity, tackle the climate crisis, advance public health, and much more to improve the lives of the American people. Agencies will also be continuing their work to implement landmark new legislation passed in 2022, including the implementation of the PACT Act, (Pub. L. 117–168); the Inflation Reduction Act, (Pub. L. 117–169); and the CHIPS and Science Act, (Pub. L. 117–167); as well as ongoing efforts to implement the Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), Pub. L. 117–58.

Department of Agriculture

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
1	Unfair Practices, Undue Preferences, and Harm to Competition Under the Packers and Stockyards Act (AMS–FTPP–21–0046).	0581–AE04	Proposed Rule.
2	Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045).	0581–AE05	Proposed Rule.
3	Poultry Growing Tournament Systems: Fairness and Related Concerns—Harm to Competition (AMS–FTPP–22–0046).	0581–AE18	Proposed Rule.
4	Transparency in Poultry Grower Contracting and Tournaments (AMS–FTPP–21–0044).	0581–AE03	Final Rule.
5	Organic Livestock and Poultry Standards (AMS–NOP–21–0073)	0581–AE06	Final Rule.
6	Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages.	0584–AE82	Proposed Rule.
7	Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans.	0584–AE88	Proposed Rule.
8	Community Eligibility Provision: Increasing Options for Schools	0584–AE93	Proposed Rule.
9	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions.	0584–AE94	Final Rule.
10	Voluntary Labeling of Products With ''Product of USA'' and Similar Statements	0583–AD87	Proposed Rule.
11	Labeling of Meat and Poultry Products Made Using Animal Cell Culture Technology.	0583–AD89	Proposed Rule.
12	Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed.	0583–AD56	Final Rule.
13	Prior Label Approval System: Expansion of Generic Label Approval	0583–AD78	Final Rule.

Department of Commerce

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
14	Section 1758 Technologies: Proposed Controls; Request for Comments	0694–AH80	Proposed Rule.

DEPARTMENT OF COMMERCE—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
15	The Imposition of Emerging Technology Export Controls on Instruments for the Automated Chemical Synthesis of Peptides.	0694–AI84	Proposed Rule.
16	Updates to Bayh-Dole Implementing Regulations	0693–AB66	Final Rule.
17	Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act **(Reg Plan Seq No. 17)**.	0648–BG11	Final Rule.
18	Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule	0648–BI88	Final Rule.
19	Setting and Adjusting Trademark Fees	0651–AD65	Proposed Rule.

DEPARTMENT OF DEFENSE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
20	Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities.	0790–AK86	Proposed Rule.
21	Cybersecurity Maturity Model Certification (CMMC) Program	0790–AL49	Proposed Rule.
22	Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DoD and in Equal Access to Information and Communication Technology Used by DoD.	0790–AJ04	Final Rule.
23	Definitions of Gold Star Family and Gold Star Survivor	0790–AL56	Final Rule.
24	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041).	0750–AK81	Proposed Rule.
25	Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043).	0750–AK84	Proposed Rule.
26	Defense Commercial Solutions Opening (DFARS Case 2022–D006)	0750–AL57	Proposed Rule.
27	Modification of Prize Authority For Advanced Technology Achievements (DFARS Case 2022–D014).	0750–AL65	Proposed Rule.
28	DFARS Buy American Act Requirements (DFARS Case 2022–D019)	0750–AL74	Proposed Rule.
29	Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055).	0750–AK16	Final Rule.
30	Restriction on Acquisition of Personal Protective Equipment and Certain Items From Non-Allied Foreign Nations (DFARS Case 2022–D009).	0750–AL60	Final Rule.
31	Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers.	0710–AA78	Proposed Rule.
32	Policy and Procedures for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408.	0710–AB22	Proposed Rule.
33	Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision	0710–AB34	Proposed Rule.
34	USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources.	0710–AB41	Proposed Rule.
35	Appendix C Procedures for the Protection of Historic Properties	0710–AB46	Proposed Rule.
36	Revised Definition of "Waters of the United States"—Rule 2	0710–AB47	Proposed Rule.
37	Credit Assistance for Water Resources Infrastructure Projects	0710–AB31	Final Rule.
38	Revised Definition of "Waters of the United States"—Rule 1	0710–AB40	Final Rule.
39	TRICARE Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals.	0720–AB73	Final Rule.
40	TRICARE Coverage of National Institute of Allergy and Infectious Disease Coronavirus Disease 2019 Clinical Trials.	0720–AB83	Final Rule.
41	Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic	0720–AB85	Final Rule.
42	Collection From Third Party Payers of Reasonable Charges for Healthcare Services; Amendment.	0720–AB87	Final Rule.

DEPARTMENT OF EDUCATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
43	Nondiscrimination on the Basis of Sex in Athletics Education Programs or Activities Receiving Federal Financial Assistance.	1870–AA19	Proposed Rule.
44	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.	1870–AA16	Final Rule.
45	Gainful Employment	1840–AD57	Proposed Rule.
46	Improving Income Driven Repayment	1840–AD81	Proposed Rule.

DEPARTMENT OF ENERGY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
47	Clean Energy Rule for New Federal Buildings and Major Renovations	1904–AB96	Proposed Rule.

DEPARTMENT OF ENERGY—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
48	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces.	1904–AD20	Final Rule.
49	Loan Guarantees for Clean Energy Projects	1901–AB59	Final Rule.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
50	Amendments to Civil Monetary Penalty Law Regarding Grants, Contracts, and Information Blocking.	0936–AA09	Final Rule.
51	Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities.	0945–AA15	Proposed Rule.
52	Nondiscrimination in Health Programs and Activities	0945–AA17	Final Rule.
53	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.
54	Establishment of Disincentives for Health Care Providers who Have Committed Information Blocking.	0955–AA05	Proposed Rule.
55	Patient Engagement, Information Sharing, and Public Health Interoperability	0955–AA06	Proposed Rule.
56	Medications for the Treatment of Opioid Use Disorder	0930–AA39	Proposed Rule.
57	Control of Communicable Diseases; Foreign Quarantine	0920–AA75	Final Rule.
58	World Trade Center Health Program; Addition of Uterine Cancer to the List of WTC-Related Health Conditions.	0920–AA81	Final Rule.
59	Biologics Regulation Modernization	0910–AI14	Proposed Rule.
60	Certifications Concerning Imported Foods	0910–AI66	Proposed Rule.
61	Use of Salt Substitutes to Reduce the Sodium Content in Standardized Foods	0910–AI72	Proposed Rule.
62	Tobacco Product Standard for Nicotine Level of Certain Tobacco Products	0910–AI76	Proposed Rule.
63	Mammography Quality Standards Act	0910–AH04	Final Rule.
64	Nonprescription Drug Product With an Additional Condition for Nonprescription Use.	0910–AH62	Final Rule.
65	Tobacco Product Standard for Characterizing Flavors in Cigars	0910–AI28	Final Rule.
66	Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water.	0910–AI49	Final Rule.
67	Tobacco Product Standard for Menthol in Cigarettes	0910–AI60	Final Rule.
68	Provider Nondiscrimination Requirements for Group Health Plans and Health Insurance Issuers in the Group and Individual Markets (CMS–9910).	0938–AU64	Proposed Rule.
69	Short-Term Limited Duration Insurance; Update (CMS–9904)	0938–AU67	Proposed Rule.
70	Assuring Access to Medicaid Services (CMS–2442)	0938–AU68	Proposed Rule.
71	Transitional Coverage for Emerging Technologies (CMS–3421)	0938–AU86	Proposed Rule.
72	Interoperability and Prior Authorization for MA Organizations, Medicaid and CHIP Managed Care and State Agencies, FFE QHP Issuers, MIPS Eligible Clinicians, Eligible Hospitals and CAHs (CMS–0057).	0938–AU87	Proposed Rule.
73	Medicare and Medicaid Program Integrity (CMS–6084)	0938–AU90	Proposed Rule.
74	Culturally Competent and Person-Centered Requirements to Increase Access to Care and Improve Quality for All (CMS–3418).	0938–AU91	Proposed Rule.
75	Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 (CMS–9902).	0938–AU93	Proposed Rule.
76	Coverage of Certain Preventive Services Under the Affordable Care Act (CMS–9903).	0938–AU94	Proposed Rule.
77	Contract Year 2024 Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Medicare Cost Plan Programs, Medicare Overpayment Provisions of the Affordable Care Act, and PACE (CMS–4201).	0938–AU96	Proposed Rule.
78	FY 2024 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS–1779).	0938–AV02	Proposed Rule.
79	Streamlining the Medicaid and CHIP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS–2421).	0938–AU00	Final Rule.
80	Foster Care Legal Representation	0970–AC89	Proposed Rule.
81	Separate Licensing Standards for Relative or Kinship Foster Family Homes	0970–AC91	Proposed Rule.
82	Unaccompanied Children Program Foundational Rule	0970–AC93	Proposed Rule.
83	Federal Licensing of Office of Refugee Resettlement Facilities	0970–AC94	Proposed Rule.
84	Strengthening TANF as a Safety Net and Work Program	0970–AC97	Proposed Rule.
85	Adoption and Foster Care Analysis and Reporting System (AFCARS)	0970–AC98	Proposed Rule.
86	Modification of the Tribal Non-Federal Share Requirement	0970–AC99	Proposed Rule.
87	ANA Non-Federal Share Emergency Waivers	0970–AC88	Final Rule.
88	Older Americans Act, Titles III, VI, and VII	0985–AA17	Proposed Rule.
89	Adult Protective Services Functions and Grant Programs	0985–AA18	Proposed Rule.

DEPARTMENT OF HOMELAND SECURITY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
90	Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status.	1615–AA67	Proposed Rule.
91	Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits.	1615–AC22	Proposed Rule.
92	Particular Social Group and Related Definitions and Interpretations for Asylum and Withholding of Removal.	1615–AC65	Proposed Rule.
93	U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.	1615–AC68	Proposed Rule.
94	Bars to Asylum Eligibility and Related Procedures	1615–AC69	Proposed Rule.
95	Modernization and Reform of the H–2 Programs	1615–AC76	Proposed Rule.
96	Citizenship and Naturalization and Other Related Flexibilities	1615–AC80	Proposed Rule.
97	Relief Under the Violence Against Women Act of 1994 and Subsequent Legislation.	1615–AC81	Proposed Rule.
98	Security Bars and Processing	1615–AC57	Final Rule.
99	Cybersecurity in the Marine Transportation System	1625–AC77	Proposed Rule.
100	MARPOL Annex VI; Prevention of Air Pollution From Ships	1625–AC78	Proposed Rule.
101	Advance Passenger Information System: Electronic Validation of Travel Documents.	1651–AB43	Proposed Rule.
102	Enhancing Surface Cyber Risk Management	1652–AA74	Prerule.
103	Vetting of Certain Surface Transportation Employees	1652–AA69	Proposed Rule.
104	Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA).	1652–AA70	Proposed Rule.
105	Flight Training Security Program	1652–AA35	Final Rule.
106	Immigration Bond Notifications and Electronic Service	1653–AA85	Final Rule.
107	Optional Alternative to the Physical Examination Associated With Employment Eligibility Verification (Form I–9).	1653–AA86	Final Rule.
108	National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form.	1660–AB06	Proposed Rule.
109	Individual Assistance Program Equity	1660–AB07	Proposed Rule.
110	Update of FEMA's Public Assistance Regulations	1660–AB09	Proposed Rule.
111	Updates to Floodplain Management and Protection of Wetlands Regulations	1660–AB12	Proposed Rule.
112	National Flood Insurance Program's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats.	1660–AB11	Long-Term Action.
113	Ammonium Nitrate Security Program	1670–AA00	Proposed Rule.
114	Chemical Facility Anti-Terrorism Standards (CFATS)	1670–AA01	Proposed Rule.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
115	24 CFR 5, 92, 93, 200, 247, 574, 576 578 Violence Against Women Act Reauthorization Act of 2022: Compliance in HUD Housing Programs (FR–6319).	2501–AE05	Proposed Rule.
116	24 CFR 50 Floodplain Management and Protection of Wetlands (FR–6272)	2506–AC54	Proposed Rule.

DEPARTMENT OF INTERIOR

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
117	Onshore Oil and Gas Operations—Annual Civil Penalties Inflation Adjustments	1004–AE91	Final Rule.

DEPARTMENT OF JUSTICE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
118	Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.	1120–AB79	Final Rule.
119	Implementation of the ADA Amendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973).	1190–AA73	Proposed Rule.
120	Nondiscrimination on the Basis of Disability by State and Local Governments: Medical Diagnostic Equipment.	1190–AA78	Proposed Rule.
121	Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments.	1190–AA79	Proposed Rule.
122	Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way.	1190–AA77	Long-Term Action.
123	Medications to Prevent Narcotic Opioid Withdrawal Symptoms	1117–AB73	Proposed Rule.

DEPARTMENT OF JUSTICE—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
124	Expansion of Induction of Buprenorphine via Telemedicine Encounter	1117–AB78	Proposed Rule.
125	Bars to Asylum Eligibility and Related Procedures	1125–AB12	Proposed Rule.
126	Particular Social Group and Related Definitions and Interpretations for Asylum and Withholding of Removal.	1125–AB13	Proposed Rule.
127	Procedures for Asylum and Withholding of Removal	1125–AB15	Proposed Rule.
128	Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure.	1125–AB18	Proposed Rule.
129	Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers.	1125–AB20	Final Rule.
130	Final Action on Proposal to Rescind Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption.	1250–AA09	Final Rule.
131	Pre-enforcement Notice and Conciliation Procedures	1250–AA14	Final Rule.
132	Form LM–10 Employer Report	1245–AA13	Final Rule.
133	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.	1235–AA39	Proposed Rule.
134	Nondisplacement of Qualified Workers Under Service Contracts	1235–AA42	Proposed Rule.
135	Updating the Davis-Bacon and Related Acts Regulations	1235–AA40	Final Rule.
136	Wagner-Peyser Act Staffing	1205–AC02	Final Rule.
137	Definition of the Term "Fiduciary"	1210–AC02	Proposed Rule.
138	Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021.	1210–AC11	Proposed Rule.
139	Respirable Crystalline Silica	1219–AB36	Proposed Rule.
140	Safety Program for Surface Mobile Equipment	1219–AB91	Final Rule.
141	Prevention of Workplace Violence in Health Care and Social Assistance	1218–AD08	Prerule.
142	Heat Illness Prevention in Outdoor and Indoor Work Settings	1218–AD39	Prerule.
143	Infectious Diseases	1218–AC46	Proposed Rule.
144	Occupational Exposure to COVID–19 in Healthcare Settings	1218–AD36	Final Rule.

DEPARTMENT OF TRANSPORTATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
145	+Enhancing Transparency of Airline Ancillary Service Fees	2105–AF10	Proposed Rule.
146	+Accessible Lavatories on Single-Aisle Aircraft: Part II	2105–AE89	Final Rule.
147	+Safety Management System for Parts 21, 91, 135 and 145	2120–AL60	Proposed Rule.
148	+National Electric Vehicle Infrastructure Formula Program	2125–AG10	Final Rule.
149	+Heavy Vehicle Automatic Emergency Braking	2127–AM36	Proposed Rule.
150	+Light Vehicle Automatic Emergency Braking (AEB) with Pedestrian AEB	2127–AM37	Proposed Rule.
151	+Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles.	2127–AM39	Proposed Rule.
152	+Light Vehicle CAFE Standards Beyond MY 2026	2127–AM55	Proposed Rule.
153	+Train Crew Staffing	2130–AC88	Proposed Rule.
154	+Pipeline Safety: Class Location Requirements	2137–AF29	Final Rule.

DEPARTMENT OF VETERANS AFFAIRS

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
155	Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure.	2900–AR10	Proposed Rule.
156	Pilot Veterans Services Organization Complementary and Integrative Health Self-Care Well-Being Center Grant Program.	2900–AR60	Proposed Rule.
157	Expanded Burial Benefits	2900–AR69	Proposed Rule.
158	Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure.	2900–AR75	Proposed Rule.
159	Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117–168.	2900–AR76	Proposed Rule.
160	Authorization of Electronic Notice in Claims Under Laws Administered by the Secretary of Veterans Affairs.	2900–AR77	Proposed Rule.
161	Modifying Copayments for Veterans at High Risk for Suicide	2900–AQ30	Final Rule.
162	Home Visits in Program of Comprehensive Assistance for Family Caregivers During COVID–19 National Emergency.	2900–AQ96	Final Rule.
163	Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program	2900–AR16	Final Rule.

DEPARTMENT OF VETERANS AFFAIRS—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
164	Copayment Exemption for Indian Veterans	2900–AR48	Final Rule.
165	Technical Revisions to Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service.	2900–AR73	Final Rule.
166	Procedural Updates for the PACT Act	2900–AR74	Final Rule.

ENVIRONMENTAL PROTECTION AGENCY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
167	Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020.	2060–AV84	Prerule.
168	PFAS-Related Designations as CERCLA Hazardous Substances	2050–AH25	Prerule.
169	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.	2060–AU37	Proposed Rule.
170	Amendments to the NSPS for GHG Emissions From New, Modified, & Reconstructed Stationary Sources: EGUs.	2060–AV09	Proposed Rule.
171	Emission Guidelines for Greenhouse Gas Emissions From Fossil Fuel-Fired Existing Electric Generating Units.	2060–AV10	Proposed Rule.
172	Volume Requirements for 2023 and Beyond Under the Renewable Fuel Standard Program.	2060–AV14	Proposed Rule.
173	New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review.	2060–AV16	Proposed Rule.
174	Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.	2060–AV20	Proposed Rule.
175	Revisions to the Air Emission Reporting Requirements (AERR)	2060–AV41	Proposed Rule.
176	Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years.	2060–AV45	Proposed Rule.
177	Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act.	2060–AV46	Proposed Rule.
178	Implementing Regulations Under 40 CFR Part 60 Subpart Ba Adoption and Submittal of State Plans for Designated Facilities.	2060–AV48	Proposed Rule.
179	Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles.	2060–AV49	Proposed Rule.
180	Reconsideration of the National Ambient Air Quality Standards for Particulate Matter.	2060–AV52	Proposed Rule.
181	NESHAP: Coal-and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review.	2060–AV53	Proposed Rule.
182	Methane Emissions and Waste Reduction Incentive Program and Revisions to the Mandatory Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems.	2060–AV83	Proposed Rule.
183	Fees for the Administration of the Toxic Substances Control Act (TSCA)	2070–AK64	Proposed Rule.
184	Methylene Chloride; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070–AK70	Proposed Rule.
185	1-Bromopropane; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070–AK73	Proposed Rule.
186	Carbon Tetrachloride; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070–AK82	Proposed Rule.
187	Trichloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070–AK83	Proposed Rule.
188	Perchloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070–AK84	Proposed Rule.
189	N-Methylpyrrolidone; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070–AK85	Proposed Rule.
190	Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA).	2070–AK90	Proposed Rule.
191	Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels.	2070–AK91	Proposed Rule.
192	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments.	2050–AH14	Proposed Rule.
193	Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives.	2050–AH24	Proposed Rule.
194	Listing of PFOA, PFOS, PFBS, and GenX as Resource Conservation and Recovery Act (RCRA) Hazardous Constituents.	2050–AH26	Proposed Rule.
195	Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units.	2050–AH27	Proposed Rule.
196	Reporting Requirements for Emissions From Animal Waste Under the Emergency Planning and Community Right-to-Know Act.	2050–AH28	Proposed Rule.
197	Federal Baseline Water Quality Standards for Indian Reservations	2040–AF62	Proposed Rule.

ENVIRONMENTAL PROTECTION AGENCY—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
198	Revised Definition of "Waters of the United States"	2040–AG13	Proposed Rule.
199	National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI) (.	2040–AG16	Proposed Rule.
200	Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights	2040–AG17	Proposed Rule.
201	Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation Rulemaking.	2040–AG18	Proposed Rule.
202	Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.	2040–AG23	Proposed Rule.
203	Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards.	2060–AU41	Final Rule.
204	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	Final Rule.
205	Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPs) Derived From Newer Technologies.	2070–AK54	Final Rule.
206	Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070–AK86	Final Rule.
207	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program.	2050–AH07	Final Rule.
208	Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Implementation of Closure.	2050–AH18	Final Rule.
209	Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention.	2050–AH22	Final Rule.
210	Clean Water Act Section 401: Water Quality Certification	2040–AG12	Final Rule.
211	Revised Definition of "Waters of the United States"	2040–AG19	Final Rule.

OFFICE OF PERSONNEL MANAGEMENT

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
212	Postal Service Health Benefits Program	3206–AO43	Final Rule.

PENSION BENEFIT GUARANTY CORPORATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
213	Actuarial Assumptions for Determining an Employer's Withdrawal Liability	1212–AB54	Proposed Rule.
214	Special Financial Assistance by PBGC	1212–AB53	Final Rule.

SOCIAL SECURITY ADMINISTRATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
215	Use of Electronic Payroll Data To Improve Program Administration	0960–AH88	Proposed Rule.
216	Omitting Food From In-Kind Support and Maintenance Calculations	0960–AI60	Proposed Rule.
217	Social Security Number Use in Government Records	0960–AI80	Proposed Rule.
218	Revised Medical Criteria for Evaluating Digestive Disorders and Skin Disorders	0960–AG65	Proposed Rule.

CONSUMER PRODUCT SAFETY COMMISSION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
219	Regulatory Options for Table Saws	3041–AC31	Final Rule.
220	Petition for Rulemaking to Eliminate Accessible Cords on Window Covering Products.	3041–AD31	Final Rule.
221	Furniture Tip Overs: Clothing Storage Units	3041–AD65	Final Rule.

NUCLEAR REGULATORY COMMISSION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
222	Enhanced Weapons for Spent Fuel Storage Installations and Transportation—Section 161A Authority [NRC–2015–0018].	3150–AJ55	Prerule.
223	American Society of Mechanical Engineers Code Cases and Update Frequency [NRC–2018–0291].	3150–AK23	Proposed Rule.
224	Risk-Informed, Technology Inclusive Regulatory Framework [NRC–2019–0062]	3150–AK31	Proposed Rule.
225	Renewing Nuclear Power Plant Operating Licenses—Environmental Review [NRC–2018–0296].	3150–AK32	Proposed Rule.
226	Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024]	3150–AK58	Proposed Rule.

DEPARTMENT OF AGRICULTURE

Statement of Regulatory Priorities

The U.S. Department of Agriculture's (USDA) fall 2022 Regulatory Agenda and Plan prioritizes initiatives fostering 21st century innovation like delivering broadband to farmers, ranchers, small businesses, and rural communities, addressing the effects of climate change such as drought and wildfire risks via climate-smart agriculture, expanding economic and market opportunity at home and abroad, job creation, improving access and delivery of our programs, particularly among historically underserved people and communities, and tackling food and nutrition insecurity while maintaining a safe food supply. Meanwhile, as we've responded to immediate needs during the past two years, USDA will continue to leverage our existing programs in response to those unforeseen domestic and international events and national emergencies that impact the American farm economy, schools, individual households, and our National Forests. Finally, we note that 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 2022, the USDA:

Risk Management Agency implemented the *Pandemic Cover Crop Program* that reduced crop insurance premiums for agricultural producers to help them maintain cover crop systems, an important conservation practice, while keeping producers eligible for a premium benefit under the program.

Food and Nutrition Service (FNS) implemented a final rule that establishes *Standards for Milk, Whole Grains, and Sodium* in its Child Nutrition Programs for school years 2022–2023 and 2023–2024 to give schools time to transition in the short term as FNS works to develop long-term nutrition standards—based on the newest Dietary Guidelines for America and extensive input from a wide range of partners—that will work for schools, families, and industry alike. In 2022, FNS also implemented streamlining requirements in its Child Nutrition Programs to simplify the application process, enhance monitoring requirements, offer more clarity on existing requirements, and provide more discretion at the State agency level to manage program operations.

In late 2022, USDA plans to announce Phase 2 of the *Emergency Relief Program* that provides assistance to producers who suffered crop losses due to qualifying disaster events, and the *Pandemic Assistance Revenue Program,* a new program that provides support for agricultural producers impacted by the COVID–19 pandemic. In addition, this action makes changes to the Coronavirus Food Assistance Program; the Emergency Conservation Program; the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program; the Livestock Forage Disaster Program; the Livestock Indemnity Program; the Noninsured Crop Disaster Assistance Program; and general payment eligibility provisions. For more information about this rule, see RIN 0503–AA75.

Outlined below are some of USDA's most important upcoming regulatory actions for 2023. These include efforts to restore and expand economic opportunity; address the climate crisis; and support agricultural markets that are free, open and promote competition. This Regulatory Plan also reflects USDA's continued commitments to ensuring a safe and nutritious food supply and animal welfare protections. As always, our Semiannual Regulatory Agenda contains information on a broad-spectrum of USDA's initiatives and upcoming regulatory actions.

Combat Climate Change To Support America's Working Lands, Natural Resources and Communities

Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska: In November 2021, USDA proposed 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. USDA is planning to finalize this proposed rule in a manner consistent with President Biden's Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,* directing review of Federal regulations issued during the previous four years that may conflict with protecting the environment, and in support of efforts to confront the climate crisis. For more information about this rule, see RIN 0596–AD51.

Foster an Equitable and Competitive Marketplace for All Agricultural Producers

Inclusive Competition and Market Integrity Rules Under the Packers and Stockyards Act: In October 2022, USDA proposed to revise regulations under the Packers and Stockyards (P&S) Act, prohibiting certain prejudices and disadvantages and unjustly discriminatory conduct against covered producers in the livestock, meat, and poultry markets. The proposal identified retaliatory practices that interfere with lawful communications, assertion of rights, and participation in associations, among other protected activities. The proposal also identified unlawfully deceptive practices that violate the P&S Act with respect to contract formation, contract performance, contract termination and contract refusal. The purpose of the final rule is to promote inclusive competition and market integrity in the livestock, meats, and poultry markets. For more information about this rule, see RIN 0581–AE05.

Transparency in Poultry Grower Contracting and Tournaments Systems: The final rule 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 final rule 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 final rule. A proposed rule was published in the **Federal Register** on June 8, 2022, 87 FR 48091. For more information about this rule, see RIN 0581–AE03.

Unfair Practices, Undue Preferences, and Harm to Competition under the Packers and Stockyards Act: The proposal would revise regulations under the Packers and Stockyards Act (Act), providing clarity regarding conduct that may violate the Act, including addressing harm to competition. For more information about this rule, see RIN 0581–AE04.

Poultry Growing Tournament Systems: Fairness and Related Concerns—Harm to Competition: The proposal seeks to address the use of poultry grower ranking systems, commonly known as ''tournaments'' in contract poultry production. Based on inputs from poultry growers, the proposal will seek to improve the market for poultry grower services. An advance notice of proposed rulemaking was published in the **Federal Register** on June 8, 2022, 87 FR 34814. For more information about this rule, see RIN 0581–AE18.

Provide All Americans Safe, Nutritious Food

USDA's Food Safety and Inspection Service (FSIS) continues to ensure that meat, poultry, and egg products are safe, wholesome, and properly marked, labeled, and packaged, and prohibits the distribution in-commerce of meat, poultry, and egg products that are adulterated or misbranded. One of FSIS' top priorities is to develop a more comprehensive and effective strategy to reduce Salmonella illnesses associated with poultry products. The agency is gathering the data and information necessary to support future action and move closer to the national target of a 25 percent reduction in Salmonella illnesses.

In addition, to enhance the safety of raw beef products, FSIS is strengthening its sampling and testing programs for shiga-toxin producing Escherichia coli in these products.

Moreover, 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 and undermine fair competition. FSIS intends to define 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.

Labeling of Meat or Poultry Products Comprised of or Containing Cultured Animal Cells; Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed; and Prior Label Approval System: Expansion of Generic Label Approval: FSIS will propose to establish new requirements for the labeling of meat or poultry products made using animal cell culture technology. FSIS also plans to finalize two other labeling 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 will reduce labeling costs for meat and poultry establishments, including small and very small establishments. The three rules will provide additional certainty about what is required for meat and poultry labeling while ensuring that consumers have accurate information about the food they buy. For more information about these rules, see RINs 0583–AD56, 0583–AD78, and 0583–AD89.

National Organic Program; Organic Livestock and Poultry Standards: The final rule would establish standards that support additional practice standards for organic livestock and poultry production. This final action would add provisions to the USDA organic regulations to address and clarify livestock and poultry living conditions (for example, outdoor access, housing environment and stocking densities), health care practices (for example physical alterations, administering medical treatment, euthanasia), and animal handling and transport to and during slaughter. For more information about this rule, see RIN 0581–AE06.

FNS' Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Guidelines forAmericans: The proposed revisions would revise meal patterns in the National School Lunch Program and School Breakfast Program to make school meals healthier and more consistent with the most recent Dietary Guidelines for Americans while reflecting the nutrient needs of children at risk for food insecurity. For more information about this rule, see RIN 0584–AE88.

FNS' Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages: Consistent with recommendations from the National Academies of Sciences, Engineering, and Medicine and the latest Dietary Guidelines for Americans, the proposal seeks to provide participants with greater choices in variety and food package sizes. For more information about this rule, see RIN 0584–AE82.

FNS' Community Eligibility Provision: Increasing Options for Schools: The Community Eligibility Provision (CEP) is an option for schools to offer no-cost meals to all students without the burden of collecting household applications. This provision saves local educational agencies time and money by streamlining paperwork and administrative requirements and facilitates low-income children's access to nutritious school meals. This rule would lower the minimum participation threshold, which would expand access to CEP and provide greater flexibility to States and schools that want to use additional State and local funds to provide no-cost meals to students. For more information about this rule, see RIN 0584–AE93.

USDA—AGRICULTURAL MARKETING SERVICE (AMS)

Proposed Rule Stage

1. Unfair Practices, Undue Preferences, and Harm to Competition Under the Packers and Stockyards Act (AMS–FTPP–21–0046) [0581–AE04]

Priority: Other Significant.
Legal Authority: 7 U.S.C. 181 to 229c
CFR Citation: 9 CFR 201.
Legal Deadline: None.
Abstract: This action proposes to revise regulations issued under the Packers and Stockyards Act (Act) (7

U.S.C.181 229c), providing clarity regarding conduct that may violate the Act. Revisions are intended to support market growth, assure fair trade practices and competition, and protect livestock and poultry growers and producers. The action addresses long-standing issues related to competitiveness and showings of harm or likely harm to competition.

Statement of Need: Revisions to regulations pertaining to the Packers and Stockyards Act (Act) clarify the types of conduct by packers, swine contractors, or live poultry dealers that the Agricultural Marketing Service (AMS) considers unfair practices or undue preferences and a violation of sections 202(a) or 202(b) of the Act.

Sections 202(a) and 202(b) of the P&S Act are broadly written to prohibit unjustly practices and undue preferences. Industry members have complained that the regulations effectuating the Act are too vague and do not provide adequate clarity about the types of conduct or action that are likely to violate the Act. This rule is needed to provide essential clarity about what would be considered violations of the Act.

Revisions to regulations pertaining to the Packers and Stockyards Act (Act) that would also clarify the scope of the Act are needed to establish what conduct or action, depending on their nature and the circumstances, violate the Act without a finding of harm or likely harm to competition or as they may relate to harm or likely harm to competition as such terms were contemplated under the Act. Such revisions reflect the Department of Agriculture's (USDA) longstanding position in this regard.

Summary of Legal Basis: The Packers and Stockyards Act (Act) authorizes AMS to determine if conduct within the poultry and livestock industries are unfair practices or undue preferences and, therefore a violation of the Act.

The Act provides USDA with the authority to assure fair competition and trade practices and to safeguard farmers against receiving less than the true market value of their livestock. Sections 202(c), (d), and (e) of the Act limit the application of those sections to acts or practices that have an adverse effect on competition, such as acts restraining commerce, creating a monopoly, or producing another type of antitrust injury. However, provisions in sections 202(a) and (b) restrict practices that are deceptive, unfair, unjust, undue, and unreasonable; terms that are understood to encompass more than anticompetitive conduct. USDA's position is that Congress did not intend application of sections 202(a) and (b) to be limited to instances in which there is harm to competition.

Alternatives: USDA considered doing nothing. However, courts are not unanimous in their findings. Further, several courts disagree with USDA's position. Lack of clarity hinders the agency's ability to consistently administer and enforce the Act.

Anticipated Cost and Benefits: USDA estimate annual costs related to this rule of $9 million for the first five years, decreasing in subsequent years, for total ten-year costs of $66 million. We believe the primary benefit of the proposed regulation is the increased ability to protect producers and growers through enforcement of the Act for violations of section 202(a) and/or (b) that do not result in harm, or a likelihood of harm, to competition.

Risks: Courts have recognized that the proper analysis of alleged violations of these two sections depends on the facts of each case. However, four courts of appeals have disagreed with USDA's interpretation of the Act and have concluded that plaintiffs could not prove their claims under those sections without proving harm to competition or likely harm to competition. There is a risk if future legal challenge of USDA interpretation of sections 202(c), (d), and (e) of the Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

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:* 202 720–219.

RIN: 0581–AE04

USDA—AMS

2. Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045) [0581–AE05]

Priority: Other Significant.

Legal Authority: 7 U.S.C. 181 to 229c

CFR Citation: 9 CFR 201.

Legal Deadline: None.

Abstract: This final rule would supplement a recent revision to regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C.181 229c) that provided criteria for the Secretary to consider when determining whether certain conduct or action by packers, swine contractors, or live poultry dealers is unduly or unreasonably or advantageous. Supplemental amendments clarify the conduct the Department considers unfair, preferential unjustly discriminatory, or deceptive and a violation of sections 202(a) and (b) of the Act. The rule also clarifies 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) clarify the types of conduct by packers, swine contractors, or live poultry dealers that the Agricultural Marketing Service (AMS) considers unfair, unjustly discriminatory, or deceptive and a violation of section 202(a) of the Act, regardless of whether such action harms or is likely to harm competition. The rule also clarifies the criteria and/or types of conduct that would be considered unduly or unreasonably preferential, advantageous, prejudicial, or disadvantageous and a violation of section 202(b) of the Act.

Sections 202(a) and 202(b) of the P&S Act are broadly written to prohibit unjustly practices and undue preferences and prejudices. Industry members have complained that the regulations effectuating the Act are too vague and do not provide adequate clarity about the types of conduct or action that are likely to violate the Act. This rule is needed to provide essential clarity about what would be considered violations of the Act, regardless of whether such violations harm or are likely to harm competition.

Summary of Legal Basis: The Packers and Stockyards Act (Act) authorizes AMS to determine if conduct within the poultry and livestock industries are unfair, unjustly discriminatory, or deceptive and, therefore a violation of the Act.

Alternatives: AMS considered taking no further action, allowing 100 years of case law to determine precedent in making determinations about whether certain behaviors violate the Act. AMS also considered revisiting the withdrawn 2016 rulemaking approach that would have identified criteria with which to determine whether certain behaviors violate the Act.

Anticipated Cost and Benefits: USDA estimates first-year costs associated with this rule to be $517 thousand, with decreased costs each year thereafter, resulting in a ten-year total cost of $2.88

million. AMS expects this rule to benefit all segments of the industry, providing greater clarity about what would be considered violations of the Act. AMS expects this rule, coupled with a concurrent rule on the scope of the Act, to strengthen enforcement of the Act, resulting in fairer and more competitive markets for producers and poultry growers.

Risks: Industry is divided about adding lists or examples of specific prohibited conduct to the regulations. Some argue such lists would inhibit freedom to forge contracts that fit individual situations, while others contend greater specificity is required so that affected parties can more readily identify violative behavior. Industry is also split on the question of whether identified prohibited behaviors must be found to harm or likely harm competition to be considered violations of the Act. AMS expects to resolve some of the controversy by being proactive and transparent with the industry to allow for critical discussions and decisions on the rule.

Timetable:

Action	Date	FR Cite
NPRM	10/03/22	87 FR 60010
NPRM Comment Period Extended.	11/30/22	87 FR 73507
NPRM Comment Period End.	12/02/22	
NPRM Comment Period Extended End.	01/17/23	
Final Rule	04/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0237, *Phone:* 202 720–0219.

RIN: 0581–AE05

USDA—AMS

3. Poultry Growing Tournament Systems: Fairness and Related Concerns—Harm to Competition (AMS–FTPP–22–0046) [0581–AE18]

Priority: Other Significant.

Legal Authority: 7 U.S.C. 181 *et seq.,* 192

CFR Citation: 9 CFR 201.

Legal Deadline: None.

Abstract: This action seeks comments on proposed amendments to regulations that promote transparency in the poultry grower ranking systems, more commonly known as tournaments, in contract poultry production. Proposed amendments serve to remove obstacles to fair contracting.

Statement of Need: Executive Order 14036 Promoting Competition in the American Economy, directs the Secretary of Agriculture to address unfair treatment of farmers and improve conditions of competition in their markets by considering rulemaking to address, among other things, certain practices related to poultry grower ranking systems. AMS is responding to numerous complaints from poultry growers about the use of tournament systems and recognizes that measures beyond disclosure and transparency may be necessary to address those practices, given the economic power imbalances and competition concerns that exist in today's markets. Responses to requests for comment have helped AMS tailor further policy development and rulemaking under the Packers and Stockyards Act, as amended, to address, through specific prohibitions, limits, and/or conventionalities, potential unfairness that may arise from the use of the tournament contracts in the poultry sector.

Summary of Legal Basis: Sections 202(a) and 202(b) of the Packers and Stockyards Act prohibits unfair practices and undue preferences.

Alternatives: The alternative considered is to continue with other efforts already underway to enhance fair and competitive markets in poultry. These include: (1) a separate rulemaking, under RIN 0581–AE03, in which USDA proposed a series of new transparency measures designed to address many grower concerns relating to deception and lack of access to critical information in connection with poultry contracting and tournament systems; (2) under the American Rescue Plan Act's provision to enhance supply chain resiliency, investing directly into the creation of new, and expansion of existing, local and regional meat and poultry processing enterprises; and (3) in partnership with DOJ, through such means as a newly established joint complaints and tips portal, *www.farmerfairness.gov*, enhancing enforcement activities including responding in a more coordinated manner to a range of competition and fair markets concerns.

Anticipated Cost and Benefits: AMS is at an early stage of evaluating the costs and benefits of the contemplated regulatory interventions. However, expected benefits include greater certainty, investment, and supply of poultry products, greater returns to poultry growers and enhanced rural economic welfare, and expanded competitive choices in the poultry sector. Expected costs may include compliance costs, such as certain contract change costs.

Risks: Agricultural production is an inherently risky endeavor, and returns have some level of risk no matter the marketing channel or structural arrangement. Tournament systems do not insulate growers from the financial risk, liquidity risk, the risk from incomplete contracts, and the lack of control over inputs and production variables. Tournaments also introduce new categories of risks to growers: Group composition risk and added risks of settlement-related deception or fraud. The risks of deception or fraud as discussed above include the inability of growers to verify the accuracy of payments, and to detect discrimination or retaliation.

Timetable:

Action	Date	FR Cite
ANPRM: Request for Comments.	06/08/22	87 FR 34814
ANPRM Comment Period End.	09/06/22	
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Stephen Slinsky, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 901 287–9719, *Email: stephen.slinsky@usda.gov.*

RIN: 0581–AE18

USDA—AMS

Final Rule Stage

4. Transparency in Poultry Grower Contracting and Tournaments (AMS–FTPP–21–0044) [0581–AE03]

Priority: Other Significant.

Legal Authority: 7 U.S.C. 181 to 229c

CFR Citation: 9 CFR 201.

Legal Deadline: None.

Abstract: This action amends regulations issued under the Packers and Stockyards Act (P&S Act), revising the list of disclosures and information live poultry dealers must furnish to poultry growers and sellers with whom dealers make poultry growing arrangements. The rule establishes parameters for the use of poultry grower ranking systems by dealers to determine settlement payments for poultry growers. Amendments are intended to

promote transparency in poultry production contracting and to give poultry growers relevant information with which to make business decisions.

Statement of Need: 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	06/08/22	87 FR 34980
NPRM Comment Period End.	08/08/22	
Notice of Reopening of Comment Period.	08/08/22	87 FR 48091
NPRM Comment Period End.	08/23/22	
Final Rule	05/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0237, *Phone:* 202 720–0219.

RIN: 0581–AE03

USDA—AMS

5. Organic Livestock and Poultry Standards (AMS–NOP–21–0073) [0581–AE06]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 7 U.S.C. 6501 to 7 U.S.C. 6524

CFR Citation: 7 CFR 205.

Legal Deadline: None.

Abstract: This action establishes additional practice standards for organic livestock and poultry production. The rule amends the USDA organic regulations related to: livestock and poultry living conditions (for example, outdoor access, housing environment, and stocking densities); animal health care (for example, physical alterations, administering medical treatment, and euthanasia); animal transport; and slaughter.

Statement of Need: The Organic Livestock and Poultry Standards (OLPS) 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 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 rule. AMS presents two compliance date alternatives in the rule that would affect the costs and benefits of the rule. Additionally, AMS discusses alternatives to specific policies included in the rule, including alternative indoor and outdoor space requirements, and non-regulatory alternatives, including consumer education or no rule.

Anticipated Cost and Benefits: AMS assumes no costs or benefits are accumulated for clarifying and codifying existing practices. However, AMS does expect costs and benefits to occur for organic broiler production through increased indoor space and for organic broilers and in egg production through increased outdoor access for layers.

AMS estimates that the discounted costs for layer operations would range between $3.6 million and $8.4 million annually. To monetize the benefits of this rule, AMS used research that measured consumers' willingness-to-pay for outdoor access at a premium of between $0.16 and $0.25 per dozen eggs, controlling for other factors, including the organic label. Based on this, AMS estimates the annually discounted benefits falling between $11.6 million to $27.1 million.

AMS estimates that the total annual discounted costs for broiler compliance would be between $5.7 million and $6.3 million. The benefits for broilers are calculated using a willingness-to-pay at a premium of $0.34/lb. With this willingness-to-pay, the annual discounted benefits range between $97 million and $107 million.

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: This rule is similar to the rule published on January 19, 2017 (82 FR 7042). That rule was subsequently withdrawn and never became effective. The USDA continues to face two legal challenges related to the withdrawal of that rule. 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.

Publishing a new proposed rule indicated that the USDA is taking new steps to advance the regulations. This has been viewed favorably by some, although others would prefer reinstating the January 2017 rule without the associated steps required to finalize a new rule.

Timetable:

Action	Date	FR Cite
NPRM	08/09/22	87 FR 48562
NPRM Comment Period End.	10/11/22	
Comment Period Extended.	10/11/22	87 FR 61268
Comment Period Extended End.	11/10/22	
Final Rule	04/00/23	

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—FOOD AND NUTRITION SERVICE (FNS)

Proposed Rule Stage

6. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages [0584–AE82]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1786, sec. 17(f)(11)(C)

CFR Citation: 7 CFR 246.10.

Legal Deadline: None.

Abstract: This proposed rulemaking would amend regulations governing the WIC food packages to: (1) incorporate recommendations of the National Academies of Science, Engineering, and Medicine 2017 scientific report, Review of WIC Food Packages: Improving Balance and Choice; (2) align with 2020 Dietary Guidelines for Americans; and (3) make other administrative revisions or clarifications to food package requirements.

Statement of Need: The National Academies of Sciences, Engineering, and Medicine (NASEM) issued a 2017 report with recommendations to align the WIC food packages with the available nutrition science and to reflect the supplemental nature of the Program. In December 2020, the USDA and the Department of Health and Human Services released the 2020–2025 Dietary Guidelines for Americans (DGAs). USDA FNS will propose rulemaking to incorporate NASEM recommendations and align the food package with the latest DGAs.

Summary of Legal Basis: 42 U.S.C. 1786, sec. 17(f)(11)(C).

Alternatives: N/A.

Anticipated Cost and Benefits: This is discussed in the Regulatory Impact Analysis which was published on November 21, 2022 as an appendix to the rule, available at 87 FR 71090.

Risks: N/A.

Timetable:

Action	Date	FR Cite
NPRM	11/21/22	87 FR 71090
NPRM Comment Period End.	02/21/23	

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: 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–AE82

USDA—FNS

7. Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans [0584–AE88]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1758, sec. 9(f)(1)

CFR Citation: 7 CFR 210.10; 7 CFR 210.11; 7 CFR 215.7a; 7 CFR 220.8; 7 CFR 226.20; . . .

Legal Deadline: None.

Abstract: This rule will propose long-term school nutrition standards based on the Dietary Guidelines for Americans, 2020–2025, and feedback from child nutrition program stakeholders. The proposed revisions are expected to make school meals more nutritious and more consistent with the goals of the most recent Dietary Guidelines, as required by statute. In addition, FNS is merging ''Buy American Provision in the National School Lunch and School Breakfast Programs'' (0584–AE91),which was listed as a long-term rule on the Fall 2021 Regulatory Agenda, with this rule (0584–AE88). When developing this proposed rule, FNS will consider comments submitted in response to the February 2022 final rule, ''Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium'' (0584–AE81). FNS will also consider comments submitted in response to the August 2021 ''Request for Information: Buy American in the National School Lunch Program and School Breakfast Program,'' including feedback on how FNS can better support local schools as they strive to purchase domestic foods and food products.

Statement of Need: The proposed revisions are needed to make school meals more nutritious and more consistent with the goals of the most recent Dietary Guidelines, as required by statute.

Summary of Legal Basis: 42 U.S.C. 1758, sec. 9(f)(1).

Alternatives: Alternatives not identified to date.

Anticipated Cost and Benefits: These would be addressed in the Regulatory Impact Analysis for the rule.

Risks: None known at this time.

Timetable:

Action	Date	FR Cite
NPRM	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State.

Federalism: Undetermined.

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.*

Related RIN: Merged with 0584–AE913

RIN: 0584–AE88

USDA—FNS

8. • Community Eligibility Provision: Increasing Options for Schools [0584–AE93]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 1759a(a)(1)(F)

CFR Citation: 7 CFR 245.9.

Legal Deadline: None.

Abstract: This proposed rule would lower the minimum participation threshold for Community Eligibility Provision (CEP) elections. Currently, to elect CEP, a local educational agency (LEA), group of schools, or individual school must meet a minimum identified student percentage threshold of 40 percent. This rule would lower the minimum participation threshold, which would provide an additional option for LEAs and schools to receive special assistance payments as Federal reimbursement for meals served to students, in lieu of taking applications.

Statement of Need: The Community Eligibility Provision (CEP) is an option for schools to offer no-cost meals to all students without the burden of collecting household applications. This provision saves local educational agencies time and money by streamlining paperwork and administrative requirements and facilitates low-income children's access to nutritious school meals. Lowering the participation threshold expands access to CEP and provides greater flexibility to States and schools that want to use additional State and local funds to provide no-cost meals to students.

Summary of Legal Basis: Per the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)(F)(viii)(II)): ''For each school year beginning on or after July 1, 2014, the Secretary may use a threshold that is less than 40 percent.''

Alternatives: None.

Anticipated Cost and Benefits: Expanding access to CEP to additional schools is not expected to measurably increase costs to the Federal government due to the cost sharing aspect. FNS anticipates that this provision could impact State and/or local costs. FNS expects that local educational agencies that choose to elect CEP at lower eligibility levels will have increased State and/or local obligations. A cost/benefit analysis will be addressed in the economic analysis section to be included within the rule.

Risks: No risks have been identified at this time.

Timetable:

Action	Date	FR Cite
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Federal, Local, State, Tribal.

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–AE93

USDA—FNS

Final Rule Stage

9. • Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions [0584–AE94]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Pub. L. 117–129

CFR Citation: 7 CFR 246.

Legal Deadline: None.

Abstract: This rule would amend 7 CFR 246 to codify the provisions of the Access to Baby Formula Act of 2022 (ABFA). ABFA amends Section 17 of the Child Nutrition Act of 1966 to (1) add requirements to State agency infant formula cost containment contracts; and (2) establish waiver authority to the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting WIC. FNS would make other related technical corrections and updates as necessary to modernize applicable WIC Program regulations.

Statement of Need: This rule would codify requirements for State agencies to include language in their WIC infant formula rebate contracts that describes remedies in the event of an infant formula recall, including how an infant formula manufacturer would protect against disruption to program participants in the State (*i.e.,* ensure that WIC participants can purchase formula using WIC benefits). The rule would also codify permanent expanded waiver authority to aid participants in obtaining and redeeming WIC benefits during certain emergencies, disasters, and supply chain disruptions impacting WIC. Finally, the rule would make other miscellaneous technical corrections and updates as necessary to update WIC regulations.

Summary of Legal Basis: The Access to Baby Formula Act of 2022 (ABFA, Pub. L. 117–129) amends section 17 of the Child Nutrition Act of 1966 (Pub. L. 89–642).

Alternatives: No alternatives have been identified at this time.

Anticipated Cost and Benefits: The costs associated with implementing the rule's regulatory requirements are not expected to significantly add to current program costs at the State and local levels.

Risks: No risks have been identified at this time.

Timetable:

Action	Date	FR Cite
Final Rule With Comment.	05/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State.

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–AE94

USDA—FOOD SAFETY AND INSPECTION SERVICE (FSIS)

Proposed Rule Stage

10. Voluntary Labeling of Products With ''Product of USA'' and Similar Statements [0583–AD87]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.;* 21 U.S.C. 1031 *et seq.*

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 products 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 products and that the current labeling policy may no longer meet consumer expectations of what the Product of USA claim signifies. In 2021, FSIS received another petition related to its Product of USA policy. The Agency wants to ensure that any changes to its current policy are accomplished by an open and transparent process. Therefore, FSIS commissioned a consumer survey and decided that, instead of changing the Policy Book entry, it would initiate rulemaking to define the conditions under which the labeling of FSIS-regulated products would be permitted to bear voluntary statements indicating that the product is of U.S. origin.

Summary of Legal Basis: Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695, at 607), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470, at 457), and the Egg Products Inspection Act (21 U.S.C. 1031–1056, at 1036) (the Acts), the labels of meat, poultry, and egg products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products can enter commerce. The Acts prohibit the sale or offer for sale by any person, firm, or corporation of any article in commerce under any name or other marking or labeling that is false or misleading or in any container of a misleading form or size (21 U.S.C. 607(d); 21 U.S.C. 457(c)). The Acts also prohibit the distribution in commerce of meat or poultry products that are adulterated or misbranded. The FMIA and PPIA give FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Acts (21 U.S.C. 621 and 463(b)).

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 FSIS-regulated products may be labeled as Product of USA only if significant ingredients are of domestic origin and; (2) to amend the FSIS Policy Book to provide that any FSIS regulated 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 animals that have been born, raised, and slaughtered in the United States. FSIS is conducting a comprehensive review of origin labeling claims 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 as well as producers by providing them more specific information on what Product of USA means for FSIS-regulated products.

Risks: N/A.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Melissa Hammar, Acting Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–2096, *Email: melissa.hammar@usda.gov.*

RIN: 0583–AD87

USDA—FSIS

11. Labeling of Meat and Poultry Products Made Using Animal Cell Culture Technology [0583–AD89]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 451 *et seq.*

CFR Citation: 9 CFR ch. III.

Legal Deadline: None.

Abstract: This notice of proposed rulemaking seeks public comments to inform future Food Safety and Inspection Service (FSIS) regulations for the labeling of meat and poultry products made using animal cell culture technology.

Statement of Need: Many companies, both domestic and foreign, are currently developing cultured products derived from the cells of food animals amenable to the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) (cattle, sheep, swine, goats, and fish of the order Siluriformes, *e.g.,* catfish) or the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) (chickens, turkeys, ducks, geese, guineas, ratites, and squabs). Human food products derived from these species fall under FSIS jurisdiction.

Summary of Legal Basis: The Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) require that meat and poultry products be truthfully and accurately labeled and that their labels be pre-approved by FSIS (21 U.S.C. 607(d) and 457(c), respectively), prior to movement in commerce. FSIS issues labeling regulations and reviews and approves meat and poultry product labels pursuant to these statutory labeling requirements. Food products made using animal cell culture technology and derived from the cells of livestock subject to the FMIA or the PPIA are subject to the labeling (and other applicable) requirements of these Acts and the regulations issued thereunder.

Alternatives: FSIS will consider at least three alternatives for the rule: (1) Adopting a naming convention that is preferred by cellular agriculture industry; (2) Adopting a naming convention that is preferred by traditional agriculture industry; (3) Adopting a naming convention that is preferred by consumers groups.

Anticipated Cost and Benefits: This proposed rule would benefit the public by providing truthful and accurate labeling of meat and poultry products produced using animal cell culture technology.

FSIS expects its costs to be minimal and that current FSIS staffing would meet sketch approval needs.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	09/03/21	86 FR 49491
ANPRM Comment Period End.	12/02/21	
NPRM	08/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Melissa Hammar, Acting Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–2096, *Email: melissa.hammar@usda.gov.*

RIN: 0583–AD89

USDA—FSIS

Final Rule Stage

12. Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed [0583–AD56]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.*

CFR Citation: 9 CFR 317; 9 CFR 381; 9 CFR 413.

Legal Deadline: None.

Abstract: Consistent with the changes that the Food and Drug Administration (FDA) finalized, the Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to update and revise the nutrition labeling requirements for meat and poultry products to reflect recent scientific research and dietary recommendations and to improve the presentation of nutrition information to assist consumers in maintaining healthy dietary practices.

Statement of Need: On May 27, 2016, the Food and Drug Administration (FDA) published two final rules: (1) ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels'' (81 FR 33742); and (2) ''Food Labeling: Serving Sizes of Foods that Can Reasonably be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments'' (81 FR 34000). FDA finalized these rules to update the Nutrition Facts label to reflect new nutrition and public health research, to reflect recent dietary recommendations from expert groups, and to improve the presentation of nutrition information to help consumers make more informed choices and maintain healthy dietary practices. FSIS has reviewed FDA's analysis and, to ensure that nutrition information is presented consistently across the food supply, FSIS is amending the nutrition labeling regulations for meat and poultry products to parallel, to the extent possible, FDA's regulations. This approach will help increase clarity of information for consumers and will improve efficiency in the marketplace.

Summary of Legal Basis: Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695, at 607), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470, at 457), and the Egg Products Inspection Act (21 U.S.C. 1031–1056, at 1036) (the Acts), the labels of meat, poultry, and egg products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products can enter commerce. The Acts prohibit the sale or offer for sale by any person, firm, or corporation of any article in commerce under any name or other marking or labeling that is false or misleading or in any container of a misleading form or size (21 U.S.C. 607(d); 21 U.S.C. 457(c)). The Acts also prohibit the distribution in commerce of meat or poultry products that are adulterated or misbranded. The FMIA and PPIA give FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Acts (21 U.S.C. 621 and 463(b)).

To prevent meat and poultry products from being misbranded, the meat and poultry product inspection regulations require that the labels of meat and poultry products include specific information, such as nutrition labels, and that such information be displayed as prescribed in the regulations (9 CFR part 317 and part 381). The nutrition labeling requirements for meat and meat food products are in 9 CFR 317.300–317.400, and the nutrition labeling requirements for poultry products are in 9 CFR 381.400–381.500.

Alternatives: FSIS considered three alternatives for the final rule: (1.) No action; (2.) A 24-month compliance period for large businesses and a 36-month compliance period for small businesses (as proposed); or (3.) A 12-month compliance period for large businesses and a 24-month compliance period for small businesses for faster label harmonization.

Anticipated Cost and Benefits: These regulations are expected to benefit consumers by increasing and improving dietary information available in the market. Firms will incur a one-time cost for relabeling, recordkeeping costs, and costs associated with voluntary reformulation. Many firms have voluntarily begun using the FDA format, which will reduce costs.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/19/17	82 FR 6732
NPRM Comment Period End.	04/19/17	
Final Action	06/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Melissa Hammar, Acting Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–2096, *Email: melissa.hammar@usda.gov.*

RIN: 0583–AD56

USDA—FSIS

13. Prior Label Approval System: Expansion of Generic Label Approval [0583–AD78]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.;* 21 U.S.C. 1031 *et seq.*

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, poultry, and egg 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, poultry, and egg product labeling.

Summary of Legal Basis: The Acts direct the Secretary of Agriculture to maintain meat, poultry, and egg 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 and the Egg Products Inspection Act contain similar language in section 21 U.S.C. 457(c) and 1036(b), respectively.

Alternatives: FSIS considered three alternatives for the 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' 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 will 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.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	09/14/20	85 FR 56538
NPRM Comment Period End.	11/13/20	
Final Rule	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Melissa Hammar, Acting Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 720–2096, *Email: melissa.hammar@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, NOAAmay 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 ther 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)

Proposed Rule Stage

14. Section 1758 Technologies: Proposed Controls; Request for Comments [0694–AH80]

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), Department of Commerce, which 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), is considering imposing controls pursuant to Section 1758. 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 (Public Law 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	02/00/23	

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

15. The Imposition of Emerging Technology Export Controls on Instruments for the Automated Chemical Synthesis of Peptides [0694–AI84]

Priority: Other Significant.

Legal Authority: 50 U.S.C. 4817(a)(2)(C)

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The Bureau of Industry and Security (BIS) has identified instruments for the automated synthesis of peptides (automated peptide synthesizers) for evaluation according to the criteria in section 1758 of the Export Control Reform Act of 2018 (ECRA) pertaining to emerging and foundational technologies. On September 13, 2022, BIS published an advance notice of proposed rulemaking (87 FR 55930) that requested public comments on the potential uses of this technology, particularly with respect to its impact on U.S. national security (*e.g.,* whether such technology could provide the United States, or any of its adversaries, with a qualitative military or intelligence advantage). Taking into consideration the public comments on BIS's September 2022 ANPRM, this rule proposes to implement export controls on certain automated peptide synthesizers, consistent with the criteria in section 1758 of ECRA.

Statement of Need: Recent advances in peptide synthesis technology and instrumentation have increased both the speed of peptide synthesis and the length of peptide products, including peptides and proteins greater than 100 amino acids in length. Most protein toxins that are controlled under Export Control Classification Number (ECCN) 1C351 on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR) are over 100 amino acids in length and have an average length of 300 amino acids (with the notable exception of conotoxins, which range between 10–100 amino acids in length). Consequently, absent the imposition of additional controls on the export, reexport or transfer (in-country) of certain peptide synthesis technology and instrumentation (*e.g.,* automated peptide synthesizers), there would be an increased risk that such technology and instrumentation could be used to produce controlled toxins for biological weapons purposes.

Summary of Legal Basis: Certain instruments for the automated synthesis of peptides (automated peptide synthesizers) have been identified by BIS for evaluation according to the criteria in Section 1758 of the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) pertaining to emerging and foundational technologies.

Alternatives: Consistent with 5 U.S.C. 603(c), BIS is considering significant alternatives to the imposition of controls on automated peptide synthesizers and will assess whether the alternatives would: (1) accomplish the stated objectives of this rule (consistent with the Section 1758 requirements in ECRA); and (2) minimize any significant economic impact of this rule on U.S. industry and academia. BIS could impose broad controls on automated peptide synthesizers that would capture most of these instruments. However, that option would have a greater impact not only on small businesses, but also on research and development laboratories (both academic and corporate), which are involved in advancing biological technology. BIS is considering focused controls on automated peptide synthesizers that are determined to be capable of posing a greater risk of diversion to biological weapons activities. BIS considers that this approach would be the least disruptive alternative for implementing export controls in a manner consistent with controlling technology that has been determined, through the Section 1758 technology interagency process authorized under ECRA, to be essential to U.S. national security.

Anticipated Cost and Benefits: BIS estimates that it will receive roughly 15 license applications per year if Section 1758 export controls are imposed on automated peptide synthesizers. To the extent that compliance with these controls would impose a burden on U.S. industry and academia, BIS believes the burden would be minimal. In addition, the reclassification process would need to be done only once per license applicant for exports, reexports or transfers (in-country) of these items and, consequently, would constitute a one-time burden for each applicant. Similarly, assessing the availability of license exceptions and/or applying for and using BIS licenses would impose some minimal burden on affected persons. The benefit, from a national security perspective, would be the imposition of export controls on those automated peptide synthesizers that are determined to be capable of posing a greater risk of diversion to biological weapons activities.

Risks: The imposition of overly broad (or otherwise improperly targeted) Section 1758 export controls on peptides or peptide synthesizers could impair the ability of companies in the United States to compete effectively with potential competitors in other countries, which could adversely affect the leadership of U.S. companies in the field of peptide manufacturing. On the other hand, failure to impose controls that effectively target those automated peptide synthesizers that could be of concern for biological weapons purposes, could increase the potential threat of terrorist attacks involving toxins produced by such synthesizers.

Timetable:

Action	Date	FR Cite
ANPRM	09/13/22	87 FR 5593
ANPRM Comment Period End.	10/28/22	
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: 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–AI84

DOC—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST)

Final Rule Stage

16. Updates to Bayh-Dole Implementing Regulations [0693–AB66]

Priority: Other Significant.

Legal Authority: 37 U.S.C. 206 *et seq.*

CFR Citation: 37 CFR 401; 37 CFR 404; 37 CFR 501.

Legal Deadline: None.

Abstract: The revisions will add language to provide additional clarity in subject invention and utilization reporting requirements, U.S. industry preference, and other regulations that impact the transfer of technology from federally funded research and development. The final rule aims to improve the transition of federally funded innovations from the laboratory to the marketplace by reducing the regulatory burdens for technology transfer.

Statement of Need: This rule would revise the Bayh Dole Act implementing regulations in order to make technical corrections; reorganize certain

subsections; remove outdated and/or unnecessary sections; improve reporting by federal agencies; and provide clarifications.

Summary of Legal Basis: The rule revisions would be promulgated under the University and Small Business Patent Procedures Act of 1980, Public Law 96–517 (as amended), codified at 35 U.S.C. 200 *et seq.,* commonly known as the Bayh-Dole Act or Bayh-Dole.

Alternatives: There are not alternatives to this rule.

Anticipated Cost and Benefits: The action would remove duplicative text, streamline the implementing regulations, and reduce regulatory burdens, all at no additional cost.

Risks: There are no applicable risks to this rule.

Timetable:

Action	Date	FR Cite
NPRM	01/04/21	86 FR 35
NPRM Comment Period End.	04/05/21	
Final Action	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Henry N. Wixon, Chief Counsel for NIST, Department of Commerce, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1052, Gaithersburg, MD 20899–1052, *Phone:* 301 975–2803, *Fax:* 301 926–6241, *Email: henry.wixon@nist.gov*.

RIN: 0693–AB66

DOC—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

Final Rule Stage

17. Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act [0648–BG11]

Priority: Other Significant.

Legal Authority: Pub. L. 114–81

CFR Citation: 50 CFR 300.

Legal Deadline: None.

Abstract: This proposed rule would make conforming amendments to regulations implementing the various statutes amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114–81). The Act amends several regional fishery management organization implementing statutes as well as the High Seas Driftnet Fishing Moratorium Protection Act. It also provides authority to implement two new international agreements under the Antigua Convention, which amends the Convention for the establishment of an Inter-American Tropical Tuna Commission, and the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement), which restricts the entry into U.S. ports by foreign fishing vessels that are known to be or are suspected of engaging in illegal, unreported, and unregulated fishing. This proposed rule would also implement the Port State Measures Agreement. To that end, this proposed rule would require the collection of certain information from foreign fishing vessels requesting permission to use U.S. ports. It also includes procedures to designate and publicize the ports to which foreign fishing vessels may seek entry and procedures for conducting inspections of these foreign vessels accessing U.S. ports. Further, the rule would establish procedures for notification of: the denial of port entry or port services for a foreign vessel, the withdrawal of the denial of port services if applicable, the taking of enforcement action with respect to a foreign vessel, or the results of any inspection of a foreign vessel to the flag nation of the vessel and other competent authorities as appropriate.

Statement of Need: The United States is a signatory to the Port State Measures Agreement (PSMA). The agreement is aimed at combating illegal, unreported and unregulated (IUU) fishing activities through increased port inspection of foreign fishing vessels and thereby closing seafood markets to the products of illegal fishing. In addition, regulations to identify and certify nations for IUU fishing and other adverse fishing activities under the authority of the High Seas Driftnet Fishing Moratorium Protection Act must be updated to conform to statutory changes. NMFS will also propose changes to the definition of IUU fishing for the purposes of identifying and certifying nations under that Act.

Summary of Legal Basis: This action is required under several statutes: Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94–265 as amended by P.L. 109–479); Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (P.L. 114–81); Ensuring Access to Pacific Fisheries Act (P.L. 114–327); High Seas Driftnet Fishing Moratorium Protection Act (P.L. 104–43). The Secretary of Commerce is authorized to issue regulations to implement the statutory obligations to counter IUU fishing by foreign fishing vessels and to prevent the importation of illegally harvested seafood.

Alternatives: Alternatives to taking action at the port would include taking action at sea against IUU fishing vessels and in the supply chain against detected IUU fishing products. At-sea monitoring and inspection is part of an overall strategy to combat IUU fishing, but it is extremely expensive, resources are limited, and the U.S. has limited jurisdiction to board foreign-flag vessels at sea. Likewise, tracing and removing illegal products already released into the U.S. seafood market would be difficult and resource intensive.

Preventing entry of IUU fishing vessels into ports or investigating fishing vessels at the port is an efficient and effective approach to combat illegal activity and to prevent illegal products from entering the supply chain. There are no alternatives to the conforming amendments to the High Seas Driftnet Fishing Moratorium Protection Act. Without these changes, the implementing regulations would not be consistent with the revised statute. However, the statute authorizes the Secretary of Commerce to amend the regulatory definition of IUU fishing for the purposes of identifying and certifying nations. NMFS has considered several activities that constitute illegal fishing and proposes amendments to the definition to counter these forms of IUU fishing. Alternatives to amending the IUU fishing definition would include the adoption of binding measures at regional fishery organizations to counter the activities of concern. While NMFS is pursuing this approach, amending the definition provides a more direct means of addressing the problem through the identification of nations and potential trade restrictions.

Anticipated Cost and Benefits: The anticipated costs will be minimal in that foreign vessels requesting permission to visit U.S. ports are already required to report. Under this rule, fishing vessel masters will have to include more information about the vessel and its cargo when they submit an electronic notice of arrival to the U.S. Coast Guard. Based on the information submitted, NMFS may deny port privileges for vessels known to have engaged in illegal fishing or may meet the vessel in port to conduct an inspection. The minimal additional data elements required of foreign fishing vessels will be submitted through the existing U.S. Coast Guard system for electronic Notices of Arrival and Departure, thus reporting costs are

not anticipated to affect shipping patterns, port usage, or international commerce. In addition, vessel inspections will be coordinated and planned based on the notice of arrival submitted prior to entry into port, thus delays for inspection will be minimal and not result in significant costs to legitimate vessels. Benefits of the rule will accrue when IUU vessels are denied entry, and illegal seafood products are precluded from the U.S. supply chain, thereby maintaining higher prices and market share for legitimate producers of fishery products. In addition, benefits will accrue from reduced costs of inspection and monitoring at ports of entry due to the advance notice provided and the ability of NMFS and Coast Guard to take a risk management approach to vessel inspection. Should the United States impose trade restrictions on foreign nations due to the expanded definition of IUU fishing, some costs would be borne by U.S. importers who would have to adjust their supply chains. However, many U.S. importers and seafood dealers are already adjusting supply chains to respond to consumer demand for lawfully-acquired, sustainable and environmentally responsible seafood. The benefits of additional steps to counter IUU fishing will accrue to law-abiding harvesters, processors and traders as fish stocks are recovered and they no longer must compete with illegitimate products in the supply chain.

Risks: If the port entry reporting and inspection provisions of this rule were not implemented, there is an increased risk of IUU fishing vessels entering U.S. ports and/or the products of IUU fishing infiltrating the U.S. supply chain. In addition, the U.S. would be out of compliance with its international obligations under the PSMA. If the revisions to the High Seas Driftnet Fishing Moratorium Protection Act are not implemented through conforming amendments to the regulations and through additions to the definition of IUU fishing, nations might not be identified under the statute, therefore diminishing the likelihood of corrective actions to counter IUU fishing.

Timetable:

Action	Date	FR Cite
NPRM	07/08/22	87 FR 40763
NPRM Comment Period End.	09/06/22	
Final Action	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Alexa Cole, Director, Office of International Affairs 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

DOC—NOAA

18. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [0648–BI88]

Priority: Other Significant.

Legal Authority: 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 *et seq.*

CFR Citation: 50 CFR 224.

Legal Deadline: None.

Abstract: NMFS 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.

Statement of Need: This action is needed to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a leading cause of the species' decline and contributing to the ongoing Unusual Mortality Event (2017–present). Following two decades of growth, the species has been in decline over the past decade with a best population estimate of fewer than 350 individuals. Entanglement in fishing gear and vessel strikes are the two primary causes of North Atlantic right whale mortality and serious injury across their range, and human-caused mortality to adult females, in particular, is limiting recovery of the species.

Summary of Legal Basis: NMFS is implementing this rule pursuant to its rulemaking authority under MMPA section 112(a) (16 U.S.C. 1382(a)), and ESA section 11(f) (16 U.S.C. 1540(f)).

Alternatives: In January 2021, NMFS released, and solicited public comment on, an assessment of the current right whale vessel speed rule (50 CFR 224.105). The assessment highlighted the need to address collision risk from vessels less than 65 ft in length and modify the boundaries and timing of Seasonal Management Areas (SMAs) to better reflect current whale and vessel traffic distribution, along with other recommendations to improve vessel strike mitigation efforts. In 2022, NMFS completed a coastwide right whale vessel strike risk model (Garrison et al. 2022), which informed development of the proposed modifications to the existing speed rule. At the proposed rule stage, there are a number of alternatives considered in the draft Regulatory Impact Review and draft Environmental Assessment. The Preferred Alternative would modify the spatial and temporal boundaries of the existing SMAs to create newly proposed Seasonal Speed Zones (SSZs), add smaller vessels down to 35 ft in length, and establish a mandatory Dynamic Speed Zone program.

Anticipated Cost and Benefits: Under the Preferred Alternative, NMFS estimated modifications to the speed rule would cost just over $46 million per year. Estimated costs would be borne primarily by the owners and operators of vessels currently transiting within newly expanded portions of SSZs along the U.S. East Coast. Owners and operators of vessels of applicable size classes that regularly transit within active SSZs at speeds in excess of 10 knots would be most affected. Vessels operating in the Northeast and Mid-Atlantic regions are expected to bear the majority of costs (89%). Potential benefits stemming from this action include a reduction in North Atlantic right whale mortalities and serious injuries resulting from collisions with vessels, with potential reduction in vessel strike risk for other large whale species.

Risks: This will be a high-profile action and is essential to ensure long-term recovery of North Atlantic right whales. Given the endangered status of the North Atlantic right whale, the large geographic area, and number of stakeholders subject to the updated regulations, modification to the current speed rule will be both controversial and of high interest. Changes to the current speed rule are necessary to: (1) address a misalignment between existing Seasonal Management Areas and places/times with elevated strike risk, and (2) mitigate currently unregulated lethal strike risk from vessels 35–65 ft in length.

Timetable:

Action	Date	FR Cite
NPRM	08/01/22	87 FR 46921

Action	Date	FR Cite
NPRM Comment Period End.	09/30/22	
NPRM Comment Period Extension.	09/16/22	87 FR 56925
NPRM Comment Period Extension End.	10/31/22	
Final Action	06/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400, *Email: kimberly.damon-randall@noaa.gov.*

Related RIN: Related to 0648–AS36

RIN: 0648–BI88

DOC—PATENT AND TRADEMARK OFFICE (PTO)

Proposed Rule Stage

19. • Setting and Adjusting Trademark Fees [0651–AD65]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Pub. L. 112–29

CFR Citation: 37 CFR 2.

Legal Deadline: None.

Abstract: The United States Patent and Trademark Office (USPTO or Office) takes this action to set and adjust Trademark fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, ensure the integrity of the Trademark register, and promote efficiency of processes.

Statement of Need: The purpose of this rule is to set and adjust trademark fee amounts to provide sufficient aggregate revenue to cover the agency's aggregate cost of operations. To this end, this rule creates new or changes existing fees for trademark services.

Summary of Legal Basis: The Leahy-Smith America Invents Act (AIA), enacted in 2011, provided USPTO with the authority to set and adjust its fees for patent and trademark services. This authority was extended by the Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act of 2018. Since then, USPTO has conducted an internal biennial fee review, in which it undertook internal consideration of the current fee structure, and considered ways that the structure might be improved, including rulemaking pursuant to the USPTO's fee-setting authority. This fee review process involves public outreach, including, as required by the Act, a public hearing held by the USPTO's Trademark Public Advisory Committee, as well as public comment and other outreach to the user community and public in general.

Alternatives: This rulemaking action is currently in development and alternatives have not yet been determined.

Anticipated Cost and Benefits: This rulemaking action is currently in development and aggregate annual economic impacts have not yet been determined. The user fees charged by the USPTO for its services are considered transfer payments that do not affect the total resources available to society, and therefore the changes to trademark fees proposed by this rulemaking are transfers, and are not costs of this rulemaking.

Risks: The USPTO will set and adjust trademark fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, ensure the integrity of the Trademark register, and promote efficiency of processes. Therefore, one risk of taking no action could be that USPTO might not be able to recover its aggregate costs of operations in the long run.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	
NPRM Comment Period End.	01/00/24	
Final Action	07/00/24	
Final Action Effective.	09/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Organizations.

Government Levels Affected: None.

Agency Contact: Brendan Hourigan, Director, Office of Planning and Budget, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, *Phone:* 571 272–8966, *Fax:* 571 273–8966, *Email: brendan.hourigan@uspto.gov.*

RIN: 0651–AD65

BILLING CODE 3410–12–P

DEPARTMENT OF DEFENSE

Statement Of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal department, employing over 1.6 million military personnel and 750,000 civilians with operations all over the world. DoD's enduring mission is to provide combat-credible military forces needed to deter war and protect the security of our nation. To guide this mission, the Secretary of Defense has outlined three top priorities, which are to defend the nation, take care of our people, and succeed through teamwork. In addition, the National Defense Strategy sets out how DoD will contribute to advancing and safeguarding vital U.S. national interests—protecting the American people, expanding America's prosperity, promoting global security, seizing new strategic opportunities, and realizing and defending our democratic values. Because of this expansive and diversified mission and reach, DoD regulations can address a broad range of matters and have an impact on varied members of the public, as well as other federal agencies.

Pursuant to Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993) and Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), the DoD issues this Regulatory Plan and Agenda to provide notice about the DoD's regulatory and deregulatory actions.

Retrospective Review of Existing Regulations

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (January 18, 2011), the Department continues to review existing regulations with a goal to eliminate outdated, unnecessary, or ineffective regulations; account for the currency and legitimacy of each of the Department's regulations; and ultimately reduce regulatory burden and costs.

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) 2023 and help support President Biden's regulatory priorities, the Secretary of Defense's top priorities, and those priorities set out in the National Defense Strategy. The DoD regulatory prioritization is focused on initiatives that:

- Promote the country's economic resilience, including addressing COVID-related and other healthcare issues.
- Support underserved communities and improve small business opportunities.
- Promote competition in the American economy.
- Promote diversity, equity, inclusion, and accessibility in the Federal workforce.
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.
- Tackle the climate crisis and protect the environment; and
- Address military family matters.

Rules That Promote the Country's Economic Resilience

Pandemic COVID–19 Rules

Pursuant to Executive Order 13987, ''Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID–19 and to Provide United States Leadership on Global Health and Security,'' January 20, 2021; Executive Order 13995, ''Ensuring an Equitable Pandemic Response and Recovery,'' January 21, 2021; Executive Order 13997, ''Improving and Expanding Access to Care and Treatments for COVID–19,'' January 21, 2021; and Executive Order 13999, ''Protecting Worker Health and Safety,'' January 21, 2021, the Department temporarily modified its TRICARE regulation so TRICARE beneficiaries have access to the most up-to-date care required for the diagnosis and treatment of COVID–19. TRICARE continues to reimburse like Medicare, to the extent practicable, as required by statute. The Department is researching the impacts of making some of those modifications permanent and may pursue such future action.

These modifications include:

TRICARE Coverage of National Institute of Allergy and Infectious Disease—Coronavirus Disease 2019 Clinical Trials. RIN 0720–AB83

This final rule is required to finalize certain temporary flexibilities enacted in interim final rules published in 2020 in response to the COVID–19 pandemic. This rule finalizes provisions published in two interim final rules (IFRs) with request for comment, which temporarily added coverage for the treatment use of investigation drugs under U.S. Food and Drug Administration (FDA) approved expanded access programs when for the treatment of coronavirus disease 2019 (COVID–19) and permitted coverage of National Institute of Allergy and Infectious Disease (NIAID)-sponsored clinical trials for the treatment or prevention of COVID–19.

Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic. RIN 0720–AB85

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; and (2) adopting Medicare New COVID–19 Treatments Add-on Payments (NTCAPs). The TRICARE regulation is temporarily being modified (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.

Restriction on Acquisition of Personal Protective Equipment and Certain Items From Non-Allied Foreign Nations (DFARS Case 2022–D009). RIN 0750–AL60

This rule implements section 802 of the National Defense Authorization Act for Fiscal Year 2022, which prohibits acquisition of personal protective equipment related to healthcare and certain other healthcare-related items from non-allied foreign nations. Decreasing dependence on personal protective equipment and certain other items originating in non-allied foreign nations is a matter of public health and national security, especially during a declared public health emergency. The domestic supply chain for personal protective equipment and certain other items is critical. An adequate continued supply is vital to ensure domestic control with minimal disruption in production and to reduce U.S. dependence on non-allied foreign nations. Potential benefits of this rule will be the elimination of counterfeit covered items within the domestic supply chain and reduced dependence on foreign sources that are not allies of the United States. In addition, this restriction will further promote growth in domestic capabilities and may provide additional opportunities to domestic small businesses for future procurement and manufacturing efforts, increasing domestic sourcing of personal protective equipment and other covered items.

Medical Debt Relief

Collection From Third Party Payers of Reasonable Charges for Healthcare Services. RIN 0720–AB87

This rule discusses new debt waiver process for medical debt owed for services rendered at Military Treatment Facilities to civilians who are not covered beneficiaries and implements section 702 of the FY 2021 NDAA. Under section 702, the Secretary of Defense may waive a fee charged to a civilian who is not a covered beneficiary if after any insurance payments the civilian is not able to pay for the trauma or other medical care provided to the civilian; and the provision of such care enhanced the medical readiness of the health care provider or health care providers furnishing such care.

Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' January 20, 2021

Rules That Promote Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce

Nondiscrimination on the Basis of Disability in Program or Activities Assisted or Conducted by the DoD and in Equal Access to Information and Communication Technology Used by DoD, and Procedures for Resolving Complaints. RIN: 0790–AJ04

Revisions to this regulation: (1) update and clarify the obligations that

Section 504 of the Rehabilitation Act of 1973 (section 504) imposes on recipients of Federal financial assistance and the Military Departments and Components (DoD Components); (2) reflect the most current Federal statutes and regulations, as well as developments in Supreme Court jurisprudence, regarding unlawful discrimination on the basis of disability and promotes consistency with comparable provisions implementing title II of the Americans with Disabilities Act (ADA); (3) implement section 508 of the Rehabilitation Act of 1973 (section 508), requiring DoD make its electronic and information technology accessible to individuals with disabilities; (4) establish and clarify obligations under the Architectural Barriers Act of 1968 (ABA), which requires that DoD make facilities accessible to individuals with disabilities; and (5) Provide complaint resolution and enforcement procedures pursuant to section 504 and the complaint resolution and enforcement procedures pursuant to section 508. These revisions incorporate the directive of Executive Order 14035, ''Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce'' by defining, clarifying, advancing accessibility throughout DoD programs and activities.

USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources. RIN 0710–AB41

Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) called for revisions to the 1983 Principles and Guidelines for Water and Land Related Resources Implementation Studies, resulting in the issuance of the Principles and Requirements (P&R) guidance document in March 2013 and the Interagency Guidelines in December 2014, which together comprise the Principles, Requirements, and Guidelines (PR&G). The PR&G are intended to provide a common framework and comprehensive policy and guidance for analyzing a diverse range of water resources projects, programs, activities, and related actions involving Federal investment in water resources. The U.S. Army Corps of Engineers (Corps) proposes a regulation to show how it would apply the PR&G to the Corps' mission and authorities. In this proposed regulation, the Corps intends to increase consistency and compatibility in Federal water resources investment decision making to include considerations such as analyzing a broader range of long-term costs and benefits, enhancing collaboration, including a more thorough and transparent risk and uncertainty analyses, and improving resilience for dealing with emerging challenges, including climate change.

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision. RIN: 0710–AB34

Section 103(m) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213(m)), authorizes the USACE to reduce the non-Federal share of the cost of a study or project for certain communities that are not able financially to afford the standard cost-share. Part 241 of title 33 in the Code of Federal Regulations provides the criteria that the USACE uses in making these determinations where the primary purpose of the study or project is flood damage reduction. The proposed rule would update this regulation, by broadening its applicability to include projects with other purposes (instead of just flood damage reduction) and the feasibility study of a project (instead of just design and construction). The WRDA 2000 modified section 103(m) to 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.

Rules That Support Underserved Communities and Improve Small Business Opportunities

Rules of Particular Interest to Small Business

Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043). RIN 0750–AK84

This rule implements changes made by the Small Business Administration (SBA) related to data rights in the Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directive, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The SBIR and STTR programs fund a diverse portfolio of startups and small businesses across technology areas and markets to stimulate technological innovation, meet Federal research and development (R&D) needs, and increase commercialization to transition R&D into impact. The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the Defense Federal Acquisition Regulation Supplement (DFARS). These changes include harmonizing definitions, lengthening the SBIR/STTR protection period from 5 years to 20 years, and providing for the granting of Government-purpose rights license in place of an unlimited rights license upon expiration of the SBIR/STTR protection period.

Executive Order 14036, ''Promoting Competition in the American Economy'' July 9, 2021

Rule That Promotes Competition in the American Economy

Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055). RIN 0750–AK16

This rule implements section 823 of the National Defense Authorization Act for Fiscal Year 2019, which establishes a requirement for use of the best available information regarding past performance of subcontractors and joint venture partners when awarding DoD construction and architect-engineer contracts. Section 823 requires annual performance evaluations for first-tier subcontractors and individual parties to joint ventures performing construction and architect-engineer contracts valued at either $750,000 or more, or 20 percent of the value of the prime contract (whichever is higher), in accordance with specified conditions. In addition, processes for exceptions from the annual evaluation requirement will be established for construction and architect-engineer contracts where submission of annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners under specified conditions. This rule will make it easier for subcontractors and individual parties to joint ventures to establish a record of their past performance. These entities will be able to take credit for the work they performed on contracts and subcontracts, which will help them be more competitive when bidding on future DoD contracts. This will help increase competition for DoD contracts.

Defense Commercial Solutions Opening (DFARS Case 2022–D006). RIN 0750–AL57

This rule implements section 803 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81), which establishes a permanent authority for the Secretary of Defense and those of the military departments to acquire innovative commercial products and commercial services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals. Products and services purchased under this authority are treated as commercial. This rule will enable DoD to access innovative products and services of entities that may not have done business with DoD in the past. Such entities may compete for additional DoD contracts, thereby increasing competition for DoD contracts.

Modification of Prize Authority for Advanced Technology Achievements (DFARS Case 2022–D014). RIN 0750–AL65

This rule implements section 822 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). Section 822 revises 10 U.S.C. 2374a regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements ''as another type of prize'' (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of $10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds $10 million. This rule will help to expand the Defense Industrial Base, thereby increasing competition for future DoD contracts.

DFARS Buy American Act Requirements (DFARS Case 2022–D019). RIN 0750–AL74

This rule implements the requirements of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Changes to the Federal Acquisition Regulation (FAR) are being made via RIN 9000–AO22 (FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements). This rule proposes conforming changes to the DFARS.

Rules That Support National Security Efforts

Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041). RIN 0750–AK81

The purpose of this rule is to ensure that Defense Industrial Base (DIB) contractors will adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Cybersecurity Maturity Model Certification (CMMC) Program. RIN 0790–AL49

This rule establishes a requirement for Defense Industrial Base (DIB) contractors to be assessed against the Cybersecurity Maturity Model Certification (CMMC) 2.0 in order to qualify for award of designated future DoD contracts. This model is designed to provide increased assurance to the Department that contractors are compliant with existing information security standards for Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) and are fully capable of protecting such information at a level commensurate with risk from cybersecurity threats.

Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities. RIN: 0790–AK86

This rule will allow a broader community of defense contractors to access to relevant cyber threat information the Department believes is critical in defending unclassified networks and information systems and protecting DoD warfighting capabilities. These revisions seek to address the increasing cyber threat targeting all defense contractors by expanding eligibility to defense contractors that process, store, develop, or transmit DoD Controlled Unclassified Information (CUI). This rule is part of DoD's approach to collaborate with industry to counter cyber threats through information sharing.

Rules That Tackle the Climate Crisis and Protect the Environment

Policy and Procedures for Processing Requests To Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408. RIN: 0710–AB22

Where a party other than the USACE seeks to use or alter a Civil Works project that USACE constructed, the proposed use or alteration is subject to the prior approval of the USACE. Some examples of such alterations include an improvement to the project; relocation of part of the project; or installing utilities or other non-project features. These alterations may be proposed by local or state governments, other federal agencies, private corporations, or private citizens, for example. This requirement was established in section 14 of the Rivers and Harbors Act of 1899 and is codified at 33 U.S.C. 408 (section 408). Section 408 provides that the USACE may grant permission for another party to alter a Civil Works project, upon a determination that the alteration proposed will not be injurious to the public interest and will not impair the usefulness of the Civil Works project. The USACE is proposing to convert its policy that governs the section 408 program to a binding regulation. This policy, Engineer Circular 1165–2–220, Policy, and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408, was issued in September 2018.

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers. RIN 0710–AA78

The U.S. Army Corps of Engineers (Corps) is proposing to update the Federal regulation that covers the procedures that the Corps uses under section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as Public Law 84–99. The Corps relies on this program to prepare for, respond to, and help communities recover from a flood, hurricane, or other natural disaster, including the repair of damage to eligible flood risk reduction infrastructure. The Corps initiated this rulemaking process through an advanced notice of proposed rulemaking (ANPRM) on February 13, 2015. As a next step, the Corps is planning to propose revisions to the program to address statutory changes under various Water Resources Development Act provisions and to formalize certain agency guidance relating to natural disaster procedures. Hurricane Katrina (2005), Hurricane Sandy (2012), flooding on the Mississippi and Missouri Rivers (2008, 2011, and 2013), and Hurricanes Harvey, Irma, and Maria (2017) have provided a more detailed understanding of the nature and severity of risk associated with flood control projects. In addition, the maturation of risk-informed decision-making approaches and technological advancements influenced the outlook on the implementation of Public Law 84–99 activities, with a shift toward better

alignment with Corps Levee Safety and National Flood Risk Management Programs, as well as the National Preparedness and Response Frameworks. Through these programs, the Corps works with non-Federal sponsors and stakeholders to assess, communicate, and manage the risks to people, property, and the environment associated with levee systems and flood risks.

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.

Appendix C Procedures for the Protection of Historic Properties. RIN 0710–AB46

The U.S. Army Corps of Engineers (Corps) considers the effects of its actions on historic properties pursuant to section 106 of the National Historic Preservation Act (NHPA). The Corps' Regulatory Program's regulations for complying with the NHPA are outlined at 33 CFR 325 Appendix C. Since these regulations were promulgated in 1990, there have been amendments to the NHPA and revisions to the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800. In response, the Corps issued interim guidance until rulemaking could be completed in order to ensure full compliance with the NHPA and ACHP's regulations. Appendix C is intended to provide the implementing procedures for the Regulatory Program's compliance with Section 106 of the National Historic Preservation Act.

Rulemaking is required to ensure the Regulatory Program is compliant with the NHPA and ACHP's implementing regulations at 36 CFR 800 for federal agency compliance with Section 106.

Revised Definition of ''Waters of the United States''—Rule 1 RIN: 0710—AB40. Related RIN: 2040–AG19

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 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 definition is consistent with the best available science, protects the environment, ensures access to clean water, considers how climate change resiliency may be affected by the definition of waters of the United States, and ensures environmental justice is prioritized in the rulemaking process. 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, and reflect a reasonable interpretation based on the record before the agencies, including the best available science. 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 That Address Military Family Matters

Definitions of Gold Star Family and Gold Star Survivor. RIN 0790–AL56

This rule implements section 626 of the FY 2022 NDAA to define the terms ''gold star family'' and ''gold star survivor'' for consistent use across all military departments. The Defense Department treats all surviving family members equally and survivor benefits are the same across the board unless their Service member is killed or dies from causes under dishonorable conditions.

TRICARE; Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals. RIN 0720–AB73

This final rule will revise: (1) 32 CFR 199.2 by adding, in alphabetical order, the definitions of ''Ambulatory Surgery Center'', ''Cancer hospital'', and ''Children's hospital''; (2) 32 CFR 199.6 to include news requirements that Ambulatory Surgery Centers (ASC) participating in Medicare must meet all program requirements; and (3) 32 CFR 199.14 to implement Medicare's payment methodologies for reimbursing ambulatory surgery centers and Cancer and Children's Hospitals. The combined impact of is rule is a cost-saving of approximately $45 million, which would be offset by $1.5 million in administrative costs to implement the changes. This estimated reduction in costs of $45 million is a transfer from providers to DoD.

DOD—OFFICE OF THE SECRETARY (OS)

Proposed Rule Stage

20. Department of Defense (DOD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities [0790–AK86]

Priority: Other Significant.

Legal Authority: 10 U.S.C. 391; 10 U.S.C. 2224; 44 U.S.C. 3541; 10 U.S.C. 393

CFR Citation: 32 CFR 236.

Legal Deadline: None.

Abstract: The DIB CS Program currently provides cyber threat information to cleared defense contractors. Proposed revisions would allow all defense contractors who process, store, develop, or transit DoD controlled unclassified information to

be eligible for the program and to receive cyber threat information. Expanding participation will allow a broader community of defense contractors to participate in the DIB CS Program and is in alignment with the National Defense Strategy.

Statement of Need: The unauthorized access and compromise of DoD unclassified information and operations poses an imminent threat to U.S. national security and economic security interests and contractors are being targeted on a daily basis. Many of these contractors are small and medium size contractors that can benefit from partnering with DoD to enhance and supplement their cybersecurity capabilities.

Summary of Legal Basis: This revised regulation supports the Administration's effort to promote public-private cyber collaboration by expanding eligibility for the DIB CS voluntary cyber threat information sharing program to all defense contractors. This regulation aligns with DoD's statutory responsibilities for cybersecurity engagement with those contractors supporting the Department.

Alternatives: (1) No action alternative: Maintain status quo with the ongoing voluntary cybersecurity program for cleared contractors. (2) Next best alternative: DoD posts generic cyber threat information and cybersecurity best practices on a public accessible website without directly engaging participating companies.

Anticipated Cost and Benefits: Participation in the voluntary DIB CS Program enables DoD contractors to access Government Furnished Information and collaborate with the DoD Cyber Crime Center (DC3) to better respond to and mitigate cyber threats. In order to join the DIB CS Program, there is an initial labor burden to apply to the program and provide point of contact information which is estimated to take 20 minutes per company. In addition, there is a cost for defense contractors to voluntarily share cyber indicator information. DoD estimates that each response will take a respondent two hours to complete. The costs are under review as part of 0704–0489 and 0704–0490. For DIB participants, this program provides cyber threat information and technical assistance through analyst-to-analyst exchanges, mitigation and remediation strategies, and cybersecurity best practices in a collaborative environment for participating companies.

Risks: Threats to unclassified information systems represent a risk of compromise of DoD information and mission. This threat is particularly acute for small and medium size companies with less mature cybersecurity capabilities. Through collaboration with DoD and the sharing with other contractors in the DIB CS Program, defense contractors will be better prepared to mitigate the cyber risk they face today and in the future.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Agency Contact: McKay Tolboe, Director, Cybersecurity Policy and Partnerships CIO, Department of Defense, Office of the Secretary, 4800 Mark Center, Alexandria, VA 22311, *Phone:* 571 372–4640, *Email: mckay.r.tolboe.civ@mail.mil.*

RIN: 0790–AK86

DOD—OS

21. Cybersecurity Maturity Model Certification (CMMC) Program [0790–AL49]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under PL 104–4.

Legal Authority: 5 U.S.C. 301; Pub. L. 116–92, sec. 1648

CFR Citation: 32 CFR 170.

Legal Deadline: None.

Abstract: DOD is proposing to implement the Cybersecurity Maturity Model Certification (CMMC) Framework, to help assess a Defense Industrial Base (DIB) contractor's compliance with and implementation of cybersecurity requirements to safeguard Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) transiting non-federal systems and mitigate the threats posed by Advanced Persistent Threats—adversaries with sophisticated levels of expertise and significant resources.

Statement of Need: CMMC is designed to provide increased assurance to the DoD that a DIB contractor can adequately protect sensitive unclassified information (*i.e.,* FCI and CUI) at a level commensurate with the risk, and accounting for information flow down to its subcontractors in a multi-tier supply chain.

Summary of Legal Basis: 5 U.S.C. 301 authorizes the head of an Executive department or military department to prescribe regulations for the government of his or her department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

41 U.S.C 1303; Pub. L. 116–92, sec. 1648 directs the Secretary of Defense to develop a consistent, comprehensive framework to enhance cybersecurity for the U.S. defense industrial base. Developing the CMMC Program was as an important first step toward meeting these requirements.*

Alternatives: DoD considered and adopted several alternatives during the development of this rule that reduce the burden on the DIB community and still meet the objectives of the rule. These alternatives include: (1) maintaining status quo, leveraging only the current requirements implemented in DFARS provision 252.204–7019 and DFARS clause 252.204–7020 requiring DIB contractors and offerors to self-assess utilizing the DoD Assessment Methodology and entering a Basic Summary Score; (2) revising CMMC 1.0 to CMMC 2.0 in response to public comments, to reduce the burden for small businesses and contractors who do not process, store or transmit critical CUI by eliminating the requirement to hire a C3PAO and instead allow self-assessment with annual affirmations to maintain compliance at CMMC Level 1, and llowing triennial self-certification with an annual affirmation to maintain compliance for some CMMC Level 2 programs; (3) exempting contracts and orders exclusively for the acquisition of commercially available off-the-shelf items; and (4) implementing a phased implementation for CMMC.

In addition, the Department took into consideration the timing of the requirement to achieve a specified CMMC level: (1) at time of proposal or offer submission, (2) post contract award, or (3) at the time of contract award.

Anticipated Cost and Benefits: The theft of intellectual property and sensitive information, including FCI and CUI, from all U.S. industrial sectors due to malicious cyber activity threatens U.S. economic and national security. The Council of Economic Advisors estimates that malicious cyber activity cost the U.S. economy between $57 billion and $109 billion in 2016. Over a ten-year period, that burden would equate to an estimated $570 billion to $1.09 trillion dollars in costs.

Risks: The aggregate loss of intellectual property and certain unclassified information from the DoD supply chain can undercut U.S. technical advantages and innovation, as

well as significantly increase risk to national security.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Diane L. Knight, Senior Management and Program Analyst, Department of Defense, Office of the Secretary, 4800 Mark Center Drive, Suite 12E08, Alexandria, VA 22350, *Phone:* 202 770–9100, *Email: diane.l.knight10.civ@mail.mil.*

RIN: 0790–AL49

DOD—OS

Final Rule Stage

22. Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DOD and in Equal Access to Information and Communication Technology Used by DOD [0790–AJ04]

Priority: Other Significant.

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 is finalizing revisions to implement Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance from DoD and those programs or activities conducted by DoD. The regulation also implements section 508 of the Rehabilitation Act, which requires DoD make its electronic and information technology accessible to individuals with disabilities. Additionally, the regulation implements the Architectural Barriers Act of 1968, which requires that DoD make facilities accessible to individuals with disabilities. Finally, the regulation updates the complaint resolution and enforcement procedures pursuant to section 504 and the complaint resolution and enforcement procedures pursuant to section 508.

Statement of Need: Finalization of this Department-wide rule will clarify the longstanding policy of the Department. It will modernize the Department's practices in addressing issues of discrimination. This rule amends the Department's prior regulation to include updated accessibility standards for recipients of Federal financial assistance to be more user-friendly and to support individuals with disabilities. This update incorporates the directive of Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the* Federal Workforce by defining, clarifying, advancing accessibility throughout DoD programs and activities.

Summary of Legal Basis: Title 28, Code of Federal Regulations, part 41, implementing Executive Order 12250, assigns the DOJ responsibility to coordinate implementation of section 504 of the Rehabilitation Act.

This rule is being finalized under the authorities of title 29, U.S.C., chapter 16, subchapter V, sections 794 through 794d, codifying legislation prohibiting discrimination on the basis of disability under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Federal agency, including provisions establishing the United States Access Board and requiring Federal agencies to ensure that information and communication technology is accessible to and usable by individuals with disabilities

Alternatives: The Department considered taking no new action and continuing to rely on the existing regulation. The Department considered issuing sub-regulatory guidance to clarify existing regulation. Both options were rejected because of the need to update and clarify the Department's obligations pursuant to section 504 and section 508 of the Rehabilitation Act of 1973, as amended.

Anticipated Cost and Benefits: TBD.

Risks: Without this final rule, the Department's current regulation is inconsistent with current Federal statutes and regulations, as well as developments in Supreme Court jurisprudence, regarding unlawful discrimination on the basis of disability. Consistent with congressional intent, the provisions in the final rule are consistent with the nondiscrimination provisions in DOJ regulations implementing title II of the ADA Amendments Act (applicable to state and local government entities).

Timetable:

Action	Date	FR Cite
NPRM	07/16/20	85 FR 43168
NPRM Comment Period End.	09/14/20	
Final Action	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: DoD internal guidance will be located in 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''). This Instruction will publish after the finalization of this rule.

Agency Contact: Randy Cooper, Director, Department of Defense Disability EEO Policy and Compliance Department of Defense, Office of the Secretary 4000 Defense Pentagon Room 5D64, Washington, DC 20301–4000, *Phone:* 703 571–9327, *Email: randy.d.cooper3.civ@mail.mil.*

RIN: 0790–AJ04

DOD—OS

23. Definitions of Gold Star Family and Gold Star Survivor [0790–AL56]

Priority: Other Significant.

Legal Authority: Pub. L. 117–81

CFR Citation: 32 CFR 46.

Legal Deadline: Final, Statutory, December 27, 2022, Sec 626 of the NDAA 2022 (Pub. L. 117–81).

Section 626 of the NDAA 2022 (Pub. L. 117–81) requires publication of an interim final rule no later than one year after the date of the enactment of this Act.

Abstract: This rule implements section 626 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81) to establish standard definitions, for use across the military departments, of the terms ''gold star family'' and ''gold star survivor.''

Statement of Need: The objective of the rule is to establish standard definitions, for use across the military departments, of the terms gold star family and gold star survivor.

Summary of Legal Basis: This rule is proposed under the authorities of section 626(c) of Public Law 117–81, FY 2022 NDAA.

Alternatives: The alternative is to take no action.

Anticipated Cost and Benefits: The cost to publish this new rule and update the Defense Department's policies is estimated at $900,000. This includes the public's time to review the proposed rule and resources needed to respond to any public comments, publish the

interim rule, revise policies, and possibly revamp the Navy and Coast Guard's long-term case management programs.

Risks: This action does not reduce risks to public health, safety, or the environment, or effect other risks within the jurisdiction of the Defense Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Deborah S. Skillman, Director, Department of Defense, Office of the Secretary, 1500 Defense Pentagon, Washington, DC 20301–1500, *Phone:* 571 372–5333, *Email: deborah.s.skillman.civ@mail.mil*.

RIN: 0790–AL56

DOD—DEFENSE ACQUISITION REGULATIONS COUNCIL (DARC)

Proposed Rule Stage

24. Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041) [0750–AK81]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 41 U.S.C. 1303; Pub. L. 116–92, sec. 1648

CFR Citation: 48 CFR 204; 48 CFR 212; 48 CFR 217; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is amending an interim rule to implement the CMMC framework 2.0 in order to protect against the theft of intellectual property and sensitive information from the Defense Industrial Base (DIB) sector. The CMMC framework is a DoD certification process that measures a company's institutionalization of processes and implementation of cybersecurity practices. This rule provides the Department with assurances that a DIB contractor can adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Statement of Need: The purpose of this DFARS rule is to ensure that Defense Industrial Base (DIB) contractors will adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Summary of Legal Basis: This rule is being implemented under the authority of 41 U.S.C. 1303 and section 1648 of the National Defense Authorization Act for Fiscal Year (FY) 2020 (Pub. L. 116–92). The USD (A&S) has the authority and responsibility for promulgating DoD procurement rules under the OFPP statute, codified at title 41 of the U.S. Code. Section 1648 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) directs the Secretary of Defense to develop a risk-based cybersecurity framework for the DIB sector, such as CMMC, as the basis for a mandatory DoD standard.

*Alternatives:*DoD considered and adopted several alternatives during the development of the interim rule that reduced the burden on small entities and still meet the objectives of the rule. DoD will consider similar alternatives for the amendment rule. These alternatives include: (1) exempting contracts and orders exclusively for the acquisition of commercially available off-the-shelf items; and (2) implementing a phased rollout and stipulating that the inclusion a CMMC requirement in new contracts until that time be approved by the Office of the Under Secretary of Defense for Acquisition and Sustainment.

Anticipated Cost and Benefits: The annualized value of costs beginning in fiscal year 2021 (calculated in perpetuity in 2016 dollars at a 7 percent discount rate) associated with implementing the CMMC Framework in the interim is $4 billion. The primary benefit of this rule is improving the protection of the Department's sensitive information and reducing the threat to DIB sector intellectual property by:

- Enabling assessments at the entity-level of contractor implementation of cyber security processes and practices that should already be in place;
- Requiring comprehensive implementation of cybersecurity requirements rather than plans of action to accomplish implementation;
- Verifying DIB sector contractor and subcontractor cybersecurity postures; and
- Reducing duplicative or repetitive assessments of our industry partners through standardization.

Risks: The theft of intellectual property and sensitive information from all U.S. industrial sectors due to malicious cyber activity threatens economic security and national security. Malicious cyber actors have and continue to target the DIB sector and the supply chain of the Department of Defense. These attacks not only focus on the large prime contractors, but also target subcontractors that make up the lower tiers of the DoD supply chain. Many of these subcontractors are small entities that provide critical support and innovation. The aggregate loss of intellectual property and certain unclassified information from the DoD supply chain can undercut U.S. technical advantages and innovation, as well as significantly increase risk to national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/29/20	85 FR 48513
Interim Final Rule Effective.	11/30/20	
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Public Compliance Cost: Base Year for Dollar Estimates: 2021.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email: jennifer.d.johnson1.civ@mail.mil*.

Related RIN: Split from 0750–AL68, Related to 0790–AL49

RIN: 0750–AK81

DOD—DARC

25. Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043) [0750–AK84]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303

CFR Citation: 48 CFR 227; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is 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) policies related to data rights in the Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directive, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the DFARS.

Summary of Legal Basis: The legal basis for this rule is 15 U.S.C. 638, which provides the authorization, policy, and framework for SBIR/STTR programs.

Alternatives: There are no alternatives that would meet the stated objective of this rule.

Anticipated Cost and Benefits: While specific costs and savings have not been quantified, this rule is expected to have significant benefit for small businesses participating in the DoD SBIR and STTR programs. SBIR and STTR enable small businesses to explore their technological potential and provide the incentive to profit from its commercialization. By including qualified small businesses in the nation's research and development arena, high-tech innovation is stimulated, and the United States gains entrepreneurial spirit as it meets its specific research and development needs.

Risks: The continuous protection of a contractor's SBIR/STTR data while actively pursuing or commercializing its technology with the Federal Government, provides a significant incentive for innovative small businesses to participate in these programs.

Timetable:

Action	Date	FR Cite
ANPRM	08/31/20	85 FR 53758
Correction	09/21/20	85 FR 59258
ANPRM Comment Period End.	10/30/20	
Comment Period Extended.	12/04/20	85 FR 78300
ANPRM Comment Period End.	01/31/21	
NPRM	12/19/22	87 FR 77680
NPRM Comment Period End.	02/17/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email:* *jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK84

DOD—DARC

26. Defense Commercial Solutions Opening (DFARS Case 2022–D006) [0750–AL57]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303; Pub. L. 117–81, sec. 803; 10 U.S.C. 2380(c)

CFR Citation: 48 CFR 212.

Legal Deadline: None.

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 803 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81) that amends 10. U.S.C. 2380 to establish a permanent authority for the Secretary of Defense and those of the military departments to acquire innovative commercial products and commercial services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals. Products and services purchased under this authority are treated as commercial.

Statement of Need: This rule is necessary to implement section 803 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81), which establishes a permanent authority for the Secretary of Defense and those of the military departments to acquire innovative commercial products and commercial services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals. Products and services purchased under this authority are treated as commercial.

Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and section 803 of Public Law 117–81.

Alternatives: There are no alternatives that would meet the requirements of section 803 of Public Law 117–81.

Anticipated Cost and Benefits: This rule will enable DoD to access innovative products and services of entities that may not have not done business with DoD in the past. Such entities may compete for additional DoD contracts, thereby increasing competition for DoD contracts.

Risks: The difficulty of accessing innovative products and services of these entities creates a risk for DoD with regard to finding solutions and obtaining products and services that meet the Department's needs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email:* *jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AL57

DOD—DARC

27. Modification of Prize Authority for Advanced Technology Achievements (DFARS Case 2022–D014) [0750–AL65]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303; 10 U.S.C. 2374a; Pub. L. 117–81, sec. 822

CFR Citation: 48 CFR 235.

Legal Deadline: None.

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81), which revises 10 U.S.C. 2374a regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements ''as an other type of prize'' (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of $10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds $10 million.

Statement of Need: This rule is necessary to implement section 822 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). Section 822 revises 10 U.S.C. 2374a regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements as an other type of prize (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of $10,000,000 with the approval of the

Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds $10 million.

Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and section 822 of Public Law 117–81.

Alternatives: There are no alternatives that would meet the requirements of section 822 of Public Law 117–81.

Anticipated Cost and Benefits: This rule will help to expand the Defense Industrial Base, thereby increasing competition for future DoD contracts.

Risks: The difficulty of accessing advanced technologies creates a risk for DoD with regard to finding solutions and obtaining products and services that meet the Department's needs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

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–AL65

DOD—DARC

28. • DFARS Buy American Act Requirements (DFARS Case 2022–D019) [0750–AL74]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 41 U.S.C. 1303

CFR Citation: 48 CFR 225; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the requirements of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Changes to the Federal Acquisition Regulation (FAR) are being made via RIN 9000–AO22 (FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements). This rule proposes conforming changes to the DFARS.

Statement of Need: This rule is necessary to implement Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers, which increases the required percentage of domestic content for end products and construction material. Changes to the Federal Acquisition Regulation (FAR) are being made via RIN 9000–AO22 (FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements). This rule proposes conforming changes to the DFARS.

Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

Alternatives: There are no alternatives that would meet the requirements of Executive Order 14005.

Anticipated Cost and Benefits: This rule increases the percentage for use in the domestic content text applied to offers of end products and construction materials to determine domestic or foreign origin. The rule will strengthen domestic preferences under the Buy American statute. It is expected that this rule will benefit large and small U.S. manufacturers supplying domestic end products and materials.

Risks: There is a risk that U.S. manufacturers would experience a competitive disadvantage without the increase in the required domestic content.

Timetable:

Action	Date	FR Cite
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email: jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AL74

DOD—DARC

Final Rule Stage

29. Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055) [0750–AK16]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303; Pub. L. 115–232, sec. 823

CFR Citation: 48 CFR 215; 48 CFR 236; 48 CFR 242; 48 CFR 252.

Legal Deadline: Final, Statutory, February 9, 2019, 180 days after enactment.

Abstract: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 823 of the National Defense Authorization Act for Fiscal Year 2019, which establishes a requirement for use of the best available information regarding past performance of subcontractors and joint venture partners when awarding DoD construction and architect-engineer (A&E) contracts. Section 823 requires annual performance evaluations for first-tier subcontractors and individual partners of joint venture construction and A&E contracts valued at either $750,000 or more, or 20 percent of the value of the prime contract (whichever is higher), in accordance with specified conditions. In addition, processes for exceptions from the annual evaluation requirement will be established for construction and A&E contracts where submission of annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners under specified conditions. This rule will amend DFARS part 242 to incorporate these new requirements and processes.

Statement of Need: This rule is necessary to implement section 823 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), which establishes a requirement for use of the best available information regarding past performance of subcontractors and joint venture partners when awarding DoD construction and architect-engineer contracts. Section 823 requires annual performance evaluations for first-tier subcontractors and individual parties to joint ventures performing construction and architect-engineer contracts valued at either $750,000 or more, or 20 percent of the value of the prime contract (whichever is higher), in accordance with specified conditions. In addition, processes for exceptions from the annual evaluation requirement will be established for construction and architect-engineer contracts where submission of annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners under specified conditions.

Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and section 823 of Public Law 115–232.

Alternatives: There are no alternatives that would meet the requirements of section 823 of Public Law 115–232.

Anticipated Cost and Benefits: This rule will make it easier for subcontractors and individual parties to joint ventures to establish a record of their past performance. These entities will be able to take credit for the work they performed on contracts and subcontracts, which will help them be more competitive when bidding on future DoD contracts. This will help increase competition for DoD contracts.

Risks: Due to the difficulty of establishing a record of past performance on DoD contracts, there is a risk of reduced competitiveness for subcontractors and individual parties to joint ventures.

Timetable:

Action	Date	FR Cite
NPRM	05/20/21	86 FR 27358
NPRM Comment Period End.	07/19/21	
Final Action	02/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Agency Contact: Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, *Phone:* 703 717–8226, *Email:* *jennifer.d.johnson1.civ@mail.mil.*

RIN: 0750–AK16

DOD—DARC

30. Restriction on Acquisition of Personal Protective Equipment and Certain Items From Non-Allied Foreign Nations (DFARS Case 2022–D009) [0750–AL60]

Priority: Other Significant.

Legal Authority: 41 U.S.C. 1303; Pub. L. 117–81 sec. 802; 10 U.S.C. 2533e

CFR Citation: 48 CFR 225; 48 CFR 252.

Legal Deadline: None.

Abstract: DoD is issuing an interim rule to amend the Defense Federal Acquisition Regulation Supplement to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 NDAA (Pub. L. 117–81). Section 802 adds 10 U.S.C. 2533e which prohibits the acquisition of personal protective equipment and certain other items from non-allied foreign nations. An exception applies if: (1) the Secretary of Defense determines that a covered item of satisfactory quality and quantity, in the required form, cannot be procured as and when needed from nations other than a covered country to meet requirements at a reasonable price; (2) a covered item is for use outside of the United States; or (3) if the procurement for a covered material is at or below $150,000. A limitation provides that a proposed procurement in an amount greater than $150,000 may not be divided into several purchases or contracts for lesser amounts in order to qualify for an exception.

Statement of Need: This rule is needed to implement section 802 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81), which prohibits the acquisition of personal protective equipment related to healthcare and certain other healthcare-related items from non-allied foreign nations. The prohibition does not apply to items for use outside of the United States or if the procurement is valued at or below $150,000. In addition, the prohibition does not apply if the Secretary of Defense determines that a covered item of satisfactory quality and quantity, in the required form, cannot be procured as and when needed from nations other than non-allied nations to meet requirements at a reasonable price.

Summary of Legal Basis: The legal basis for this rule is 41 U.S.C. 1303 and section 802 of Public Law 117–81.

Alternatives: There are no alternatives that would meet the requirements of section 802 of Public Law 117–81.

Anticipated Cost and Benefits: Decreasing dependence on personal protective equipment and certain other items, as identified in section 802, originating in non-allied foreign countries is a matter of public health and national security especially during a declared public health emergency. The domestic supply chain for personal protective equipment and certain other items is critical. An adequate continued supply is vital to ensure domestic control with minimal disruption in production and to reduce U.S. dependence on non-allied foreign countries. This restriction is similar to other domestic sourcing restrictions required by 10 U.S.C. 2533 in effect to reduce dependence on non-allied foreign sources and to continue to promote growth in domestic capability.

This rule restricts the acquisition of covered items (personal protective equipment for use in preventing the spread of disease and certain other items) from non-allied foreign nations. The restriction will not apply—

- To acquisitions of the covered items for use outside of the United States;
- For acquisitions at or below $150,000; or
- If it is determined that covered items of satisfactory quality and quantity, in the required form, cannot be procured as and when needed from nations other than the covered countries to meet the requirements at a reasonable price.

Estimated impacts to industry may include minor compliance costs to validate with suppliers the origin of covered items to comply with the prohibition. Based on data from the Federal Procurement Data System for fiscal years 2019, 2020, and 2021 for contracts awarded in Product Service Code 65 (Medical, Dental, and Veterinary Equipment and Supplies) in the United States valued at or above $150,000, DoD awarded an average of 1,677 such contracts to 192 unique entities, of which 105 were small businesses. It is not known what percentage of these awards might involve personal protective equipment and other covered items from the covered countries.

Potential benefits of this rule will be the elimination of counterfeit covered items within the domestic supply chain and reduced dependence on foreign sources that are not allies of the United States. In addition, this restriction will further promote growth in domestic capabilities and may provide additional opportunities to domestic small businesses for future procurement and manufacturing efforts, increasing domestic sourcing of personal protective equipment and other covered items.

Risks: A shortage of supply of personal protective equipment and certain other items would put at risk public health and the safety and well-being of the general public. A shortage of these items also would hinder DoD's mission readiness.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/23	

Regulatory Flexibility Analysis Required: No.

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–AL60

DOD—U.S. ARMY CORPS OF ENGINEERS (COE)

Proposed Rule Stage

31. Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers [0710–AA78]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 701n

CFR Citation: 33 CFR 203.

Legal Deadline: None.

Abstract: The U.S. Army Corps of Engineers (Corps) is proposing to update the Federal regulation that covers the procedures that the Corps uses under section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as Public Law 84–99. The Corps relies on this program to prepare for, respond to, and help communities recover from a flood, hurricane, or other natural disaster, including the repair of damage to eligible flood risk reduction infrastructure. The Corps initiated this rulemaking process through an advanced notice of proposed rulemaking (ANPRM) on February 13, 2015. As a next step, the Corps is planning to propose revisions to the program to address statutory changes under various Water Resources Development Act provisions and to formalize certain agency guidance relating to natural disaster procedures. The notice of proposed rulemaking (NPRM) would also include a summary of the comments to the ANPRM.

Statement of Need: Since the last revision in 2003, significant disasters, including Hurricane Katrina (2005), Hurricane Sandy (2012), flooding on the Mississippi and Missouri Rivers (2008, 2011, and 2013), and Hurricanes Harvey, Irma, and Maria (2017) have provided a more detailed understanding of the nature and severity of risk associated with flood control projects. In addition, the maturation of risk-informed decision making approaches and technological advancements influenced the outlook on the implementation of Public Law 84–99 activities, with a shift toward better alignment with Corps Levee Safety and National Flood Risk Management Programs, as well as the National Preparedness and Response Frameworks. Through these programs, the Corps works with non-Federal sponsors and stakeholders to assess, communicate, and manage the risks to people, property, and the environment associated with levee systems and flood risks. Revisions to part 203 are necessary to implement statutes that amended or otherwise affected Public Law 84–99, as explained in the next section.

Summary of Legal Basis: Public Law 84–99 authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for preparation for natural disasters, flood fighting, rescue operations, repairing or restoring flood control works, emergency protection of federally authorized hurricane or shore protection projects, and the repair and restoration of federally authorized hurricane and shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature.

1. Subsection 3029(a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) (Pub. L. 113–121) authorized the Chief of Engineers, under certain circumstances, to make modifications to flood control and hurricane or shore protections works damaged during flood or coastal storms events, as well as the authority to implement nonstructural alternatives in the repair and restoration of hurricane or shore protection works.

2. Subsection 3029(b) of WRRDA 2014 authorized the Secretary of the Army to undertake a review of implementation of Public Law 84–99 to ensure the safety of affected communities to future flooding and storm events; the resiliency of water resources development projects to future flooding and storm events; the long-term cost-effectiveness of water resources development projects that provide flood control and hurricane and storm damage reduction benefits; and the policy goals and objectives that were the President outlined as a response to recent extreme weather events at that time are met.

3. Section 3011 of WRRDA 2014 states that a levee system shall remain eligible for rehabilitation assistance under Public Law 84–99, as long as the system sponsor continues to make satisfactory progress, as determined by the Secretary of the Army, on an approved system wide improvement framework or letter of intent.

4. Section 1176 of the Water Resources Development Act of 2016 (WRDA 2016) (Pub. L. 114–322, title I) provided an express definition of nonstructural alternatives, as that term is used in Public Law 84–99, and authorized the Chief of Engineers, under certain circumstances, to increase the level of protection of flood control or hurricane or shore protection works or increase the capacity of a pumping station when conducting repair or restoration activities to such works under Public Law 84–99.

Alternatives:

1. *No rule update:* Implement all changes through agency discretion. Alternative not selected because the Public Law 84–99 amendments are very prescriptive, and it is inappropriate for those conflicts to exist.

2. *Modify:* Evaluate required changes and determine which require implementation via agency discretion and those requiring an update to the rule. Alternative not selected because of inconsistent implementation that would result and the repeal and replace alternative is the most straightforward, given the number of update changes throughout this CFR section.

3. *Repeal and replace (Selected Alternative):* Incorporate and integrate the current state of practice for flood risk management principles and concepts through the provision of agency policy codified in a federal rule. The intended benefit is to encourage broader community flood risk management activities, as undertaken by non-Federal project sponsors. The rule alternative also consolidates recent Public Law 84–99 amendments into one comprehensive rule, ensuring the public understands how the Corps would implement them.

Anticipated Cost and Benefits: Overall, the purpose of the proposed changes to this regulation are expected to improve the effectiveness of federal and local investments to reduce flood risks in both riverine and coastal settings. These proposed changes take advantage of our increased understanding of project risks, moving from an assessment of how the project is expected to perform to a focus on a broader set of actions to reduce risk to life, including operations, maintenance, planning, and execution actions to improve emergency warning and evacuation and other activities to improve the ability of communities and individuals to understand and manage project-related risks. Informed by more detailed understanding of risk for levee systems, the Federal Government and non-Federal sponsors should be able to apply the available resources to the risk management activities that most effectively reduce riverine flood risk and avoid expenditures that have little risk reduction benefit.

Risks: The rule is not expected to have a significant effect on risks to public health and safety. It would revise and update 33 CFR 203 and reflect the current state of practice for flood risk management principles and concepts. It would also amend and clarify the current role of the Corps in preparing

for, and responding a natural disaster, and in helping in the recovery effort. The rule may also encourage broader community flood risk management activities, as undertaken by non-Federal project sponsors.

Timetable:

Action	Date	FR Cite
ANPRM	02/13/15	80 FR 8014
ANPRM Comment Period End.	04/14/15	
NPRM	11/15/22	87 FR 68386
NPRM Comment Period End.	01/17/23	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Willem Helms, Department of Defense, U.S. Army Corps of Engineers, CECW–HS, 441 G Street NW, Washington, DC 20314, *Phone:* 202 761–5909, *Email: willem.h.helms@usace.army.mil.*

RIN: 0710–AA78

DOD—COE

32. Policy and Procedures for Processing Requests To Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408 [0710–AB22]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 408

CFR Citation: 33 CFR 350.

Legal Deadline: None.

Abstract: Where a party other than the U.S. Army Corps of Engineers (Corps) seeks to use or alter a Civil Works project that the Corps constructed, the proposed use or alteration is subject to the prior approval of the Corps. Some examples of such alterations include an improvement to the project; relocation of part of the project; or installing utilities or other non-project features. This requirement was established in section 14 of the Rivers and Harbors Act of 1899 and is codified at 33 U.S.C. 408 (section 408). Section 408 provides that the Corps may grant permission for another party to alter a Civil Works project upon a determination that the alteration proposed will not be injurious to the public interest and will not impair the usefulness of the Civil Works project. The Corps is proposing to convert its policy that governs the section 408 program to a binding regulation. This policy, Engineer Circular 1165–2–220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408, was issued in September 2018.

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. It is anticipated that a form would be developed for submission of requests which would trigger the Paperwork Reduction Act compliance process and any associated costs will be evaluated at that time.

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	04/00/23	

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

33. Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision [0710–AB34]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 2213(m)

CFR Citation: 33 CFR 241.

Legal Deadline: None.

Abstract: Section 103(m) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213(m)), authorizes the U.S. Army Corps of Engineers (Corps) to reduce the non-Federal share of the cost of a study or project for certain communities that are not able financially to afford the standard non-Federal cost-share. Part 241 of Title 33 in the Code of Federal Regulations provides the criteria that the Corps uses in making these determinations where the primary purpose of the study or project is flood damage reduction. The proposed rule would update this regulation, by broadening its applicability to include projects with other purposes (instead of just flood damage reduction) and the feasibility study of a project (instead of just design and construction).

Statement of Need: The Corps 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 is to conduct rulemaking to amend 33 CFR 241 by broadening the project purposes for which the Corps could reduce the non-Federal cost-share based on ability to pay and by allowing such a reduction for feasibility studies. The next best alternative would be to provide additional guidance instead of amending the existing regulation. This alternative could lead to confusion for the regulated public.

Anticipated Cost and Benefits: The proposed rule would add Corps procedures on the ability to pay provision allowing for consistent implementation across the Corps and clear understanding of the program and its requirements by the regulated public.

Risks: The proposed action is not anticipated to 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	11/00/23	

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

34. USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources [0710–AB41]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: Sec. 2031 of Pub. L. 110–114

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) called for revisions to the 1983 Principles and Guidelines for Water and Land Related Resources Implementation Studies, resulting in the issuance of the Principles and Requirements (P&R) guidance document in March 2013 and the Interagency Guidelines in December 2014, which together comprise the Principles, Requirements, and Guidelines (PR&G). The PR&G are intended to provide a common framework and comprehensive policy and guidance for analyzing a diverse range of water resources projects, programs, activities, and related actions involving Federal investment in water resources. The U.S. Army Corps of Engineers (Corps) proposes a regulation to show how it would apply the PR&G to the Corps' mission and authorities. In this proposed regulation, the Corps intends to increase consistency and compatibility in Federal water resources investment decision making to include considerations such as analyzing a broader range of long-term costs and benefits, enhancing collaboration, including a more thorough and transparent risk and uncertainty analyses, and improving resilience for dealing with emerging challenges, including climate change.

Statement of Need: The Corps needs to develop implementing procedures for the Principles, Requirements, and Guidelines (PR&G) per a requirement under section 110 of the Water Resources Development Act of 2020.

Summary of Legal Basis: Section 110 of the Water Resources Development Act of 2020 directed the Corps to implement the PR&G. Also see section 2031 of Public Law 110–114.

Alternatives: The Corps could implement PR&G with guidance rather than through rulemaking; however, such procedures would not be binding on the Corps or the public as any procedures would not have undergone APA rulemaking. The Corps would not develop procedures to implement PR&G and instead rely solely on the PR&G documents to implement. This could result in confusion and a lack of consistency for the Corps and the public as to how and when to apply PR&G to Civil Works authorities. The Corps proposes to conduct rulemaking to ensure the PR&G implementing procedures are clear for the Corps and the public as well as binding.

Anticipated Cost and Benefits: As this rulemaking action is implementing procedures for the Corps to ensure compliance with the PR&G, there may be some administrative costs incurred to the Corps for implementation and training. There would be benefits accrued to the public in the form of reduced confusion and assurance of consideration of comprehensive benefits for water resource development projects. The rulemaking action would also result in more net beneficial project outcomes from improved decision making.

Risks: The proposed action is not anticipated to increase risk to public health, safety, or the environment because it outlines the procedures the Corps will follow for implementing a federal statutory requirement in WRDA as well as Administration policy. The Corps will comply with all statutory requirements when implementing PR&G.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Stacey M. Jensen, Office of the Assistant Secretary of the Army, Department of Defense, U.S. Army Corps of Engineers, 108 Army Pentagon, Washington, DC 22202, *Phone:* 703 695–6791, *Email: stacey.m.jensen.civ@army.mil.*

RIN: 0710–AB41

DOD—COE

35. Appendix C Procedures for the Protection of Historic Properties [0710–AB46]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 401; 33 U.S.C. 1344; 33 U.S.C. 1413

CFR Citation: 33 CFR 325.

Legal Deadline: None.

Abstract: The U.S. Army Corps of Engineers (Corps) considers the effects

of its actions on historic properties pursuant to section 106 of the National Historic Preservation Act (NHPA). The Corps' Regulatory Program's regulations for complying with the NHPA are outlined at 33 CFR 325 appendix C. Since these regulations were promulgated in 1990, there have been amendments to the NHPA and revisions to the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800. In response, the Corps issued interim guidance until rulemaking could be completed in order to ensure full compliance with the NHPA and ACHP's regulations. The Corps proposes to revise its regulations to conform to the ACHP regulations.

Statement of Need: Appendix C intends to provide the implementing procedures for the Regulatory Program's compliance with section 106 of the National Historic Preservation Act. Rulemaking is required to ensure the Regulatory Program is compliant with the NHPA and ACHP's implementing regulations at 36 CFR 800 for federal agency compliance with Section 106. The NHPA and the ACHP regulations have been updated since Appendix C was promulgated.

Summary of Legal Basis: Appendix C was promulgated through an APA rulemaking process intended to provide compliance with section 106 of the NHPA specific to the Regulatory Program.

Alternatives: Alternatives considered include retaining appendix C, which in its current state is not compliant with the updates to NHPA or the ACHP implementing regulations for federal agencies. The current appendix C is also not compliant with the NHPA and Administration policies regarding Tribal Nations. Another alternative is to rescind Appendix C and have the Regulatory Program rely on the ACHP implementing regulations. This would ensure consistency with the Civil Works program of the Corps and ensure compliance with the statutory and regulation language. Another alternative is to modify appendix C to update the regulation incorporating changes made since promulgation to the NHPA and ACHP implementing regulations. The goal would be to ensure compliance with NHPA and the ACHP implementing regulations but the end result would be comparable to the rescission alternative with more resource and workload effort. It would also result in continued confusion for the public with the differing name from ACHP's regulations and Civil Works implementation.

Anticipated Cost and Benefits: As this rulemaking action is implementing procedures for the Corps to ensure compliance with the NHPA, there may be some administrative costs incurred to the Corps for training. There would be benefits accrued to the public in the form of reduced confusion and assurance of consideration of potential adverse effects to historic properties and items and areas of cultural/religious significance.

Risks: The proposed action is not anticipated to increase risk to public health, safety, or the environment because it outlines the procedures the Corps will follow for implementing a federal statutory requirement. The Corps will comply with all statutory requirements when reviewing permit applications.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Federalism: Undetermined.

Agency Contact: Margaret Gaffney-Smith, Regulatory Program Manager, Department of Defense, U.S. Army Corps of Engineers, Attn: CECW–CO, 441 G Street NW, Washington, DC 20314, *Phone:* 202 761–4229.

RIN: 0710–AB46

DOD—COE

36. Revised Definition of ''Waters of the United States''—Rule 2 [0710–AB47]

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 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 develop regulations that are founded on the familiar framework of the pre-2015 regulations, are consistent with the statute and informed by relevant Supreme Court decisions, and that reflect a reasonable interpretation based on the record before the agencies, including the best available science. This second rule proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values. This effort would 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	09/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Stacey M. Jensen, Office of the Assistant Secretary of the Army, Department of Defense, U.S. Army Corps of Engineers, 108 Army Pentagon, Washington, DC 22202, *Phone:* 703 695–6791, *Email: stacey.m.jensen.civ@army.mil.*

RIN: 0710–AB47

DOD—COE

Final Rule Stage

37. Credit Assistance for Water Resources Infrastructure Projects [0710–AB31]

Priority: Other Significant.

Legal Authority: Pub. L. 114–94; Pub. L. 114–322; Pub. L. 115–270; 33 U.S.C. 3901

CFR Citation: 33 CFR 386.

Legal Deadline: None.

Abstract: The U.S. Army Corps of Engineers (Corps) is implementing 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 will be evaluated and selected by the Secretary of the Army (the Secretary) based on the requirements and the criteria described in this rule.

Statement of Need: The 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, essentially dams where the primary owner is a state, local government, public utility, or private owner.

Alternatives: The preferred alternative would be to conduct proposed rulemaking to implement a new credit program for dam safety work at non-Federal dams in the form of a binding regulation in compliance with the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) and Division D, title 1 of the Consolidated Appropriations Act of 2020. The next best alternative would involve issuing these implementing procedures in the form of an Engineer Regulation. That alternative would not fulfill the intent of the law because it would not be binding on the regulated public. The no action alternative would be to not conduct rulemaking which would not fulfill the authorization provided by Congress.

Anticipated Cost and Benefits: The 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. WIFIA compliance costs likely include costs associated with application and transaction processing fees, which are waived or reduced for small and disadvantaged communities, obtaining a credit rating letter, any consultant fees (not required), completing applications, reporting requirements, and record keeping. These costs are not anticipated to represent a significant economic impact, especially given that participation in the program is voluntary.

Risks: The 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	06/10/22	87 FR 35473
NPRM Comment Period End.	08/09/22	
Final Action	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Aaron Snyder, Department of Defense, U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314, *Phone:* 651 290–5489, *Email: aaron.m.snyder@usace.army.mil.*

Related RIN: Merged with 0710–AB32

RIN: 0710–AB31

DOD—COE

38. Revised Definition of ''Waters of the United States''—Rule 1 [0710–AB40]

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 initiated the development of regulations that are founded on the familiar framework of the pre-2015 regulations, are consistent with the statute and informed by relevant Supreme Court decisions, and that reflect a reasonable interpretation based on the record before the agencies, including the best available science. The proposal was open for public comment between Dec 2021 and Feb 2022. It is planned that this rule will be finalized by the end of the calendar year (2022).

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	12/07/21	86 FR 69372
NPRM Comment Period End.	02/07/22	
Final Action	12/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Federalism: Undetermined.

Agency Contact: Stacey M. Jensen, Office of the Assistant Secretary of the Army, Department of Defense, U.S. Army Corps of Engineers, 108 Army Pentagon, Washington, DC 22202, *Phone:* 703 695–6791 *Email: stacey.m.jensen.civ@army.mil.*

RIN: 0710–AB40

DOD—OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS (DODOASHA)

Final Rule Stage

39. TRICARE Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals [0720–AB73]

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, 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.

Statement of Need: The rule finalizes modifications to TRICARE regulation necessary to implement Medicare-similar reimbursement methods for Ambulatory Surgery Centers (ASCs) and Cancer and Children's Hospitals (CCHs). This is outlined in 10 U.S.C. 1079(i)(2) which 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.

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) Permitting a transition period for Ambulatory Surgery Centers (ASCs). DHA explored the use of a transition period that blended the current reimbursement method with the proposed method. This would slowly shift the rates to be fully aligned with Medicare at the end of the transition and would protect providers from lower payments. After comparing the differences in rates, DHA found that many providers are likely to see an increase in reimbursement, which would not be effective until the end of the transition period. Some providers may see a decrease in payments, but on the whole, Medicare's payments have been found to be adequate based upon a Medicare Payment Advisory Committee (MedPAC) review. As a result, DHA will not adopt a transition period.

(3) Permitting a transition period for Cancer and Children's Hospitals (CCHs). DHA explored the use of a transition period that blended the current reimbursement method with the proposed, and slowly shifted the rates to be fully aligned with Medicare at the end of the transition. This would be done to protect providers from payments below their cost, in the event that the rates are significantly affected. To protect CCHs, DHA will ensure that CCHs are reimbursed the greater of 100% of their costs or the OPPS payment. Because many CCH providers will receive payment increases, a transition period would not be beneficial for them. Historically, transitions are done to protect providers from payments below their costs. However, in this case, providers will be held-harmless, so no transition is necessary.

Anticipated Cost and Benefits: Economic impact of this rule is based on analysis of expected outcomes had the rule been implemented in 2021. The overall impact to the DoD, for ASC reimbursement, would be $10 million in reduced payments for ASCs. The overall impact to the DoD, for adopting OPPS for CCHs, would be $35 million in reduced payments to these providers. The combined impact is a cost-saving of approximately $45 million, which would be offset by $1.5 million in administrative costs to implement the changes. This estimated reduction in costs of $45 million is a transfer from providers to DoD.

Risks: None. DHA is adopting the new Ambulatory Surgery Center (ASC) and Cancer and Children's Hospital (CCH) reimbursement systems to be consistent with Medicare's, as required by statute. Although DHA expects a decrease in total TRICARE payments for ASCs; however, rates for almost half the high-volume ASC surgeries will increase under the new ASC payment system. DHA also notes that even if some ASCs deny access to some surgeries, TRICARE beneficiaries would be largely protected from access problems as these patients could have their surgeries performed in hospital outpatient departments (HOPDs). Additionally, CCHs will be held harmless, as they will receive, at a minimum, one-hundred percent of its costs, or the higher payment under Outpatient Prospective Payment System (OPPS). Under the new method, CCHs may be eligible for the General Temporary Military Contingency Payment Adjustments (GTMCPA) that will ensure network adequacy during military contingency operations. These GTMCPAs will be issued in the same manner as those made currently under TRICARE's OPPS.

Timetable:

Action	Date	FR Cite
NPRM	11/29/19	84 FR 65718
NPRM Comment Period End.	01/28/20	
Final Action	02/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Jahanbakhsh Badshan, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 East Centretech Parkway, Aurora, CO 80011, *Phone*: 303 676–3881, *Email: jahanbakhsh.badshah.civ@health.mil.*

RIN: 0720–AB73

DOD—DODOASHA

40. TRICARE Coverage of National Institute of Allergy and Infectious Disease Coronavirus Disease 2019 Clinical Trials [0720–AB83]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch. 55

CFR Citation: 32 CFR 199.

Legal Deadline: None.

Abstract: This rule finalizes provisions published in two interim final rules with request for comment, which temporarily added coverage for the treatment use of investigation drugs under U.S. Food and Drug Administration (FDA) approved expanded access programs when for the treatment of coronavirus disease 2019 (COVID–19) and permitted coverage of National Institute of Allergy and Infectious Disease (NIAID)-sponsored clinical trials for the treatment or prevention of COVID–19.

Statement of Need: This final rule is required to finalize certain temporary flexibilities enacted in interim final rules published in 2020 in response to the COVID–19 pandemic.

Pursuant to the President's national emergency declaration and as a result of the worldwide COVID–19 pandemic, the Assistant Secretary of Defense for Health Affairs hereby temporarily modified the regulation at 32 CFR 199.4(e)(26) to permit TRICARE coverage for National Institute of Allergy and Infectious Disease (NIAID)-sponsored COVID–19 phase I, II, III, and IV clinical trials for the treatment or prevention of coronavirus disease 2019 (COVID–19). This provision supports increased access to emerging therapies for TRICARE beneficiaries.

Summary of Legal Basis: This rule is issued under 10 U.S.C. 1073(a)(2) giving authority and responsibility to the Secretary of Defense to administer the TRICARE program.

Alternatives:

(1) No action.

(2) The second alternative the DoD considered was implementing a more limited benefit change for COVID–19 patients by not covering phase I clinical trials. Although this would have the benefit of reimbursing only care that has more established evidence in its favor, this alternative is not preferred because early access to treatments is critical for TRICARE beneficiaries given the rapid progression of the disease and the lack of available approved treatments.

Anticipated Cost and Benefits: Any cost to beneficiaries would be consistent with existing costs under the TRICARE Program (such as cost-shares and copayments). Finalizing TRICARE coverage of clinical trials will benefit TRICARE beneficiaries by ensuring they continue to have access to emerging therapies in the safest setting possible.

In the interim final rule, DoD estimated the total cost for TRICARE participation in NIAID-sponsored COVID–19 clinical trials would be $3.2M for the duration of the national emergency, with an additional $4.0M for continued care for beneficiaries enrolled in clinical trials prior to termination of the national emergency. There were several assumptions we made in developing this estimate. The duration of the COVID–19 national emergency is uncertain; however, for the purposes of this estimate, we assumed the national emergency would expire on September 30, 2021. As of the drafting of the IFR, there were 27 NIAID-sponsored COVID–19 clinical trials begun since the start of the national emergency. We assumed 6.2 new trials every 30 days, for a total of 126 trials by September 2021. We assumed, based on average trial enrollment and that TRICARE beneficiaries would participate in trials at the same rate as the general population, that 4,549 TRICARE beneficiaries would participate through September 2021. Each of the assumptions in this estimate is highly uncertain, and our estimate could be higher or lower depending on real world events (more or fewer trials, a longer or shorter national emergency, and/or higher or lower participation in clinical trials by TRICARE beneficiaries).

Benefits: These changes expand the therapies available to TRICARE beneficiaries in settings that ensure informed consent of the beneficiary, and where the benefits of treatment outweigh the potential risks. Participation in clinical trials may provide beneficiaries with benefits such as reduced hospitalizations and/or use of a mechanical ventilator. Although we cannot estimate the value of avoiding these outcomes quantitatively, the potential long-term consequences of serious COVID–19 illness, including permanent cardiac or lung damage, are not insignificant. Beneficiary access to emerging therapies that reduce these long-term consequences or even death can be considered to be high-value for those able to participate.

TRICARE providers will be positively affected by being able to provide their patients with a broader range of treatment options. The general public will benefit from an increased pool of available participants for the development of treatments and vaccines for COVID–19, as well as the evidence (favorable or otherwise) that results from this participation.

Risks: None. This rule will not directly affect the efficient functioning of the economy or private markets. However, increasing the pool of available participants for clinical trials may help speed the development of treatments or vaccines for COVID–19. Once effective treatments or vaccines for COVID–19 exist, individuals are likely to be more confident interacting in the public sphere, resulting in a positive impact on the economy and private markets.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/20	85 FR 68753
Interim Final Rule Effective.	10/30/20	
Interim Final Rule Comment Period End.	11/30/20	
Final Action	05/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Jennifer Stankovic, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 E Centretech Parkway, Aurora, CO 80011–9066, *Phone:* 303 676–3742, *Email: jennifer.l.stankovic.civ@health.mil.*

Related RIN: Related to 0720–AB81, Related to 0720–AB82

RIN: 0720–AB83

DOD—DODOASHA

41. Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic [0720–AB85]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch. 55

CFR Citation: 32 CFR 199.

Legal Deadline: None.

Abstract: This 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; and (2) 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.

Summary of Legal Basis: This rule is issued under 10 U.S.C. 1073 (a)(2) giving authority and responsibility to the Secretary of Defense to administer the TRICARE program.

Alternatives:

(1) No action.

(2) The second alternative the Department of Defense considered was to adopt Medicare's ESRD reimbursement methodology, the ESRD Prospective Payment System (PPS), in total. While this would have been completely consistent with the statutory provision to pay institutional providers using the same reimbursement methodology as Medicare, this alternative is not preferred because there is still a relatively low volume of TRICARE beneficiaries who receive dialysis services from freestanding ESRDs and who are not enrolled to Medicare. The cost of implementing the full ESRD PPS system is estimated to be at least $600,000.00 in start-up costs, plus ongoing administrative costs, to ensure all adjustments were made for each claim, plus additional special pricing software or algorithms. In contrast, we estimate that the option provided in this IFR can be implemented relatively quickly (within six months of publication), and for approximately $300,000.00 in start-up costs with lower ongoing administrative costs. Further, the flat rate will provide the ESRD facilities with predictability with regard to TRICARE payments and will reduce uncertainty and specialized coding or case-mix documentation requirements that may be required by the ESRD PPS, reducing the administrative burden on the provider.

To summarize, adopting the ESRD PPS was considered, but was deemed impracticable and overly burdensome to both the Government and providers due to the relative low volume of claims that will be priced and paid by TRICARE as primary under this system.

Anticipated Cost and Benefits: $8.08 million. Only the ESRD provisions are expected to result in recurring incremental health care costs; the remaining two provisions are expected to result in one-time cost increases.

This estimate includes approximately $0.9M in administrative costs and $5.9M in direct health care costs.

$1.8M of the total cost impact is expected to be a one-time start-up cost for both the temporary and permanent provisions, while the permanent ESRD provisions are expected to result in $5M in incremental annual costs.

Risks: None. This rule will promote the efficient functioning of the economy and markets by modifying the regulations to better reimburse health care providers for care provided during the COVID–19 pandemic, particularly as strain on the health care economy is being felt due to reductions in higher cost elective procedures. Additionally, this rule will increase the access of TRICARE beneficiaries to more providers administering COVID–19 vaccinations, which promotes the efficient functioning of the U.S. economy by quickening the pace at which the public receives COVID–19 vaccinations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Jahanbakhsh Badshah, Healthcare Program Specialist—Reimbursement, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 E Centretech Parkway, Aurora, CO 80011, *Phone:* 303 676–3881, *Email: jahanbakhsh.badshah.civ@health.mil.*

RIN: 0720–AB85

DOD—DODOASHA

42. Collection From Third Party Payers of Reasonable Charges for Healthcare Services; Amendment [0720–AB87]

Priority: Other Significant.

Legal Authority: NDAA 2021, sec. 702

CFR Citation: 32 CFR 220.

Legal Deadline: None.

Abstract: The National Defense Authorization Act (NDAA) section 702 for Fiscal Year (FY) 2021 provides authority to waive fees charged for certain civilian non-beneficiary patients: (1) after the patient's insurance pays, if any, the civilian is not able to pay for the trauma or other medical care provided to the civilian; and (2) the provision of such care enhances the knowledge, skills, and abilities of health care providers, as determined by the Secretary. The amendment of 32 CFR 220.7 would delegate authority to the Secretary of Defense or a Secretary of Defense established representative to waive medical debt owed for services rendered at Military Treatment Facilities (MTF) if the patient requests a medical debt waiver and meets the two specified criteria.

This amendment should be made as current legislation and policies can lead to an undue financial burden on non-beneficiary patients who have incurred medical debt from treatment at MTFs. The Debt Collection Improvement Act of 1996 and the Digital Accountability and Transparency act of 2014 drive federal collection activities and can place individuals indebted to the government at risk of financial hardship. By making these changes, the Secretary of Defense would have the ability to waive non-beneficiary civilian debt in cases where the patient is unable to pay as determined using U.S. Treasury guidelines and when the care provided enhances the knowledge, skills, and abilities of health care providers.

Statement of Need: Section 702 of the FY 2021 NDAA amends 10 U.S.C. 1079b by inserting a new subsection regarding the waiver of fees. Under section 702,

the Secretary of Defense may waive a fee charged to a civilian who is not a covered beneficiary if after insurance payments, if any, the civilian is not able to pay for the trauma or other medical care provided to the civilian; and the provision of such care enhanced the medical readiness of the health care provider or health care providers furnishing such care. This rule prescribes a new debt waiver process for medical debt owned for services rendered at Military Treatment Facilities to civilians who are not covered beneficiaries.

Summary of Legal Basis: Section 702 of the FY 2021 NDAA amends 10 U.S.C. 1079b by inserting a new subsection regarding the waiver of fees. Under section 702, the Secretary of Defense may waive a fee charged to a civilian who is not a covered beneficiary if after insurance payments, if any, the civilian is not able to pay for the trauma or other medical care provided to the civilian; and the provision of such care enhanced the medical readiness of the health care provider or health care providers furnishing such care.

Alternatives:

Alternative #1: The first alternative will use an outside agency, the Centralized Receivable Service (CRS) to complete the patient ability-to-pay assessment and make a recommendation to the DHA Cost Accounting Division (CAD) Financial Operations (FO). CAD FO will then make the final determination based on that recommendation. This alternative will utilize DHA's existing relationship with CRS, a program under the U.S. Department of Treasury focused on managing pre-delinquent debt and debt in the early stages of delinquency before it is referred to the U.S. Treasury.

Alternative #2: The DoD considered a second alternative in which the DHA UBO will stand up a cell to complete the ability-to-pay assessments and make a recommendation. The recommendations will be directed to either the DHA CAD FO for accounts under $100,000 or to the Deputy Assistant Director (DAD) FO for accounts over $100,000.

Alternative #3: Option 3, which is DoD's preferred approach due to operational efficiency gains, would leverage existing partnerships with CRS and U.S. Treasury. For active or non-delinquent debt, the MTF UBO will direct all uninsured non-beneficiary accounts to CRS for billing. The patient can request a waiver by contacting CRS as directed on their invoice, the MTF will direct the account information to CRS to complete the financial analysis. If a patient is deemed financially culpable, collections will be pursued by CRS. If not, CRS will calculate an amount the debtor can pay within 3–5 years and waive the remaining debt. CRS would report decisions to DHA following established business rules and guidelines including monthly accounting of all waiver and compromise agreements to DHA, and immediately report waived amounts over $100,000. Any additional business rules will be decided by DHA FO and DHA General Counsel.

Anticipated Cost and Benefits: This cost will be the fee paid to CRS for their services, totaling an estimated $145, 711. Time required for this alternative is an estimated 17 days based on CRS reported process completion estimates from the DAMP program. This would include time for the civilian to compile required documents, for CRS to draft the package and assess ability to pay, as well as CRS response time for a decision and any other follow-up activities for each request for waiver.

Risks: None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: DeLisa Prater, DHA Uniform Business Office Program Manager, Department of Defense, Office of Assistant Secretary for Health Affairs, 8111 Gatehouse Road, Suite #221, Falls Church, VA 22042–5101, *Phone:* 703 275–6380, *Email: delisa.e.prater.civ@mail.mil.*

RIN: 0720–AB87

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Statement of Regulatory Priorities

I. Introduction

The U.S. Department of Education (Department) supports States, local communities, institutions of higher education, and families in improving education and other services nationwide to ensure that all Americans, including those with disabilities and who have been underserved, receive a high-quality and safe education and are prepared for employment that provides a livable wage. We provide leadership and financial assistance pertaining to education and related services at all levels to a wide range of stakeholders and individuals, including State educational and other agencies, local school districts, providers of early learning programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, students, members of the public, families, and many others. These efforts are helping to advance equity, recover from the COVID–19 pandemic, and ensure that all children and students from pre-kindergarten through grade 12 will be ready for, and succeed in, postsecondary education and employment, and that students attending postsecondary institutions, or participating in other postsecondary education options, are prepared for a profession or career.

We also vigorously monitor and enforce the implementation of Federal civil rights laws in educational programs and activities that receive Federal financial assistance from the Department, and support innovative and promising programs, research and evaluation activities, technical assistance, and the dissemination of data, research, and evaluation findings to improve the quality of education.

Overall, the laws, regulations, and programs that the Department administers will affect nearly every American during his or her life. Indeed, in the 2021–22 school year, about 56 million students attended an estimated 129,000 elementary and secondary schools in approximately 13,600 districts, and about 20 million students enrolled in postsecondary institutions of higher education. Many of these students 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 organizations,

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 time in office, the President has repeatedly made clear the importance of advancing equity and opportunity for those who have historically been underserved, both as a general matter and with regard to the education system in particular.

See Executive Order 13985 (On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government); Executive Order 14021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity); Executive Order 14041 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities); Executive Order 14045 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics); Executive Order 14049 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities); and Executive Order 14050 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans). The rulemaking actions on the Department's agenda seek to advance the President's priorities, as set out in these executive orders and more broadly. Our regulatory agenda covers a wide range of topics, and a wide range of educational institutions—from those serving our youngest children to colleges, universities, and adult education programs. In each of these contexts, promoting equity and opportunity for students who have been historically underserved is central to the Department's regulatory plan.

Postsecondary Education/Federal Student Aid

The Department's upcoming higher education regulatory efforts include the following areas:

- Improving Income Driven Repayment
- Gainful Employment

These rulemakings are focused on improving the rules governing student loan repayment and protecting students and taxpayers from career-training programs that fail to provide sufficient value, among other topics. These rulemakings reflect the Department's commitment to helping borrowers successfully manage their student loans and protecting students 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 delinquency, and default, as well as the returns students receive for their investments. For its higher education rulemakings, generally the Department uses a negotiated rulemaking process. We 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.

The Department used this negotiated rulemaking process for its rulemakings on Improving Income Driven Repayment and Gainful Employment. On Improving Income Driven Repayment, the Department plans to create or adjust an income driven repayment plan that would allow borrowers to more easily afford their student loan payments. 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.

Civil Rights/Title IX

The Secretary proposed to amend its regulations implementing Title IX of the Education Amendments of 1972, as amended, consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity.

Student Privacy

The Department is considering policy options to amend the Family Educational Rights and Privacy Act (FERPA) regulations, to update, clarify, and improve the current regulations. The proposed regulations are also needed to implement statutory amendments to FERPA contained in the Uninterrupted Scholars Act of 2013 and the Healthy, Hunger-Free Kids Act of 2010, to reflect a change in the name of the office designated to administer FERPA, and to make changes related to the enforcement responsibilities of the office concerning FERPA.

Recently Completed Rulemakings

Additionally, the Department has recently concluded a number of critical rulemakings, including Public Service Loan Forgiveness; Borrower Defense to Repayment; Improving Discharges for Total and Permanent Disabilities, Closed Schools, and False Certification; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); and Pell Grants for Prison Education Programs. For Public Service Loan Forgiveness, the Department streamlined 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 amended 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 Discharges for Total and Permanent Disabilities, Closed Schools, and False Certification, the Department improved 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 amended the regulations relating to borrower eligibility and streamlined application requirements and the application and certification processes. On the 90/10 rule, in response to changes to the HEA made by the American Rescue Plan Act of 2021, the Department amended 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. To increase access to educational opportunities, the Department also issued 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.

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

43. • Nondiscrimination on the Basis of Sex in Athletics Education Programs or Activities Receiving Federal Financial Assistance [1870–AA19]

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 issue a final rule amending its regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.,* consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity.

Statement of Need: This rulemaking is necessary to align the Title IX regulations to fully implement the statute.

Summary of Legal Basis: We are conducting this rulemaking under 20 U.S.C. 1681 *et seq.*

Alternatives: We have limited information about the alternatives at this time.

Anticipated Cost and Benefits: We have limited information about the costs and benefits at this time.

Risks: We have limited information about the risks at this time.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Alejandro Reyes, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, Room PCP–6125, Washington, DC 20202, *Phone:* 202 245–7272, *Email: alejandro.reyes@ed.gov.*

RIN: 1870–AA19

ED—OCR

Final Rule Stage

44. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance [1870–AA16]

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 issue a final rule amending its regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.,* consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity. The proposed amendments include, among others, revisions to 34 CFR 106.2 (Definitions), 106.6 (Effect of other requirements and preservation of rights), 106.8 (Designation of coordinator, dissemination of policy, and adoption of grievance procedures), 106.10 (Scope), 106.11 (Application), 106.30 (Definitions), 106.31 (Education programs or activities), 106.40 (Parental,

family, or marital status; pregnancy or related conditions), 106.44 (Action by a recipient to operate its education program or activity free from sex discrimination), 106.45 (Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination), 106.46 (Grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions); 106.51 (Employment), 106.57 (Parental, family, or marital status; pregnancy or related conditions), 106.60 (Pre-employment inquiries), and 106.71 (Retaliation).

Statement of Need: This rulemaking is necessary to align the Title IX regulations with the priorities of the Biden-Harris Administration, including those set forth in the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (E.O. 13988) and the Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity (E.O. 14021).

Summary of Legal Basis: We are conducting this rulemaking under 20 U.S.C. 1681 *et seq.*

Alternatives: This was discussed in the notice of proposed rulemaking (NPRM) and will be discussed in the final regulations.

Anticipated Cost and Benefits: This was discussed in the notice of proposed rulemaking (NPRM) and will be discussed in the final regulations.

Risks: This was discussed in the notice of proposed rulemaking (NPRM) and will be discussed in the final regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/12/22	87 FR 41390
Final Action	05/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Alejandro Reyes, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, PCP–6125, Washington, DC 20202, *Phone:* 202 245–7705, *Email: t9nprm@ed.gov.*

RIN: 1870–AA16

ED—OFFICE OF POSTSECONDARY EDUCATION (OPE)

Proposed Rule Stage

45. Gainful Employment [1840–AD57]

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	04/00/23	

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

46. • Improving Income Driven Repayment [1840–AD81]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 20 U.S.C. 1070g; 20 U.S.C. 1087a, *et seq.*

CFR Citation: 34 CFR 685.

Legal Deadline: None.

Abstract: The Secretary plans to propose amendments to the regulations governing income-contingent repayment plans by amending the Revised Pay as You Earn (REPAYE) repayment plan, and to restructure and rename the repayment plan regulations under the William D. Ford Federal Direct Loan (Direct Loan) Program, including combining the Income Contingent Repayment (ICR) and the Income-Based Repayment (IBR) plans under the umbrella term of Income-Driven Repayment (IDR) plans.

Statement of Need: This rulemaking is necessary to make improvements to the income-driven repayment plans created under the ICR authority in Higher Education Act of 1965 that allows the Secretary to cap payments at a set share of a borrower's income.

Summary of Legal Basis: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

Alternatives: We have limited information about the alternatives at this time.

Anticipated Cost and Benefits: We have limited information about the anticipated costs and benefits at this time.

Risks: We have limited information about the risks at this time.

Timetable:

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rulemaking.	05/26/21	86 FR 28299
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Tamy Abernathy, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 2C–232, Washington, DC 20202, *Phone:* 202 453–5970, *Email: tamy.abernathy@ed.gov.*

RIN: 1840–AD81

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Statement of Regulatory and Deregulatory Priorities

The Department of Energy (Department or DOE) makes vital contributions to the Nation's welfare through its activities focused on improving national security, energy supply, energy efficiency, environmental remediation, and energy research. The Department's mission is to:

- Promote dependable, affordable and environmentally sound production and distribution of energy;
- Advance energy efficiency and conservation;
- Provide responsible stewardship of the Nation's nuclear weapons;
- Provide a responsible resolution to the environmental legacy of nuclear weapons production; and
- Strengthen U.S. scientific discovery, economic competitiveness, and improve quality of life through innovations in science and technology.

The Department's regulatory activities are essential to achieving its critical mission and to implementing the President's clean energy and climate initiatives. Among other things, the Regulatory Plan and the Unified Agenda contain the rulemakings the Department will be engaged in during the coming year to fulfill the Department's commitment to meeting deadlines for issuance of energy conservation standards and related test procedures. The Regulatory Plan and Unified Agenda also reflect the Department's continuing commitment to cut costs, reduce regulatory burden, and increase responsiveness to the public.

Energy Efficiency Program for Consumer Products and Commercial Equipment

The Energy Policy and Conservation Act (EPCA) requires DOE to set appliance efficiency standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. The Department continues to follow its schedule for setting new appliance efficiency standards by both tackling its backlog of rulemakings with missed statutory deadlines and advancing rulemakings with upcoming statutory deadlines. In 2022, DOE has published 55 actions relating to energy conservation standards, including nine final actions; 45 actions relating to test procedures, including 18 final rules; and four actions related to coverage determinations, including three final rules. DOE tentatively plans to publish three additional actions relating to energy conservation standards and seven actions relating to test procedures by the end of the year. These rulemakings are expected to save American consumers billions of dollars in energy costs over a 30-year timeframe.

The Department is highlighting one important energy conservation standard rule entitled ''Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces.'' For non-weatherized gas furnaces and mobile home gas furnaces, DOE estimates that energy savings for active mode operation (in terms of annual fuel utilization efficiency (AFUE)) will be 5.48 quads over 30 years and that the net benefit to the Nation will be between $6.2 billion and $21.6 billion. DOE estimates that energy savings for standby mode and off mode operation will be 0.28 quads over 30 years and that the net benefit to the Nation will be between $1.1 billion and $3.4 billion.

Federal Agency Leadership in Climate Change

Beyond the appliance program, DOE is supporting Federal agency leadership in climate change in various ways, including in its ''Clean Energy Rule for New Federal Buildings and Major Renovations'' (Clean Energy Rule), which implements a provision of the Energy Independence and Security Act of 2007 (EISA) that requires the Department to establish revised-performance standards for the construction of all new Federal buildings, including commercial buildings, multi-family high-rise residential buildings, and low-rise residential buildings. Consistent with the requirements in EISA, this rule presents revised Federal building energy performance standards that would require reductions in Federal agencies' on-site use of fossil fuels (which include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils) consistent with the targets of EPCA and EISA, and provides processes by which agencies can petition DOE for the downward adjustment of these targets for buildings. For covered buildings for which design for construction or whole building renovation begins in fiscal year 2030 or beyond, the fossil fuel-generated energy consumption of the building must be zero for all building types and climate zones, based on the calculation established in the regulations.

Investing in Clean Energy Projects

The ''Loan Guarantees for Clean Energy Projects'' interim final rule would amend DOE's regulations implementing the Title XVII loan guarantee program to incorporate new categories of eligible projects and other provisions of the Energy Act of 2020, the Infrastructure Investment Act of 2021, and the Inflation Reduction Act of 2022. The rule would also include other changes to the existing regulations based on experiences gained implementing the Title XVII program and on comments recently received from stakeholders in response to DOE's Request for Information. The rule would enable DOE's use of nearly $300 billion of additional loan authority for a broad range of energy projects.

DOE—ENERGY EFFICIENCY AND RENEWABLE ENERGY (EE)

Proposed Rule Stage

47. Clean Energy Rule for New Federal Buildings and Major Renovations [1904–AB96]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 6834(a)(3)(D)

CFR Citation: 10 CFR 433; 10 CFR 435.

Legal Deadline: Other, Statutory, Subject to the requirements in 42 U.S.C. 6834(a)(3)(D).

Abstract: This rulemaking implements provisions of the Energy Independence and Security Act of 2007 that require the U.S. Department of Energy (DOE) to establish revised-performance standards for the construction of all new Federal buildings, including commercial, multi-family high-rise residential and low-rise residential buildings. This rulemaking will specifically address the reduction of fossil fuel-generated energy consumption in new buildings and buildings undergoing major renovations, as well as how agencies may petition DOE for a downward adjustment of the requirements if they believe meeting required energy reduction levels would be technically impracticable. This effort was previously reported as the Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings rulemaking.

Statement of Need: The Energy Independence and Security Act of 2007 (EISA 2007) requires certain new

Federal buildings and Federal buildings undergoing major renovations to meet fossil fuel-generated consumption reduction targets based on fiscal year.

Summary of Legal Basis: Section 433(a) of EISA 2007 2007 (Pub. L. 110–140) amended section 305 of the Energy Conservation and Production Act (ECPA) and directed the DOE to establish regulations that require fossil fuel-generated energy consumption reductions for certain new Federal buildings and Federal buildings undergoing major renovations. (42 U.S.C. 6834(a)(3)(D)(i)) For these buildings, section 305 of ECPA, as amended by EISA 2007, mandates that the buildings be designed so that a building's fossil fuel-generated energy consumption is reduced as compared with such energy consumption by a similar building in fiscal year (FY) 2003 (as measured by Commercial Buildings Energy Consumption Survey (CBECS) or Residential Energy Consumption Survey (RECS) data from the DOE's Energy Information Administration (EIA)) by 55 percent beginning in FY2010, 65 percent beginning in FY2015, 80 percent beginning in FY2020, 90 percent beginning in FY2025, and 100 percent beginning in FY2030. (42 U.S.C. 6834(a)(3)(D)(i)(I)).

Alternatives: The statute requires DOE to establish regulations implementing the specific fossil fuel-generated energy consumption targets for certain new Federal buildings and Federal buildings undergoing major renovations. The targets may be adjusted with respect to a specific building upon petition from an agency, with agreement from the DOE Secretary. In implementing these regulations, DOE considers the technologies available to achieve the statutory targets and those relevant for petitions submitted by agencies.

Anticipated Cost and Benefits: The cumulative net present value (NPV) of the proposed Clean Energy Rule compliant buildings ranges from −$16.0 Million (at a 7-percent discount rate) to −$85.3 Million (at a 3-percent discount rate).DOE also analyzed an additional case where the future grid emission factors were assumed to follow a 95% reduction by 2035 (95 by 2035) profile as defined in the National Renewable Energy Laboratory's (NREL) 2021 Standard Scenarios Report: A U.S. Electricity Sector Outlook. This case represents a change in national electricity generation which assumes national power sector CO^2 emissions reach 95% below 2005 levels by 2035 and are eliminated on a net basis by 2050. The cumulative NPV of the proposed Clean Energy Rule compliant buildings in the 95 by 2035 case ranges from $104.6 Million (at a 7-percent discount rate) to $83.4 Million (at a 3-percent discount rate).

Risks: Optional field—no response.

Timetable:

Action	Date	FR Cite
NPRM	10/15/10	75 FR 63404
NPRM Comment Period End.	12/14/10	
Supplemental NPRM.	10/14/14	79 FR 61693
Supplemental NPRM Comment Period End.	12/15/14	
Supplemental Notice of Proposed Rulemaking (NPRM).	12/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

URL For More Information: *www.energy.gov/eere/femp/notices-and-rules.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Ashley Armstrong, Director Regulatory Buildings, EE–5B, Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Office, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 586–6590, *Email:* *ashley.armstrong@ee.doe.gov.*

RIN: 1904–AB96

DOE—EE

Final Rule Stage

48. Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces [1904–AD20]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 6295(f)(4)(C); 42 U.S.C. 6295(m)(1); 42 U.S.C. 6295(gg)(3)

CFR Citation: 10 CFR 429; 10 CFR 430.

Legal Deadline: NPRM, Judicial, April 24, 2015, Final Rule, Judicial, the later date of April 24, 2016, or one year after the issuance of the proposed rule.

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 proposes amended and new energy conservation standards for non-weatherized gas furnaces and mobile home gas furnaces pursuant to a court-ordered remand of DOE's 2011 rulemaking for these products and other statutory requirements.

Statement of Need: EPCA requires minimum energy efficiency standards for certain appliances and commercial equipment, including residential furnaces.

Summary of Legal Basis: Title III of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that the U.S. Department of Energy (DOE) prescribes for certain products, such as residential furnaces, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)) and result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B)).

Alternatives: The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified in the statute.

Anticipated Cost and Benefits: DOE finds that the benefits to the Nation of the proposed energy standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces (such as energy savings, consumer average lifecycle cost savings, an increase in national net present value, and emission reductions) outweigh the burdens (such as loss of industry net present value). For non-weatherized gas furnaces and mobile home gas furnaces, DOE estimates that energy savings for active mode operation (in terms of annual fuel utilization efficiency (AFUE)) will be 5.48 quads over 30 years and that the net benefit to the Nation will be between $6.2 billion and $21.6 billion. DOE estimates that energy savings for standby mode and off mode operation will be 0.28 quads over 30 years and that the net benefit to the Nation will be between $1.1 billion and $3.4 billion.

Risks: Optional field—no response.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting.	10/30/14	79 FR 64517
NPRM and Notice of Public Meeting.	03/12/15	80 FR 13120
NPRM Comment Period Extended.	05/20/15	80 FR 28851
NPRM Comment Period Extended End.	07/10/15	
Notice of Data Availability (NODA).	09/14/15	80 FR 55038
NODA Comment Period End.	10/14/15	
NODA Comment Period Reopened.	10/23/15	80 FR 64370
NODA Comment Period Reopened End.	11/06/15	
Supplemental NPRM and Notice of Public Meeting.	09/23/16	81 FR 65720
Supplemental NPRM Comment Period End.	11/22/16	
SNPRM Comment Period Reopened.	12/05/16	81 FR 87493
SNPRM Comment Period End.	01/06/17	
Notice of NPRM Withdrawal.	01/15/21	86 FR 3873
NPRM	07/07/22	87 FR 40590
Notification of data availability (NODA), public meeting, and extension of the comment period.	08/30/22	87 FR 52861
NPRM Comment Period End.	10/06/22	
Final Action	09/00/23	

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/72.

URL For Public Comments: www.regulations.gov/#!docketDetail;D=EERE–2014-BT-STD-0031.

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

DOE—DEPARTMENTAL AND OTHERS (ENDEP)

Final Rule Stage

49. • Loan Guarantees for Clean Energy Projects [1901–AB59]

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 16511 *et seq.*

CFR Citation: 10 CFR 609.

Legal Deadline: None.

Abstract: The Inflation Reduction Act (IRA) has added new categories of eligible projects to the U.S. Department of Energy (DOE) Loan Programs Office's program authorized by Title XVII of the Energy Policy Act of 2005, as amended (42 U.S.C. 16511 *et seq.*). This requires immediate and material changes to DOE's existing regulations (10 CFR part 609) implementing the Title XVII program for DOE to be able to accept applications and issue loan guarantees for those categories of projects. The loan authority and appropriations authorized under the IRA are available through September 30, 2026, making the implementation of the authority time-sensitive. The rule would also include changes to the existing regulations based on experience gained implementing the Title XVII loan guarantee program and to reflect amendments to Title XVII enacted by the Energy Policy Act of 2020 and the Infrastructure Investment and Jobs Act of 2021.

Statement of Need: The existing regulations governing Title XVII do not contemplate certain categories of projects and terms applicable to Title XVII, as amended by recent legislation. As such, DOE must revise its regulations in order to effectuate the new categories of eligible projects and terms.

Summary of Legal Basis: Title XVII of the Energy Policy Act of 2005, Public Law 109–58 (42 U.S.C. 16511 *et seq.*) established a program for the Department of Energy to guarantee loans for innovative projects that avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases. Title XVII has since been amended, including most recently under the Consolidated Appropriations Act of 2021 (Energy Act of 2020), Public Law 116–260, the Infrastructure Investment and Jobs Act of 2021, Public Law 117–158 (IIJA), and the Inflation Reduction Act of 2022, Public Law 117–169 (IRA).

Alternatives: This rulemaking seeks to codify recent legislative changes to the Title XVII program and make changes to DOE's regulations to improve implementation of the program. DOE recently solicited input from stakeholders to understand how it could improve the Title XVII program.

Anticipated Cost and Benefits: The Title XVII rule sets forth the policies and procedures DOE uses for the application process, which includes receiving, evaluating, and approving loan guarantees to support eligible projects under Title XVII. While the rule itself will not have a direct economic impact, it will enable DOE's use of nearly $300 billion of additional loan authority provided under the IIJA and IRA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Rebecca Limmer, Chief Counsel, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 586–1174, *Email: rebecca.limmer@hq.doe.gov.*

RIN: 1901–AB59

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Regulatory Priorities for Fiscal Year 2023

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 (FY) 2023 is focused on expanding access to health care, tackling disparities and advancing equity, increasing the nation's public health preparedness, and supporting the wellbeing of families and communities. To highlight a few of these regulatory priorities:

• This Plan expands access to health care and strengthens behavioral health, with rules that expand evidence-based behavioral health treatment via telehealth and streamline enrollment and improve access to care for children and families through the Medicaid

program and the Children's Health Insurance Program (CHIP), among others.

• The Department is also taking action to advance equity in health and social outcomes, including through rules designed to prevent discrimination and protect every person's ability to equitably obtain health care and human services, regardless of where they live, who they are, or their background.

• Forthcoming rules would also increase the nation's public health preparedness, such as measures aimed at ensuring Americans are able to access safe produce and imported foods, and rules that would bolster the Department's ability to respond to the spread of COVID–19 and prevent future public health threats.

• This Plan supports the wellbeing of families and communities by including rules that would strengthen services for older Americans to allow them to live in their communities, as well as ensure that children and youth receive the care and support they need to thrive.

In short, the Department's Regulatory Plan reflects the Biden-Harris Administration's commitment to continue building a better, healthier America, through rules designed to help protect the public health and to improve the health and wellbeing of every person touched by HHS programs.

I. Building and Expanding Access to Affordable Health Care

The Biden-Harris Administration is committed to ensuring that high-quality health care is accessible and affordable for every American. The Inflation Reduction Act of 2022 (IRA), signed by President Biden in August, lowers costs for American families by continuing increased premium tax credits for plans under the Affordable Care Act (ACA), allowing the federal government to negotiate prices for certain drugs under Medicare, and more. The Bipartisan Safer Communities Act of 2022, signed by President Biden in June, expands capacity and advances access to behavioral health treatment, particularly for children and youth. Additionally, President Biden's Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage (E.O. 14070) calls on federal agencies—including the Department—to continue to expand the availability of health care coverage, improve its quality, strengthen benefits, and help more Americans enroll.

Charged with overseeing federal health programs such as Medicare, Medicaid, CHIP, and the ACA Marketplace, the Department plays a central role in the Administration's agenda to protect and strengthen access to health care. From day one of this Administration, the Department has worked closely with states to expand Medicaid to hundreds of thousands of newly eligible people and to allow Medicaid enrollees who are pregnant to keep their coverage for up to one year after pregnancy. The Department has also maximized opportunities to enroll a record number of people in ACA coverage and strengthened policies related to coverage and benefits in the ACA Marketplace. These actions, alongside others, have contributed to an all-time low uninsured rate among Americans.

Over the next year, the Department will build upon its previous efforts by pursuing rules aimed at enhancing coverage and access to benefits in the ACA Marketplaces and the Medicaid, CHIP, and Medicare programs; expanding the accessibility and affordability of drugs and medical products; addressing behavioral health needs; and streamlining the secure exchange of health information.

a. Enhancing Coverage and Access in the ACA Marketplaces, Medicaid, CHIP, and Medicare

The Department will take several regulatory actions in the next year to improve access to care for Americans in the ACA Marketplace, Medicaid, CHIP, and Medicare. For example, the Department expects to finalize a rule on eligibility and enrollment processes in Medicaid and CHIP that will streamline the application, eligibility determination, enrollment, and renewal processes for these programs and create new pathways to maximize enrollment and retention of eligible individuals.

Additional rules would promote access to care in Medicaid and CHIP and raise standards for hospitals, providers, and other entities participating in Medicare and Medicaid. For example, the Department plans to issue a proposed rule that would establish cultural competency and person-centered care requirements for all provider and supplier types that participate in the Medicare and Medicaid programs.

The HHS Regulatory Plan also includes regulations aimed at improving access to care for consumers in the ACA Marketplaces. For instance, the Department plans to propose a rule on provider nondiscrimination requirements for certain health plans and issuers. This rule would protect patients' access to care and promote competition by ensuring that plans do not engage in unlawful discrimination against health care providers. 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. Finally, the Department will propose to amend regulations on short-term limited duration plans to better ensure access to comprehensive coverage for Americans, especially those with pre-existing conditions.

In addition to the above, the Centers for Medicare & Medicaid Services (CMS) will issue several annual payment rules and notices over the next year that affect federal health programs, including Medicare and the ACA Marketplace. These rules, though they are not included in the HHS Regulatory Plan, will include policies that further the Secretary's priority of expanding access to affordable, high-quality health care.

b. Expanding the Accessibility and Affordability of Drugs and Medical Products

Over the next year, the Department will continue expanding the accessibility and affordability of drugs and other medical products for Americans. For example, the Department expects to issue a final rule to set requirements for nonprescription drug products with an additional condition to ensure appropriate self-selection or appropriate actual use (or both) for consumers. This rule is expected to increase consumer access to nonprescription drugs, which could mean a reduction in under-treatment of certain diseases and conditions. The Department also plans to propose updates to the Food and Drug Administration (FDA) biologics regulations to support competition and enhance consumer choice through changes that would prevent efforts to delay or block competition from biosimilars and interchangeable products.

The Department is also working to implement the IRA through policies aimed at reducing the high cost of prescription drugs for people with Medicare. Furthermore, the Department is committed to making sure Medicare beneficiaries are able to access emerging technologies and will initiate notice and comment rulemaking in the coming months to explore policy options that would create an accelerated approval pathway. This pathway would build on prior initiatives, including coverage with evidence development.

In addition, in November 2022, the Department issued a proposed rule on the Administrative Dispute Resolution

(ADR) process used to settle certain disputes among covered entities and manufacturers arising under the 340B Drug Pricing Program. This rule would establish new requirements and procedures for the Program's ADR process, making the process more equitable and accessible for participation by program participants, and supporting the Program's mission to expand access to health care for underserved communities.

c. Addressing Behavioral Health Needs

The Secretary remains committed to expanding access to integrated and equitable behavioral health services, including by addressing the impacts of the COVID–19 pandemic on mental health and substance use, which have disproportionately affected young people and underserved communities. This commitment will guide the Department's planned regulatory activity for FY 2023, which includes several rules aimed at tackling mental health challenges and substance use disorders.

For example, the HHS Regulatory Plan includes a proposed rule that is intended to make permanent certain telehealth flexibilities for substance use disorder treatments that were granted during the COVID–19 public health emergency. This rule would allow certain providers to provide buprenorphine via telehealth, as well as provide extended take-home doses of methadone to patients, when it is safe and appropriate to do so. Both changes are intended to increase access to comprehensive opioid use disorder treatment and may address barriers to treatment such as transportation, geographic proximity, employment, or other required activities of daily living.

Working closely with the Departments of Labor and the Treasury, the Department will also issue a proposed rule to implement portions of 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.

In November 2022, the Department also announced a proposed rule on the confidentiality of substance use disorder patient records. Consistent with the CARES Act, this rule would align HHS regulations governing the disclosure and use of substance use disorder patient records (42 CFR part 2) with aspects of the HIPAA Privacy, Breach Notification, and Enforcement Rules; strengthen 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.

d. Streamlining the Secure Exchange of Health Information

The secure exchange of health information and interoperability among health care providers and other entities improves patient care, promotes competition, reduces costs, and provides more accurate public health data.

To help ensure greater interoperability and transparency, the HHS Regulatory Plan includes rules focused on addressing and preventing information blocking, consistent with the 21st Century Cures Act (Cures Act). For instance, the Department plans to finalize a rule that would, among other things, empower the HHS Office of the Inspector General (OIG) to investigate claims of information blocking and impose civil monetary penalties on health IT developers and health information networks where appropriate. Another complementary proposed rule would implement the Secretary's authority under the Cures Act to establish appropriate disincentives for health care providers found to have committed information blocking. The Department is also proposing a rule on the Electronic Health Record (EHR) Reporting Program condition and maintenance of certification requirements under the Office of the National Coordinator for Health Information Technology (ONC) Health IT Certification Program, which would include enhancements to support information sharing under the information blocking regulations.

The Department is also advancing interoperability policies in the context of the federal health programs it administers and oversees. For example, the Department will propose rules to improve the electronic exchange of health care data and streamline processes related to prior authorization for Medicare Advantage (MA) organizations, Medicaid managed care plans, CHIP managed care entities, state Medicaid and CHIP fee-for-service (FFS) programs, and Qualified Health Plan (QHP) issuers on the Federally Facilitated Exchange (FFE). Similarly, the Department's upcoming proposed rule on strengthening and improving the Medicare Advantage and prescription drug programs will include provisions proposing to enhance interoperability within Medicare.

II. Tackling Disparities and Advancing Equity

Equity is the focus of over a dozen Executive Orders issued by President Biden, and it remains a cornerstone of the Biden-Harris Administration's agenda. The Department recognizes that people of color, people with disabilities, lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) people, and other underserved groups in the U.S. have been systematically denied a full and fair opportunity to participate in economic, social, and civic life. Among its other manifestations, this history of inequality shows up as persistent disparities in health and social outcomes and in access to care.

As the federal agency responsible for ensuring the health and wellbeing of Americans, the Department, under Secretary Becerra's leadership, is committed to tackling these entrenched inequities and their root causes throughout its programs and policies. The Department's regulatory priority of tackling disparities and advancing equity includes rules aimed at preventing and remedying discrimination; strengthening health and safety standards for consumer products that impact underserved communities; and promoting equity in federally supported health care services.

In addition to the specific rulemakings identified in this section, HHS is committed to advancing equity in all aspects of the Department's work. Consistent with President Biden's Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985), the Department's efforts in this area include an ongoing assessment of whether underserved communities face barriers in accessing benefits and opportunities in HHS programs and whether policy changes are necessary to advance equity. This process continues to inform the Department's broader regulatory agenda.

a. Preventing and Remedying Discrimination

The HHS Regulatory Plan includes actions to eliminate discrimination as a barrier for historically marginalized communities seeking access to HHS programs and activities. For instance, the Department plans to finalize its rule

on nondiscrimination in health programs and activities, which would amend the existing regulations implementing section 1557 of the ACA, ensuring that the regulations reflect the proper scope of the statute's protections. Because discrimination in the U.S. health care system is a driver of health disparities, the Section 1557 regulations present a key opportunity for the Department to promote equity and ensure protection of health care as a right.

Additionally, the Department will issue a proposed rule addressing discrimination on the basis of disability in health and human services programs or activities. This rule would revise regulations under section 504 of the Rehabilitation Act of 1973 to address unlawful discrimination on the basis of disability in HHS-funded health and human services programs. Topics that HHS may cover include nondiscrimination in medical treatment, child welfare programs and services, value assessment methodologies, accessible medical equipment, information and communication technology, and other relevant health and human services activities.

b. Strengthening Health and Safety Standards for Consumer Products That Impact Underserved Communities

To protect the public health and advance equity, the Department continues to pursue regulatory action with respect to consumer products that harm the health of underserved groups.

Over the next year, the Department plans to finalize two rules that prohibit menthol as a characterizing flavor in cigarettes and prohibit all characterizing flavors (other than tobacco) in cigars. These and other potential future regulatory actions have the potential to significantly reduce disease and death from combusted tobacco product use, the leading cause of preventable death in the United States.

The regulations are also expected to promote better health outcomes across population groups. Evidence shows that tobacco is disproportionately marketed to underserved communities and vulnerable populations—such as disproportionate storefront and outdoor marketing, as well as point-of-sale marketing, in Black, Hispanic, and low-income communities. The disparities in tobacco marketing and use shape disparities in tobacco-related disease and death. These planned regulatory actions by the Department on tobacco are expected not only to benefit the population as a whole, but, in doing so, also substantially decrease tobacco-related health disparities.

c. Promoting Equity in Federally Supported Health Care Services

The Department continues to seek out opportunities to embed equity throughout HHS programs and policies, including in federally supported health care services. The World Trade Center (WTC) Health Program is a limited federal health program that provides no-cost medical monitoring and treatment for certified WTC-related health conditions to those directly affected by the 9/11 attacks. The Department plans to issue a proposed rule to add uterine cancer to the List of WTC-Related Health Conditions.Permitting the Program to pay for medically necessary treatment, this rule would advance health equity for those WTC Health Program members who are found to have WTC-related uterine cancer.

III. Increasing Public Health Preparedness

Protecting the nation's public health is a primary responsibility of the Department. This responsibility includes ensuring that the right protections and infrastructure are in place to help the nation to respond to public health threats and outbreaks quickly and effectively, including COVID–19. It also includes ensuring healthy and safe food for every American through protections against foodborne illness in the food supply chain.

In service of this regulatory priority, over the next year, the Department is pursuing rules that would bolster the nation's resilience to handle COVID–19 and future public health threats and improve Americans' access to safe and nutritious food.

a. Bolstering the Nation's Resilience To Handle COVID–19 and Future Public Health Threats

The Department continues to play 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, Secretary Becerra has leveraged the Department's full resources to pursue a comprehensive strategy to combat COVID–19.

In the context of COVID–19 and other disease outbreaks, it is crucial for public health authorities to be able to identify and evaluate persons who may have been exposed to a communicable disease. Currently, on an interim basis, the Centers for Disease Control and Prevention (CDC) is authorized to require airlines to collect certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including contact tracing and travel restrictions. The Department intends to finalize this regulation in FY 2023. This would allow the Department to continue to receive data in a timely manner and more effectively provide critical public health services in response to COVID–19 and other communicable diseases that may put Americans' health at risk.

In addition to strengthening the public health system, the Department is continuing to address the need for flexibility in HHS programs to minimize disruptions and alleviate burdens that may be caused by COVID–19 or future emergencies. To that end, the Department also plans to finalize its rule allowing current grantees under the Administration for Native Americans (ANA) 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.

b. Improving Access to Safe and Nutritious Food

To help ensure healthy and safe food for every American, the HHS Regulatory Plan includes rules that improve the Department's ability to identify foodborne illnesses, prevent them from reoccurring, and remove unsafe products from the market. It also supports the goals of the White House Conference on Hunger, Nutrition, and Health, by advancing work to improve consumers' ability to access nutritious food to prevent disease and protect public health.

For example, the Department will finalize a rule intended to improve the safety of produce by requiring farms to conduct comprehensive assessments of pre-harvest agricultural water that would help farms identify and mitigate hazards in water used to grow produce. Moreover, the Department is proposing a rule that would require importers of certain foods to certify, or otherwise provide appropriate assurances, that these imported foods comply with U.S. safety requirements. This rule would help prevent potentially harmful imported foods from reaching consumers and thereby improve the safety of the U.S. food supply. In November 2022, the Department finalized its rule establishing additional recordkeeping requirements for persons

who manufacture, process, pack, or hold foods identified on the Food Traceability List (FTL). This rule is intended to make it easier to rapidly and effectively track the movement of a food to prevent or mitigate a foodborne illness outbreak.

In addition, the Department seeks to improve dietary patterns in the United States to help reduce the burden of diet-related chronic diseases. One way HHS is working towards creating a healthier food supply is by proposing a rule that would permit use of salt substitutes, rather than salt, to help reduce the amount of sodium in standardized foods.

IV. Supporting the Wellbeing of Families and Communities

The Department strives to support the wellbeing of Americans by funding and providing access to a range of critical social services. Millions of people benefit from HHS programs that help older adults and people with disabilities participate fully in their communities, promote opportunity and economic security for families, help refugees and other eligible newcomers integrate and thrive, and provide care for unaccompanied children. The Secretary recognizes that these programs and forms of assistance are more important than ever due to the COVID–19 pandemic and its economic consequences, which have had an outsized impact on people of color and other underserved communities.

To sustain and strengthen these essential benefits and services, the Department is prioritizing regulations that would improve their quality and accessibility while reducing burdens and increasing the efficiency of service delivery. The Secretary's regulatory priority in this area includes rules aimed at strengthening high-quality services for older adults, expanding opportunities for children and youth to thrive, and providing pathways to economic success.

a. Strengthening High-Quality Services for Older Adults

The HHS Regulatory Plan includes rules aimed at enhancing the ability of Administration for Community Living (ACL) programs to protect the rights and wellbeing of older adults. For instance, the Department plans to propose regulations for Adult Protective Services (APS) programs that will strengthen services for older adults and adults with disabilities that experience adult maltreatment. Additionally, the Department will propose changes to its Older Americans Act (OAA) regulations to support long-term care services, nutrition, caregiver supports, and more, for older adults. In both rulemakings, the Department plans to incorporate applicable elements E.O. 13985 and ensure access to services for individuals with the greatest social and economic need.

Furthermore, consistent with the Biden-Harris Administration's Nursing Home Reform Action Plan, the Department's Regulatory Plan includes efforts to improve the safety and quality of care in the nation's nursing homes. For example, in the next year, the Department plans to issue proposed rules that are intended to institute minimum staffing standards in nursing homes, protect residents, and prevent fraud, waste, and abuse.

b. Expanding Opportunities for Children and Youth To Thrive

The Department's mission to provide effective human services includes a focus on protecting the wellbeing of children and youth. This focus has special significance given the COVID–19 pandemic and its economic consequences, which have deeply affected the lives of children and youth—particularly Black, Latino, Indigenous, Native American, and other underserved youth with disproportionate involvement in the child welfare system. Several rules planned for FY 2023 are aimed at enhancing programs and protections for youth and families experiencing foster care, unaccompanied children in the Department's care, and individuals entitled to child support.

As part of its focus on the foster care and the child welfare system, the Department will propose changes to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations that would help the Department to administer foster care and adoption assistance programs more effectively and better serve children and families. This rule would require title IV–E agencies to collect and report for AFCARS additional information related to the Indian Child Welfare Act of 1978 and the sexual orientation of youth in the reporting population and their foster parents, adoptive parents, and legal guardians. The Department will also propose a rule allowing licensing standards for relative or kinship foster family homes that are different from non-relative or non-kinship homes. 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. Additionally, the Department will issue a proposed rule to facilitate the provision of independent legal representation to a child who is a candidate for foster care, or in foster care, and to a parent preparing for participation in foster care legal proceedings. Improving access to independent legal representation may help prevent the removal of a child from the home or, for a child in foster care, achieve permanence faster.

Moreover, the Department's commitment to children and youth includes rules intended to ensure the highest level of services and care for unaccompanied children in the Department's custody. For instance, the Department will propose a new rule to strengthen and codify protections and service provisions for children cared for by the Office of Refugee Resettlement's (ORR's) Unaccompanied Children Program. Furthermore, the Department will issue a proposed rule that would provide new regulations governing the federal licensing of ORR facilities, which may be used in certain situations when state governments do not provide state licensing for such facilities.

Finally, the Department is taking action to protect the sustainability of tribal child support programs. The Department's forthcoming proposed rule on tribal child support programs would modify the non-federal share of the program expenditures requirement, including 90/10 and 80/20 cost sharing rates.

c. Providing Pathways to Economic Success

In administering the Temporary Assistance for Needy Families (TANF) program, the Department works with states, territories, and tribes to help children and families achieve economic success. The COVID–19 pandemic highlighted the importance of using federal investments and existing program flexibilities strategically to reduce family poverty and alleviate economic crises, especially for families of color and underserved communities. In the next year, the Department plans to issue a proposed rule to reform the TANF program to strengthen the safety net and work preparation program for families and individuals with the lowest income, change allowable uses of TANF funds to refocus on the intended purposes of TANF, improve work program effectiveness, and reduce administration burden. These changes are intended to improve the overall wellbeing of families while addressing inequities in program services and policies.

HHS—OFFICE OF THE INSPECTOR GENERAL (OIG)

Final Rule Stage

50. Amendments to Civil Monetary Penalty Law Regarding Grants, Contracts, and Information Blocking [0936–AA09]

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's 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: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	04/24/20	85 FR 22979
NPRM Comment Period End.	06/23/20	
Final Action	03/00/23	

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

51. Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities [0945–AA15]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: sec. 504 of the Rehabilitation Act of 1973; 29 U.S.C. 794

CFR Citation: 45 CFR 84.

Legal Deadline: None.

Abstract: This proposed rule would revise regulations under section 504 of the Rehabilitation Act of 1973 to address unlawful discrimination on the basis of disability in vital HHS-funded health and human services programs. Covered topics may include nondiscrimination in medical treatment, child welfare programs and activities, value assessment methods, accessible medical equipment, information and communication technology, and other relevant health and human services activities.

Statement of Need: To robustly enforce the prohibition of discrimination on the basis of disability, OCR will update the section 504 of the Rehabilitation Act regulations to clarify obligations and address issues that have emerged in our enforcement experience (including complaints OCR has received), case law, and statutory changes under the Americans with Disabilities Act and other relevant laws, in the forty-plus years since the regulation was promulgated. OCR has heard from complainants and many other stakeholders, as well as Federal partners, including the National Council on Disability, on the need for updated regulations in a number of important areas.

Summary of Legal Basis: The current regulations have not been updated to be consistent with the Americans with Disabilities Act, the Americans with Disabilities Amendments Act, or the 1992 Amendments to the Rehabilitation Act, all of which made changes that should be reflected in the HHS section 504 regulations. Under Executive Order 12250, the Department of Justice has provided a template for HHS to update this regulation.

Alternatives: OCR considered issuing guidance, and/or investigating individual complaints and compliance reviews. However, we concluded that not taking regulatory action could result in continued discrimination, inequitable treatment and even untimely deaths of people with disabilities. OCR continues to receive complaints alleging serious acts of disability discrimination each year. While we continue to engage in enforcement, we believe that our enforcement and recipients' overall compliance with the law will be better supported by the presence of a clearly articulated regulatory framework than continuing the status quo. Continuing to conduct case-by-case investigations without a broader framework risks lack

of clarity on the part of providers and violations of section 504 that could have been avoided and may go unaddressed. By issuing a proposed rule, we are undertaking the most efficient and effective means of promoting compliance with section 504.

Anticipated Cost and Benefits: The Department anticipates that this rulemaking will result in significant benefits, namely by providing clear guidance to the covered entity community regarding requirements to administer their health programs and activities in a non-discriminatory manner. In turn, the Department anticipates cost savings as individuals with disabilities can access a range of health care services. The Department expects that the rule, when finalized, will generate some changes in action and behavior that may generate some costs. The rule will address a wide range of issues, with varying impacts and a comprehensive analysis is underway.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

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:* 800 368–1019, *TDD Phone:* 800 537–7697, *Email: ocrmail@hhs.gov*.

RIN: 0945–AA15

HHS—OCR

Final Rule Stage

52. Nondiscrimination in Health Programs And Activities [0945–AA17]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: sec. 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. 18116); 42 U.S.C. 1302; 42 U.S.C. 1395; 42 U.S.C. 1395eee(f); 42 U.S.C. 1396u–4(f); 42 U.S.C. 2000d–1; 20 U.S.C. 1405; 29 U.S.C. 794; 42 U.S.C. 290dd–2; 21 U.S.C. 1174; 42 U.S.C. 300gg to 300gg–63; 42 U.S.C. 300gg–91; 42 U.S.C. 300gg–92; 42 U.S.C. 300gg–111 to 300gg–139 as amended, sec. 3203; Pub. L. 116–136, 134 Stat. 281; 42 U.S.C. 18021 to 18024; 42 U.S.C. 18031 to 18033; 42 U.S.C. 18041 to 18042; 42 U.S.C. 18044; 42 U.S.C. 18051; 42 U.S.C. 18054; 42 U.S.C. 18061; 42 U.S.C. 18063; 42 U.S.C. 18071; 42 U.S.C. 18081 to 18083; 26 U.S.C. 36B

CFR Citation: 42 CFR 438; 42 CFR 440; 42 CFR 457; 42 CFR 460; 45 CFR 80; 45 CFR 84; 45 CFR 86; 45 CFR 91; 45 CFR 92; 45 CFR 147; 45 CFR 155; 45 CFR 156; . . .

Legal Deadline: None.

Abstract: This rule will address changes to the 2020 Final Rule implementing section 1557 of the Patient Protection and Affordable Care Act (PPACA). Section 1557 of PPACA prohibits discrimination on the basis of race, color, national origin, sex, age, or disability under any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency, or any entity established under title l of the PPACA.

Statement of Need: The Biden-Harris Administration has made advancing health equity and nondiscrimination in health care a cornerstone of its policy agenda. The current section 1557 implementing regulation significantly curtails the scope of application of section 1557 protections and creates uncertainty and ambiguity as to what constitutes prohibited discrimination in covered health programs and activities. Issuance of a revised section 1557 implementing regulation is important because it would provide clear and concise regulations that are consistent with the statutory text and protect historically marginalized communities as they seek access to health programs and activities.

Summary of Legal Basis: The Secretary of the Department is statutorily authorized to promulgate regulations to implement section 1557. 42 U.S.C. 18116(c). The current section 1557 Final Rule 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 that are difficult to quantify, namely by providing clear guidance to the covered entity community regarding requirements to administer their health programs and activities in a non-discriminatory manner. In turn, the Department anticipates cost savings as individuals are able to access a range of health care services that will result in decreased health disparities among historically marginalized groups and increased health benefits. The Department estimates annualized costs over a 5-year time horizon of about $551 million or $560 million; however, it is important to recognize that this rule applies pre-existing nondiscrimination requirements in Federal civil rights laws to various entities, the great majority of which have been covered by these requirements for years.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	08/04/22	87 FR 47751
NPRM Comment Period End.	10/03/22	
Final Action	03/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

URL For More Information: https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html.

URL For Public Comments: https://www.regulations.gov/document/HHS-OS-2022-0012-0001.

Agency Contact: Dylan Nicole De Kervor, Senior Advisor to the Director, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 202 240–3110, *Email: 1557ocrmail@hhs.gov*.

Related RIN: Related to 0945–AA02, Related to 0945–AA11

RIN: 0945–AA17

HHS—OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY (ONC)

Proposed Rule Stage

53. 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]

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 the United States Core Data for Interoperability, real-time benefit tools, 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 the United States Core Data for Interoperability, 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	12/00/22	

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—ONC

54. • Establishment of Disincentives for Health Care Providers Who Have Committed Information Blocking [0955–AA05]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 300jj–52; 42 U.S.C. 1315a; 42 U.S.C. 1395jjj; 42 U.S.C. 1395ww; 42 U.S.C. 1395f; 42 U.S.C. 1395w–4; 42 U.S.C. 1395yy; 42 U.S.C. 1395rr; 42 U.S.C. 1395f; 42 U.S.C. 1395l; 42 U.S.C. 195fff

CFR Citation: 45 CFR 171; 42 CFR 495; 42 CFR 413; 42 CFR 41.

Legal Deadline: None.

Abstract: The rulemaking implements certain provisions of the 21st Century Cures Act to establish appropriate disincentives for health care providers determined by the Inspector General to have committed information blocking. Consistent with the 21st Century Cures Act, the rulemaking establishes a first set of disincentives using HHS authorities under applicable Federal law, including authorities delegated to the Centers for Medicare & Medicaid Services, and includes related policies necessary to implement these provisions.

Statement of Need: The rulemaking would implement a provision of the 21st Century Cures Act which requires OIG to refer health care providers that OIG determines to have committed information blocking to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking. Release of the proposed rule is needed to implement this critical component of the Cures Act and ensure effective enforcement of information blocking rules.

Summary of Legal Basis: The provisions would be implemented under the authority of the Public Health

Service Act, as amended by the 21st Century Cures Act.

Alternatives: ONC will consider different available authorities under which appropriate disincentives could be established to minimize regulatory burden for health care providers.

Anticipated Cost and Benefits: The costs of this proposed rule would be minimal. Investigated parties may incur some costs in response to an OIG investigation or enforcement action by an HHS agency, however this would depend on the frequency of prohibited conduct. The expected benefits of the regulation are deterring information blocking conduct that interferes with effective health information exchange and negatively impacts many important aspects of health care, including patient access, duplicative testing and costs, and the availability and quality of care.

Risks: We anticipate that health care providers will express concern with the potential complexity of the approach (*i.e.,* the application of a range of disincentives based on available authorities) as compared to a range of civil monetary penalties or fines. ONC will continue to consider additional potential risks, identify them for stakeholders, and seek comment from stakeholders during the comment period for the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Alex Baker, Federal Policy Branch Chief, Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, 330 C Street SW, 7th Fl., Washington, DC 20201, *Phone:* 202 260–2048, *Email: alexander.baker@hhs.gov.*

RIN: 0955–AA05

HHS—ONC

55. • Patient Engagement, Information Sharing, and Public Health Interoperability [0955–AA06]

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

CFR Citation: 45 CFR 170; 45 CFR 171.

Legal Deadline: None.

Abstract: The rulemaking builds on policies adopted in the 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification final rule (85 FR 25642) and included in the Health Information Technology: 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 proposed rule (0955–AA03). The rulemaking advances electronic health information sharing through proposals for: standards adoption; the certification of health IT to support expanded uses of application programming interfaces (APIs), such as electronic prior authorization, patient engagement, and interoperable public health exchange; and supporting patient engagement and other information sharing principles under the information blocking regulations.

Statement of Need: The rulemaking builds on policies adopted in the 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification final rule (85 FR 25642) and included in the Health Information Technology: 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 proposed rule (0955–AA03). The rulemaking is needed to advance electronic health information sharing through proposals for: standards adoption; the certification of health IT to support expanded uses of application programming interfaces (APIs), such as electronic prior authorization, patient engagement, and interoperable public health exchange; and supporting patient engagement and other information sharing principles under the information blocking regulations.

Summary of Legal Basis: The regulatory proposals 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 to improve electronic health information interoperability and sharing 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. We also expect that implementation of new standards for interoperability and information sharing requirements may 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 improved interoperability and the access, exchange, and use of 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 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	11/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

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–AA06

HHS—SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA)

Proposed Rule Stage

56. Medications for the Treatment of Opioid Use Disorder [0930–AA39]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 21 U.S.C. 823(g)(1)

CFR Citation: 42 CFR 8.

Legal Deadline: None.

Abstract: The Substance Abuse and Mental Health Services Administration (SAMHSA) will revise 42 CFR part 8 to make permanent some regulatory flexibilities for Opioid Treatment Programs (OTPs) granted under the COVID–19 Public Health Emergency (PHE), and to expand access to care for people with Opioid Use Disorder (OUD). Specifically, SAMHSA will propose making permanent those flexibilities pertaining to unsupervised

doses of methadone and also initiation of buprenorphine via telemedicine. To expand access to care, SAMHSA will also review admission criteria, particularly rules that may limit timely access to treatment in an OTP. To achieve this, sections of 42 CFR part 8 will require updating. SAMHSA's changes will impact roughly 1900 opioid treatment programs and state opioid treatment authorities.

Statement of Need: These proposed changes 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 and stakeholder feedback indicate that flexibilities granted under the COVID–19 PHE have been well received by treatment programs and patients. There are very few reports of diversion or overdose, and the flexibilities have been shown to facilitate patient engagement in activities, such as employment, that support recovery. Moreover, those with limited access to transportation benefit from these flexibilities since they are not required to attend the OTP as frequently. In this way, making permanent the methadone extended take home flexibility and buprenorphine initiation via telehealth flexibility will facilitate treatment engagement. To further support this and to help surmount increasing mortality and morbidity due to the growing fentanyl-driven overdose crisis, it is necessary to review OTP admission criteria. This will further expand access to care.

Summary of Legal Basis: The current OTP flexibilities allow OTPs to operate in a manner that is otherwise inconsistent with existing OTP regulations, and therefore, a permanent extension of such exemptions would effectively revise the OTP regulations. If such action is pursued without rulemaking, it could be interpreted as inconsistent with SAMHSA's exemption authority under 42 CFR 8.11(h) and the Administrative Procedures Act, which requires agencies to go through notice and comment rulemaking before establishing legally binding rules. Therefore, incorporating the OTP flexibilities at issue into 42 CFR part 8 through rulemaking is the optimal approach for making the OTP flexibilities permanent.

Alternatives: Congressional action; allowing the flexibilities to lapse.

Anticipated Cost and Benefits: This change will help facilitate access to opioid use disorder treatment in SAMHSA-regulated OTPs. Programs have already incorporated COVID–19 flexibilities into practice and have systems in place that support their delivery in a cost effective, safe, and patient centered manner. This proposed rule is not expected to impart a cost to patients. In fact, the proposed rule allows patients to more readily engage in employment and necessary daily activities. This supports patient workforce participation, income generation, and also recovery. Further to this, expanded access will potentially limit the long-term effects of opioid misuse among those seeking rapid access to treatment.

Risks: Patients seeking extended take-home doses of methadone or who have been reviewed via telehealth for initiation of buprenorphine should still be required to have an in-person visit at the OTP at intermittent intervals. Without this provision, there is risk of patients receiving a lower standard of care and increased risk of diversion of medications.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: State.

Agency Contact: Dr. Neeraj Gandotra, Chief Medical Officer, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 18E67, Rockville, MD 20857, *Phone:* 202 823–1816, *Email: neeraj.gandotra@samhsa.hhs.gov.*

RIN: 0930–AA39

HHS—CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

Final Rule Stage

57. Control of Communicable Diseases; Foreign Quarantine [0920–AA75]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 264; 42 U.S.C. 265

CFR Citation: 42 CFR 71.

Legal Deadline: None.

Abstract: This rulemaking amends current regulation to enable CDC to require airlines to collect and provide to CDC certain data elements regarding passengers and crew arriving from foreign countries under certain circumstances.

Statement of Need: In order to control the introduction, transmission, and spread of communicable diseases such as COVID–19 into the United States, the collection of traveler contact information helps ensure that CDC and state and local health authorities are able to identify and locate persons arriving in, or transiting through, the United States from a foreign country who may have been exposed to a communicable disease abroad.

Summary of Legal Basis: The Public Health Service Act (42 U.S.C. 264 and 268) authorizes the Secretary of the Department of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one State or possession into any other State or possession. Regulations that implement federal quarantine authority are currently promulgated in 42 CFR parts 70 and 71. CDC's authority for collecting these data fields is contained in 42 CFR 71.4.

Alternatives: The transmission of disease, as seen during the COVID–19 pandemic, has the potential to lead to thousands or millions of deaths in addition to the significant healthcare and economic costs. Follow-up with passengers arriving from foreign countries who may be infectious or exposed to a communicable disease is critical. The alternative to collecting traveler contact information before their flight is to collect the information from airlines following the passenger's flight. When this was done in the past, some airlines took several days to respond to a single request if the information was available. In addition, there is significant time and labor required for CDC to obtain additional information from federal databases and process the received information into a format suitable for distribution to state and local health authorities in the United States. As a result, obtaining contact information after a flight, assuming that information is available, can lead to a delay of several days before health authorities can start contacting potentially exposed travelers. This time delay allows for travelers to be lost to follow-up or become symptomatic or infectious. The time required and costs incurred under this alternative increase exponentially with multiple post-flight manifest requests to airlines.

Anticipated Cost and Benefits: The annual, ongoing costs to collect traveler contact information, in the form of airline and travel agency staff time and passenger time, are estimated to be approximately $285 million. This does not include the initial costs for updating IT systems and employee training, which have already been incurred. The costs to the government are minimal, as

the vast majority of passenger information that is being collected is transmitted to the government via established data systems that are already in use for other purposes.

The benefits to this rulemaking include rapid follow-up by public health authorities with passengers who may be infectious or exposed to a communicable disease, resulting in less spread and transmission of disease into and throughout the United States, helping to prevent public health and economic costs. The availability of passenger contact data may be used by public health authorities to slow the introduction and transmission of novel infectious diseases, including new variants of the SARS–CoV–2 virus, which causes COVID–19 disease.

Risks: The risk to not collecting this information is that CDC would have to revert back to previous ways of obtaining this information for public health follow up. Some of those methods were time intensive and resulted in delays in follow up.

The risk, although minimal, in collecting this information is that airlines and international passengers often do not want to comply (or may not want to comply) with the requirement. To date, however, CDC has found instances of noncompliance have been very limited.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective.	02/07/20	
Interim Final Rule	02/12/20	85 FR 7874
Interim Final Rule Comment Period End.	03/13/20	
Final Action	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Ashley C. Altenburger JD, 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

HHS—CDC

58. World Trade Center Health Program; Addition of Uterine Cancer to the List of WTC-Related Health Conditions [0920–AA81]

Priority: Other Significant.

Legal Authority: Pub. L. 111–347; Pub. L. 114–113

CFR Citation: 42 CFR 88.15.

Legal Deadline: NPRM, Statutory, February 28, 2022.

Authorizing statute requires publication of a rulemaking in the **Federal Register** not later than 90 days after receipt of advisory committee recommendation.

Abstract: With this rulemaking, HHS/CDC proposes to add uterine cancer to the List of WTC-Related Health Conditions.

Statement of Need: Uterine cancer is the only type of cancer not included on the List of WTC-Related Health Conditions (List) eligible for coverage by the WTC Health Program. Following requests from WTC responders and survivors, as well as a letter from five WTC Health Program Clinical Centers of Excellence requesting the addition of uterine cancer to the List, the Program reviewed the available scientific evidence of an association between uterine cancer and 9/11 exposures in accordance with the WTC Health Program's *Policy and Procedures for Adding Cancers to the List of WTC-Related Health Conditions*. The disproportionately low representation of women in the most studied cohorts of exposed responders makes it unlikely that a definitive association between toxic exposure arising from the September 11, 2001, terrorist attacks and the occurrence of uterine cancer will be identified during the lifetimes of most WTC Health Program members.

The Administrator of the WTC Health Program exercised discretion to seek a recommendation from the Program's Scientific/Technical Advisory Committee (STAC) and asked the STAC to review the available scientific evidence concerning potential associations between 9/11 exposures and uterine cancer. During public meetings, the STAC considered public comments and deliberated on whether there is a reasonable basis to recommend the addition of uterine cancer to the List, ultimately providing the Administrator with its recommendation and rationale for the addition. Based on the STAC's recommendation and the Program's evaluation of the available scientific literature, the Administrator determined that there is a sufficient evidentiary basis to propose the addition of uterine cancer to the List. This action will promote equity for Program members who are found to have WTC-related uterine cancer.

Summary of Legal Basis: Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 amended the Public Health Service (PHS) Act to establish the WTC Health Program within HHS. *See* 42 U.S.C. 300mm to 300mm61. The WTC Health Program provides medical monitoring and treatment benefits to eligible responders to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and eligible survivors in the New York City disaster area (survivors). Treatment is available under the Program for specified health conditions included on the List. Section 3312(a)(6) of the PHS Act requires the Administrator of the WTC Health Program to conduct rulemaking to propose the addition of a health condition to the List codified in 42 CFR 88.15.

Alternatives: If the WTC Health Program did not add uterine cancer to the List of WTC-Related Health Conditions, current and future WTC Health Program members who have or develop uterine cancer likely related to 9/11 exposures will not be eligible to receive treatment services from the Program.

Anticipated Cost and Benefits: This final rulemaking is estimated to cost the WTC Health Program between $1,718,691 and $3,617,447 per annum for 2022–2025. Due to the implementation of provisions of the Patient Protection and Affordable Care Act and as required under the authorizing statute for the WTC Health Program, all of the members and future members are assumed to have or have access to medical insurance coverage other than through the WTC Health Program. Therefore, all treatment costs to be paid by the WTC Health Program are considered transfer payments. This final rulemaking will not impose costs on Program members or any other interested party.

WTC Health Program members with certified WTC-related uterine cancer are expected to experience better treatment outcomes with Program physicians as compared to receiving care outside of the Program. Members may experience higher survival rates compared with those not enrolled and have improved access to timely care, which is associated with improved treatment outcomes.

Risks: The WTC Health Program may be perceived as a policy decision as a result of this rulemaking because the

science informing proposed additions to the List is limited by incomplete information on 9/11 exposures, health outcomes, and the relationships they share. For example, the exposures experienced by the responders and survivors on and after September 11, 2001 were not measured and can only be estimated. Also, there are relatively few women in the 9/11-exposed populations; therefore, studies lack the statistical power needed to observe a causal association among women with a high degree of certainty. Given incomplete information, some may argue against the sufficiency of the science supporting the addition of uterine cancer to the List.

Timetable:

Action	Date	FR Cite
NPRM	05/10/22	87 FR 27961
NPRM Comment Period End.	06/24/22	
Final Action	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Agency Contact: Rachel Weiss, Public Health Analyst, Department of Health and Human Services, Centers for Disease Control and Prevention, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226, *Phone:* 404 498–2500, *Email: nioshregs@cdc.gov.*

RIN: 0920–AA81

HHS—FOOD AND DRUG ADMINISTRATION (FDA)

Proposed Rule Stage

59. Biologics Regulation Modernization [0910–AI14]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 262; 21 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) helping 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	10/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Federalism: Undetermined.

Agency Contact: Sandra Benton, Senior Policy Coordinator, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 22, Room 1132, Silver Spring, MD 20993, *Phone:* 301 796–1042, *Email: sandra.benton@fda.hhs.gov.*

RIN: 0910–AI14

HHS—FDA

60. Certifications Concerning Imported Foods [0910–AI66]

Priority: Other Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 21 U.S.C. 381; 21 U.S.C. 371(b); 42 U.S.C. 243; 42 U.S.C. 264; 42 U.S.C. 271; . . .

CFR Citation: 21 CFR 1, Subpart F.

Legal Deadline: None.

Abstract: This regulation, if finalized, will help prevent potentially harmful imported foods from reaching consumers and thereby improve the safety of the U.S. food supply by allowing the agency to require, as a condition of importation of food with known safety risk, a certification or such other assurances as the Agency determines appropriate, that imported food complies with U.S food safety requirements.

Statement of Need: Imported food is increasingly implicated in U.S. foodborne illness outbreaks. These illnesses emphasize the importance of ensuring imported food meets applicable requirements of the Act. Historically, FDA has relied on its staff to detect safety problems with imported food by intercepting and examining food products when they are offered for import into the United States or by performing inspections of foreign facilities that produce food for export to the United States. This rule, if finalized, would establish requirements for implementing import certification as a condition of granting admission to an article of food imported into the United States, pursuant to section 801(q) of the FD&C Act. We anticipate that this regulation, if finalized, will help prevent potentially harmful imported foods from reaching consumers and thereby improve the safety of the U.S. food supply.

Summary of Legal Basis: Section 303 of FSMA, Authority to Require Import Certifications for Food, amended section 801 of the FD&C Act (21 U.S.C. 381) to create a new subsection (q) entitled, Certifications Concerning Imported Foods. Section 801(q) gives FDA authority to require import certification based on the risk of the food. FDA also derives authority for these proposed requirements from section 701(b) of the FD&C Act (21 U.S.C. 371(b)), which authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act. Additionally, sections 311, 361, and 368 of the Public Health Service Act (PHS Act) (42 U.S.C. 243, 264, and 271, respectively), which relate

to communicable disease, provide FDA with authority to make and enforce such regulations as in FDA's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession (see section 361(a) of the PHS Act) (42 U.S.C. 264(a)).

Alternatives: None.

Anticipated Cost and Benefits: The primary estimate for annualized costs is $74.3 million, including costs from third-party audits, foreign government inspections, and foreign government certification associated with complying with an import certification requirement.

The primary estimate for annualized benefits is $109.7 million, including food safety benefits to consumers, cost savings from reduced transit and storage time, and cost savings from reduced food testing.

Risks: During 1996–2014, 195 outbreaks with 10,685 associated illnesses were reported where the implicated food was imported into the U.S., representing an increasing percentage of reported outbreaks during that timeframe. These illnesses underscore the importance of ensuring imported food meets applicable requirements of the FD&C Act. This rule, if finalized, would implement a risk-based approach to requiring import certification for food as a condition of admissibility. FDA would obtain assurances that imported food meets applicable requirements of the FD&C Act and implementing regulations before the food is offered for import into the U.S. This rule is intended to protect public health by strengthening FDA's import oversight activities for foods and preventing unsafe foods from reaching domestic markets.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Peter Fox, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 12420 Parklawn Drive, ELEM, RM 41416, Rockville, MD 20857, *Phone:* 240 402–1857, *Email: peter.fox@fda.hhs.gov.*

RIN: 0910–AI66

HHS—FDA

61. Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods [0910–AI72]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 336; 21 U.S.C. 346; 21 U.S.C. 343; 21 U.S.C. 348; 21 U.S.C. 371; 21 U.S.C. 379e

CFR Citation: 21 CFR 130; 21 CFR 131; 21 CFR 133; 21 CFR 136; 21 CFR 155; . . .

Legal Deadline: None.

Abstract: The Food and Drug Administration (FDA) is proposing to amend its regulations to permit the use of salt substitutes in standardized foods in which salt (sodium chloride) is a required or optional ingredient. The proposed rule, if finalized, would support industry efforts to reduce sodium content in standardized foods and improve dietary patterns by helping to reduce consumer sodium consumption.

Statement of Need: FDA seeks to improve dietary patterns in the United States to help reduce the burden of diet-related chronic diseases and advance health equity. We are committed to accomplishing this by, in part, creating a healthier food supply for all. One way FDA is working towards this goal is by helping to reduce sodium across the food supply.

FDA is proposing to amend 80 standards of identity (SOI) that include salt as a required or optional ingredient to allow the use of salt substitutes. Salt substitutes are ingredients that can help to reduce sodium in the food supply. FDA is proposing to permit the use of salt substitutes to reduce the sodium content in standardized foods. Most SOI regulations that include salt as a required or optional ingredient do not allow the use of salt substitutes. Therefore, food manufacturers are currently precluded from using salt substitutes in the production of these standardized foods. The proposed rule does not identify specific salt substitutes, but rather, proposes a broad definition to provide flexibility and facilitate industry innovation.

The proposed rule would permit the use of salt substitutes across 80 SOI that require salt as an ingredient or provide for salt as an optional ingredient. In addition, the proposed rule would update the incorporation by reference (IBR) information of several SOI to refer to the most recent versions of the IBR materials and to provide up-to-date contact information for obtaining the IBR materials. The proposed rule would also make technical amendments to correct typographical errors in some SOI regulations.

Summary of Legal Basis: FDA is issuing this proposed rule under sections 201, 401, 402, 409, and 701 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 341, 342, 348, 371). These sections authorize FDA to issue regulations establishing a reasonable definition and standard of identity to promote honesty and fair dealing in the interest of consumers; define food additives, provide authorizations and exemptions from regulation as a food additive, and allow the agency to issue regulations for the efficient enforcement of the FD&C Act.

Alternatives: The rule is a voluntary or permitting rule with no regulatory costs. Therefore, we did not consider alternatives designed to reduce the regulatory impact.

Anticipated Cost and Benefits: Voluntary or permitting rules generate potential for social benefits that depend on voluntary behavior for their realization. Being voluntary, they do not generate regulatory costs. Net social costs are possible if the newly allowed voluntary behavior generates net social costs, in which case we should not have permitted that behavior. In this case, we can identify only a potential social benefit. However, the size of any actually occurring benefit is unknown. Because we cannot rule out economic significance, we set the primary estimated annualized benefits at the minimum that would make the rule economically significant, which is $165 M. That social benefit is calculated net of the cost of the voluntary activity that generates those benefits. We set the uncertainty range to give that figure as the mean, so it runs from $0 to $330 M.

Risks: There are no known risks.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Jeanmaire Hryshko, Lead Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5001 Campus

Drive, HFS–265, College Park, MD 20740, *Phone:* 240 402–2371, *Email: jeanmaire.hryshko@fda.hhs.gov.*

RIN: 0910–AI72

HHS—FDA

62. Tobacco Product Standard for Nicotine Level of Certain Tobacco Products [0910–AI76]

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: 21 CFR 1160.

Legal Deadline: None.

Abstract: The proposed rule is a tobacco product standard that would establish a maximum nicotine level in cigarettes and certain other finished tobacco products.

Statement of Need: Each year, 480,000 people die prematurely from a smoking-attributed disease, making tobacco use the leading cause of preventable disease and death in the United States. Nearly all these adverse health effects are ultimately the result of addiction to the nicotine in combusted tobacco products, leading to repeated exposure to toxicants from those products. Nicotine is powerfully addictive. The U.S. Surgeon General has reported that 87 percent of adult smokers start smoking before age 18, and half of adult smokers become addicted before age 18. This proposed rule is a tobacco product standard that would establish a maximum nicotine level in cigarettes and certain other finished tobacco products. Because tobacco-related harms primarily result from addiction to products that repeatedly expose users to toxins, FDA would take this action to reduce addictiveness of certain tobacco products, thus giving addicted users a greater ability to quit. This product standard would also help to prevent experimenters (mainly youth) from initiating regular use, and, therefore, from becoming regular smokers. The proposed product standard is anticipated to benefit the population as a whole, while also advancing health equity by addressing disparities associated with cigarette smoking, dependence, and cessation.

Summary of Legal Basis: Section 907 of the FD&C Act authorizes the adoption of tobacco product standards if the Secretary finds that a tobacco product standard is appropriate for the protection of public health, and includes authority related to provisions for nicotine yields in tobacco product standards.

Alternatives: In addition to the costs and benefits of the product standard as proposed, FDA plans to assess the costs and benefits of a different effective date for the rule and the impact of including additional tobacco products in the product standard.

Anticipated Cost and Benefits: The anticipated benefits of the product standard include benefits from reduced death and disease resulting from decreased tobacco use among adult consumers, reduced death and disease from secondhand smoke, and reduced death and disease among youth who are deterred from initiating under the product standard. The qualitative benefits of the proposed rule include impacts such as reduced illness and increased productivity for smokers and nonsmokers, as well as reduced smoking-related fires, cigarette litter, and other environmental impacts.

The proposed rule is expected to generate compliance costs on affected entities, such as one-time costs to read and understand the rule and alter manufacturing and importing practices; and costs to some consumers, such as search and temporary withdrawal costs.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	10/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Courtney Smith, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, Document Control Center Building 71, Room G335, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Fax:* 877 287–1426, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AI76

HHS—FDA

Final Rule Stage

63. Mammography Quality Standards Act [0910–AH04]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 21 U.S.C. 360i; 21 U.S.C. 360nn; 21 U.S.C. 374(e); 42 U.S.C. 263b

CFR Citation: 21 CFR 900.

Legal Deadline: None.

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.

Statement of Need: FDA is updating the mammography regulations that were issued under the Mammography Quality Standards Act of 1992 (MQSA) and the FD&C Act. FDA is taking this action to address changes in mammography technology and mammography processes.

FDA is also updating to modernize the regulations by incorporating current science and mammography best practices, including addressing breast density reporting to patients and healthcare providers. These updates are intended to improve the delivery of mammography services.

Summary of Legal Basis: The MQSA (Pub. L. 102–539) is codified under the Public Health Service (PHS) Act (42 U.S.C. 263b; section 354 of the PHS Act). Under the MQSA, all mammography facilities, except facilities of the Department of Veterans Affairs, must be accredited by an approved accreditation body and certified by FDA (or an approved State certification agency) to provide mammography services (42 U.S.C. 263b(b)(1), (d)(1)(iv)). FDA is amending the mammography regulations (set forth in part 900 (21 CFR part 900)) under section 354 of the PHS Act (42 U.S.C. 263b), and sections of the FD&C Act (sections 519, 537, and 704(e); 21 U.S.C. 360i, 360nn, and 374(e)).

Alternatives: The Agency will consider different options so that the health benefits to patients are maximized and the economic burdens to mammography facilities are minimized.

Anticipated Cost and Benefits: The benefits and costs associated with this final rule include qualitative benefits related to reduced mortality, morbidity and breast cancer treatment costs resulting from the breast density reporting requirements. Additional benefits that we are not able to quantify include improvements in the accuracy of mammography by improving quality control and strengthening the medical audit, and effects on morbidity.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	03/28/19	84 FR 11669
NPRM Comment Period End.	06/26/19	
Final Rule	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Agency Contact: Laurie Sternberg, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 66, Room 5517, Silver Spring, MD 20993, *Phone:* 240 402–0425, *Email: laurie.sternberg@fda.hhs.gov.*

RIN: 0910–AH04

HHS—FDA

64. Nonprescription Drug Product With an Additional Condition for Nonprescription Use [0910–AH62]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 371; 42 U.S.C. 262; 42 U.S.C. 264; . . .

CFR Citation: 21 CFR 201.67; 21 CFR 314.56; 21 CFR 314.81; 21 CFR 314.125; 21 CFR 314.127.

Legal Deadline: None.

Abstract: The final rule is intended to increase access to nonprescription drug products. The final 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: Currently, nonprescription drug products are limited to drugs that can be labeled with sufficient information for consumers to appropriately self-select and use the drug product. For certain drug products, limitations of labeling present challenges for adequate communication of information needed for consumers to appropriately self-select or use the drug product without the supervision of a healthcare practitioner. FDA is finalizing regulations that would establish the requirements for a drug product that could be marketed as a nonprescription drug product with an additional condition that an applicant must implement to ensure appropriate self-selection, appropriate actual use or both by consumers.

Summary of Legal Basis: FDA's revisions to the regulations regarding labeling and applications for nonprescription drug products 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 final rule would include increased consumer access to drug products and reduced access costs to these products as compared to their prescription alternatives. Benefits to industry would arise from the flexibility in drug product approval and the potential expansion of market revenue. Other benefits would include a reduction in repetitive meetings with industry and the Agency regarding this approval pathway. In addition, private and government-sponsored drug coverage plans may experience cost savings. Although applicants would incur the costs to develop and submit an application for a nonprescription drug with an ACNU, they would likely submit applications only when they expect that the profits from the approval would exceed the costs of the application. Lastly, we anticipate one-time costs of reading and understanding the rule that potential applicants would incur.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	06/28/22	87 FR 38313
NPRM Comment Period End.	10/26/22	
Final Rule	10/00/23	

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

65. Tobacco Product Standard for Characterizing Flavors in Cigars [0910–AI28]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 21 U.S.C. 331; 21 U.S.C. 333; 21 U.S.C. 371(a); 21 U.S.C. 387b and 387c; 21 U.S.C. 387f(d) and 387g; . . .

CFR Citation: 21 CFR 1166.

Legal Deadline: None.

Abstract: This rule is a tobacco product standard that would prohibit characterizing flavors (other than tobacco) in all cigars. We are taking this action with the intention of reducing the tobacco-related death and disease associated with cigar use. Evidence shows that flavored tobacco products appeal to youth and also shows that youth may be more likely to initiate tobacco use with such products. Characterizing flavors in cigars, such as strawberry, grape, orange, and cocoa, enhance taste and make these products easier to use. Over a half million youth in the United States use flavored cigars, placing these youth at risk for cigar-related death and disease.

Statement of Need: The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), authorizes FDA to adopt tobacco product standards under section 907 if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This product standard will prohibit characterizing flavors (other than tobacco) in all cigars. Characterizing flavors in cigars, such as strawberry, grape, cocoa, and fruit punch, increase appeal and make the cigars easier to use, particularly among youth and young adults. This product standard will reduce the appeal of cigars, particularly to youth and young adults, and thereby decrease the likelihood of experimentation, development of nicotine dependence, and progression to regular use. This product standard will improve public health by increasing the likelihood of cessation among existing cigar smokers; this product standard will also improve health outcomes within groups that experience disproportionate levels of tobacco use, including certain vulnerable populations.

Summary of Legal Basis: Section 907 of the FD&C Act authorizes the adoption of tobacco product standards if the Secretary finds that a tobacco product

standard is appropriate for the protection of public health. Section 907 also authorizes FDA to include in a product standard a provision that restricts the sale and distribution of a tobacco product to the extent that it may be restricted by a regulation under section 906(d) of the FD&C Act. Section 906(d) of the FD&C Act authorizes the Secretary to issue regulations requiring restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. Section 701(a) of the FD&C Act authorizes the promulgation of regulations for the efficient enforcement of the FD&C Act.

Alternatives: In addition to the costs and benefits of the product standard, FDA will assess the costs and benefits of, among other things, a different effective date for the rule, and including pipe tobacco in the product standard.

Anticipated Cost and Benefits: The anticipated benefits of the product standard include those coming from reduced death and disease that are the result of cigar use among adult cigar smokers, reduced death and disease from secondhand smoke, and reduced death and disease among youth who are deterred from initiating under the product standard.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	03/21/18	83 FR 12294
ANPRM Comment Period End.	07/19/18	
NPRM	05/04/22	87 FR 26396
NPRM Comment Period Extended.	06/21/22	87 FR 36786
NPRM Comment Period End.	07/05/22	
NPRM Comment Period Extended End.	08/02/22	
Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Nathan Mease, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Center for Tobacco Products, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AI28

HHS—FDA

66. Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water [0910–AI49]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 342; 21 U.S.C. 350h; 21 U.S.C. 371; 42 U.S.C. 243; 42 U.S.C. 264; 42 U.S.C. 271; . . .

CFR Citation: 21 CFR 112.

Legal Deadline: None.

Abstract: This rulemaking would revise certain requirements for agricultural water in the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (produce safety) regulation for covered produce other than sprouts.

Statement of Need: Agricultural water can be a major conduit of pathogens that can contaminate produce. Recent produce outbreaks potentially linked to agricultural water have emphasized the importance of ensuring that FDA's agricultural water standards are workable across the diversity of domestic and foreign farms and account for the variety of factors that impact water sources and uses. FDA plans to amend its produce safety regulation to address concerns about the practical challenges of implementing certain agricultural water requirements, while protecting the public health.

Summary of Legal Basis: FDA's authority for issuing this rule is provided by sections 402, 419, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342, 350h, and 371(a)) and sections 311, 361, and 368 of the Public Health Service Act (PHS Act) (42 U.S.C. 243, 264, and 271).

Specifically, this rulemaking would amend certain agricultural water requirements in the produce safety regulation, codified at 21 CFR part 112, and issued under the following authorities: Section 419(c)(1)(A) of the FD&C Act (21 U.S.C. 350h(c)(1)(A)) authorizes FDA to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables that are raw agricultural commodities for which such standards minimize the risk of serious adverse health consequences or death. Section 419(c)(1)(B) of the FD&C Act (21 U.S.C. 350h(c)(1)(B)) further requires that these minimum standards provide sufficient flexibility to be practicable for all sizes and types of businesses. Section 402(a)(3) of the FD&C Act (21 U.S.C. 342(a)(3)) provides that a food is adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. Section 402(a)(4) of the FD&C Act (21 U.S.C. 342(a)(4)) provides that a food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. Additionally, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) grants the authority to promulgate regulations for the efficient enforcement of the FD&C Act. Sections 311, 361, and 368 of the PHS Act (21 U.S.C. 243, 264, and 271), provide authority for FDA to issue regulations to prevent the spread of communicable diseases from one State to another.

Alternatives: None.

Anticipated Cost and Benefits: FDA anticipates costs associated with complying with the proposed water risk assessment provisions for non-sprout covered produce.

This final rule would generate unquantified benefits stemming from increasing flexibility and addressing practical implementation challenges associated with certain agricultural water provisions in the produce safety regulation and quantified benefits resulting from fewer illnesses caused by pre-harvest agricultural water.

Risks: In a 2019 Report, the Interagency Food Safety Analytics Collaboration (IFSAC) estimated that produce commodities cause 65 percent of foodborne E. coli O157 illnesses and over 40 percent of foodborne Salmonella illnesses. Agricultural water can be a major conduit for produce contamination. This rule is intended to address the practical implementation challenges of certain agricultural water requirements, while protecting public health by setting forth standards to minimize the risk of serious adverse health consequences or death, including those reasonably necessary to prevent the introduction of known or reasonably foreseeable biological hazards into or onto produce, and provide reasonable assurances that the produce is not adulterated on account of those hazards.

Timetable:

Action	Date	FR Cite
NPRM	12/06/21	86 FR 69120

Action	Date	FR Cite
NPRM Comment Period End.	04/05/22	
Supplemental NPRM.	07/19/22	87 FR 42973
Supplemental NPRM Comment Period End.	09/19/22	
Final Rule	10/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Samir Assar, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Safety, 5001 Campus Drive, College Park, MD 20740, *Phone:* 240 402–1636, *Email: samir.assar@fda.hhs.gov.*

RIN: 0910–AI49

HHS—FDA

67. Tobacco Product Standard for Menthol in Cigarettes [0910–AI60]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 21 U.S.C. 387g; 21 U.S.C 371; 21 U.S.C 387f

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: This final rule is a tobacco product standard to prohibit the use of menthol as a characterizing flavor in cigarettes.

Statement of Need: The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), authorizes FDA to adopt tobacco product standards under section 907 if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This product standard would prohibit menthol as a characterizing flavor in cigarettes. The standard would reduce the appeal of cigarettes, particularly to youth and young adults, and thereby decrease the likelihood that nonusers who would otherwise experiment with menthol cigarettes would progress to regular cigarette smoking. In addition, the tobacco product standard would improve the health and reduce the mortality risk of current menthol cigarette smokers by decreasing cigarette consumption and increasing the likelihood among current menthol cigarette smokers, the 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 rule, FDA will assess the costs and benefits of extending the effective date of the rule, creating a process by which some products may apply for an exemption or variance from the product standard, and prohibiting menthol as an intentional additive in cigarette products rather than prohibiting menthol as a characterizing flavor.

Anticipated Cost and Benefits: The rule is expected to generate compliance costs on affected entities, such as one-time costs to read and understand the rule and alter manufacturing/importing practices. The quantified benefits of the rule stem from improved health and diminished exposure to tobacco smoke for users of cigarettes from decreased experimentation, progression to regular use, and consumption of menthol cigarettes. The qualitative benefits of the rule include impacts such as reduced illness for smokers and non-smokers.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	07/24/13	78 FR 44484
ANPRM Comment Period End.	09/23/13	
NPRM	05/04/22	87 FR 26454
NPRM Comment Period Extended.	06/21/22	87 FR 36786
NPRM Comment Period End.	07/05/22	
NPRM Comment Period Extended End.	08/02/22	
Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Agency Contact: Beth Buckler, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AI60

HHS—CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

Proposed Rule Stage

68. Provider Nondiscrimination Requirements for Group Health Plans and Health Insurance Issuers in the Group and Individual Markets (CMS–9910) [0938–AU64]

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, Statutory Deadline for Issuing a Proposed Rule.

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	05/00/23	

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

69. Short-Term Limited Duration Insurance; Update (CMS–9904) [0938–AU67]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 111–148, title I

CFR Citation: 45 CFR 144; 45 CFR 146; 45 CFR 148.

Legal Deadline: None.

Abstract: This rule would propose amendments to the definition of 'short-term, limited-duration insurance' under section 2791(b)(5) of the Public Health Service Act. The rule's proposals would be designed to ensure this type of coverage does not undermine the Affordable Care Act, including its protections for people with pre-existing conditions, the Health Insurance Exchanges, or the individual, small group, or large group markets for health insurance in the United States.

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–300gg–63, 300gg–91, 300gg–92, 300gg–94, 300gg–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	04/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Lindsey Murtagh, Director, Market-Wide Regulation Division, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492–4106, *Email: lindsey.murtagh@cms.hhs.gov.*

RIN: 0938–AU67

HHS—CMS

70. Assuring Access to Medicaid Services (CMS–2442) [0938–AU68]

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 address elements related to assuring access in Medicaid and/or the Children's Health Insurance Program (CHIP). These elements could include processes that support the implementation of a comprehensive access strategy as well as payment processes, such as those related to specific payment systems.

Statement of Need: In order to assure equitable access to health care for all Medicaid and CHIP beneficiaries across all delivery systems, access regulations need to be multi-factorial and focus beyond payment rates. Barriers to accessing health care services can be as heterogeneous as Medicaid and CHIP populations which can be measured through provider availability and provider accessibility to realized or perceived access barriers which can be measured through utilization and satisfaction with services. CMS 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).

Summary of Legal Basis: 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: Risks of the proposals in this rule are still under development and will be included in the published rule for comment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

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

71. Transitional Coverage for Emerging Technologies (CMS–3421) [0938–AU86]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 263a; 42 U.S.C. 405(a); 42 U.S.C. 1302; 42 U.S.C. 1320b–12; . . .

CFR Citation: 42 CFR 405.

Legal Deadline: None.

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. This pathway would build off of prior initiatives, including coverage with evidence development. The proposed rule will meet the following principles previously published by CMS:

(1) Manufacturers may enter the process on a voluntary basis. This process will be limited to medical devices that fall within the Medicare statute and that are relevant to the Medicare population.

(2) CMS may conduct early evidence review (before the device secures FDA marking authorization) and discuss with the manufacturer the best Medicare coverage pathway, depending upon the strength of the evidence collected.

(3) At the manufacturer's request, CMS may initiate the coverage process before FDA market authorization, which could require developing an additional evidence development plan and confirming that there are appropriate safeguards and protections for Medicare beneficiaries.

(4) If CMS determines that further evidence development is the best coverage pathway, the agency would explore how to reduce the burden on manufactures, clinicians and patients

while maintaining rigorous evidence requirements.

Statement of Need: This rule is necessary to codify the Coverage with Evidence Development (CED) coverage pathway in regulation and aims to incresase predictability, transparency, and timeliness of Transitional Coverage for Emerging Technologies (TCET).

Summary of Legal Basis: This rule would be proposed under the authority of sections 1862(a)(1)(A) and 1862(a)(1)(E) of the Social Security Act.

Alternatives: Not yet determined.

Anticipated Cost and Benefits: Not yet determined.

Risks: Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Federal, State.

Federalism: Undetermined.

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

HHS—CMS

72. Interoperability and Prior Authorization for MA Organizations, Medicaid and CHIP Managed Care and State Agencies, FFE QHP Issuers, MIPS Eligible Clinicians, Eligible Hospitals and CAHs (CMS–0057) [0938–AU87]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 1395hh

CFR Citation: 42 CFR 422; 42 CFR 431; 42 CFR 435; 42 CFR 438; . . .

Legal Deadline: None.

Abstract: This proposed rule would place new requirements on Medicare Advantage (MA) organizations, Medicaid managed care plans, Children's Health Insurance Program (CHIP) managed care entities, state Medicaid and CHIP fee-for-service (FFS) programs, and Qualified Health Plan (QHP) issuers on the Federally-facilitated Exchanges (FFEs) to improve the electronic exchange of health care data and streamline processes related to prior authorization, while continuing CMS' drive toward interoperability, and reducing burden in the health care market. This proposed rule would also add a new measure for eligible hospitals and critical access hospitals under the Medicare Promoting Interoperability Program and for Merit-based Incentive Payment System (MIPS) eligible clinicians under the Promoting Interoperability performance category of MIPS. These policies taken together would play a key role in reducing overall payer and provider burden and improving patient access to health information.

Statement of Need: The proposed changes further support CMS' efforts to improve the electronic exchange of healthcare data and streamline processes related to prior authorization, while continuing CMS' drive toward interoperability in the healthcare market. The proposals in this rule build on the foundation we laid out in the CMS Interoperability and Patient Access final rule to move the healthcare system toward increased interoperability and reduced burden by proposing to enhance the data sharing capabilities of impacted payers and providers through the use of innovative technologies. The proposals also empower patients by making health-related data more easily available through standards-based technology.

Summary of Legal Basis: This rule addresses multiple sections of the Social Security Act, as well as Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.

Alternatives: We carefully considered alternatives to the policies we are proposing in this rule and concluded that none of the alternatives would adequately or immediately begin to address the critical issues related to patient access to health information and interoperability or help to address the processes that contribute to payer, provider, and patient burden. Alternatives considered will be included in the proposed rule.

Anticipated Cost and Benefits: We believe that the proposed policies, if finalized, would result in some financial burdens for impacted payers and providers. We have weighed these potential burdens against the potential benefits, and believe the potential benefits outweigh any potential costs. We anticipate the long-term savings to be significant. As we move toward publication, estimates of costs and benefits will be included in the proposed rule.

Risks: Risks of the proposals in this rule are still under development and will be included in the published rule for comment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Agency Contact: Alexandra Mugge, Director & Deputy Chief Health Informatics Officer, Health Informatics and Interoperability Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Burden Reduction and Health Informatics, MS: C5–02–00, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4457, *Email: alexandra.mugge@cms.hhs.gov.*

RIN: 0938–AU87

HHS—CMS

73. Medicare and Medicaid Program Integrity (CMS–6084) [0938–AU90]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

CFR Citation: 42 CFR 400; 42 CFR 402; 42 CFR 405; 42 CFR 406; . . .

Legal Deadline: None.

Abstract: This proposed rule includes provisions that would promote payment accuracy and efficiency and help CMS identify and deter fraud, waste, and abuse in a timely, effective manner, enabling the Agency to protect the Medicare and Medicaid programs and the Children's Health Insurance Program (CHIP). This rule would implement portions of section 6101(a) of the Patient Protection and Affordable Care Act (Affordable Care Act), which require the disclosure of certain ownership, managerial, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities.

Statement of Need: This rule is necessary to strengthen CMS's program integrity efforts across Medicare, Medicaid, and the CHIP and increase transparency and accountability.

Summary of Legal Basis: The proposals included in this rule will address several sections of title XVIII of the Social Security Act.

Alternatives: Alternatives considered will be described in the rule.

Anticipated Cost and Benefits: As many of the provisions to be included in this rule are still under development, it is not possible at this time to provide cost and benefit estimates. As it is

developed further, such estimates will be included in the proposed rule.

Risks: The proposed provisions included in this rule would address a number of program integrity vulnerabilities. Risks of the proposals are still under development and will be included in the rule.

Timetable:

Action	Date	FR Cite
NPRM	01/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Federalism: Undetermined.

Agency Contact: John Spiegel, Senior Advisor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Program Integrity, MS: AR–19–15, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–1909, *Email: john.spiegel@cms.hhs.gov.*

RIN: 0938–AU90

HHS—CMS

74. Culturally Competent and Person-Centered Requirements To Increase Access to Care and Improve Quality for All (CMS–3418) [0938–AU91]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 1821; 42 U.S.C 1832(a)(2)(F)(I); 42 U.S.C. 1861(dd)(1); 42 U.S.C. 1905(a)

CFR Citation: 42 CFR 403; 42 CFR 416; 42 CFR 418; 42 CFR 441; . . .

Legal Deadline: None.

Abstract: The proposed rule would establish culturally competent and person-centered requirements for all provider and supplier types that participate in Medicare and Medicaid programs. These requirements revise the Conditions of Participations/Conditions for Coverage (CoPss/CfCs) pertaining to governance, patient/resident/client rights (such as nondiscrimination and accessibility), clinical quality standards, quality assessment and performance improvement, staff training, discharge planning, and care planning in an effort to increase quality and improve access to health care. These proposals also include additional requirements for transplant programs, organ procurement organizations, and end-stage renal disease facilities that would advance equity and reduce disparities in organ transplantation and organ donation.

Statement of Need: This rule would advance health equity, increase access to care, improve quality of care, and reduce health disparities for all individuals. The proposals are in accordance with Executive Orders 13985, 13988, 13995, and 14301 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Ensuring an Equitable Pandemic Response and Recovery, and on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, respectively. Despite the existence of Federal civil rights laws, disparities in care still persist. Revising the CoPs/CfCs by adding culturally competent and person-centered requirements will incentivize providers to address disparities that exist within their facilities by requiring specific actions or face a noncompliance determination that may affect their participation status in the Medicare and Medicaid programs. Discrimination, or even the fear of discriminatory behavior by healthcare providers, negatively impacts a patient's health and safety and health outcomes, and presents barriers to accessing quality health care. The establishment of culturally competent and person-centered requirements are a necessary step to protect an individual's health and safety. The provisions of this rule would help ensure that everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes. Further, culturally competent and person-centered focused health and safety requirements could lead to improved access to care, improved quality of care, and better health outcomes for all.

Summary of Legal Basis: The statutory authority to revise the health and safety standards for Medicare and Medicaid participating providers and suppliers is contained within Section 1102 (42 U.S.C. 1302) of the Social Security Act. In addition, this rule revises the health and safety regulations to advance health equity and reduce disparities for all individuals in accordance with Executive Orders 13985, 13988, 13995, and 14301 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Ensuring an Equitable Pandemic Response and Recovery, and on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, respectively.

Alternatives: In developing the policies contained in this rule, we considered numerous alternatives to the presented proposal. These alternatives will be included in the proposed rule.

Anticipated Cost and Benefits: The provisions in this rule aim to advance health equity, increase access to care, improve quality of care, and reduce health disparities for all individuals. This regulation will ultimately remove barriers to access health care, ensure that all individuals have equitable care, and improve quality of care for all. As we move toward publication, estimates of the cost and benefits of these provisions will be included in the rule.

Risks: This action furthers the goals of the Executive Orders on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985), Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (E.O. 13988), Executive Order on Ensuring an Equitable Pandemic Response and Recovery (E.O. 13995), and Executive Order on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders (E.O. 14301). While there may be some risks associated with an increased burden on providers as a result of these regulations, we believe benefits related to addressing the challenges that historically underserved populations (those that have been subject to racism, discrimination, or systemic disadvantage) face when accessing and receiving care from a health care organization, would far outweigh any risks.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, State.

Agency Contact: Alpha-Banu Wilson, 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:* 410 786–8687, *Email: alphabanu.wilson@cms.hhs.gov.*

RIN: 0938–AU91

HHS—CMS

75. Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 (CMS–9902) [0938–AU93]

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. The amendments would clarify plans' and issuers' obligations under the law, promote compliance with MHPAEA, and update requirements taking 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.

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	12/00/22	

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

76. Coverage of Certain Preventive Services Under the Affordable Care Act (CMS–9903) [0938–AU94]

Priority: Other Significant.

Legal Authority: Pub. L. 111–148, sec. 1001

CFR Citation: 45 CFR 147; 45 CFR 156.

Legal Deadline: None.

Abstract: This rule 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	12/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

Agency Contact: Lindsey Murtagh, Director, Market-Wide Regulation Division, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492–4106, *Email: lindsey.murtagh@cms.hhs.gov.*

RIN: 0938–AU94

HHS—CMS

77. Contract Year 2024 Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Medicare Cost Plan Programs, Medicare Overpayment Provisions of the Affordable Care Act, and PACE (CMS–4201) [0938–AU96]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 115–271

CFR Citation: 42 CFR 422; 42 CFR 423.

Legal Deadline: None.

Abstract: This proposed rule would implement changes to strengthen and improve the Medicare Advantage (Part C) and prescription drug (Part D) programs. It also proposes changes to the Medicare Cost Plan Program, Medicare Parts A, B, C, and D Overpayment Provisions of the Affordable Care Act, and Programs of All-Inclusive Care (PACE).

Statement of Need: This rule is necessary to make revisions to the Medicare Advantage (Part C), Medicare Prescription Drug Benefit (Part D), and PACE regulations to implement changes related to Star Ratings, medication therapy management, marketing and communications, health equity, provider directories, prior authorization, passive enrollment, network adequacy, identification of overpayments, formulary changes, and other programmatic areas. This proposed rule would also codify regulations implementing Section 118 of the Consolidated Appropriations Act of 2021 and includes a large number of provisions that would codify existing sub-regulatory guidance in the Part C, Part D, and PACE programs. This proposed rule would also amend the existing regulations for Medicare Parts A, B, C, and D regarding the standard for an identified overpayment.

Summary of Legal Basis: This rule addresses multiple sections of the Social Security Act, the Bipartisan Budget Act of 2018, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act, and the Consolidated Appropriations Act of 2021.

Alternatives: This rule implements provisions that require public notice and comment and are necessary for the upcoming contract year. We continue to explore alternatives as we develop the rule.

Anticipated Cost and Benefits: As we move toward publication, estimates of costs and benefits will be included in the proposed rule.

Risks: Risks of the proposals in this rule are still under development and will be included in the published rule for comment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Christian Bauer, Director, Division of Part D Policy, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C1–26–16, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6043, *Email: christian.bauer@cms.hhs.gov.*

Related RIN: Related to 0938–AV01

RIN: 0938–AU96

HHS—CMS

78. • FY 2024 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS–1779) [0938–AV02]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C 1395hh; 42 U.S.C. 1302

CFR Citation: 42 CFR 413.

Legal Deadline: Final, Statutory, October 1, 2023, By statute, rule must be effective by October 1 annually.

Abstract: This annual proposed rule would update the payment rates used under the prospective payment system for SNFs for fiscal year 2024. The rule also includes proposals for the SNF Quality Reporting Program (QRP) and for the Skilled Nursing Facility Value-Based Purchasing (VBP) Program that will affect Medicare payment to SNFs. In addition, this rule also proposes to establish new minimum staffing requirements that facilities must meet to ensure safe and quality care.

Statement of Need: This proposed rule would update the SNF prospective payment rates as required under the Social Security Act (the Act). The Act requires the Secretary to provide, before the August 1 that precedes the start of each FY, the unadjusted Federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment.

Summary of Legal Basis: In accordance with sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5) of the Act, the Federal rates in this proposed rule would reflect an update to the rates that we published in the SNF PPS final rule for FY 2023. These changes would be applicable to services furnished on or after October 1, 2023.

Alternatives: None. This is a statutory requirement.

Anticipated Cost and Benefits: Total expenditures will be adjusted for FY 2024.

Risks: None. The rule is necessary for SNF services to be paid appropriately.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Tammy Luo, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5–06–17, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4325, *Email: tammy.luo@cms.hhs.gov.*

RIN: 0938–AV02

HHS—CMS

Final Rule Stage

79. Streamlining the Medicaid and CHIP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS–2421) [0938–AU00]

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 final rule streamlines eligibility and enrollment processes for all Medicaid and Children's Health Insurance Program (CHIP) populations and creates 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 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 will 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 will further the administration's goal of strengthening Medicaid and making high-quality health care accessible and affordable for every American. At the same time, through clear and consistent requirements for conducting regular renewals of eligibility, acting on changes reported by beneficiaries and maintaining thorough recordkeeping on these activities, this rule will reduce the risk of improper payments.

Timetable:

Action	Date	FR Cite
NPRM	09/07/22	87 FR 54760
NPRM Comment Period End.	11/07/22	
Final Action	11/00/23	

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—ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

Proposed Rule Stage

80. Foster Care Legal Representation [0970–AC89]

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 permanency 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 only 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, but not in other civil proceedings (See 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 $2,731 billion in FFP over 10 years. 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	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Kathleen McHugh, Director, Division of Policy, Children's Bureau, ACYF/ACF/HHS, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3411, Washington, DC 20201, *Phone:* 202 401–5789, *Fax:* 202 205–8221, *Email: kmchugh@acf.hhs.gov.*

RIN: 0970–AC89

HHS—ACF

81. Separate Licensing Standards for Relative or Kinship Foster Family Homes [0970–AC91]

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 IV–E, all foster family homes must meet the same licensing standards, regardless of whether the foster family home is a relative or non-relative placement. This Notice of Proposed Rulemaking (NPRM) allows a title IV–E agency to adopt licensing or approval standards for all relative foster family homes that are different from the licensing standards used for non-related foster family homes.

Summary of Legal Basis: This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions for which the Secretary is responsible pursuant to the Act. Section 472 of the Act authorizes federal reimbursement for a FCMP for an otherwise eligible child when the child is placed in a fully licensed or approved foster family home.

Alternatives: There are no satisfactory alternatives to publishing this NPRM. This change cannot be made in sub-regulatory guidance.

Anticipated Cost and Benefits: This NPRM impacts state and tribal title IV–E agencies and does not impose a burden. The title IV–E agency has discretion to develop separate licensing standards for relatives and non-relatives and if they do so, they may claim title IV–E funding. ACF estimates that the proposed regulatory change would cost the Federal Government $3.085 billion in title IV–E foster care federal financial participation over 10 years.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.
Government Levels Affected: None.
Agency Contact: Kathleen McHugh, Director, Division of Policy, Children's Bureau, ACYF/ACF/HHS, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3411, Washington, DC 20201, *Phone:* 202 401–5789, *Fax:* 202 205–8221, *Email: kmchugh@acf.hhs.gov.*
RIN: 0970–AC91

HHS—ACF

82. Unaccompanied Children Program Foundational Rule [0970–AC93]

Priority: Other Significant.
Legal Authority: sec. 462 of the Homeland Security Act (6 U.S.C. 279)
CFR Citation: 45 CFR 410.
Legal Deadline: None.
Abstract: This rule would establish the regulatory framework for a variety of activities currently conducted by the Office of Refugee Resettlement's Unaccompanied Children (UC) Program. The rule would target activities currently mandated under the Flores Settlement Agreement (FSA), and it would further strengthen and codify additional protections and service provisions for unaccompanied children.
Statement of Need: Historically, the UC Program has operated largely without authorizing regulations enacted under the Administrative Procedures Act or subject to notice-and-comment rulemaking. Instead, virtually all ORR policies and procedures are contained in an ORR Policy Guide, and more recently, official ORR Field Guidance.

The UC Program is currently subject to the FSA, a consent decree which was first agreed to on January 28, 1997, in the United States District Court for the Central District of California. The court continues to supervise the agreement, which, based on a subsequent amendment, cannot terminate until 45 days after the agency publishes rules implementing the agreement.

At this time, ORR seeks to promulgate a new UC Program Foundational Rule, which will govern ORR activities that are currently governed by the FSA along with the federal statutes concerning the UC program, and address additional areas not contemplated in 1997 when the FSA was instituted.

It is important to note that this rule will codify new and vital protections for all children in ORR care, most of which currently are only provided in ORR policies and procedures. Upon promulgation of the final UC Program Foundational Rule, ORR will seek to terminate the FSA. The long-term goal is for ORR to codify FSA requirements and provide programmatic enhancements that will result in better and more durable protections for all children in ORR care, including greater transparency of ORR policies.
Summary of Legal Basis: ORR has broad statutory authority concerning the care and custody of UC through the Homeland Security Act of 2002 (HSA), 6 U.S.C. 279, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 8 U.S.C. 1232.
Alternatives: The agency could choose to not issue regulations and continue to be governed by the FSA. However, as noted above, although the FSA provides important protections, it was never intended to permanently govern the program, and regulations are needed to codify enhancements that will result in better and more durable protections for all children in ORR care.
Anticipated Cost and Benefits: ORR anticipates new costs associated with this rule particularly those associated with staffing increases (*e.g.,* related to administrative hearings as part of due process protections) and will work to estimate the costs based on updated staffing requirements, costs associated with promulgation of the federal rule, and any other associated costs.
Risks: No programmatic risks are anticipated.
Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Undetermined.
Small Entities Affected: Businesses, Organizations.
Government Levels Affected: None.
Agency Contact: Toby Biswas, Senior Supervisory Policy Counsel, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 555–4440, *Email: ucpolicy@acf.hhs.gov.*
RIN: 0970–AC93

HHS—ACF

83. Federal Licensing of Office of Refugee Resettlement Facilities [0970–AC94]

Priority: Other Significant.
Legal Authority: sec. 462 of the Homeland Security Act (6 U.S.C. 279)
CFR Citation: 45 CFR 412.
Legal Deadline: None.
Abstract: This rule would provide the regulatory framework for new Federal licensing of shelter care providers for unaccompanied children. This framework would be used when State governments do not provide State licensing for such providers under certain circumstances. The new office created to manage the Federal licensing will be proposed to be located within the Administration for Children and Families, but not within the Office of Refugee Resettlement.
Statement of Need: ORR's Unaccompanied Children (UC) Program is responsible for the administration of childcare shelters that provide care to UC arriving in the United States, prior to being placed with vetted sponsors. As of December 2021, ORR supports over 250 licensed care provider shelters in 25 states under approximately 150 separate grants between ORR and its network of care providers.

In addition, the Flores Settlement Agreement (FSA) generally requires that UC be placed in a state-licensed shelters subject to certain exceptions and expresses a specific preference for placements in geographic locations in which a majority of children are apprehended. Critically, none of ORR's authorizing statutes mandate placement in state-licensed shelters.

ORR has cultivated a large network of state-licensed shelters and developed close, cooperative relationships with many of the partner states that oversee and enforce their own licensing processes for ORR care providers. Accordingly, ORR has not attempted to fulfill all of the functions of, nor provide the services typically performed by, state agencies involved in the licensure and oversight of child care facilities with respect to compliance with state licensing requirements, such as conducting facility inspections, facilitating and processing background checks, and investigating child abuse/neglect allegations.

Recent actions by Texas and Florida to restrict or exempt from state licensure of ORR UC care provider facilities have required ORR to re-evaluate how to continue providing care for UC consistent with the FSA's expectation that children be placed in state-licensed shelters in those states, which represent a significant proportion of ORR's overall UC bed space. ACF has determined that the HSA's and TVPRA's broad grant of authority to ORR to manage the care and custody of UC authorizes the Department of Health and Human Services (HHS) to federally license shelters that house UC where states abdicate their traditional licensing responsibilities. This authority has been further delegated to ACF. ACF believes this change is necessary because

additional states have recently taken steps to sever ORR grantees' access to state licensure through executive action. ACF has determined that implementing federal licensure in these states can substantively address concerns underlying the FSA's requirement that UC shelters be state licensed (*e.g.* establishment and monitoring of facility standards not addressed by ORR policies, by authorities that are independent of ORR).

To continue serving UC and maintain quality of care in states that have restricted the availability of licensure to UC care providers, ORR has determined that the most effective response is for HHS, through ACF, to develop federal licensing standards for its care provider facilities under certain circumstances.

ORR will propose that this function be carried out by the proposed Office of Residential Licensure for Unaccompanied Children (ORLUC), to sit within ACF but independent of ORR. That office would oversee the issuance of licensing standards, implement monitoring, and oversee associated processes including federal license revocations.

Summary of Legal Basis: ORR has broad statutory authority concerning the care and custody of UC through the Homeland Security Act of 2002 (HSA), 6 U.S.C. 279, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 8 U.S.C. 1232.

Alternatives: If this rule is not issued, ACF will lack the legal authority to issue licenses and enforce licensing requirements in states that have acted to restrict the availability of licensure to organizations funded by ORR to carry out the UC program. This would limit ACF's ability to ensure the safety and well-being of children in its care, and to comply with the intent of the FSA.

Anticipated Cost and Benefits: The proposed regulations would result in costs to federal licensees, prospective federal licensees, ORR, and to ACF in implementing the proposed federal licensure program. Based on ACF's analysis, costs associated with the proposed regulations range from approximately $153 to $220 per licensee for submitting licensure applications and corrective action plans, as necessary. In addition, ACF conducted a regulatory impact analysis to assess costs associated with other requirements in the proposed rule such as updating policy and/or training staff, hiring additional staff, and implementing facility changes. At this time, ACF lacks the ability to estimate the potential costs specific to potentially affected care providers, especially with regard to changes to facilities. Therefore, ACF is required to make assumptions general to all prospective federal licensees in implementing any necessary changes. On average, ACF estimates that updates to affected facility policies or staff training will cost licensees between $17.32 and $34.68 per childcare worker. Should a federal licensee need to hire additional staff in order to come into compliance with federal licensure standards, ACF estimates the average cost to be $36,361 per year per worker.

The proposed rule would also result in associated federal costs of the establishment and operation of ORLUC. Based on ACF's analysis, the federal costs associated with the proposed regulations would be approximately $6.4 million in the first fiscal year once they are finalized. ACF also notes that many potential federal licensees discussed in this proposed rule are ACF grantees and the costs of maintaining compliance with licensing requirements are allowable costs to grant awards under the Basic Considerations for cost provisions at 45 CFR part 75, sections 403 through 405, if that the costs are reasonable, necessary, ordinary, treated consistently, and are allocable to the award. Additional costs associated with the policies discussed in this proposed rule that were not budgeted, and cannot be absorbed within existing budgets, would be allowable for the grant recipient to submit a request for supplemental funds to cover the costs, and may therefore result in additional federal costs.

Risks: No programmatic risks are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Organizations.

Government Levels Affected: None.

Agency Contact: Toby Biswas, Senior Supervisory Policy Counsel, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 555–4440, *Email: ucpolicy@acf.hhs.gov.*

RIN: 0970–AC94

HHS—ACF

84. • Strengthening TANF as a Safety Net and Work Program [0970–AC97]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 609

CFR Citation: 45 CFR 260.

Legal Deadline: None.

Abstract: This rule would strengthen the Temporary Assistance for Needy Families (TANF) program as a safety net and a work preparation program, make changes to allowable uses of TANF funds, improve work program effectiveness, and reduce administrative burden. The rule responds to the President's Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as well as the Biden-Harris Administration's priority to build a bridge towards economic recovery. The rule aims to increase support for families with the greatest needs and the services most integral to the safety net, including cash assistance, and help to reduce racial inequities across states. Additionally, the rule aims to help states to tailor effective workforce services to the needs of each family and reduce administrative burden.

Statement of Need: In fiscal year (FY) 2020, combined federal TANF and state maintenance-of-effort (MOE) expenditures and transfers totaled $31.6 billion. Of that amount only 22 percent was spent on basic assistance, compared to 71 percent in FY 1997. As a result, TANF currently serves less than 25 percent of eligible families across the country, as compared to 1997 when TANF served almost 70 percent of eligible families. States in which the lowest proportion of families in poverty receive cash benefits also have proportionally larger shares of Black and Latinx children. The rule aims to address these shortcomings and would align with the Administration's efforts to address equity, focus on upstream preventions, and increase opportunities for economic mobility for low-income families. The NPRM may consider changes around use of funds, eligible families, state MOE spending, and work flexibilities.

Summary of Legal Basis: The proposed regulations will relate to allowable spending, eligible work activities and penalties, and administrative simplification. The NPRM would be issued under the Secretary's authority to issue regulations where Congress has charged the Department with enforcing penalties, 42 U.S.C. 609.

Alternatives: Without these regulatory changes around allowable uses of funds, states will continue to underinvest in services most integral to the safety net, including cash assistance, and supports for families with the greatest needs. Without regulatory changes to improve work program effectiveness, states will

have less flexibility to tailor employment and training services to the needs of each family. Lastly, in the absence of these regulatory changes, states will not experience any relief in their administrative burden to operate the TANF program.

Anticipated Cost and Benefits: This NPRM imposes no costs on the federal government nor does it change overall funding amounts or spending requirements for states, territories, and tribes, as TANF is a fixed block grant. We anticipate a benefit in the transfer of funding toward critical supports to families experiencing economic hardships.

Risks: While we expect more low-income families to receive TANF benefits and receive more effective work-related services, this action may result in states having to increase their own spending to fund activities previously funded by federal TANF dollars or previously counted as state MOE spending.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Deborah List, Associate Deputy Director, Office of Family Assistance, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 401–5488, *Email: deborah.list@acf.hhs.gov.*

RIN: 0970–AC97

HHS—ACF

85. • Adoption and Foster Care Analysis and Reporting System (AFCARS) [0970–AC98]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 679

CFR Citation: 45 CFR 1355.41 *et seq.*

Legal Deadline: None.

Abstract: To ensure equitable treatment of all children and youth in child welfare, including Native American and LGBTQ+ children and youth, this rule will propose to require title IV–E agencies to collect and report for AFCARS additional information related to youth, foster parents, adoptive parents, and legal guardians. AFCARS data is used for planning, technical assistance, discretionary service grants, and research and evaluation, all with the goal of reducing entry into and improving outcomes of children in foster care.

Statement of Need: This NPRM is consistent with the Administration's priority of advancing equity for those historically underserved and adversely affected by persistent poverty and inequality. Native and LGBTQI+ children are over-represented populations in the child welfare system; however, the experiences of LGBTQI+ children in foster care and Native children are not fully captured in current child welfare data systems. As such, adding sexual orientation and ICWA data elements removed from the 2020 rule would make the experiences of these children more visible and may provide better insight into the trajectory of LGBTQI+ and Native children in foster care. It will also provide avenues for collaboration between states and tribes, in areas such as technical assistance, training and resource allocation that would be informed by the additional ICWA data elements. We anticipate that this is a critical step in addressing the needs of this population, and also will assist title IV–E agencies in recruiting and training foster care providers in meeting the needs of these youth. We will also consider potentially adding other elements that were removed by a May 2020 AFCARS Final Rule, such as health and education data.

Summary of Legal Basis: AFCARS is authorized by section 479 of the Social Security Act (the Act), which mandates that the Department of Health and Human Services (HHS) regulate a data collection system for national adoption and foster care data. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. 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, title IV–E agencies are required to report to AFCARS (beginning 10/1/22 under the 2020 final rule) related to ICWA: the child's tribal membership and name of Tribe; tribal membership for the child's the parents, foster parents, adoptive parents, and legal guardians; whether the state made inquiries if the child is an Indian child as defined in ICWA; whether ICWA applies for the child and if yes, the date that the state was notified by the Indian tribe or state or tribal court that ICWA applies; and whether the child's tribe(s) was sent legal notice. Title IV–E agencies are not required to report on sexual orientation in AFCARS currently.

Anticipated Cost and Benefits: There will be new state/tribe and federal costs associated with requiring title IV–E agencies to report additional AFCARS data elements, and the cost is contingent on the scope of the NPRM.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	06/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State.

Agency Contact: Kathleen McHugh, Director, Division of Policy, Children's Bureau, ACYF/ACF/HHS, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3411, Washington, DC 20201, *Phone:* 202 401–5789, *Fax:* 202 205–8221, *Email: kmchugh@acf.hhs.gov.*

RIN: 0970–AC98

HHS—ACF

86. • Modification of the Tribal Non-Federal Share Requirement [0970–AC99]

Priority: Other Significant.

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

CFR Citation: 45 CFR 309; 45 CFR 310.

Legal Deadline: None.

Abstract: This rule would modify the non-Federal share of program expenditures requirement, including the 90/10 and 80/20 cost sharing rates, for Tribal child support enforcement programs.

Statement of Need: The requirement to provide the non-Federal share of program expenditures has been a longstanding issue for Tribal child support enforcement programs. It limits growth, causes disruptions, and creates instability. Modifying the non-Federal share requirement prevents existing Tribal child support enforcement programs from closing. It implements guidance provided by the Secretary that the match rate would be revised if it were disruptive and imposed hardship (see 65 Fed Reg. at 50823). It also removes a major barrier that hinders prospective Tribes and Tribal organizations from administering a Tribal child support enforcement program. Most importantly, it ensures the opportunity for Tribal families to

receive child support services that reflect and affirm their Tribal cultures and traditions, promote parental responsibility, create financial stability, and lift Tribal families out of poverty. In FY 2020, Tribal child support enforcement programs collected $58 million in child support payments and 96 percent went to families.

Summary of Legal Basis: Section 455(f) of the Social Security Act (the Act) requires the Secretary to issue regulations governing the grants to Tribes and Tribal organizations operating child support enforcement programs. Additionally, 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 the NPRM is not published, many Tribal child support enforcement programs will continue to reduce services, delay filling vacancies, forgo system upgrades, and operate at a limited capacity so that they can meet the non-Federal share of program expenditures. Some Tribal child support enforcement programs will continue to face the danger of closing and may eventually be forced to close. Additionally, many prospective Tribes and Tribal organizations will be unable to apply for funding to operate a Tribal child support enforcement program due to the non-Federal share requirement.

Anticipated Cost and Benefits: ACF estimates that a modification to the regulation will result in increased costs to the Federal government but will also result in additional tribal child support programs added to serve children and families.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Chad Sawyer, Senior Policy Specialist, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 774–2323, *Email: chad.sawyer@acf.hhs.gov.*

RIN: 0970–AC99

HHS—ACF

Final Rule Stage

87. ANA Non-Federal Share Emergency Waivers [0970–AC88]

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 2991b

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 (NAPA), as amended, 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 the 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 (NAPA), as amended, 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 the 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. This final rule is responsive to the President's Executive Order 13995 (Ensuring an Equitable Pandemic Response and Recovery) and Executive Order 14002 (Economic Relief Related to the COVID–19 Pandemic), as well as responsive to the needs of Native American communities. Existing regulations state 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	12/07/21	86 FR 69215
NPRM Comment Period End.	02/07/22	
Final Action	04/00/23	

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—ADMINISTRATION FOR COMMUNITY LIVING (ACL)

Proposed Rule Stage

88. Older Americans Act, Titles III, VI, and VII [0985–AA17]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 3001 *et seq.*

CFR Citation: 45 CFR 1321 to 1324.

Legal Deadline: None.

Abstract: The proposed rule would amend the regulations implementing programs under the Older Americans Act (OAA) (42 U.S.C. 3001 *et seq.*): 45 CFR part 1321 (Grants to State and Community Programs on Aging); 45 CFR part 1322 (Grants to Indian Tribes for Support and Nutrition Services); 45 CFR part 1323 (Grants for Supportive and Nutritional Services to Older Hawaiian Natives); and 45 CFR part 1324 (Allotments for Vulnerable Elder Rights Protection Activities, including Subpart A State Long-Term Care Ombudsman Program). The proposed rule would make revisions to these regulations to align with the OAA as reauthorized in 2020. Current OAA regulations are more than 30 years old (issued in 1988), other than portions of 45 CFR part 1321 and 1324 regarding the State Long-Term Care Ombudsman Program, which were issued in 2015.

Statement of Need: The proposed rule would make important revisions to these regulations following the reauthorization of the Act in 2020. The majority of the current regulations associated with this Act are more than 30 years old, so updates to these regulations will allow for an overall alignment of regulations with current statutory language, related regulatory language and circumstances in the field. These regulations also provide an important opportunity to advance equity in the OAA programs as envisioned by the statute and consistent with current executive orders.

Summary of Legal Basis: Development, promulgation and implementation of regulations for OAA programs have been and will be carried out consistently with the statute. This particular regulatory action is not required by the reauthorization of the statute or court order.

Alternatives: ACL considers sub-regulatory guidance, information and education outreach, and voluntary approaches as alternatives to regulatory action. None of these alternatives are the appropriate option for promulgating and administering the provisions that will be included in the regulations consistent with statute. Economic incentives and instruments are not an option.

Anticipated Cost and Benefits: To be determined. A regulatory impact analysis is concurrently underway.

Risks: These regulations would update past and establish new regulatory provisions consistent with the reauthorization of the OAA in 2020. Promulgating this NPRM and obtaining public feedback in order to issue a new final rule will result in decreased risk for administering agencies at the federal, state and local level in ensuring the administration of the OAA programs consistent with the statute, and in also supporting the statute's purpose of reducing the risk of injury, disease, disability and institutional placement of older adults.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	05/06/22	87 FR 27160
Request for Information Comment Period End.	06/06/22	
NPRM	06/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State, Tribal.

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–AA17

HHS—ACL

89. • Adult Protective Services Functions and Grant Programs [0985–AA18]

Priority: Other Significant.

Legal Authority: Elder Justice Act (SSA sec. 2042. [42 U.S.C. 1397m–1] (a) Secretarial Responsibilities)

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: The proposed rule would create federal regulations for Adult Protective Services (APS) programs as authorized by the Elder Justice Act. APS programs were originally recognized by federal law in 1975 under title XX of the Social Security Act via the Social Services Block Grant (SSBG). States have wide discretion whether to allocate any funding to APS via the SSBG program, and there are no regulations pertaining to APS under SSBG. Since 1975, all 50 states, the District of Columbia, and four territories have developed APS programs in accordance with local needs, structures, and laws. Historic investments through the Coronavirus Relief and Response Supplemental Appropriations Act (CRRSA) and the American Rescue Plan Act (ARPA) provided the very first funding for APS program formula funding to states as authorized by the Elder Justice Act (EJA). These regulations would promote an effective APS response across the country so that all older adults and adults with disabilities, regardless of the state or jurisdiction in which they live, have similar protections and service delivery from APS systems.

Statement of Need: The proposed rule would create federal regulations for Adult Protective Services (APS) programs as authorized by the Elder Justice Act (EJA). These regulations are critical in establish consistent national requirements and standards for EJA APS program formula funding to states.

Summary of Legal Basis: Development, promulgation and implementation of this regulation will be carried out consistently with the statute; however, this regulatory action is not required by the statute or a court order.

Alternatives: ACL considers sub-regulatory guidance, information and education outreach, and voluntary approaches as alternatives to regulatory action. Prior to the availability of appropriations for formula funding for this program ACL utilized guidance and voluntary approach for the establishment of a national data system and in supporting the establishment and dissemination of program best practices. However, now that federal funding is available to all states and territories, none of these alternatives are the appropriate option for promulgating and administering the provisions that will be included in the regulations consistent with statute. Economic incentives and instruments are not an option.

Anticipated Cost and Benefits: To be determined. A regulatory impact analysis is concurrently underway.

Risks: These regulations would establish first ever regulations for APS programs consistent with the Elder Justice Act passed in 2010. Promulgating this NPRM and obtaining public feedback in order to issue a new final rule will result in decreased risk for administering agencies at the federal, state and local level in ensuring the administration of appropriations for APS programs consistent with the statute, and in also supporting the

statute's programmatic purpose of detecting, preventing and reducing the abuse, neglect and exploitation of adults, including older adults.

Timetable:

Action	Date	FR Cite
NPRM	06/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: State.

Agency Contact: Richard Nicholls, Chief of Staff and Executive Secretary, Department of Health and Human Services, Administration for Community Living, 330 C Street SW, Room 1004B, Washington, DC 20201, *Phone:* 202 795–7415, *Fax:* 202 205–0399, *Email: rick.nicholls@acl.hhs.gov*.

RIN: 0985–AA18

BILLING CODE 4150–03–P

DEPARTMENT OF HOMELAND SECURITY (DHS)

Fall 2022 Statement of Regulatory Priorities

The Department of Homeland Security (DHS or Department) was established in 2003 pursuant to the Homeland Security Act of 2002, Public Law 107–296. The DHS mission statement provides the following: ''With honor and integrity, we will safeguard the American people, our homeland, and our values.''

DHS was created in the aftermath of the horrific attacks of 9/11, and its distinctive mission is defined by those words. The phrase ''homeland security'' refers to the security of the American people, the homeland (understood in the broadest sense), and the nation's defining values. A central part of the mission of protecting ''our values'' includes fidelity to law and the rule of law, reflected above all in the Constitution of the United States, and also in statutes enacted by Congress, including the Administrative Procedure Act. That commitment is also associated with a commitment to individual dignity. Among other things, the attacks of 9/11 were attacks on that value as well.

The regulatory priorities of DHS are founded an insistence on the rule of law—and also on a belief that individual dignity, symbolized and made real by the opening words of the Constitution (''We the People''), the separation of powers, and the Bill of Rights (including the Due Process Clause), helps to define our mission.

Fulfilling that mission requires the dedication of more than 240,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector, from the economist seeking to identify the consequences of our actions to the scientist and policy analyst seeking to make the nation more resilient against flooding, drought, extreme heat, and wildfires. Our duties are wide-ranging, but our goal is clear: keep America safe.

There are six overarching homeland security missions that make up DHS's strategic plan: (1) Counter terrorism and homeland security threats; (2) secure U.S. borders and approaches; (3) secure cyberspace and critical infrastructure; (4) preserve and uphold the Nation's prosperity and economic security; (5) strengthen preparedness and resilience (including resilience from risks actually or potentially aggravated by climate change); and (6) champion the DHS workforce and strengthen the Department. See also 6 U.S.C. 111(b)(1) (identifying the primary mission of the Department).

In promoting these goals, we attempt to evaluate our practices by reference to evidence and data, and to improve them in real time. We also attempt to deliver our multiple services in a way that, at once, protects the American people and does not impose excessive or unjustified barriers and burdens on those who use them.

In achieving those goals, we are committed to public participation and to listening carefully to the American people (and to noncitizens as well). We are continually strengthening our partnerships with communities, first responders, law enforcement, and Government agencies—at the Federal, State, local, tribal, and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure against risks old and new—and to perform our services better. We are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. We are reducing administrative burdens and simplifying our processes. For a further discussion of our mission, see the DHS website at *https://www.dhs.gov/mission.*

The regulations we have summarized below in the Department's Fall 2022 regulatory plan and agenda support the Department's mission. We are committed to continuing evaluation of our regulations, consistent with Executive Order 13563, and Executive Order 13707, and in a way that improves them over time. These regulations will improve the Department's ability to accomplish its mission. Also, these regulations address legislative initiatives such as the ones found in the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) and the FAA Extension, Safety, and Security Act of 2016.

We emphasize here our commitments (1) To fidelity to law; (2) to treating people with dignity and respect; (3) to increasing national resilience against multiple risks and hazards, including those actually or potentially associated with climate change; (4) to modernization of existing requirements; and (5) to reducing unjustified barriers and burdens, including administrative burdens.

DHS strives for organizational excellence and uses a centralized and unified approach to managing its regulatory resources. The Office of the General Counsel manages the Department's regulatory program, including the agenda and regulatory plan. In addition, DHS senior leadership reviews each significant regulatory project in order to ensure that the project fosters and supports the Department's mission.

The Department is committed to ensuring that all of its regulatory initiatives are aligned with its guiding principles to remain faithful to law, protect civil rights and civil liberties, integrate our actions, listen to those affected by our actions, build coalitions and partnerships, develop human resources, innovate, and be accountable to the American public.

DHS is strongly committed to the principles described in Executive Orders 13563 and 12866 (as amended). Both Executive Orders direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 explicitly draws attention to human dignity and to equity.

Finally, the Department values public involvement in the development of its regulatory plan, agenda, and regulations. It is particularly concerned with the impact its regulations have on small businesses and startups, consistent with its commitment to promoting economic growth. DHS is also concerned to ensure that its regulations are equitable, and that they do not have unintended or adverse effects on (for example) women,

disabled people, people of color, or the elderly. Its general effort to modernize regulations, and to remove unjustified barriers and burdens, is meant in part to avoid harmful effects on small businesses, startups, and disadvantaged groups of multiple sorts. DHS and its components continue to emphasize the use of plain language in our regulatory documents to promote a better understanding of regulations and to promote increased public participation in the Department's regulations. We want our regulations to be transparent and ''navigable,'' so that people are aware of how to comply with them (and in a position to suggest improvements).

The Fall 2022 regulatory plan for DHS includes regulations from multiple DHS components, including the Federal Emergency Management Agency (FEMA), U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (the Coast Guard), U.S. Customs and Border Protection (CBP), Transportation Security Administration (TSA), U.S. Immigration and Customs Enforcement (ICE), and the Cybersecurity and Infrastructure Security Agency (CISA). We next describe the regulations that comprise the DHS fall 2022 regulatory plan.

Federal Emergency Management Agency

The Federal Emergency Management Agency (FEMA) is the government agency responsible for helping people before, during, and after disasters. FEMA supports the people and communities of our Nation by providing experience, perspective, and resources in emergency management. FEMA is particularly focused on national resilience in the face of the risks of flooding, drought, extreme heat, and wildfire; it is acutely aware that these risks, and others, are actually or potentially aggravated by climate change. FEMA seeks to ensure, to the extent possible, that changing weather conditions do not mean a more vulnerable nation. FEMA is also focused on individual equity, and it is aware that administrative burdens and undue complexity might produce inequitable results in practice.

Consistent with President Biden's Executive Order on Climate Related Financial Risk (Executive Order 14030), FEMA will propose a regulation titled *National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form.* The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. Property owners in participating communities are eligible to purchase NFIP flood insurance. This proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners' insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

FEMA will also propose a regulation titled *Individual Assistance Program Equity* to further align with Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. 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 in the program, FEMA will propose to amend application of ''safe, sanitary, and functional'' for the Individuals and Households Program Home Repair assistance; re-evaluate the requirement to apply for a Small Business Administration loan prior to receipt of certain types of Other Needs Assistance; add eligibility criteria for its Serious Needs and 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, child care assistance, maximum assistance limits, and waiver authority. Finally, FEMA will propose allowing self-employed individuals to receive assistance for essential tools under Other Needs Assistance, allowing certain home repair accessibility-related items, and allowing the reopening of the registration period when the President adds new counties to the major disaster declaration.

In addition, FEMA will propose a regulation titled *Update of FEMA's Public Assistance Regulations.* FEMA proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

Additionally, FEMA will propose a regulation titled *Updates to Floodplain Management and Protection of Wetlands Regulations* consistent with President Biden's Executive Order on Climate Related Financial Risk (Executive Order 14030). FEMA proposes to amend its existing regulations to incorporate amendments that have been made to Executive Order 11988 and the Federal Flood Risk Management Standard (FFRMS). The FFRMS is a flexible framework allowing agencies to choose among three approaches to define the floodplain and corresponding flood elevation requirements for federally funded projects. Existing regulations describe FEMA's process for determining whether the proposed location for an action falls within a floodplain and how to complete the action in the floodplain, in light of the risk of flooding. The proposed rule would change how FEMA defines a floodplain with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating the proposed action in the floodplain.

Finally, FEMA continues to engage with the public related to its floodplain management standards. 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. FEMA's authority under the National Flood Insurance Act requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. The agency is reviewing potential actions to better align the NFIP minimum floodplain management standards with FEMA's current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. FEMA is considering revisions to the minimum standards to better protect people and property in a nuanced manner that balances community needs with the

national scope of the NFIP while also incorporating opportunities for improving resilience in communities that have been historically underserved. FEMA is also considering revisions to the minimum standards that would advance the conservation of threatened and endangered species and their habitat. In response to a separate Request for Information, FEMA is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System.

United States Citizenship and Immigration Services

U.S. Citizenship and Immigration Services (USCIS) is the government agency that administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits with integrity and respect for all we serve. To the extent permitted by law, USCIS is committed to meeting the economic needs of U.S. employers, reducing unnecessary barriers to legal immigration, increasing access to legally authorized immigration benefits, and reinvigorating the size and scope of humanitarian relief. In the coming year, USCIS intends to pursue several regulatory actions that support these goals while balancing this work with our fiscal stability goals.

Employment Issues, Economic Needs, and Lawful Pathways. USCIS is focused on promulgating policies that are responsive to the needs of the U.S. economy and U.S. employers, while providing lawful pathways to work in the United States and also protecting the rights of both U.S. and noncitizen workers. USCIS will propose a rule to modernize and reform the H–2A and H–2B programs. The proposed rule will incorporate necessary program efficiencies and meet the legitimate needs of U.S. employers; it will include provisions designed to protect against the exploitation or other abuse of H–2A and H–2B workers. (*Modernization and Reform of the H–2 Programs.*)

Improvements to the Overall Immigration System. USCIS will propose adjustments to certain immigration and naturalization benefit request fees (after performing the required biennial fee review) to ensure that fees recover full costs borne by USCIS. In doing so, USCIS will adhere to the ideals of removing unjustified barriers and promoting access to the immigration system (to promote, among other things, economic needs and economic growth); improving and expanding naturalization processing; and implementing the administration's humanitarian priorities. (*USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.*) In addition, USCIS plans to take steps to reform the regulations governing the adjustment of status to lawful permanent residence to improve the efficiency and administration of that program. USCIS will propose a rule that updates outdated regulations, reduces the potential for visa retrogression, and promotes the efficient use of immediately available immigrant visas. (*Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits.*) Lastly, USCIS will propose a rule to clarify and update eligibility requirements governing citizenship and naturalization. (*Citizenship and Naturalization and Other Related Flexibilities.*)

Humanitarian Relief. USCIS will propose reforms to the U nonimmigrant visa classification. The U nonimmigrant status is for noncitizen victims of certain qualifying criminal activities, and their eligible family members, who have been, are, or are likely to be helpful in the investigation or prosecution of those crimes. To streamline the procedures and enhance operational efficiency, USCIS will propose a rule to update eligibility, procedural and filing requirements governing U nonimmigrant status, and adjustment of status for those nonimmigrants. (*Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status*). In addition, USCIS will propose a rule to update the regulations governing self-petitions in cases where the noncitizen has been subjected to battery or extreme cruelty by their U.S. citizen spouse, parent, son, or daughter, or lawful permanent resident spouse or parent. USCIS will also propose to update the regulations to align with statutory updates made as a result of subsequent reauthorizations of the Violence Against Women Act. (*Relief Under the Violence Against Women Act of 1994 and Subsequent Legislation.*)

Asylum Reforms. USCIS is focused on pursuing regulations to strengthen, rebuild, and (where appropriate) streamline the asylum system, consistent with law and mission imperatives. For example, USCIS and DOJ will take steps to remove regulatory provisions that are currently enjoined *(Bars to Asylum Eligibility and Related Procedures*), propose updates to clarify eligibility for asylum and withholding of removal (*Particular Social Group and Related Definitions and Interpretations for Asylum and Withholding of Removal*), and propose modifications or withdrawal of other asylum-related regulatory provisions (*Security Bars and Processing*).

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:

Cybersecurity in the Marine Transportation System. The Coast Guard is proposing to update its maritime security regulations by adding cybersecurity requirements to existing regulations. This proposed rulemaking is part of an ongoing effort to address emerging cybersecurity risks and threats to maritime security by including additional security requirements to safeguard the marine transportation system.

Shipping Safety Fairways Along the Atlantic Coast. The Coast Guard published an ANPRM on June 19, 2020. The Coast Guard is reviewing comments to help develop a proposed rule that would establish shipping safety fairways along the Atlantic Coast of the United States. Fairways are marked routes for vessel traffic. They facilitate the direct and unobstructed transit of ships. The proposed fairways will be based on studies about vessel traffic along the Atlantic Coast. 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.

MARPOL Annex VI; Prevention of Air Pollution From Ships. The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rulemaking would fill gaps in the existing framework for carrying out the provisions of Annex VI. Chapter 4 of Annex VI contains shipboard energy efficiency measures that include short-term measures reducing carbon emissions linked to climate change. This proposed rulemaking would apply to U.S.-flagged ships. It would also apply to foreign-flagged ships operating either in U.S. navigable waters or in the U.S. Exclusive Economic Zone.

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 travel 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. CBP highlights one those projects below.

Advance Passenger Information System: Electronic Validation of Travel Documents. CBP intends to amend current Advance Passenger Information System (APIS) regulations to incorporate additional carrier requirements that would further enable CBP to determine whether each passenger is traveling with valid, authentic travel documents prior to the passenger boarding the aircraft. The proposed regulation would require commercial air carriers to receive a second message from CBP that would state whether CBP matched the travel documents of each passenger to a valid, authentic travel document recorded in CBP's databases. The proposed regulation would also require air carriers to transmit additional data elements regarding contact information through APIS for all commercial aircraft passengers arriving in the United States to support border operations and national security. CBP expects that the collection of these elements would enable CBP to further support the Center for Disease Control and Prevention's mission in monitoring and tracing the contacts for persons involved in health incidents. This action will result in time savings to passengers and cost savings to CBP, carriers, and the public.

In addition to the regulations that CBP issues to promote DHS's mission, CBP issues regulations related to the mission of the Department of the Treasury. Under section 403(1) of the Homeland Security Act of 2002, the former-U.S. Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security. As part of the initial organization of DHS, the Customs Service inspection and trade functions were combined with the immigration and agricultural inspection functions and the Border Patrol and transferred into CBP. The Department of the Treasury retained certain regulatory authority of the U.S. Customs Service relating to customs revenue function. In the coming year, CBP expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. For a discussion of CBP regulations regarding the customs revenue function, see the regulatory plan of the Department of the Treasury.

Transportation Security Administration

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA applies an intelligence-driven, risk-based approach to all aspects of its mission. This approach results in layers of security to mitigate risks effectively and efficiently. In the coming fiscal year, TSA is prioritizing the following actions that are required to meet statutory mandates or that are necessary for national security.

Enhancing Surface Cyber Risk Management. TSA intends to issue a rulemaking that will permanently codify critical cybersecurity requirements for pipeline and rail modes of transportation. On January 28, 2021, the President issued the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Controls Systems. Consistent with this priority of the Administration and in response to the ongoing cybersecurity threat to surface transportation systems, TSA issued security directives to owners and operators of TSA-designated critical pipeline systems and facilities,

and higher-risk rail operations (freight, passenger, and mass transit) to implement several urgently needed protections against cyber intrusions. Through these directives, TSA has imposed measures to report cybersecurity incidents; designate a cybersecurity coordinator; review current cybersecurity measures; identify and report any gaps and related remediation measures to address cyber-related risks; implement specific mitigation measures to protect against cyber-attacks; develop and implement a cybersecurity incident response plan; and develop an assessment program to proactively address and audit cybersecurity measures. TSA is committed to enhancing and sustaining cybersecurity for all modes of transportation and intends to issue a rulemaking that may codify these and other requirements.

Vetting of Certain Surface Transportation Employees. Consistent with the Implementing Recommendations of the 9/11 Commission Act of 2007, TSA will propose a rule requiring 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 through 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 Program. TSA published an interim final rule in 2004 related to flight schools. The IFR requires flight schools to notify TSA when noncitizens, and other individuals designated by TSA, apply for flight training or recurrent training. TSA subsequently issued exemptions and interpretations in response to comments on the IFR and questions raised during operation of the program since 2004. TSA published a notice reopening the comment period on May 18, 2018. Based on the comments and questions received, TSA is finalizing the rule with modifications that may include changing the frequency of security threat assessments from a high-frequency event-based interval to a time-based interval, clarify the definitions and other provisions of the rule, and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule. These and other changes would provide significant cost-savings to the industry and individuals seeking flight training while also enhancing security.

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 will propose a rule to revise current vetting requirements to enhance eligibility requirements 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 processing improvements, including the rules mentioned below.

Immigration Bond Notifications and Electronic Service. ICE is revising regulations that authorize the means to serve decisions and other notices in-person or by mail, to include electronic and other means of service. This rule is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government. Current regulations limit ICE to serve documents in-person, or by certified, registered, or ordinary mail, which is time consuming, inefficient, and unreliable. This interim final rule would enable ICE to issue and serve certain notices, decisions, and other documents electronically to noncitizens, parties, attorneys, or other persons of interest who voluntarily opt-in to be served electronically. The intent is to improve convenience, transparency, and provide quicker information and communication to both the public and the government.

Optional Alternative to the Physical Examination Associated With Employment Eligibility Verification (Form I–9). In August of 2022, ICE published a proposed rule that would revise employment eligibility verification regulations to allow the Secretary to authorize alternative document examination procedures in certain circumstances or with respect to certain employer. As explained in the rule, future exercises of such authority may reduce burdens on employers and employees while maintaining the integrity of the employment verification process. DHS will complete this rulemaking following review of public comments received. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Cybersecurity and Infrastructure Security Agency

The Cybersecurity and Infrastructure Security Agency (CISA) is responsible for leading the national effort to develop cybersecurity and critical infrastructure security programs, operations, and associated policy to enhance the security and resilience of physical and cyber infrastructure.

Ammonium Nitrate Security Program. This rule implements a 2007 amendment to the Homeland Security Act. The amendment requires DHS to ''regulate the sale and transfer of ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.'' CISA published an Notice of Proposed Rulemaking in 2011. CISA is planning to issue a Supplemental Notice of Proposed Rulemaking.

Chemical Facility Anti-Terrorism Standards (CFATS). This rule would update CFATS' Risk Based Performance Standards to enhance cybersecurity requirements, modify the counting rules associated with release-flammable chemicals, remove release-explosive chemicals, and adjust the Screening Threshold Quantities of Appendix A to account for the updated risk analysis methodology. CISA previously invited public comment on an Advance Notice of Proposed Rulemaking (ANPRM)

during August 2014 for potential revisions to the CFATS regulations. The ANPRM provided an opportunity for the public to provide recommendations for possible program changes. In June 2020, CISA published for public comment a retrospective analysis of the CFATS program. And in January 2021, CISA invited additional public comment through an ANPRM concerning the removal of certain explosive chemicals from CFATS. CISA intends to address many of the subjects raised in both ANPRMs and the retrospective analysis in this regulatory action, including potential updates to CFATS cybersecurity requirements and Appendix A to the CFATS regulations. CISA is planning to issue a notice of proposed rulemaking.

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

90. Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status [1615–AA67]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1101 (note); 8 U.S.C. 1102; Pub. L. 113–4

CFR Citation: 8 CFR 214; 8 CFR 274a; 8 CFR 103; 8 CFR 299.

Legal Deadline: None.

Abstract: This proposed rule would clarify and update eligibility, procedural, and filing requirements for U nonimmigrant status (commonly known as the ''U'' visa) and adjustment of status for U nonimmigrants. U nonimmigrant status is for noncitizen victims of certain qualifying criminal activities who have been, are being, or are likely to be helpful in the investigation or prosecution of those crimes and eligible family members. There is a statutory limit of 10,000 U visas per year for principal petitioners. DHS published an interim final rule in 2007 (72 FR 53013) to establish the procedures to be followed in order to petition the U nonimmigrant status and published an interim final rule in 2008 (73 FR 75540) to establish the procedures for applying for adjustment of status as a U nonimmigrant, and this rule would address relevant comments and stakeholder feedback received since publication of those interim final rules, as well as update the regulations for changes in legislation.

Statement of Need: This regulation is necessary to allow noncitizen victims of certain crimes to petition for U nonimmigrant status and to adjust status to that of a lawful permanent resident. The U classification is for noncitizen victims of certain qualifying criminal activities who have been, are being, or are likely to be helpful in the investigation or prosecution of those crimes. This rule would address the eligibility requirements that must be met for classification as a U nonimmigrant and implements statutory amendments to these requirements, streamlines the procedures to petition for U nonimmigrant status, provides evidentiary guidance to assist in the petition process, and clarifies adjustment of status requirements.

Summary of Legal Basis: This regulation is necessary to allow noncitizen victims of certain crimes to petition for U nonimmigrant status and to adjust status to that of a lawful permanent resident. The U classification is for noncitizen victims of certain qualifying criminal activities who have been, are, or are likely to be helpful in the investigation or prosecution of those crimes. This rule would address the eligibility requirements that must be met for classification as a U nonimmigrant and implements statutory amendments to these requirements, streamlines the procedures to petition for U nonimmigrant status, provides evidentiary guidance to assist in the petition process, and clarifies adjustment of status requirements.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/17/07	72 FR 53013
Interim Final Rule Effective.	10/17/07	
Interim Final Rule Comment Period End.	11/17/07	
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, Local, State.

Additional Information: Transferred from RIN 1115–AG39.

URL For More Information: *www.regulations.gov.*

URL For Public Comments: *www.regulations.gov.*

Agency Contact: Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

RIN: 1615–AA67

DHS—USCIS

91. Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits [1615–AC22]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 8 U.S.C. 1101; 8 U.S.C. 1103(a); 8 U.S.C. 1153 to 1155; 8 U.S.C 1160; 8 U.S.C 1254a; 8 U.S.C. 1255 and 1324a; . . .

CFR Citation: 8 CFR 204.5; 8 CFR 204.12; 8 CFR 205.1; 8 CFR 209.1; 8 CFR 209.2; 8 CFR 244.15; 8 CFR 245.1; 8 CFR 245.2; 8 CFR 245.5; 8 CFR 245.11; 8 CFR 245.15; 8 CFR 245.18; 8 CFR 249.2; 8 CFR 264.2; 8 CFR 274a.12; . . .

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS) proposes to amend its regulations governing adjustment of status to lawful permanent residence in the United States. The proposed changes include permitting concurrent filing of a visa petition and the application for adjustment of status for the employment-based 4th preference (certain special immigrants) category, including religious workers; permitting the transfer of underlying basis of a pending adjustment of status application; amending the definition relating to ineligibilities under section 245(c) of the INA; changing the age calculation under the Child Status Protection Act; and authorizing employment authorization for certain derivative beneficiaries waiting for immigrant visa availability when they present compelling circumstances. DHS also proposes to amend the regulations relating to temporary protected status and travel authorization and the impact on the adjustment of status eligibility. The intent of these proposed changes is to reduce processing times, improve the quality of inventory data provided to partner agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas.

Statement of Need: This rulemaking is necessary to address outdated regulations and to improve the efficiency and the administration of the adjustment of status of immigrants to

lawful permanent residence in the United States, improve the quality of inventory data that DHS provides to agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas. This proposed rule would revise travel authorization regulations for temporary protected status beneficiaries and clarify the impact on adjustment of status eligibility. This rule also changes eligibility requirements for certain classifications for what constitutes compelling circumstances for employment authorization.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Mark Phillips, Residence and Naturalization Division Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC22

DHS—USCIS

92. Particular Social Group and Related Definitions and Interpretations for Asylum and Withholding of Removal [1615–AC65]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 8 U.S.C. 1101(a)(42); 8 U.S.C. 1158; 8 U.S.C. 1225; 8 U.S.C. 1231 and 1231 (note); E.O. 14010; 86 FR 8267 (Feb. 2, 2021)

CFR Citation: 8 CFR 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) (collectively, ''the Departments'') regulations that govern eligibility for asylum and withholding of removal. The amendments focus on portions of the regulations that deal with the definitions of membership in a particular social group and the interpretation of various other elements of eligibility for asylum, including some that are often determinative in particular social group claims, such as the requirements for failure of State protection, and determinations about whether persecution is on account of a protected ground. The rule will also propose to modify or rescind portions of the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42). This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a particular social group.

Statement of Need: The Departments propose this rule to clarify standards governing numerous elements of eligibility for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, and protection from removal under the regulations that implement U.S. obligations in immigration cases under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The rule proposes to rescind certain provisions of the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule, which had addressed many of the same issues. See 85 FR 80274. The previous rule was the subject of multiple suits challenging the rule on numerous procedural and substantive grounds, and was preliminarily enjoined before it became effective. *Pangea Legal Servs.* v. *U.S. Dep't of Homeland Sec.,* 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021). In some circumstances the Departments have decided to republish changes made in the Global Asylum Rule without amendment. The purpose of doing so is to remedy any alleged procedural deficiencies with the enactment of those provisions. In other instances, the Departments now propose different provisions with the goal of adopting clearer and simpler analyses that would reduce burdens on adjudicators and applicants, and result in more consistent and accurate adjudications. The Departments believe that the existing standards governing these issues have become confusing, overly complex, and subject to inconsistent interpretations among adjudicators and across federal circuit courts on numerous issues. The Departments propose this rule to rectify these problems.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

Related RIN: Related to 1615–AC42, Related to 1125–AB13, Related to 1125–AA94

RIN: 1615–AC65

DHS—USCIS

93. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements [1615–AC68]

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	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: None.

Agency Contact: Kika Scott, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC68

DHS—USCIS

94. Bars to Asylum Eligibility and Related Procedures [1615–AC69]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135, sec. 1102, as amended; 8 U.S.C. 1103(a)(1); 8 U.S.C. 1103(a)(3); 8 U.S.C. 1103(g); 8 U.S.C. 1225(b); 8 U.S.C. 1231(b)(3) and 1231 (note); 8 U.S.C. 1158

CFR Citation: 8 CFR 208; 8 CFR 235; 8 CFR 1003; 8 CFR 1208; 8 CFR 1235.

Legal Deadline: None.

Abstract: In 2020, the Department of Homeland Security and Department of Justice (collectively, the Departments) published 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), and Asylum Eligibility and Procedural Modifications (RINs 1125–AA91 and 1615–AC44), 85 FR 82260 (Dec. 17, 2020), final rules. The Departments will propose to modify or rescind the regulatory changes promulgated in these two 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 Executive Order 14010 and Executive Order 14012.

Anticipated Cost and Benefits: The Departments are currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

Related RIN: Related to 1125–AA87, Split from 1615–AC41, Related to 1125–AA91, Related to 1615–AC44, Related to 1125–AB12

RIN: 1615–AC69

DHS—USCIS

95. Modernization and Reform of the H–2 Programs [1615–AC76]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 8 U.S.C. 1103(a)(3); 8 U.S.C. 1001(a)(15)(H)(ii)(a) and (b); 8 U.S.C. 1184(a), (c) and (g)

CFR Citation: 8 CFR 214; 8 CFR 274a.

Legal Deadline: None.

Abstract: DHS plans to issue a notice of proposed rulemaking that will modernize and reform the H–2A and H–2B nonimmigrant worker programs. DHS will propose to incorporate policies that produce program efficiencies, address current aspects of the program that may unintentionally result in exploitation or other abuse of persons seeking to come to this country as H–2A and H–2B workers, build upon existing protections against prohibited payments or other assessment of fees and/or salary deductions by H–2A and H–2B workers in connection with recruitment and/or employment, and otherwise add protections for workers. This rule would not revise the temporary labor certification process or the regulations contained in 20 CFR part 655 or 29 CFR part 501 and 503.

Statement of Need: This rulemaking is needed to enhance protections for workers and better ensure the integrity of the H–2A and H–2B programs. In addition, this proposed rule is necessary to improve H–2 program efficiencies and remove certain barriers to program access.

Summary of Legal Basis: The Immigration and Nationality Act (INA) charges the Secretary of Homeland Security with the administration and enforcement of the immigration laws and provides that the Secretary shall establish such regulations and perform such other acts as he deems necessary for carrying out his authority under the INA. *See* INA section 103(a)(1),(3), 8 U.S.C. 1103(a)(1), (3). In addition, the Homeland Security Act of 2002, also charges the Secretary with establishing and administering rules governing the granting of visas or other forms of permission to enter the United States to individuals who are not a citizen, or an alien lawfully admitted for permanent residence in the United States. *See* Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 202(4). With respect to nonimmigrants in particular, the INA provides that the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Secretary may by regulations prescribe. *See* INA section 214(a)(1), 8 U.S.C. 1184(a)(1). The INA also tasks DHS with approving petitions filed by the importing employers of nonimmigrants, including those in the H nonimmigrant visa classification, before a nonimmigrant visa may be granted. *See* INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC76

DHS—USCIS

96. • Citizenship and Naturalization and Other Related Flexibilities [1615–AC80]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: sec. 102 of the Homeland Security Act of 2002; 6 U.S.C. 112(a)(3); 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1151; 8 U.S.C. 1153; 8 U.S.C. 1154; 8 U.S.C. 1159; 8 U.S.C. 1182; 8 U.S.C. 1255; 8 U.S.C. 1401; 8 U.S.C. 1409; 8 U.S.C. 1421; 8 U.S.C. 1423; 8 U.S.C. 1427; 8 U.S.C. 1429 to 1431; 8 U.S.C. 1433; 8 U.S.C. 1435; 8 U.S.C. 1438 to 1440; 8 U.S.C. 1443; 8 U.S.C. 1445 to 1449; 8 U.S.C. 1452; 8 U.S.C. 1454; 8 U.S.C. 1481

CFR Citation: 8 CFR 1.2; 8 CFR 103; 8 CFR 106; 8 CFR 204; 8 CFR 209; 8 CFR 245; 8 CFR 300; 8 CFR 306; 8 CFR 312; 8 CFR 316; 8 CFR 318; 8 CFR 319; 8 CFR 320; 8 CFR 322; 8 CFR 324; 8 CFR 329; 8 CFR 333; 8 CFR 334; 8 CFR 335; 8 CFR 336; 8 CFR 337; 8 CFR 338; 8 CFR 339; 8 CFR 341; 8 CFR 343a; 8 CFR 349; . . .

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS) will propose to amend its regulations governing citizenship and naturalization. This includes clarifying the testing requirements, updating eligibility requirements, and proposing amendments to clarify definitions. DHS will also propose removing certain outdated provisions and amending other provisions to align with current statutory framework, such as updating the adoption-related regulatory provisions consistent with the Intercountry Adoption Universal Accreditation Act of 2012.

Statement of Need: These proposed changes, some of which were requested by the public, are needed to improve the efficiency, effectiveness, accessibility, uniformity, and consistency of adjudications.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Mark Phillips, Residence and Naturalization Division Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

RIN: 1615–AC80

DHS—USCIS

97. • Relief Under the Violence Against Women Act of 1994 and Subsequent Legislation [1615–AC81]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 8.U.S.C. 1103; 8 U.S.C. 1154; 8 U.S.C. 1155; 8 U.S.C. 1182; 8 U.S.C. 1183a; 8 U.S.C. 1186; 8 U.S.C. 1324a; 8 U.S.C. 1225; 8 U.S.C. 1255; . . .

CFR Citation: 8 CFR 103; 8 CFR 204; 8 CFR 205; 8 CFR 213a; 8 CFR 216; 8 CFR 245; 8 CFR 274a; . . .

Legal Deadline: None.

Abstract: This proposed rule would amend regulations governing self-petitions for immigrant classification and related relief available to certain spouses, children, and parents who have been subjected to battery or extreme cruelty by their U.S. citizen spouses, parents, sons, or daughters, or lawful permanent resident spouses or parents. DHS also proposes to amend regulations governing petitions to remove conditions on permanent residence in which conditional permanent residents (CPR) request a waiver of the joint filing requirement due to battery or extreme cruelty by their U.S. citizen or lawful permanent resident (LPR) spouses or parents.

Statement of Need: The Violence Against Women Act of 1994 (VAWA) provides noncitizens who have been abused by their U.S. citizen or lawful permanent resident relative the ability to independently petition for themselves for immigrant classification without the abuser's knowledge, consent, or participation in the immigration process. Current VAWA regulations, which were codified to implement the Immigration Act of 1990 and the Violence Against Women Act of 1994, were published in the **Federal Register** on May 16, 1991, and March 26, 1996. Subsequently, Congress has reauthorized VAWA through the Victims of Trafficking and Violence Protection Act of 2000, the Violence Against Women and Department of Justice Reauthorization Act of 2005 and the Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, and the Violence Against Women Reauthorization Act of 2013. This rule is necessary to update USCIS regulations to comport with these subsequent reauthorizations of VAWA. The amendments contained in this proposed rule would reflect the subsequent legislative enactments and incorporate current USCIS policy.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

RIN: 1615–AC81

DHS—USCIS

Final Rule Stage

98. Security Bars and Processing [1615–AC57]

Priority: Other Significant.

Legal Authority: Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Pub. L. 104–208, 110 Stat. 3009, sec. 604(a) (codified at INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C)); INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B); Foreign Affairs

Reform and Restructuring Act (''FARRA''), Pub. L. 105–277, 112 Stat. 2681–822, sec. 2242 (1998); INA 235(b), 8 U.S.C. 1225(b)

CFR Citation: 8 CFR 208; 8 CFR 1208.

Legal Deadline: None.

Abstract: On December 23, 2020, DHS and the DOJ (collectively, the Departments) published a final rule to clarify that the danger to the security of the United States statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and make certain other changes. As of December 28, 2021, the rule's effective date was delayed to December 31, 2022. The Departments plan to further delay the effective date and to propose modification or withdrawal of the December 23, 2020, rule.

Statement of Need: The Departments are reviewing and reconsidering whether the Security Bars and Processing final rule is consistent with the goals of ensuring the safe and orderly reception and processing of asylum seekers consistent with public health and safety, with the additional context of the complex relationship between the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42) and the Security Bars rule. The Departments are reevaluating whether the Security Bars rule provides the most appropriate and effective framework for achieving its goals of mitigating the spread of communicable diseases, including COVID–19, among certain noncitizens in the credible fear screening process, as well as DHS personnel and the public. Based on such reconsideration, the Departments will publish rules to delay the effective date of the Security Bars rule and propose to modify or withdraw the Security Bars rule.

Anticipated Cost and Benefits: DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/09/20	85 FR 41201
NPRM Comment Period End.	08/10/20	
Final Action	12/23/20	85 FR 84160
Final Action Effective.	01/22/21	
Final Rule; Delay of Effective Date.	01/25/21	86 FR 6847
Final Rule; Effective Date Delayed Until.	03/22/21	
Interim Final Rule; Delay of Effective Date.	03/22/21	86 FR 15069
Interim Final Rule Comment Period End.	04/21/21	
Interim Final Rule Effective Date Delayed Until.	12/31/21	
Interim Final Rule; Delay of Effective Date.	12/28/21	86 FR 73615
Interim Final Rule Comment Period End.	02/28/22	
Interim Final Rule Effective Date Delayed Until.	12/31/22	
NPRM	02/00/23	
Interim Final Rule; Delay of Effective Date.	12/00/22	

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: Ashley Caudill-Mirillo, Acting Asylum Division, Office of Refugee, Asylum, and International Operations, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, *Phone:* 240 721–3000.

Related RIN: Related to 1125–AB08, Related to 1615–AC69

RIN: 1615–AC57

DHS—U.S. COAST GUARD (USCG)

Proposed Rule Stage

99. Cybersecurity in the Marine Transportation System [1625–AC77]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 46 U.S.C. 70101; 46 U.S.C. 70102; 46 U.S.C. 70104; 46 U.S.C. 70124; . . .

CFR Citation: 33 CFR 101; . . .

Legal Deadline: None.

Abstract: The Coast Guard proposes to update its maritime security regulations by adding cybersecurity requirements to existing Maritime Security regulations in 33 CFR part 101 *et seq.* This proposed rulemaking is part of an ongoing effort to address emerging cybersecurity risks and threats to maritime security by including additional security requirements to safeguard the marine transportation system.

Statement of Need: The purpose of this rulemaking is to set minimum cybersecurity requirements for vessels and facilities to safeguard the Marine Transportation System (MTS) from cybersecurity vulnerabilities.

Summary of Legal Basis: The Coast Guard exercises the Maritime Transportation Security Act of 2002 (MTSA) authorities of Chapter 701 of Title 46 of the U.S. Code. This includes the authority to promulgate Chapter 701 regulations under 46 U.S.C. 70124. This statute provides that the DHS Secretary may issue regulations necessary to implement Chapter 701 of Title 46.

Anticipated Cost and Benefits: The regulatory analysis for the proposed rule is still being developed.

Timetable:

Action	Date	FR Cite
NPRM	06/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Frank Strom, Chief, Systems Engineering Division (CG–ENG–3), Department of Homeland Security, U.S. Coast Guard, Office of Design and Engineering Standards, 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1375, *Email:* *frank.a.strom@uscg.mil.*

RIN: 1625–AC77

DHS—USCG

100. MARPOL Annex VI; Prevention of Air Pollution From Ships [1625–AC78]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1903

CFR Citation: 33 CFR 151.

Legal Deadline: None.

Abstract: The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rule would fill gaps in the existing framework for carrying out the provisions of Annex VI. Chapter 4 of Annex VI contains shipboard energy efficiency measures that include short-term measures reducing carbon emissions linked to climate change and supports Administration goals outlined in Executive Order 14008 titled Tackling the Climate Crisis at Home and Abroad. This proposed rule would apply to U.S.-flagged ships. It would also apply to

foreign-flagged ships operating either in U.S. navigable waters or in the U.S. Exclusive Economic Zone.

Statement of Need: The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rule would fill gaps in the existing framework for carrying out the provisions of Annex VI and explain how the United States has chosen to carry out certain discretionary aspects of Annex VI. 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.

Anticipated Cost and Benefits: USCG anticipates the costs for the proposed rule to come primarily from additional labor for 5 requirements including overseeing surveys; developing and maintaining a fuel-switching procedure; recording various data during each fuel switching; developing and managing a Volatile organic compounds (VOC) management plan; crew member to calculate and report the attained Energy Efficient Design Index (EEDI) of the vessel, and crew member to develop and maintain the Ship Energy Efficiency Management Plan (SEEMP). USCG expects the proposed rule to have 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	10/00/23	

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, STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1375, *Email: frank.a.strom@uscg.mil.*

RIN: 1625–AC78

DHS—U.S. CUSTOMS AND BORDER PROTECTION (USCBP)

Proposed Rule Stage

101. Advance Passenger Information System: Electronic Validation of Travel Documents [1651–AB43]

Priority: Other Significant.

Legal Authority: 49 U.S.C. 44909; 8 U.S.C. 1221

CFR Citation: 19 CFR 122.

Legal Deadline: None.

Abstract: U.S. Customs and Border Protection (CBP) regulations require commercial air carriers to electronically transmit passenger information to CBP's Advance Passenger Information System (APIS) prior to an aircraft's arrival in or departure from the United States. CBP proposes to amend these regulations to incorporate additional carrier requirements that will enable CBP to validate each passenger's travel documents prior to the passenger boarding the aircraft. This proposed rule would also require air carriers to transmit additional data elements through APIS for all commercial aircraft passengers arriving in the United States in order to support border operations and national security. The collection of additional data elements will support the efforts of the Centers for Disease Control, within the Department of Health and Human Services, to monitor and contact-trace health incidents. This rule is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Statement of Need: Current regulations require U.S. citizens and foreign travelers entering and leaving the United States via air travel to submit travel documents containing biographical information, such as a passenger's name and date of birth. For security purposes, CBP compares the information on passengers' documents to various databases and the terrorist watch list through APIS. While in the case of security threats CBP may require an air carrier to deny boarding to the passenger. CBP recommends that air carriers deny boarding to those likely to be deemed inadmissible upon arrival in the United States. To further improve CBP's vetting processes with respect to identifying and preventing passengers with fraudulent or improper documents from traveling to or leaving the United States, CBP proposes to require carriers to receive from CBP a message that would state whether CBP matched the travel documents of each passenger to a valid, authentic travel document prior to departure to the United States from a foreign port or place or departure from the United States. The proposed rule also would require carriers to submit passenger contact information while in the United States to CBP through APIS. Submission of such information would enable CBP to identify and interdict individuals posing a risk to border, national, and aviation safety and security more quickly. Collecting these additional data elements would also enable CBP to further assist CDC to monitor and trace the contacts of those involved in serious public health incidents upon CDC request. Additionally, the proposed rule would allow carriers to include the aircraft tail number in their electronic messages to CBP and make technical changes to conform with current practice.

Anticipated Cost and Benefits: The proposed rule would result in costs to CBP, air carriers, and passengers for additional time spent coordinating to resolve a passenger's status should there be a security issue upon checking in for a flight. In addition, CBP will incur costs for technological improvements to its systems. CBP, air carriers, and passengers would benefit from reduced passenger processing times during customs screening. Unquantified benefits would result from greater efficiency in passenger processing pre-flight, improved national security, and fewer penalties for air carriers following entry denial of a passenger.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

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—TRANSPORTATION SECURITY ADMINISTRATION (TSA)

Prerule Stage

102. Enhancing Surface Cyber Risk Management [1652–AA74]

Priority: Other Significant.
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. In response to the ongoing threat to pipeline systems, TSA used its authority under 49 U.S.C. 114 to issue emergency security directives to owners and operators of TSA-designated critical pipelines that transport hazardous liquids and natural gas to implement a number of urgently needed protections against cyber intrusions. TSA also issued security directives in the freight, passenger, and transit-rail sectors under the same statutory authority. TSA is committed to enhancing and sustaining industry's resilience to cybersecurity attacks. TSA intends to issue a rulemaking that will permanently codify critical cybersecurity requirements for pipeline and rail modes.
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
ANPRM	11/30/22	87 FR 73527
ANPRM Comment Period End.	01/17/23	

Regulatory Flexibility Analysis Required: Undetermined.
Government Levels Affected: Undetermined.
Agency Contact: Victor Parker, Chief, Policy Development Section, Surface Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–3664, *Email: victor.parker@tsa.dhs.gov.*
James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, *Email: james.ruger@tsa.dhs.gov.*
David Kasminoff, 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:* 571 227–3583, *Email: david.kasminoff@tsa.dhs.gov.*
RIN: 1652–AA74

DHS—TSA

Proposed Rule Stage

103. Vetting of Certain Surface Transportation Employees [1652–AA69]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Unfunded Mandates: Undetermined.
Legal Authority: 49 U.S.C. 114; Public Law 108–90, sec. 520; 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. Also, 6 U.S.C. 469 requires TSA to collect fees to recover the costs of the vetting services. Through this rulemaking, the Transportation Security Administration (TSA) intends to propose the standards and procedures to conduct the required vetting and recover costs. This regulation is related to 1652–AA55, Security Training for Surface Transportation Employees.
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: The vetting of freight rail, public transportation, and over-the-road bus employees covered under the rule will result in costs to TSA and to industry. TSA is proposing to establish fees to recover vetting costs. TSA also anticipates ancillary costs (*e.g.,* updating contact information, compliance inspections) associated with compliance with the rule. Anticipated benefits include reducing security risks by identifying and/or mitigating potential insider threats through vetting.
Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.
Small Entities Affected: Businesses.
Government Levels Affected: Local.
URL For More Information: www.regulations.gov.
URL For Public Comments: www.regulations.gov.
Agency Contact: Victor Parker, Chief, Policy Development Section, Surface Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans and Engagement, 6595 Springfield Center Drive, Springfield, VA 20398–6028, *Phone:* 571 227–3664, *Email: victor.parker@tsa.dhs.gov.*
James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, *Email: james.ruger@tsa.dhs.gov.*
Christine Beyer, Senior Counsel, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Chief Counsel's Office, 6595 Springfield Center Drive, Springfield, VA 20598–6002, *Phone:* 571 227–3653, *Email: christine.beyer@tsa.dhs.gov.*
Related RIN: Related to 1652–AA55, Related to 1652–AA56
RIN: 1652–AA69

DHS—TSA

104. Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA) [1652–AA70]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.
Unfunded Mandates: Undetermined.
Legal Authority: Pub. L. 114–190, sec. 3405

CFR Citation: 49 CFR 1542.209; 49 CFR 1544.229.

Legal Deadline: Final, Statutory, January 11, 2017, Rule for individuals with unescorted access to any Security Identification Display Area (SIDA) due 180 days after date of enactment. Section 3405 of title III of the FAA Extension, Safety, and Security Act of 2016 (FESSA) Extension, Public Law 114–190 (130 Stat. 615, July 15, 2016), requires the Transportation Security Administration (TSA) to revise the regulations issued under 49 U.S.C. 44936 within 180 days after the date of enactment.

Abstract: As required by the FESSA, TSA will propose a rule to revise its regulations, reflecting current knowledge of insider threat and intelligence, to enhance the eligibility requirements and disqualifying criminal offenses for individuals seeking or having unescorted access to any SIDA of an airport. Consistent with the statutory mandate, TSA will consider adding to the list of disqualifying criminal offenses and criteria, develop an appeal and waiver process for the issuance of credentials for unescorted access, and propose an extension of the lookback period for disqualifying crimes. As part of TSA's reevaluation of the eligibility and redress standards for aviation workers required by the Act, TSA is also reevaluating the current vetting process to minimize any security risks that may exist.

Statement of Need: Employee vetting is an important and effective tool for averting or mitigating potential attacks by those with malicious intent who wish to target aviation and plan or perpetrate actions that may cause significant injuries, loss of life, or economic disruption. Enhancing eligibility standards for airport workers will improve transportation and national security.

Anticipated Cost and Benefits: TSA anticipates costs associated with implementing and administering revised aspects of aviation vetting including potential changes to the list of disqualifying criminal offenses, the lookback period for convictions, and new waiver eligibility. Anticipated benefits include reducing security risks through enhanced vetting of aviation workers while also providing greater flexibility and access through waivers as well as increased efficiencies of the vetting process.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Kevin Knott, Branch Manager, Airports Policy Branch-Aviation Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–4370, *Email: kevin.knott@tsa.dhs.gov.*

James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, *Email: james.ruger@tsa.dhs.gov.*

Christine Beyer, Senior Counsel, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Chief Counsel's Office, 6595 Springfield Center Drive, Springfield, VA 20598–6002, *Phone:* 571 227–3653, *Email: christine.beyer@tsa.dhs.gov.*

Related RIN: Related to 1652–AA11

RIN: 1652–AA70

DHS—TSA

Final Rule Stage

105. Flight Training Security Program [1652–AA35]

Priority: Other Significant.

Legal Authority: 6 U.S.C. 469(b); 49 U.S.C. 114; 49 U.S.C. 44939; 49 U.S.C. 46105

CFR Citation: 49 CFR 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 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) (Vision 100 Act), 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, transferred responsibility for the vetting of flight school candidates from the Department of Justice to TSA, with certain modifications to the program, as required by the Vision 100 Act. This IFR applied to training providers and to individuals who apply for or receive flight training. Flight schools are required to notify TSA when non-U.S. citizens, non-U.S. nationals, and other individuals designated by TSA, apply for flight training or recurrent flight training. TSA issued exemptions and interpretations in response to comments on the IFR and questions raised during operation of the program since 2004. TSA published a notice reopening the comment period on May 18, 2018. Based on the comments and questions received, TSA is finalizing the rule and considering modifications that would change the frequency of security threat assessments from a high-frequency event-based interval to a time-based interval, clarify the definitions and other provisions of the rule, and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule.

Statement of Need: In the years since TSA published the IFR, members of the aviation industry, the public, and Federal oversight organizations have identified areas where the Flight Training Security Program (formerly the Alien Flight Student Program) could be improved. TSA's internal procedures and processes for vetting applicants also have advanced through technology and other enhancements. Publishing a final rule that addresses 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 training providers would upload certain information to a TSA-managed website (*https://fts.tsa.dhs.gov/*). Also at industry's request, TSA is considering changing the interval for a Security Threat Assessment of each non-U.S. citizen and non-U.S. national flight student, by eliminating the requirement for a Security Threat Assessment for each separate training event. This change would result in an annual savings, although there may be additional start-up and record retention costs for the agency as a result of this revision. The change in the interval of the Security Threat Assessment would result in immediate cost savings to flight providers and students who are neither U.S. citizens nor U.S. nationals without compromising the security process.

Timetable:

Action	Date	FR Cite
Interim Final Rule; Request for Comments.	09/20/04	69 FR 56324
Interim Final Rule Effective.	09/20/04	
Interim Final Rule; Comment Period End.	10/20/04	
Notice-Information Collection; 60-Day Renewal.	11/26/04	69 FR 68952
Notice-Information Collection; 30-Day Renewal.	03/30/05	70 FR 16298
Notice-Information Collection; 60-Day Renewal.	06/06/08	73 FR 32346
Notice-Information Collection; 30-Day Renewal.	08/13/08	73 FR 47203
Notice-Alien Flight Student Program Recurrent Training Fees.	04/13/09	74 FR 16880
Notice-Information Collection; 60-Day Renewal.	09/21/11	76 FR 58531
Notice-Information Collection; 30-Day Renewal.	01/31/12	77 FR 4822
Notice-Information Collection; 60-Day Renewal.	03/10/15	80 FR 12647
Notice-Information Collection; 30-Day Renewal.	06/18/15	80 FR 34927
IFR; Comment Period 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	03/00/23	

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: Stephanie Hamilton, Manager, Vetting Programs Branch, Department of Homeland Security, Transportation Security Administration, Enrollment Services & Vetting Programs, 6595 Springfield Center Drive, Springfield, VA 20598–6010, *Phone:* 571 227–2851, *Email:* *stephanie.w.hamilton@tsa.dhs.gov.*

James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, *Email: james.ruger@tsa.dhs.gov.*

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—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (USICE)

Final Rule Stage

106. Immigration Bond Notifications and Electronic Service [1653–AA85]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: Government Paperwork Elimination Act, 44 U.S.C. 3504 note; Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 to 7031; 8 U.S.C. 1103(a)(3)

CFR Citation: 8 CFR 103.

Legal Deadline: None.

Abstract: DHS is revising regulations that authorize the means to serve decisions and other notices in-person or by mail, to include electronic and other means of service. This rule is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government. Current regulations limit ICE, a component of DHS, to serve documents in-person, or by certified, registered, or ordinary mail, which is time consuming, inefficient, and unreliable.

This interim final rule would enable ICE to issue and serve certain notices, decisions, and other documents electronically to noncitizens, parties, attorneys, or other persons of interest who voluntarily opt-in to be served electronically. The intent is to improve convenience, transparency, and provide quicker information and communication to both the public and the government. This interim final rule would also permit ICE to issue bond-related notifications to obligors electronically for immigration bonds.The ICE transition to electronic notifications for bond-related documents is part of an electronic bonds system ICE developed to simplify the posting of bonds.

Statement of Need: This interim final rule is needed for ICE to begin transforming from a paper environment to electronic or other means to streamline processes and increase efficiency.

Anticipated Cost and Benefits: ICE is in the process of assessing the anticipated impacts of this rule. This interim final rule is expected to result in cost-savings and benefits to both the government and private parties due to the optional electronic servicing of bond-related notifications, including expedited delivery, improved reliability, and other modernization features. It may impose nominal use and familiarization costs to those who elect to create accounts and use the system.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Sharon Hageman, 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–AA85

DHS—USICE

107. Optional Alternative to the Physical Examination Associated With Employment Eligibility Verification (Form I–9) [1653–AA86]

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1101, 1103

CFR Citation: 8 CFR 274a.

Legal Deadline: None.

Abstract: On August 18, 2022, DHS published a proposed rule that would revise employment eligibility verification regulations to allow the Secretary to authorize alternative document examination procedures in certain circumstances or with respect to certain employers. DHS explained that future exercises of such authority may reduce burdens on employers and employees while maintaining the integrity of the employment verification process. DHS will complete this rulemaking following review of public comments received. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the

efficiency and effectiveness of government.

Statement of Need: DHS is exploring alternative options for examining employees' identity and employment authorization documents because of lessons learned during the COVID–19 pandemic, and because more employers are adopting telework and remote work arrangements as a result of advances in technology and new work arrangements where more employees work without physically reporting to a company location on a regular basis.

Anticipated Cost and Benefits: DHS proposed allowing the Secretary to authorize alternative options for document examination procedures with respect to some or all employers when they are hired, have their employment authorization reverified, or rehired, as part of a pilot program, or as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services or a national emergency declared by the President. The rule does not itself implement an alternative procedure to physical examination, therefore DHS is unable to fully quantify the potential impacts due to a lack of information about the specifics of a possible future alternative procedure. DHS proposed changes to the Form I–9, *Employment Eligibility Verification,* and its accompanying instructions that would allow employers to indicate that alternative procedures were used (should such alternative procedures be authorized in the future). These changes would increase the time for employers to complete the form.

Timetable:

Action	Date	FR Cite
NPRM	08/18/22	87 FR 50786
NPRM Comment Period End.	10/17/22	
Final Rule	05/00/23	

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: Sharon Hageman, 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–AA86

DHS—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Proposed Rule Stage

108. National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form [1660–AB06]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 4001 *et seq.*

CFR Citation: 44 CFR 61.

Legal Deadline: None.

Abstract: The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. Property owners in participating communities are eligible to purchase NFIP flood insurance. This proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form and five accompanying endorsements.

The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners' insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

Statement of Need: The National Flood Insurance Act requires FEMA to provide by regulation the general terms and conditions of insurability applicable to properties eligible for flood insurance coverage. 42 U.S.C. 4013(a). To comply with this requirement, FEMA adopts the Standard Flood Insurance Policy (SFIP) in regulation, which sets out the terms and conditions of insurance. See 44 CFR part 61, Appendix A. FEMA must use the SFIP for all flood insurance policies sold through the NFIP. See 44 CFR 61.13.

The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are currently three forms of the SFIP: the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP) Form. The Dwelling Form insures a one-to-four family residential building or a single-family dwelling unit in a condominium building. See 44 CFR part 61, Appendix A(1). Policies under the Dwelling Form offer coverage for building property, up to $250,000, and personal property up to $100,000. The General Property Form ensures a five-or-more family residential building or a non-residential building. See 44 CFR part 61, Appendix A(2). The General Property Form offers coverage for building and contents up to $500,000 each. The RCBAP Form insures residential condominium association buildings and offers building coverage up to $250,000 multiplied by the number of units and contents coverage up to $100,000 per building. See 44 CFR part 61, appendix A(3). RCBAP contents coverage insures property owned by the insured condominium association. Individual unit owners must purchase their own Dwelling Form policy in order to insure their own contents.

FEMA last substantively revised the SFIP in 2000. See 65 FR 60758 (Oct. 12, 2000). In 2020, FEMA published a final rule that made non-substantive clarifying and plain language improvements to the SFIP. See 85 FR 43946 (July 20, 2020). However, many policyholders, agents, and adjusters continue to find the SFIP difficult to read and interpret compared to other, more modern, property and casualty insurance products found in the private market. Accordingly, FEMA proposes to adopt a new Homeowner Flood Form.

The new Homeowner Flood Form, which FEMA proposes to add to its regulations at 44 CFR 61 appendix A(4), would protect property owners in a one-to-four family residence. Upon adoption, the Homeowner Flood Form would replace the Dwelling Form as a source of coverage for this class of residential properties. FEMA would continue to use the Dwelling Form to insure landlords, renters, and owners of mobile homes, travel trailers, and condominium units. Compared to the current Dwelling Form, the new Homeowner Flood Form would clarify coverage and more clearly highlight conditions, limitations, and exclusions in coverage as well as add and modify coverages and coverage options. FEMA also proposes adding to its regulations five endorsements to accompany the new Form: Increased Cost of Compliance Coverage, Actual Cash Value Loss Settlement, Temporary Housing Expense, Basement Coverage, and Builder's Risk. These endorsements, which FEMA proposes to codify at 44 CFR 61 appendices A(101)–(105), respectively, would give policyholders the option of amending the Homeowner Flood Form to modify coverage with a commensurate adjustment to premiums charged. Together, the Homeowner Flood Form and accompanying endorsements would increase options

and coverage for owners of one-to-four family residences.

FEMA intends that this new Form will be more user-friendly and comprehensible. As a result, the new Homeowner Flood Form and its accompanying endorsements would provide a more personalized, customizable product than the NFIP has offered during its 50 years. In addition to aligning with property and casualty homeowners' insurance, the result would increase consumer choice and simplify coverage.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in an increase in transfer payments from policyholders to FEMA and insurance providers in the form of flood insurance premiums, and from FEMA to policyholders in the form of claims payments. Additionally, this rulemaking would result in benefits to policyholders, insurance providers, and FEMA, mostly through cost savings due to increased clarity and fulfillment of customer expectations through expanded coverage options. It would also help the NFIP better signal risk through premiums, reduce the need for Federal assistance, and increase resilience by enhancing mitigation efforts. Lastly, FEMA, States, and insurance providers will incur costs for implementation and familiarization of the rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Agency Contact: Christine Merk, Lead Management and Program Analyst, Department of Homeland Security, Federal Emergency Management Agency, Insurance Analytics and Policy Branch, 400 C Street SW, Washington, DC 20472, *Phone:* 202 735–6324, *Email: christine.merk@fema.dhs.gov.*

RIN: 1660–AB06

DHS—FEMA

109. Individual Assistance Program Equity [1660–AB07]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 5155; 42 U.S.C. 5174; 42 U.S.C. 5189a

CFR Citation: 44 CFR 206.101; 44 CFR 206.110 to 206.115; 44 CFR 206.117 to 206.119; 44 CFR 206.191.

Legal Deadline: None.

Abstract: The Federal Emergency Management Agency (FEMA) 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 in the Program, FEMA proposes to amend application of 'safe, sanitary, and functional' for the Individuals and Households Program (IHP) Home Repair assistance; re-evaluate the requirement to apply for a Small Business Administration loan prior to receipt of certain types of Other Needs Assistance (ONA); 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, child care assistance, maximum assistance limits, and waiver authority. Finally, FEMA proposes allowing self-employed individuals to receive assistance for essential tools under ONA, allowing certain home repair accessibility-related items, and allowing the reopening of the registration period when the President adds new counties to the major disaster declaration.

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.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in an increase in transfer payments from FEMA and States in the form of disaster assistance to individuals and households. It would also result in additional costs to States for familiarization of the rule and to FEMA and applicants for paperwork burden. The proposed rule would ensure disaster assistance is more equitably distributed and assist applicants to more quickly and fully recover from disasters by expanding eligibility for, and access to, certain types of assistance. Lastly, the rulemaking would improve clarity and align FEMA regulations with statutory changes improving the efficiency and the consistency of IHP assistance.

Timetable:

Action	Date	FR Cite
NPRM	02/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State.

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—FEMA

110. Update of FEMA's Public Assistance Regulations [1660–AB09]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 5121 to 5207

CFR Citation: 44 CFR 206.

Legal Deadline: None.

Abstract: The Federal Emergency Management Agency (FEMA) proposes to revise its Public Assistance (PA) program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

Statement of Need: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 100–707, 102 Stat. 4689, authorizes the President to provide Federal assistance when the severity and magnitude of an incident or threatened incident, exceeds the affected State, local, Indian Tribal, and Territorial government's (SLTT's) capabilities to effectively respond or recover. 42 U.S.C. 5170 and 5191. If the President declares an emergency or major disaster authorizing the Public Assistance

program, FEMA may award Public Assistance grants to assist SLTTs and certain private nonprofit (PNP) organizations so communities can quickly respond to and recover from the major disaster or emergency.

FEMA proposes to amend its Public Assistance and Community Disaster Loan program regulations to incorporate statutory changes that have amended sections of the Stafford Act relating to Public Assistance and Community Disaster Loans and to improve program administration. These include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438. FEMA also proposes to implement program improvements and make clarifications and corrections to existing regulations.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in benefits to SLTTs and FEMA from improving clarity and aligning FEMA regulations with statutory changes and current practices. Such increased clarity and understanding would improve the efficiency and the consistency of FEMA's PA programs. Additionally, proposed improvements to State/Tribal administrative plans would better position SLTTs to respond to and to recover from emergencies and disasters. Lastly, FEMA estimates increases in costs for SLTTs due to additional paperwork burden and familiarization of the rule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Ana Montero, Public Assistance Division Recovery Directorate, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3100, *Phone:* 202 646–3834, *Email: fema-recovery-pa-policy@fema.dhs.gov.*

RIN: 1660–AB09

DHS—FEMA

111. Updates to Floodplain Management and Protection of Wetlands Regulations [1660–AB12]

Priority: Other Significant.

Legal Authority: 6 U.S.C. 101 *et seq.;* 42 U.S.C. 4001 *et seq.;* 42 U.S.C. 4321 *et seq.;* E.O. 11988 of May 24, 1977, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24, 1977, 42 FR 26961, 3 CFR, 1977 Comp., p. 121; E.O. 13690, 80 FR 6425; E.O. 14030, 86 FR 27967

CFR Citation: 44 CFR 9.

Legal Deadline: None.

Abstract: Consistent with President Biden's *Executive Order on Climate Related Financial Risk* (E.O. 14030), the Federal Emergency Management Agency (FEMA) proposes to amend its regulations at 44 CFR part 9 Floodplain Management and Protection of Wetlands to incorporate amendments to Executive Order 11988 and the Federal Flood Risk Management Standard (FFRMS). The FFRMS is a flexible framework allowing agencies to choose among three approaches to define the floodplain and corresponding flood elevation requirements for federally funded projects. 44 CFR part 9 describes FEMA's process under Executive Order 11988 for determining whether the proposed location for an action falls within a floodplain and how to complete the action in the floodplain, in light of the risk of flooding. The proposed rule would change how FEMA defines a floodplain with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating the proposed action in the floodplain.

Statement of Need: The United States is experiencing increased flooding and flood risk from changing conditions. The Federal Emergency Management Agency (FEMA) has not made significant updates to its regulations governing floodplain management to reflect the challenges faced because of increased flooding and changing conditions since initial publication in 1980. As a result, FEMA is now proposing to amend 44 CFR part 9, Floodplain Management and Protection of Wetlands, to implement the Federal Flood Risk Management Standard (FFRMS) and update the agency's 8-step process. The FFRMS is a flood resilience standard that is required for federally funded projects and provides a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands. A floodplain is any land area that is subject to flooding and refers to geographic features with undefined boundaries. 44 CFR part 9 describes the 8-step process FEMA uses to determine whether a proposed action would be located within or affect a floodplain, and if so, whether and how to continue with or modify the proposed action. Executive Order 11988, as amended, and the FFRMS changed the Executive Branch-wide guidance for defining the floodplain with respect to federally funded projects (*i.e.,* actions involving the use of Federal funds for new construction, substantial improvement, or to address substantial damage to a structure or facility). This proposed rule would ensure that actions subject to the FFRMS are designed to be resilient to both current and future flood risks to minimize the impact of floods on human health, safety, and welfare and to protect Federal investments by reducing the risk of flood loss.

Anticipated Cost and Benefits: FEMA estimates that this rulemaking would result in benefits to grant recipients (States, Local, Tribes, Territories, and Individuals) and to FEMA, mostly through the reduction in damage to properties and contents from future floods, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding. FEMA estimates project cost increases for FEMA and grant recipients due to increased elevation or floodproofing requirements of the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Portia Ross, Office of Environmental and Historic Preservation, Department of Homeland Security, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, *Phone:* 202 646–2741, *Email: fema-regulations@fema.dhs.gov.*

RIN: 1660–AB12

DHS—FEMA

Long-Term Actions

112. National Flood Insurance Program's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats [1660–AB11]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 4001 *et seq.*

CFR Citation: 44 CFR 59 to 60.

Legal Deadline: None.

Abstract: The Federal Emergency Management Agency (FEMA) issued a Request for Information to receive the public's input on revisions to the National Flood Insurance Program's (NFIP) floodplain management standards for land management and use regulations. FEMA's authority under the National Flood Insurance Act requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. The agency is reviewing potential actions to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. FEMA is considering revisions to the minimum standards to better protect people and property in a nuanced manner that balances community needs with the national scope of the NFIP while also incorporating opportunities for improving resilience in communities that have been historically underserved. The agency is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System and to strengthen NFIP compliance with Section 7 of the Endangered Species Act.

Statement of Need: FEMA issued 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 to inform any action to revise the NFIP minimum floodplain management standards.

FEMA is also re-evaluating the implementation of the NFIP under the Endangered Species Act at the national level. FEMA is reviewing potential actions based on the comments received on this Request for Information to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding.

Anticipated Cost and Benefits: FEMA is currently considering the cost and benefit impacts of potential proposed actions.

Timetable:

Action	Date	FR Cite
Request for Information.	10/12/21	86 FR 56713
Announcement of Public Meetings.	10/28/21	86 FR 59745
Announcement of Additional Public Meeting; Extension of Comment Period.	11/22/21	86 FR 66329
Request for Information Comment Period End..	01/27/22	
Next Action Undetermined.	To Be Determined	

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—CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY (CISA)

Proposed Rule Stage

113. Ammonium Nitrate Security Program [1670–AA00]

Priority: Other Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: This action may affect the private sector under Public Law 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	

Action	Date	FR Cite
Supplemental NPRM.	09/00/23	

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

DHS—CISA

114. Chemical Facility Anti-Terrorism Standards (CFATS) [1670–AA01]

Priority: Other Significant.

Legal Authority: 6 U.S.C. 621 to 629

CFR Citation: 6 CFR 27.

Legal Deadline: None.

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.

Statement of Need: The Chemical Facility Anti-Terrorism Standards (CFATS) program regulates facilities possessing large quantities of dangerous chemicals. The particular chemicals listed and threshold quantities were established in 2007, and were based on EPA's threshold quantities for Hazardous Substances published under its Release Management Program. In the 15 years since implementation of the program, CISA has gained extensive experience in analyzing chemical holdings and determining which facilities should be classified as high-risk and subject to further regulation. Given its experience, CISA has determined that it should adjust its list of regulated chemicals, threshold quantities, and counting methods to better reflect the security issues implicated by these chemicals. Additionally, CISA believes that the CFATS security performance guidelines, first issued in 2009, should be updated to better reflect lessons learned over the past decade, including substantially updating the guidelines for cybersecurity performance metrics.

Summary of Legal Basis: This regulation is authorized pursuant to 6 U.S.C. 621 *et seq.*

Alternatives: CISA considered an alternative version of this NPRM where we updated only the performance guidance but not the chemical listings. Additionally, we considered an alternative version where changes to certain toxic chemical listings were omitted.

Anticipated Cost and Benefits: CISA is developing the cost and benefits estimates for this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	08/18/14	79 FR 48693
ANPRM Comment Period End.	10/17/14	
ANPRM	01/06/21	86 FR 495
Announcement of Availability; Retrospective Analysis.	06/22/20	85 FR 37393
Announcement of Availability; Retrospective Analysis Comment Period End.	09/21/20	
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State.

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–AA69, Merged with 1670–AA03

RIN: 1670–AA01

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Statement of Regulatory Priorities for Fiscal Year 2023

Introduction

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2023 highlights two of 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.

The rules highlighted in HUD's regulatory plan for FY 2023 reflect HUD's efforts to continue its work in building strong and sustainable communities, addressing the housing needs of all Americans, and providing for equal access to housing opportunities. Additionally, HUD notes that its Fall 2022 Semiannual Regulatory Agenda includes additional rules that advance the Administration's priorities, including rules to advance racial equity and civil rights and rules to provide economic relief to homeowners and renters.

Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard

On January 20, 2021, President Biden issued Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' which declared the Administration's policy to bolster resilience to the impacts of climate change, and which directed all executive department and agencies to immediately commence work to confront the climate crisis. Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad,'' signed on January 27, 2021, noted that it is the Administration's policy to increase resilience to the impacts of climate change. HUD's proposed rule titled ''Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard'' would improve the resilience of HUD-assisted or financed projects to the effects of climate change and natural disasters,

This proposed rule would revise HUD's regulations governing floodplain management and the protection of wetlands to implement the Federal Flood Risk Management Standard (FFRMS), in accordance with Executive Order 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input) (2015) and provide for greater flexibility in the use of HUD assistance in floodways under certain circumstances. Among other revisions, the rule would provide a process for determining the FFRMS Floodplain that would establish a preference for the climate-informed science approach (CISA), and it would revise HUD's floodplain and wetland regulations to streamline them, improve overall clarity, and modernize standards.

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. Elevating HUD-assisted structures located in and around the FFRMS floodplain will lessen damage caused by flooding and avoid relocation costs to tenants associated with temporary moves when HUD-assisted structures sustain flood damage and are temporarily uninhabitable. These benefits, which are realized throughout the life of HUD-assisted structures, are offset by the one-time increase in construction costs, borne only at the time of construction.

Statement of Need

The rule is part of HUD's commitment under HUD's 2021 Climate Action Plan. HUD committed to completing rulemaking to update 24 CFR part 55 of its regulations and implement FFRMS as a key component of its plan to increase climate resilience and climate justice across the Department, noting that low-income families and communities of color are disproportionately impacted by climate change. Additionally, HUD notes that affordable housing is increasingly at risk from both extreme weather events and sea-level rise, and that coastal communities are especially at risk.

HUD's existing regulations currently rely on Flood Insurance Rate Maps, which are critical resources when assessing flood risk, but are not intended to reflect changes in future flood risk influenced by a changing climate. This rule would ensure that HUD projects are designed with a more complete picture of a proposed project site's flood risk over time. Building to the standards discussed in this proposed rule would increase resiliency, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of risk that takes into account possible sea level rise and increased development associated with population growth.

Alternatives: An alternative to promulgating this rule would be to maintain HUD's existing regulations governing floodplain management and the protection of wetlands. However, doing so would ignore the threats that increasing flood risks pose to life and taxpayer-funded property. Additionally, HUD would not be in compliance with Executive Order 13960 and implementing guidance if HUD did not revise its regulations. Other alternatives include higher additional elevation standards for HUD projects without using a CISA approach. HUD prefers the CISA approach because it provides a forward-looking assessment of flood risk based on likely or potential climate change scenarios, regional climate factors, and an advanced scientific understanding of these effects.

Risks: This rule could increase construction costs for HUD projects where it leads to additional elevation requirements, thereby increasing the cost of constructing affordable housing. However, these costs are offset by the decreased damage caused by flooding a project will endure throughout its lifetime, and the avoidance of relocation costs when HUD-assisted structures sustain flood damage.

Timetable:

Action	Date	FR Cite
Proposed Rule	12/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Federalism Affected: No.

Energy Affected: No.

International Impacts: No.

Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022)

Through this proposed rule, HUD would amend its VAWA regulations to implement the requirements of the Violence Against Women Act (''VAWA'') as reauthorized on March 15, 2022, under the Violence Against Women Act Reauthorization Act of 2022 (''VAWA 2022''). These revisions will assist in ensuring that survivors of domestic violence, dating violence, sexual assault, and stalking (''survivors'') can access and maintain affordable housing as well as homeless assistance services. Specifically, HUD is focused on protecting survivors' housing rights, enforcing VAWA's requirements and protections, and providing access to safe, stable, and affordable housing for survivors.

This proposed rule will seek to ensure that HUD's regulatory definitions account for the changes to VAWA's statutory definitions and are interpreted broadly enough to include the additional acts referred to in the VAWA 2022 reauthorization. For example, VAWA 2022 expands the definition of ''domestic violence'' by, in part, adding (as well as separately defining) the concepts of ''economic abuse'' and ''technological abuse''. Additionally, following the direction provided in VAWA 2022, this proposed rule will establish VAWA compliance review processes for VAWA-covered HUD programs (''covered housing programs''), and further address VAWA standards of compliance and standards of corrective actions, where compliance standards have not been met. VAWA 2022 also establishes substantive rights and protections for survivors, including anti-retaliation and anti-coercion

requirements, and protections for individuals against being penalized for seeking emergency assistance or for criminal activity where they are a victim or otherwise not at fault. HUD has existing enforcement mechanisms that have been used to enforce VAWA rights and protections, but this proposed rule would provide HUD and survivors with direct enforcement authority of VAWA's housing rights.

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. Unlike HUD's VAWA 2013 final rule that was published in 2016 (''VAWA 2013 rule''), which had costs that were ''primarily paperwork costs,'' this rulemaking has fewer paperwork costs. The benefits of HUD's rulemaking include codifying in regulation the protections that VAWA 2022 provides to applicants and tenants of covered housing programs; strengthening the rights of survivors accessing and living in covered housing programs, including existing emergency transfer rights and new rights against retaliation and prohibition and the right to report crime from one's home; and improving and streamlining HUD's VAWA compliance monitoring and review processes. HUD grantees are already familiar with HUD's VAWA regulations as instituted by the 2016 final rule; this proposed rule will largely build on that regulatory framework and related forms and documents. HUD is also planning to publish a notice in the **Federal Register** in the Fall of 2022 that will provide initial guidance on VAWA 2022, its impact on VAWA-covered HUD programs, and HUD's planned implementation actions. HUD believes that grantees' prior experience with HUD's implementation of other VAWA reauthorization legislation and HUD's advanced notice will reduce costs by helping grantees to understand the new protections and requirements ahead of rulemaking.

Statement of Need

The rule is needed to conform HUD regulations with statutory standards and amendments, and to ensure consistency in application and enforcement of VAWA protections and requirements across HUD's covered housing programs. This proposed rule would consider HUD's VAWA 2013 rule published on November 16, 2016, and improve upon its framework and impose less regulatory burden.

Alternatives: HUD has no alternative to implementing the provisions of VAWA 2022. VAWA 2022 requires stakeholder consultation and rulemaking to establish VAWA compliance review processes, and to incorporate this process into existing compliance review processes, where possible. Therefore, HUD does not have the discretion to choose an alternative to rulemaking for compliance review processes. HUD has also determined that rulemaking is needed to implement new and revised statutory protections and requirements. Furthermore, prior VAWA reauthorizations were implemented through rulemaking.

Risks: Previous and unfinished implementations of prior VAWA reauthorizations have resulted in challenges for grantees. HUD must seek to complete implementation of VAWA 2013, the Justice for All Reauthorization Act of 2016's amendments to VAWA's lease bifurcation provisions, and VAWA 2022, to fully implement changes to VAWA and clarify which requirements and changes HUD grantees are expected to comply with, and when those requirements and changes go into effect.

Timetable:

Action	Date	FR Cite
Proposed Rule	10/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: No.

Federalism Affected: No.

Energy Affected: No.

International Impacts: No.

HUD—OFFICE OF THE SECRETARY (HUDSEC)

Proposed Rule Stage

115. Violence Against Women Act Reauthorization Act of 2022: Compliance in HUD Housing Programs (FR–6319) [2501–AE05]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 1437a,c,d,f; 42 U.S.C. 1437n; 42 U.S.C. 3535(d); sec. 327, Pub. L. 109–115,119; Stat 2936; 42 U.S.C. 14043e et; sec. 601, Pub. L. 11304, 127 Stat 101; Pub. L. 117–103

CFR Citation: 24 CFR 5, 92, 93, 200, 247, 574, 576 578; 24 CFR 880, 882, 883, 884, 886, 891; 24 CFR 905, 960, 966, 982, 983.

Legal Deadline: None.

Abstract: This proposed rule would amend HUD's regulations to fully implement the requirements of the Violence Against Women Act (VAWA) as reauthorized on March 15, 2022, under the Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022). VAWA 2022 in part requires that HUD issue regulations to define standards of compliance for covered housing programs, address prohibitions on retaliation, and update certain definitions. HUD will also consider other revisions to update its VAWA regulations.

Statement of Need: The rule is needed to conform HUD regulations with statutory standards and amendments, and to ensure consistency in application and enforcement of VAWA protections and requirements across HUD's covered housing programs. This proposed rule would consider HUD's VAWA 2013 rule published on November 16, 2016, and improve upon its framework and impose less regulatory burden.

Summary of Legal Basis: These regulatory revisions would implement the requirements of the Violence Against Women Act (VAWA) as reauthorized on March 15, 2022, under the Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022).

Alternatives: HUD has no alternative to implementing the provisions of VAWA 2022. VAWA 2022 requires stakeholder consultation and rulemaking to establish VAWA compliance review processes, and to incorporate this process into existing compliance review processes, where possible. Therefore, HUD does not have the discretion to choose an alternative to rulemaking for compliance review processes. HUD has also determined that rulemaking is needed to implement new and revised statutory protections and requirements. Furthermore, prior VAWA reauthorizations were implemented through rulemaking.

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. Unlike HUD's VAWA 2013 final rule that was published in 2016 (VAWA 2013 rule), which had costs that were primarily paperwork costs, this rulemaking has fewer paperwork costs. The benefits of HUD's rulemaking include codifying in regulation the protections that VAWA 2022 provides to applicants and tenants of covered housing programs; strengthening the rights of survivors

accessing and living in covered housing programs, including existing emergency transfer rights and new rights against retaliation and prohibition and the right to report crime from one's home; and improving and streamlining HUD's VAWA compliance monitoring and review processes. HUD grantees are already familiar with HUD's VAWA regulations as instituted by the 2016 final rule; this proposed rule will largely build on that regulatory framework and related forms and documents. HUD is also planning to publish a notice in the **Federal Register** in the Fall of 2022 that will provide initial guidance on VAWA 2022, its impact on VAWA-covered HUD programs, and HUD's planned implementation actions. HUD believes that grantees' prior experience with HUD's implementation of other VAWA reauthorization legislation and HUD's advanced notice will reduce costs by helping grantees to understand the new protections and requirements ahead of rulemaking.

Risks: Previous and unfinished implementations of prior VAWA reauthorizations have resulted in challenges for grantees. HUD must seek to complete implementation of VAWA 2013, the Justice for All Reauthorization Act of 2016's amendments to VAWA's lease bifurcation provisions, and VAWA 2022, to fully implement changes to VAWA and clarify which requirements and changes HUD grantees are expected to comply with, and when those requirements and changes go into effect.

Timetable:

Action	Date	FR Cite
NPRM	10/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Local, State.

Agency Contact: Karlo Ng, Director on Gender-based Violence Prevention and Equity, Department of Housing and Urban Development, Office of the Secretary, 451 Seventh Street SW, Washington, DC 20410, *Phone:* 202 288–1850.

RIN: 2501–AE05

HUD—OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT (CPD)

Proposed Rule Stage

116. Floodplain Management and Protection of Wetlands (FR–6272) [2506–AC54]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 3535(d); E.O. 11990; E.O. 11988; E.O. 13690

CFR Citation: 24 CFR 50; 24 CFR 55; 24 CFR 58; 24 CFR 200.

Legal Deadline: None.

Abstract: This proposed rule would revise HUD's regulations governing floodplain management and the protection of wetlands to implement the Federal Flood Risk Management Standard (FFRMS), in accordance with Executive Order 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), improve the resilience of HUD-assisted or financed projects to the effects of climate change and natural disasters, and provide for greater flexibility in the use of HUD assistance in floodways under certain circumstances. This rule would also revise HUD's floodplain and wetland regulations to streamline them, improve overall clarity, and modernize standards.

Statement of Need: The rule is part of HUD's commitment under HUD's 2021 Climate Action Plan. HUD committed to completing rulemaking to update 24 CFR part 55 of its regulations and implement FFRMS as a key component of its plan to increase climate resilience and climate justice across the Department, noting that low-income families and communities of color are disproportionately impacted by climate change. Additionally, HUD notes that affordable housing is increasingly at risk from both extreme weather events and sea-level rise, and that coastal communities are especially at risk.

HUD's existing regulations currently rely on Flood Insurance Rate Maps, which are critical resources when assessing flood risk, but are not intended to reflect changes in future flood risk influenced by a changing climate. This rule would ensure that HUD projects are designed with a more complete picture of a proposed project site's flood risk over time. Building to the standards discussed in this proposed rule would increase resiliency, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of risk that takes into account possible sea level rise and increased development associated with population growth.

Summary of Legal Basis: These regulatory revisions would implement the Federal Flood Risk Management Standard (FFRMS), in accordance with Executive Order (E.O.) 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input) (2015).

Alternatives: An alternative to promulgating this rule would be to maintain HUD's existing regulations governing floodplain management and the protection of wetlands. However, doing so would ignore the threats that increasing flood risks pose to life and taxpayer-funded property. Additionally, HUD would not be in compliance with Executive Order 13960 and implementing guidance if HUD did not revise its regulations. Other alternatives include higher additional elevation standards for HUD projects without using a CISA approach. HUD prefers the CISA approach because it provides a forward-looking assessment of flood risk based on likely or potential climate change scenarios, regional climate factors, and an advanced scientific understanding of these effects.

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. Elevating HUD-assisted structures located in and around the FFRMS floodplain will lessen damage caused by flooding and avoid relocation costs to tenants associated with temporary moves when HUD-assisted structures sustain flood damage and are temporarily uninhabitable. These benefits, which are realized throughout the life of HUD-assisted structures, are offset by the one-time increase in construction costs, borne only at the time of construction.

Risks: This rule could increase construction costs for HUD projects where it leads to additional elevation requirements, thereby increasing the cost of constructing affordable housing. However, these costs are offset by the decreased damage caused by flooding a project will endure throughout its lifetime, and the avoidance of relocation costs when HUD-assisted structures sustain flood damage.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Kristin L. Fontenot, Director, Office of Environment and

Energy, Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street SW, Washington, DC 20410, *Phone:* 202 402–7077.

RIN: 2506–AC54

BILLING CODE 4210–67–P

UNITED STATES DEPARTMENT OF THE INTERIOR

Fall 2022 Regulatory Plan

Introduction

The U.S. Department of the Interior (Department) is the principal steward of our Nation's public lands and resources, including many of our cultural treasures. The Department serves as trustee to Native Americans, Alaska Natives, and Federally Recognized Tribes and is responsible for our ongoing relationships with the Island Territories under U.S. jurisdiction and the freely associated States. Among the Department's many responsibilities is managing more than 500 million surface acres of Federal land, which constitutes approximately 20 percent of the Nation's land area, as well as approximately 700 million subsurface acres of Federal mineral estate, and more than 2.5 billion acres of submerged lands on the Outer Continental Shelf (OCS).

In addition, the Department protects and recovers endangered species; protects natural, historic, and cultural resources; provides scientific and other information about those resources; and manages water projects that are an essential lifeline and economic engine for many communities.

Hundreds of millions of people visit Department-managed lands each year to take advantage of a wide range of recreational pursuits—including camping, hiking, hunting, fishing and various other forms of outdoor recreation—and to learn about our Nation's history. Each of these activities supports local communities and their economies. The Department also provides access to Federal lands and offshore areas for the development of energy, minerals, and other natural resources that generate billions of dollars in revenue.

In short, the Department plays a central role in how the United States stewards its public lands, ensures environmental protections, pursues environmental justice, honors the nation-to-nation relationship with Tribes and the special relationships with other Indigenous people and the insular areas.

Regulatory and Deregulatory Priorities

To help advance the Secretary of the Interior's (Secretary) commitment to honoring the Nation's trust responsibilities and to conserve and manage the Nation's natural resources and cultural heritage, the Department's regulatory and deregulatory priorities in the coming year will focus on:

- Tackling the Climate Crisis, Strengthening Climate Resiliency, and Facilitating the Transition to Renewable Energy;
- Upholding Trust Responsibilities to Federally-Recognized American Indian and Alaska Native Tribes, Restoring Tribal Lands, and Protecting Natural and Cultural Resources, Advancing Equity and Supporting Underserved Communities; and
- Investing in Healthy Lands, Waters and Local Economies and Strengthening Conservation of the Nation's Lands, Waters and Wildlife.

Tackling the Climate Crisis, Strengthening Climate Resiliency, and Facilitating the Transition to Renewable Energy

The Biden-Harris administration remains committed to combatting climate change and reducing greenhouse gas emissions while improving public health, protecting the environment, and ensuring access to clean air and water. Under this administration, the Department has been a key leader in tackling the climate crises. Pursuant to Executive Order (E.O.) 13990 ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' (signed on Jan. 20, 2021) and E.O. 14008, ''Tackling the Climate Crisis at Home and Abroad,'' (signed January 27, 2021), the Department has advanced multiple policy and regulatory efforts to reduce climate pollution; improve and increase adaptation and resilience to the impacts of drought, wildfire, and extreme weather; address current and historic environmental injustice; protect public health; and conserve Department-managed lands and waters.

The historic Infrastructure Investment and Jobs Act of 2021 (BIL) and the Inflation Reduction Act (IRA), which President Biden signed respectively on November 15, 2021, and August 16, 2022, will enable transformational outcomes on these clean energy and resilience priorities while driving the creation of good-paying union jobs. In referring to the BIL Secretary Haaland said, ''The infrastructure law invests in areas where we, working closely together, have a chance to make a better future for the people we serve in the areas of wildfire, drought, legacy pollution clean-up, and restoration of the outdoors that we all love.''

In accordance with E.O.s 13990 and 14008, as well as E.O. 14052, ''Implementation of the Infrastructure Investment and Jobs Act,'' (signed on Nov. 15, 2021), several bureaus within the Department are pursuing regulatory actions to implement these administration priorities, including steps to increase renewable energy production by improving siting and permitting processes on public lands and in offshore waters.

The Department is committed to fully facilitating the development of renewable energy on public lands and waters, as well as supporting tribal and territorial efforts to develop renewable energy, including deploying 30 gigawatts (GW) of offshore wind by 2030 and 25GW of onshore renewable energy by 2025. The Department will meet these ambitious goals while also ensuring appropriate protection of public lands, waters, and biodiversity and creating good jobs. As Secretary Haaland has stated, ''The Department of the Interior continues to make significant progress in our efforts to spur a clean energy revolution, strengthen and decarbonize the nation's economy, and help communities transition to a clean energy future.''

As part of these ongoing efforts, the Bureau of Ocean Energy Management's (BOEM) most important regulatory initiative is focused on expanding offshore wind energy's role in strengthening U.S. energy security and independence, creating jobs, providing benefits to local communities, and further developing the U.S. economy. The BOEM's renewable energy program has matured over the past 10 years, a time in which BOEM has conducted numerous auctions and issued and managed multiple commercial leases. Based on this experience, BOEM has identified multiple opportunities to update its regulations to better facilitate the development of renewable energy resources and to promote U.S. energy independence. In FY 2023, BOEM will propose a rule, the ''Renewable Energy Modernization Rule'' (1010–AE04). This rule would substantially update existing renewable energy regulations to more efficiently facilitate responsible development of renewable energy resources on the Outer Continental Shelf (OCS) and strengthen U.S. energy independence. The rule also aims to significantly reduce costs to developers for expanding renewable energy development in an environmentally sound manner.

Similarly, the Bureau of Land Management (BLM) plans to update its regulations for onshore rights-of-way, leasing, and operations related to all activities associated with renewable energy and transmission lines with a proposed rule, ''Rights-of-way, Leasing and Operations for Renewable Energy and Transmission Lines'' (1004–AE78). This rule aims to improve permitting activities and processes to facilitate increased renewable energy production on public lands.

To advance the deployment of clean energy infrastructure while also meeting obligations to conserve habitats and wildlife, the Department will improve permitting frameworks for bird conservation. On September 30, 2022 (87 FR 59598), the U.S. Fish and Wildlife Service (FWS) proposed the ''Eagle Permits; Incidental Take'' rule (108–BE70) to revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The FWS will also propose a rule, the ''Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds'' (1018–BF71), to clarify the MBTA's prohibitions on taking and killing migratory birds and consider establishing a straight-forward process to secure authorizations for otherwise prohibited take of migratory birds.

The BIL enables the Department to establish important regulations governing carbon transportation and storage on the OCS. The orderly implementation of negative emissions technologies, such as carbon capture, utilization, and storage, is necessary to reduce hard-to-abate emissions from the industrial sector, which emits nearly 25 percent of all carbon dioxide released into the atmosphere in the United States. In implementing the BIL the Bureau of Safety and Environmental Enforcement (BSEE) and BOEM are drafting a joint proposed rule that would address the transportation and geologic sequestration aspects of carbon capture utilization and storage development on the OCS, including leasing, geological, and geophysical exploration for appropriate storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; long-term site stewardship (*i.e.,* monitoring and response); financial assurance; and safety.

The Department is also committed to modernizing its oversight of oil and gas leasing and development to help address the climate and biodiversity crises and to advance environmental justice. In November 2021, the Department released its report on federal oil and gas leasing and permitting practices, following a review of onshore and offshore oil and gas programs called for in E.O. 14008. The report identified significant reforms needed to ensure the programs provide a fair return to taxpayers, discourage speculation, hold operators responsible for remediation, and more fully include communities and Tribal, state, and local governments in decision-making. As Secretary Haaland stated about the report, ''Our nation faces a profound climate crisis that is impacting every American. The Interior Department has an obligation to responsibly manage our public lands and waters—providing a fair return to the taxpayer and mitigating worsening climate impacts—while staying steadfast in the pursuit of environmental justice.''

In the coming year, the Department will pursue regulations to implement important reforms, including the report's recommendations and reforms included in the IRA regarding oil and gas resources on public lands. For example, BLM will propose 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 Oil and Gas Leases and Leasing Process 43 CFR parts 3100 and 3400'' (1004–AE80), known as the Oil and Gas Leasing Rule. The Waste Prevention Rule would prevent waste of federal resources with an additional benefit of reducing methane emissions in the oil and gas sector. The Oil and Gas Leasing Rule would incorporate many urgent fiscal and programmatic reforms included in the report and IRA, such as updating BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including potential climate and other impacts associated with oil and gas leasing activities.

Upholding Trust Responsibilities to Federally Recognized American Indian and Alaska Native Tribes Restoring Tribal Lands, and Protecting Natural and Cultural Resources

Among the Department's most important responsibilities is its commitment to honor the nation-to-nation relationship between the Federal Government and Tribes. Secretary Haaland is strongly committed to strengthening how the Department carries out its trust responsibilities and to increasing economic development opportunities for Tribes and other historically underserved communities.

To advance the Department's trust responsibilities, the Bureau of Indian Affairs (BIA) has identified opportunities, following consultation and in close collaboration with Tribal governments, to promote Tribal economic growth and development. For example, BIA is working to remove barriers to the development of renewable energy and other resources in Indian country.

In consultation with Tribes, BIA engaged in efforts to update and improve its regulations governing how it manages land held in trust or in restricted status for Tribes and individual Indians. These efforts included improving the consultation process, identifying best practices, and strengthening relationships with Tribal governments. The BIA also launched a broader review to determine whether any regulatory reforms are needed to facilitate restoration of Tribal lands and safeguard natural and cultural resources. As a result of these consultations and this review, BIA is preparing a proposed rule, ''Agricultural Leasing of Indian Land,'' which would revise the regulations governing leases of Indian land for agricultural purposes found at 25 CFR part 162 (1076–AF66). This proposed rule would streamline how leases are obtained and increase the agricultural usage of Indian land.

The Department is also committed to improving regulations meant to protect sacred and cultural resources. To this end, the Assistant Secretary for Indian Affairs and the Assistant Secretary for Fish and Wildlife and Parks are working with the National Park Service (NPS) to consult with Tribes on updates to regulations implementing the Native American Graves and Repatriation Act (NAGPRA), 43 CFR part 10 (1024–AE19). This proposed rule, the ''Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,'' which published on October 18, 2022 (87 FR 63202), would provide 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.

On November 15, 2021, Secretary Haaland signed joint SO 3403, ''Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,'' with the Secretary of Agriculture to ensure that the Department of the Interior, the Department of Agriculture, and their component Bureaus and Offices are managing Federal lands and waters in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes, including the Native Hawaiian community; that such management is consistent with the nation-to-nation relationship between the United States and federally recognized Indian Tribes; and, that such management fulfills the United States' unique trust obligation to federally recognized Indian Tribes and their citizens.

Advancing Equity and Supporting Underserved Communities

The Biden-Harris administration and Secretary Haaland recognize and support the goals of advancing equity and addressing the needs of underserved communities. In January 2021, the President signed E.O. 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' This E.O. 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. On February 17, 2022, Secretary Haaland issued SO 3406, ''Establishment of a Diversity, Equity, Inclusion and Accessibility Council.'' This council is working to identify policies and/or revisions to existing policies or practices that are needed, and make recommendations on how diversity, equity, inclusion and accessibility may be prioritized in policymaking and budget processes and decisions in accordance with the E.O.s related to equity. In response to E.O. 13985 and the SO 3406, the Department issued its Equity Action Plan on April 14, 2022. The Equity Action Plan is a key part of the Department's efforts to implement E.O. 13985, which calls on Federal agencies to advance equity by identifying and addressing barriers to equal opportunity that underserved communities may face as a result of Government policies and programs. Highlighting the importance of this initiative, Secretary Haaland said, ''We must continue to proactively ensure that historically underrepresented communities benefit from our efforts to address the climate crisis and make our nation's public lands and waters accessible and welcoming to everyone.''

In FY 2023, the Department will undertake a number of regulatory actions that will assist people who reside in underserved communities.

In support of SO 3406 and the Equity Action Plan, the Department published a final rule on April 8, 2022 (87 FR 20761), ''Acquisition Regulations; Buy Indian Act; Procedures for Contracting'' (RIN 1090–AB21). This final rule better implements the Buy Indian Act, which provides the Department with authority to set aside procurement contracts for Indian-owned and controlled businesses. These revisions will eliminate barriers that inhibit Indian Economic Enterprises (IEEs) from competing on certain construction contracts, expand IEEs' ability to subcontract construction work consistent with other socio-economic set-aside programs, and give greater preference to IEEs when a deviation from the Buy Indian Act is necessary, among other updates.

The BLM (1004–AE60), FWS (1018–BD78), and NPS (1024–AE75) are proposing right-of-way (ROW) rules that would streamline and improve efficiencies in the permitting process for electric transmission, distribution facilities, and broadband facilities. These rules should result in increased services, such as broadband connectivity, with resulting benefits to underserved communities and visitors to Departmental lands and promote good governance. These proposed rules are expected to publish in FY 2023 as well as implement several provisions of the BIL.

Investing in Healthy Lands, Waters and Local Economies and Strengthening Conservation of the Nation's Lands, Waters and Wildlife

The Department's regulatory agenda will continue to advance the goals of investing in healthy lands, waters, and local economies across the country. These regulatory efforts, which are consistent with the Biden-Harris administration's America the Beautiful initiative as well as the BIL and IRA which provide the Department with historic resilience and restoration investments, include expanding opportunities for outdoor recreation, such as hunting and fishing, for all Americans; enhancing conservation stewardship; and improving the management of species and their habitat.

Per section 2 of E.O. 13990 and the ''Fact Sheet: List of Agency Actions for Review,'' the Departments of Commerce and the Interior (Departments) initiated a review of the August 27, 2019, final rule, ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat,'' (1018–BF95) (84 FR 45020) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and the procedures for designating critical habitat. On July 5, 2022, the 2019 rule was vacated and remanded by the U.S. District Court for the Northern District of California. In response to the court order, the Departments will propose a new rulemaking for FY 2023.

Also, per section 2 of E.O. 13990 and the ''Fact Sheet: List of Agency Actions for Review,'' the Departments initiated a review of the August 27, 2019, final rule, ''Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,'' (1018–BC87) (84 FR 44976) that revised portions of the regulations that implement section 7 of the ESA, as amended. On July 5, 2022, the 2019 rule was vacated and remanded by the U.S. District Court for the Northern District of California. In response to the court order, the Departments will propose a new rulemaking for FY 2023.

Under section 4(d) of the Endangered Species Act (ESA), FWS plans to promulgate several species-specific rules to protect threatened species. Of particular note, the FWS issued a proposed rule on November 17, 2022, (87 FR 68975) that would revise the rule for the African elephant (Loxodonta africana) promulgated under section 4(d) of the ESA. The proposed rule intends to increase domestic protection for African elephants in light of the recent rise in global trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants. This rulemaking action would also clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies and incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies,

and African elephant parts and products other than ivory.

The 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, personal watercraft and bicycling, within appropriate, designated areas of certain National Park System units. These regulations would promote appropriate visitor use while supporting long-term preservation of park resources and quality visitor experiences.

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 not only to protect and recover America's imperiled wildlife, but to ensure the ESA is helping meet 21st century challenges.

In Fiscal Year (FY) 2022, FWS reviewed several ESA rules that were finalized prior to January 20, 2021, to continue improving implementation of the ESA so that it is clearly and consistently applied, helps recover listed species, and provides the maximum degree of certainty possible to all parties. As a result of that review, FWS finalized two critically important ESA rules. The FWS and the National Marine Fisheries Service (NMFS) finalized the rule, ''Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat,'' which published on June 24, 2022 (87 FR 37757), removing the regulatory definition of ''habitat.'' The FWS also finalized the rule, ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat,'' which published on July 21, 2022 (87 FR 43433). This rule sets forth the process for excluding areas of critical habitat under section 4(b)(2) of the ESA, which mandates consideration of the impacts of designating critical habitat and permits exclusions of particular areas following a discretionary exclusion analysis.

FWS published a final rule on September 16, 2022 (87 FR 57838), ''2022–2023 Station-Specific Hunting and Sport Fishing Regulations,'' (1018–BF66) and opened, for the first time, two National Wildlife Refuges (NWRs) that are currently closed to hunting and sport fishing. In addition, FWS opened or expanded hunting or sport fishing at 16 other NWRs and added pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing for the 2022–2023 season. The FWS also changed existing station-specific regulations to reduce regulatory burden on the public and increase access for hunters and anglers on FWS lands and waters.

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

Elections of Officers of the Osage Minerals Council (1076–AF58)

BIA finalized revisions to its regulations governing elections of the Osage Nation (86 FR 54364, October 1, 2021). These revisions update and limit the Secretary's role to the task of compiling a list of voters for Osage Minerals Council elections. These changes reaffirm the inherent sovereign rights of the Osage Nation to determine its membership and form of government.

In the coming year, BIA will prioritize the following rulemakings:

Procedures for Federal Acknowledgment of Indian Tribes (1076–AF67)

This rule will update the regulations in response to recent Federal court decisions to address whether previously denied petitioners for Federal acknowledgment may petition again.

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, Bureau of Indian Education, and Office of the Special Trustee for American Indians (collectively, Indian Affairs). The rule would advance the purposes of E.O. 14058 to effectively reduce administrative burdens, simplify both public-facing and internal processes to improve efficiency, and empower the Federal workforce to solve problems. The rule would streamline the process for appeals of Tribal government representative decisions, to ensure the continued government-to-government relations with the appropriate Tribal leadership is not unduly interrupted.

Mining of the Osage Mineral Estate for Oil and Gas (1076–AF59)

The regulations in 25 CFR part 226 would be revised to allow BIA to strengthen management of the Osage Mineral Estate by updating bonding, royalty payment and reporting, production valuation and measurement, site security, and operational requirements to address the changes in technology and industry standards that have occurred in the 48 years since the regulations were last revised and ensure consistency with Departmental regulations governing oil and gas development throughout the rest of Indian country.

Land Acquisitions (1076–AF71)

This rule would advance the purposes of E.O. 13985 and address the Department's jurisdiction to acquire land in trust for certain Tribes, streamline acquisitions on existing reservations, clarify Tribal jurisdiction, and promote Tribal conservation of lands.

Class III Tribal State Gaming Compact Process (1076–AF68)

This rule would provide States and Tribes with a better understanding of how the Department reviews their compacts by codifying longstanding Departmental policy and interpretations of existing case law.

Self-Governance PROGRESS Act Regulations (1076–AF62)

This rule would implement the requirements of the Practical Reforms & Other Goals to Reinforce the Effectiveness of Self Governance & Self Determination for Indian Tribes Act (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.

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.

Bureau of Land Management

The BLM manages more than 245 million acres of public land, known as the National System of Public Lands, primarily located in 12 Western States, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the Nation. The agency's mission is to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations.

Regulatory and Deregulatory Actions

In the coming year, the BLM will prioritize the following rulemaking actions:

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 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 will propose 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 powerline ROWs on public lands and national forests. The regulatory amendments would also codify statutory requirements regarding review and approval of utilities maintenance plans, liability limitations, and definitions of hazard trees and emergency conditions.

Bonding (1004–AE68)

This proposed rule would update the bonding procedures for ROWs on BLM-managed public land 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, which published on November 7, 2022 (87 FR 67306) 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 which published on November 30, 2022, (87 FR 73588) 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 E.O. 14008. In addition, in accordance with E.O. 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 Oil and Gas Leases and Leasing Process 43 CFR Parts 3100 and 3400 (1004–AE80)

This proposed rule would revise BLM's oil and gas regulations to update the fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production. The 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 oil and gas activities. This rule would implement provisions of the IRA regarding oil and gas resources on public lands.

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.

Revisions to the Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations (1004–AE87)

This rule would update BLM's existing rules governing site security and measurement of oil and gas from onshore Federal and Indian oil and gas leases. Since BLM adopted the existing rules in November 2016, the agency has

encountered significant challenges in implementing them. This regulatory action would rectify gaps and inconsistencies in the current regulations and improve measurement accuracy, verifiability, and accountability on Federal and Indian minerals.

Wildfire Prevention (1004–AE88)

This rule would revise BLM's fire-trespass and cost recovery regulations. The changes would help prevent wildfires by creating a more effective deterrent to human-caused wildfires and unauthorized burning of public lands and make it easier for the agency to recover damages from wildfires.

Closure and Restriction Orders (1004–AE89)

This proposed rule would help BLM to better protect persons, property, and public lands and resources by allowing the agency to close or restrict the use of public lands in a timelier manner. The rule would also make BLM's regulations more consistent with other Federal land management agencies' closure and restriction authorities.

Sustained Yield and Land Health (1004–AE92)

The BLM is drafting a rule to clarify and support the principles of multiple use and sustained yield in the management of the public lands pursuant to FLPMA and other relevant authorities. This proposed rule rests within 43 CFR 6000 and would provide an overarching framework governing multiple resource areas to ensure land health and sustained yield. This rule would affirm the important role of restoration and conservation actions in building and maintaining sustainable land management practices to ensure healthy and productive ecosystems for current and future generations.

Bureau of Ocean Energy Management

The mission of BOEM is to manage development of U.S. OCS energy and mineral resources in an environmentally and economically responsible way. In accordance with its statutory mandate under Outer Continental Shelf Lands Act (OCSLA), BOEM is committed to implementing its dual mission of promoting the expeditious and orderly development of the Nation's energy resources while simultaneously protecting the marine, human, and coastal environment of the OCS State submerged lands and the coastal communities. Consistent with the policy outlined by the administration in E.O. 14008, BOEM is reevaluating its programs related to the offshore development of energy and mineral resources. The BOEM is working with the Department to review options for expanding renewable energy production while evaluating alternatives to better protect the lands, waters, and biodiversity of species located within the U.S. exclusive economic zone.

Regulatory and Deregulatory Actions

In the coming year, BOEM will prioritize the following rulemaking actions:

Renewable Energy Modernization Rule (1010–AE04)

The BOEM will propose a rule that would update 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 also.

Bureau of Ocean Energy Management, and Bureau of Safety and Environmental Enforcement Renewable Energy Split Final Rule (1082–AA03)

The Department updated the Departmental Manual, which transferred the safety, environmental enforcement, and compliance functions relevant to renewable energy activities on the OCS from BOEM to BSEE. BSEE and BOEM will amend their respective regulations to reflect the split of functions between the two Bureaus.

Risk Management and Financial Assurance for OCS Lease and Grant Obligations (1010–AE14)

The BOEM has reconsidered the financial assurance policies expressed in the joint proposed rule (85 FR 65904) issued with BSEE (1082–AA02) and has determined that it would be appropriate to issue a new proposed rule that will better protect the American taxpayers from shouldering liability for the decommissioning of offshore oil and gas facilities. The proposed rule would ensure that facilities no longer needed for oil or gas exploration, or development are shut down in a safe and environmentally responsible manner. The proposed rule would modify the evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement grant holders, and pipeline ROW grant holders may be required to provide bonds or other financial assurance, above the regulatorily prescribed amounts for base bonds, to ensure compliance with their OCS obligations.

Carbon Sequestration (1082–AA04)

In accordance with the BIL, BOEM and BSEE are jointly proposing to establish regulations governing carbon transportation and storage on the OCS. Carbon capture, utilization, transport and storage (CCUTS) technologies are necessary to reduce hard-to-abate emissions from the industrial sector, which emits nearly 25 percent of all carbon dioxide released into the atmosphere in the United States. The CCUTS is likely needed to achieve mid-century climate goals and has the potential to drive regional economic development, technological innovation, and high-wage employment.

Protection of Marine Archaeological Resources (1010–AE11)

The BOEM is tasked to consider the effects of its undertakings on significant cultural resources. Title 36 section 800.4(b)(1) (Protection of Historic Properties) of the Code of Federal Regulations requires that ''the agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.'' The BOEM would propose a rule that would revise when lessees and operators would need to conduct archaeological surveys. It would clarify when operators would submit an archaeological report with their applications and clarify the source and extent of the data utilized.

Bureau of Safety and Environmental Enforcement

The BSEE's mission is to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement. The BSEE is the lead Federal agency charged with improving safety and ensuring environmental protection related to conventional and renewable energy activities on the U.S. OCS.

Regulatory and Deregulatory Actions

In the coming year, BSEE will prioritize the following rulemaking actions:

Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule (1014–AA44)

The oil spill response requirements regulations found in 30 CFR part 254 were last updated over 20 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would update existing regulations to incorporate the latest advancements in spill response and preparedness policies and technologies, as well as lessons learned and recommendations from reports related to the Deepwater Horizon explosion and subsequent oil spill.

Revisions to Subpart J—Pipelines and Pipeline Rights-of-Way Proposed Rule (1014–AA45)

This proposed rule would revise specific provisions of the current pipelines and pipeline ROW regulations under 30 CFR 250 subpart J to update those regulations to align with current technology and state-of-the-art safety equipment and procedures, primarily through the incorporation of industry standards.

Outer Continental Shelf Lands Act; Operating in High-Pressure and/or High-Temperature (HPHT) Environments (1014–AA49)

Currently, BSEE has no regulations specific to high pressure and/or high temperature (HPHT) projects, requiring it to issue multiple guidance documents clarifying the specific HPHT information prospective operators should submit to BSEE to support the Bureau's programmatic reviews and approvals of such projects. This final rule will formally codify BSEE's existing process for reviewing and approving projects in HPHT environments.

Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions (RIN

This rulemaking would revise BSEE regulations published in the 2019 final rule ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf Blowout Preventer Systems and Well Control Revisions,'' 84 FR 21908 (May 15, 2019), for drilling, workover, completion, and decommissioning operations.

Revisions to Decommissioning Requirements on the OCS (1014–AA53)

This proposed rule would address issues relating to: (1) idle iron by adding a definition of this term to clarify that it applies to idle wells and structures on active leases; (2) abandonment in place of subsea infrastructure by adding regulations addressing when BSEE may approve decommissioning-in-place instead of removal of certain subsea equipment; and (3) other operational considerations.

Risk Management, Financial Assurance and Loss Prevention—Decommissioning Activities and Obligations (1082–AA02)

On October 12, 2020, BOEM and BSEE published the joint proposed rule in the **Federal Register** (85 FR 65904). The BSEE will continue to pursue this rulemaking as a BSEE-only final rule to revise policies and procedures concerning compliance with decommissioning obligations for 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. The 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.

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 various chapters in the Departmental Manual 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 will 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 (IT). To successfully serve the Department's multiple missions, the OCIO applies modern IT tools, approaches, systems, and products. Effective and innovative use of technology and information resources enables transparency and accessibility of information and services to the public.

In 2022, OCIO finalized the following rules:

Insider Threat Program System of Records (1090–AB15)

This final rule, which published on February 15, 2022 (87 FR 8427), revised 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.

Social Security Number Fraud Prevention Act of 2017 Implementation (1090–AB24)

This direct final rule, which published on July 14, 2022 (87 FR 42097), amends 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.

For the coming year, OCIO will prioritize the following 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.

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.

Office of Acquisition and Property Management

The Office of Acquisition and Property Management (PAM) coordinates Department-wide implementation of Federal policy and regulations for acquisition, including real, personal, and museum property. The PAM also directs activities in other essential areas including motor vehicle fleet management, space management, energy efficiency, water conservation,

renewable energy programs, and capital planning for real and personal property assets.

For the coming year, PAM will prioritize the following rules:

Department of the Interior Acquisition Regulation, Governance Titles (1090–AB25)

The PAM proposes changes to the Department of the Interior Acquisition Regulation to update its nomenclature to align with recent changes to agency procurement governance. The senior GS–1102 contracting subject matter expert in a Department Bureau or Office has been designated as the Head of the Contracting Activity (formerly designated as the Bureau Procurement Chief). The Senior Executive who is accountable for the contracting activity has been designated as the Bureau Procurement Executive (this position was formerly designated as the Head of the Contracting Activity). These amendments enable acquisition programs to more efficiently meet the Department's mission needs and comply with all applicable law and regulations.

Office of Hearings and Appeals

The Office of Hearings and Appeals (OHA) exercises the delegated authority of the Secretary to conduct hearings and decide appeals from decisions made by the Bureaus and Offices of the Department. The OHA provides an impartial forum for parties who are affected by the decisions of the Department's Bureaus and Offices to obtain independent review of those decisions. The OHA also handles the probating of Indian trust estates, ensuring that individual Indian interests in allotted lands, their proceeds, and other trust assets are conveyed to the decedents' rightful heirs and beneficiaries.

Updates to American Indian Probate Regulations (1094–AA55)

On December 2021, OHA published this final rule (86 FR 72068) that makes regulatory changes relating to efficiency and streamlining of probate processes. This rule ensures that the Department meets its trust obligations and helps achieve the American Indian Probate Reform Act/statutory goal of reducing fractionalization of trust property interests.

For the coming year, OHA will prioritize the following regulatory action:

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 the OHA Director to issue interim orders in emergency circumstances, and to allow 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 Hearings and Appeals (OHA) Rule (1094–AA57)

This proposed rule will update outdated provisions, make process improvements, and provide a more modernized hearings and appeals process for proceedings before OHA. This is a comprehensive proposal to provide a more efficient process for OHA and the parties who appear before it, including external stakeholders and Departmental bureaus. The rule will build upon the Direct Final Rule to incorporate a new electronic filing and docket management system into OHA's processes and will update a number of other procedural rules. Included in this proposed rule are comprehensive changes to special rules for the Interior Board of Land Appeals, Departmental Cases Hearings Division, and the Director's office. Other provisions address specific needs of the Interior Board of Indian Appeals and the Probate Hearings Division.

Office of Natural Resources Revenue

The Office of Natural Resources Revenue (ONRR) is responsible for collecting, accounting for, and disbursing 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 completed the following rulemakings:

ONRR 2020 Valuation Reform and Civil Penalty Rule: Final Withdrawal Rule (1012–AA27)

ONRR published a final rule on September 30, 2021, withdrawing the ONRR 2020 Valuation Reform and Civil Penalty Rule. The final rule became effective on November 1, 2021.

ONRR 2020 Valuation Reform and Civil Penalty Rule: Final Withdrawal Rule (1012–AA27)

On September 20, 2021, ONRR published a final rule withdrawing the ONRR 2020 Valuation Reform and Civil Penalty Rule. The final rule became effective on November 1, 2021 (86 FR 54045).

In the coming year, ONRR will prioritize the following rulemaking actions:

Electronic Provision of Records During an Audit (1012–AA32)

The ONRR will publish a proposed rule to amend its regulations to allow ONRR and other authorized Departmental representatives the option to require that an auditee use electronic means to provide records requested during an audit of natural resources revenue reporting and payment.

ONRR Designation Form for Payment Responsibility (1012–AA33)

The ONRR will publish a proposed rule to amend its regulations and revise its form for designating a designee for a Federal oil and gas lease. This action opens a 60-day comment period to allow interested parties to comment on the proposed rule and its information collection requirements.

Partial Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Reform Final Rule (1012–AA34)

The ONRR is reissuing certain regulations for the valuation of Federal and Indian coal to implement a court order that vacates the coal valuation portions of a 2016 rule. These republished regulations implement the court's order by recodifying the regulations that were in effect prior to the vacated 2016 rule.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSMRE) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The OSMRE works with States and Tribes to ensure that citizens and the environment are protected during coal mining and that the land is restored to beneficial use when mining is finished. The OSMRE and its partners are also responsible for reclaiming and restoring lands and water degraded by mining operations before 1977. The OSMRE focuses on overseeing the State programs and developing new tools to help the States and Tribes get the job done.

The OSMRE also works with colleges and universities and other State and Federal agencies to further the science of reclaiming mined lands and protecting the environment, including initiatives to promote planting more trees and restoring much-needed wildlife habitat.

Regulatory and Deregulatory Actions

OSMRE completed the following rulemaking:

On August 24, 2022, OSMRE published its Abandoned Mine Land (AML) Fee Renewal final rule (87 FR 51904), making amendments to its regulations governing the AML Fund to be consistent with the BIL, which included the Abandoned Mine Land Reclamation Amendments of 2021. The final rule reflects the extension of OSMRE's statutory authority to collect reclamation fees for an additional 13 years, the 20 percent reduction in fee rates, and a change to maintain the existing the grant distribution formula for eligible States and Tribes.

For coming year, OSMRE will prioritize the following regulatory actions:

Ten Day Notices (1029–AC81)

This rule would amend OSMRE's regulations on the ten-day notices rule that went into effect on December 24, 2020. The proposed rule would also amend the existing rules about when OSMRE sends ten-day notices to State regulatory authorities regarding possible SMCRA violations.

Emergency Preparedness for Impoundments (1029–AC82)

This rule would incorporate certain aspects of the Federal Guidelines for Dam Safety (FGDS) into OSMRE's existing regulations. These regulations relate to emergency preparedness for impoundments and propose to incorporate the FGDS Emergency Action Plans (EAP) and After-Action Reports (AAR). 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 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 568 NWRs, with at least 1 refuge in each U.S. State and Territory, and with more than 100 refuges close to major urban centers. The Refuge System plays an essential role in providing outdoor recreation opportunities to the American public. In 2020, more than 61 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

FWS completed the following rulemakings:

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl (1018–BF01)

This final rule, which published on November 10, 2021 (86 FR 62606), withdrew and revised the final rule published on January 15, 2021 (86 FR 4820) to redesignate 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 2021 final rule that would have excluded approximately 3.4 million acres (1.4 million hectares) of designated critical habitat for the northern spotted owl. Instead, on August 11, 2020 (85 FR 48487), the FWS proposed exclusions under section 4(b)(2) of the ESA and then finalized revisions to the species' designated critical habitat by excluding approximately 204,294 acres (82,675 hectares) in Oregon.

Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Endangered and Threatened Species and Designation of Critical Habitat (1018–BE69)

On June 24, 2022 (87 FR 37757), FWS and the NMFS rescinded the final rule titled, ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat'' (87 FR 37757, December 1, 2020). The 2022 final rule removed the regulatory definition of ''habitat'' established by the 2020 rule.

Endangered and Threatened Wildlife and Plan; Revision of the Regulations for Designating Critical Habitat (1018–BD84)

On July 21, 2022, FWS published the final rule, ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat'' (87 FR 43433). The final rule rescinded the rule, ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat,'' that published on December 18, 2020, (85 FR 82376) and became effective January 19, 2021. The rule set forth new regulations addressing how we exclude areas of critical habitat under section 4(b)(2) of the ESA, outlining when and how FWS will undertake an exclusion analysis. The 2022 rule removed the regulations established by the 2020 rule.

Regulations Governing Take of Migratory Birds (1018–BD76)

On January 7, 2021, 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 (86 FR 1134). On October 4, 2021, FWS published a final rule revoking the January 7, 2021, rule (86 FR 54642). The effect of this rule is a return to implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent.

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)

On February 23, 2022, FWS published a final rule, ''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,'' (87 FR 10073).

The final rule revised regulations that implement CITES by incorporating certain non-controversial provisions adopted at the 16th through 18th meetings of the Conference of the Parties (CoP16–CoP18) to CITES and clarifying and updating certain other provisions. These changes 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 also enable FWS to 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.

2022–2023 Station-Specific Hunting and Sport Fishing Regulations (1018–BF09)

This rule made additions and revisions to station-specific regulations and expanded hunting and sport fishing opportunities for the 2022–23 hunting and sport fishing season. This action is part of an annual update for the national wildlife refuge system and the national fish hatchery system that ensures adequate public notice of openings and changes. These changes and openings enhance conservation stewardship and outdoor recreation and improve the management of game species and their habitat. The FWS operates hunting and sport fishing programs on refuges to implement Congressional directives to facilitate compatible priority wildlife-dependent recreational opportunities. Although hatcheries are not part of the national wildlife refuge system, by regulation, the administrative provisions of refuge regulations are applied to national fish hatchery areas.

In the coming year, FWS will prioritize the following rulemaking actions:

Regulations Under the Endangered Species Act

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 (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.

Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat (1018–BF95)

Per section 2 of E.O. 13990 and the ''Fact Sheet: List of Agency Actions for Review,'' the Departments of Commerce and the Interior (Departments) initiated a review of the August 27, 2019, final rule (84 FR 45020) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and the procedures for designating critical habitat. On July 5, 2022, the 2019 rule was vacated and remanded by the U.S. District Court for the Northern District of California. In response to the court order, the Departments will propose a new rulemaking.

Endangered and Threatened Wildlife and Plants; Interagency Cooperation (1018–BF96)

Per section 2 of E.O. 13990 and the ''Fact Sheet: List of Agency Actions for Review,'' the Departments initiated a review of the August 27, 2019, final rule (84 FR 44976) that revised portions of the regulations that implement section 7 of the ESA, as amended. On July 5, 2022, the 2019 rule was vacated and remanded by the U.S. District Court for the Northern District of California. In response to the court order, the Departments will propose a new rulemaking.

Regulations Under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act: Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds (1018–BF71)

This proposed rulemaking action would amend FWS regulations by providing definitions to terms used in the MBTA, as amended. 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 proposed rule would also establish authorizations for otherwise prohibited take of migratory birds.

Eagle Permits; Incidental Take (1018–BE70)

FWS published this proposed rule on September 30, 2022 (87 FR 59598). This proposed rule seeks public and regulated-community input on potential approaches for further expediting and simplifying the permit process authorizing incidental take of eagles. The proposed rule would revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The proposed rule would create general eagle permits for certain activities under prescribed conditions in addition to specific eagle permits authorized under current regulations.

Possession of Migratory Bird Feathers (1018–BB88)

This proposed rule will seek public comments on: (1) authorized possession of naturally molted migratory bird feathers, including those from bald eagles and golden eagles; (2) collection, possession, and use of migratory birds by enrolled members of federally recognized Tribes; and (3) administrative changes to the current 50 CFR 22.60, Eagle Indian Religious Permits.

National Park Service

The 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

NPS completed the following rulemakings:

Colonial National Historical Park; Vessels and Commercial Passenger-Carrying Motor Vehicles (1024–AE39)

This final rule published, which published on December 15, 2021 (86 FR 71148), amended the special regulations for Colonial National Historical Park. The rule removed a regulation that prevents the Superintendent from designating sites within the park for launching and landing private vessels and removed outdated permit and fee requirements for commercial passenger-carrying vehicles.

Pictured Rocks National Lakeshore; Snowmobiles (1024–AE53)

This final rule, which published on February 1, 2022, (87 FR 5402), clarified 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.

Saint Croix National Scenic Riverway; Bicycling (1024–AE64)

This final rule, which published on February 17, 2022, allows the use of bicycles on approximately 0.25 miles of new trail in Saint Croix National Scenic Riverway.

Curation of Federally Owned and Administered Archeological Collections (1024–AE58)

This final rule, which published on April 15, 2022 (87 FR 22447), amends 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 promotes more efficient and effective curation of these archeological collections.

In FY 2023, NPS will prioritize the following rulemaking actions:

Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (1024–AE19)

This rule which published on October 18, 2022 (87 FR 63202), 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.

Alaska; Hunting and Trapping in National Preserves (1024–AE70)

This rule would amend NPS regulations for sport hunting and trapping in national preserves in Alaska. This rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

Bureau of Reclamation

The Bureau of Reclamation's (Reclamation) mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation employs management, engineering, and science to achieve effective and environmentally sensitive solutions.

Reclamation's projects provide irrigation water service; municipal and industrial water supply; hydroelectric power generation; water quality improvement; groundwater management; fish and wildlife enhancement; outdoor recreation; flood control; navigation; river regulation and control; system optimization; and related uses. In addition, Reclamation continues to provide increased security at its facilities.

Regulatory and Deregulatory Actions

In FY 2023, Reclamation will prioritize the following rulemaking action:

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, update regulations on camping, swimming, and winter recreation for the wide range of circumstances found across Reclamation; and would clarify the permitting of memorials and reburials on Reclamation lands.

Departmental

Paleontological Resources Preservation (1093–AA25)

In FY 2022, the Department published a final rule on August 2, 2022, (87 FR 47296) that 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.

DOI—BUREAU OF LAND MANAGEMENT (BLM)

Final Rule Stage

117. • Onshore Oil and Gas Operations–Annual Civil Penalties Inflation Adjustments [1004–AE91]

Priority: Other Significant.

Legal Authority: Pub. L. 114–74, sec. 701

CFR Citation: 43 CFR part 3160.

Legal Deadline: Final, Statutory, January 15, 2023, Required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

By statute, the rule must publish by January 15th each year.

Abstract: This rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Act). The penalty adjustments made by this final rule constitute the 2023 annual inflation adjustments, accounting for 1 year of inflation spanning the period from October 2021 through October 2022. The adjustments made by this final rule constitute the annual inflation adjustments contemplated by the Act.

Statement of Need: This rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Act). The penalty adjustments made by this final rule constitute the 2023 annual inflation adjustments, accounting for 1 year of inflation spanning the period from October 2021 through October 2022. The adjustments made by this final rule constitute the annual inflation adjustments contemplated by the Act.

Summary of Legal Basis: This action is mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701).

Alternatives: N/A.

Anticipated Cost and Benefits: TBD.

Risks: None.

Timetable:

Action	Date	FR Cite
Final Action	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Sheila Mallory, Acting Division Chief, Fluid Minerals Division, Department of the Interior, Bureau of Land Management, 20 M Street SE, Washington, DC 20003, *Phone:* 775 287–3293, *Email: smallory@blm.gov.*

Related RIN: Previously reported as 1004–AE77

RIN: 1004–AE91

BILLING CODE 4334–63–P

DEPARTMENT OF JUSTICE (DOJ)—FALL 2022

Statement of Regulatory Priorities

The mission of the Department of Justice is to uphold the rule of law, to keep our country safe, and to protect civil rights. In carrying out this mission, the Department is guided by the core values of integrity, fairness, and commitment to promoting the impartial administration of justice—including for those in historically underserved, vulnerable, or marginalized communities. Consistent with its mission and values, the Department is prioritizing activities that protect the public against foreign and domestic threats, strengthen enforcement of civil rights laws, defend against domestic and international terrorism, combat gun violence, prevent and control crime, and reform criminal justice systems. Because the Department of Justice is primarily a law enforcement agency, not a regulatory agency, it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

Regulatory action is, however, a significant aspect of the law enforcement mission of the Department. The regulatory priorities of the Department include initiatives in the areas of criminal justice reform, immigration, and gun violence reduction, and are effectuated through rulemaking by the various components of the Department. These initiatives, as well as others important to components' accomplishing key law enforcement priorities, are summarized below.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

ATF issues regulations to enforce and implement federal laws relating to the manufacture, importation, sale, and other commerce in firearms and explosives. Such regulations are designed to promote the ATF mission to curb illegal traffic in, and criminal use of, firearms and explosives, to assist state, local, Tribal, territorial, and other federal law enforcement agencies in reducing violent crime.

ATF will continue, as a priority during fiscal year 2022, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals.

The Department has proposed to amend ATF's regulations 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). 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 and implement federal laws relating to its mission: to protect public safety by ensuring that federal offenders serve their sentences of imprisonment in facilities under conditions that are safe, humane, cost-efficient, and appropriately secure, and to provide rehabilitative and reentry programming to ensure their successful return to their communities.

BOP continues to sustain 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, so do elements of BOP's Incident Action Plan. BOP also relies upon guidance from the World Health Organization (WHO), the Centers for Disease Control and Prevention, the Office of Personnel Management, DOJ, and the Office of the Vice President. BOP's Health Services of Division closely monitors the spread of monkeypox, and is prepared to respond, accordingly.

The First Step Act (FSA) of 2018, Public Law 115–391, 132 Stat. 5194 (2018) brings a host of regulatory changes for BOP. The BOP has enacted regulations for eligible inmates to earn FSA Time Credits towards prerelease custody or early transfer to supervised release. Inmates earn FSA Time Credits for successfully completing approved Evidence-Based Recidivism Reduction Programs or Productive Activities 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 set aside inmate pay for prerelease purposes. BOP will also finalize a rule to clarify that the Director has authority to allow prisoners placed in home confinement under the CARES Act to remain in home confinement after the expiration of the covered emergency period (RIN 1120–AB79).

The Bureau is actively pursuing proposed rules to update the inmate disciplinary code, inmate legal activities rules, and inmate financial responsibility program procedures. Final rules are soon to be issued to grant District of Columbia inmates good conduct time credits for educational programs, update technical sections of tort claims and administrative procedures programs, clarify use of force policy for less-than-lethal munitions to align with Executive Order 14074, and provide for more rapid infectious disease testing for new inmates.

Civil Rights Division (CRT)

CRT works to uphold the civil and constitutional rights of all persons in the United States, particularly some of the most vulnerable members of our society. Consistent with this mission, CRT plans to engage in five separate rulemakings on disability rights.

First, CRT plans to propose technical standards for public entities' websites under title II of the Americans with Disabilities Act (ADA) to help public entities meet their existing ADA obligations to ensure their websites are accessible to people with disabilities (RIN 1190–AA79). Second, CRT plans to amend the current DOJ regulation under section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability in programs and activities conducted by an executive agency, to bring it up to date (RIN 1190–AA73). Third, CRT will propose standards that address the accessibility of medical diagnostic equipment under titles II and III of the ADA (RIN 1190–AA78). Fourth, CRT intends to propose requirements for pedestrian facilities in the public right-of-way, such as sidewalks and crosswalks, covered by 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 to help public entities meet their existing ADA obligations to make those facilities accessible (RIN 1190–AA77). Last, CRT plans to publish an advance notice of proposed rulemaking seeking public input on possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture in public entities' and public accommodations' programs and services (RIN 1190–AA76).

Drug Enforcement Administration (DEA)

DEA is the agency primarily responsible for coordinating the drug law enforcement activities of the United

States and also assisting in the implementation of the President's National Drug Control Strategy. DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended, collectively referred to as the Controlled Substances Act (CSA).

DEA's mission is to enforce the controlled substances laws and regulations of the United States and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacture, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the United States. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States.

Pursuant to its statutory authority, DEA intends to continue with the following priority regulations that appeared on the Fall 2021 Unified Agenda:

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).

Additionally, DEA anticipates publishing a proposed rule that promulgates changes which would enable data-waived registrants to prescribe Buprenorphine under limited circumstances to patients with substance use disorder by utilizing audio-only telecommunication systems (RIN 1117–AB78).

DEA also proposes the following priority actions to the Fall 2022 Unified Agenda: DEA intends to publish a proposed regulation that will authorize the issuance of registrations for telemedicine, and to prescribe the limited circumstances in which they may be obtained and used (RIN 1117–AB40).

DEA also intends to publish a proposed regulation to amend the reporting requirements found at 21 CFR 1310.05(b)(2) mandating notification to DEA of domestic transactions involving tableting and encapsulating machines 15-days before the seller ships the machine. The draft regulation also proposes to amend the definitions of a ''tableting machine'' and an ''encapsulating machine'' to include ''parts thereof.'' Finally, the draft regulation seeks to modernize customer verification requirements for transactions and proposes modifications to DEA Form 452 to improve tracking of transactions of tableting and encapsulating machines (RIN 1117–AB80).

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 relating to immigration-related employment practices. 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 specified by regulation. 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 several regulations related to the asylum system. Specifically, EOIR is working with the Department of Homeland Security (DHS) to finalize an interim final rule that amended 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 rules that would rescind bars to asylum implemented by three prior rules: RIN 1125–AA87 related to certain kinds of an applicant's criminal activity, RIN 1125–AA91 related to an applicant's transit through third countries, and RIN 1125–AB08 related to certain kinds of 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).

Finally, EOIR is also working to revise and update the regulations relating to immigration proceedings to increase efficiency, while also safeguarding due process. EOIR is drafting a proposed rule that would provide guidance on administrative closure and termination 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).

Federal Bureau of Investigation (FBI)

The FBI is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to federal, state, local, tribal territorial, and international agencies and partners. Only in limited contexts does the FBI rely on rulemaking.

For example, the FBI drafted a proposed rule to establish the criteria for use by a designated entity in deciding fitness as described under the Child Protection Improvements Act (CPIA), 34 U.S.C. 40102, Public Law 115–141, div. S. title I, section 101(a)(1), Mar. 23, 2018, 132 Stat. 1123.

The CPIA requires that the Attorney General, by rule, establish the criteria for use by designated entities in making a determination of fitness described in subsection (b)(4) of the Act concerning whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and wellbeing of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity. Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 U.S.C. 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858f).

The FBI is also drafting rules to implement the Bipartisan Safer Communities Act of 2022 (BSCA), 28 U.S.C. 534, 34 U.S.C. 40901, and 34 U.S.C., Subt. IV, ch. 411, Refs. & Annos., Public Law 117–159, div A, title II, sections 12001(a) and 12004(h), June 25, 2022, 136 Stat. 1313 and the National Instant Criminal Background Check System (NICS) Denial Notification Act (NDNA) of 2022, 18 U.S.C. 921, 18 U.S.C. 925B through 925D, Public Law

117–103, div. W, title XI, sections 1101 through 1103, March 15, 2022, 136 Stat. 919.

In accordance with the BSCA, the FBI will propose regulatory amendments to include, but not be limited to: authorizing and establishing the process for federal firearm licensees (FFLs) to receive access to records of stolen firearms maintained in the FBI's National Crime Information Center to verify if a firearm offered for sale to the FFL has been reported stolen; authorizing, and establishing the process for, FFLs to use NICS for the purpose of voluntary background checks of current and/or prospective employees of the FFL; and establishing the process when NICS has been contacted for the prospective transfer of a firearm to a person under the age of 21. For NICS transactions involving persons under the age of 21, proposed regulation amendments will address, but may not be limited to the BSCA provisions regarding: (A) the application of a delay, up to the tenth business day, if cause exists to further investigate a possibly disqualifying juvenile record; (B) the required collection (and any purge/retention) of residential address information submitted by an FFL so the FBI may comply with the expanded background checks of such persons; and (C) the process for conducting the expanded background checks to determine if certain entities where such persons reside (the state criminal history repository or juvenile justice information system, the state custodian of mental health adjudication records; and local law enforcement) have records establishing ''cause'' that such persons have possibly disqualifying juvenile records under 18 U.S.C., section 922(d).

The NDNA mandates that, when the FBI denies a firearm transfer during a NICS transaction, the Attorney General is to report various information about that denial to local law enforcement authorities in the state or tribe where a firearm was sought for transfer and, if different, the local law enforcement authorities of the state or tribe where the person resides. ''Local law enforcement authority'' is defined by the NDNA at 18 U.S.C., section 921(a). Regulatory amendments will be drafted outlining the process for submitting, and the contents of, such denial notifications, including language similar to the BSCA, addressing the required collection (and purge/retention) of a prospective transferee's residential address so the FBI may contact the proper local law enforcement authorities should the transaction be denied. Regulatory proposals based on the NDNA will also address denial notifications being sent to prosecution authorities in the jurisdiction where the firearm was sought and circumstances where authorities need to be updated that a person who was the subject of a denial notification has subsequently been determined to not be prohibited. Regulation proposals from the NDNA will also address the Attorney General's new, annual report to Congress concerning denial notifications, and related statistics, from the previous year.

DOJ—BUREAU OF PRISONS (BOP)

Final Rule Stage

118. Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act [1120–AB79]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 5 U.S.C. 4001; 28 U.S.C. 509, 510

CFR Citation: 28 CFR 0.

Legal Deadline: None.

Abstract: The Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) authorizes the Director of the Bureau of Prisons (Director), during the covered emergency period and upon a finding by the Attorney General that emergency conditions resulting from the Coronavirus Disease 2019 (COVID–19) pandemic materially affect the functioning of the Bureau of Prisons (Bureau or BOP), to lengthen the maximum amount of time for which a prisoner may be placed in home confinement. This proposed rule affirms that the Director has the authority to allow prisoners placed in home confinement under the CARES Act to remain in home confinement after the expiration of the covered emergency period.

Statement of Need: While the home confinement program under the CARES Act has been a measurable success, inmates and their families have sought assurance that those already on home confinement will not be abruptly returned to secure custody after the end of the covered emergency period. The Department remains sensitive to these concerns and agrees with Congress's clear indication of support for expanding the use of home confinement based on the needs of individual offenders. Affirming that the BOP has the authority to allow prisoners placed in home confinement under the CARES Act to remain in home confinement after the expiration of the covered emergency period will support the Bureau's ability to efficiently manage its resources and nimbly address changing circumstances in the community, in relation to the needs and profiles of individual inmates.

Summary of Legal Basis: The Department concludes that the most reasonable interpretation of the CARES Act permits the Bureau to continue to make individualized determinations about the conditions of confinement for inmates placed in home confinement under the CARES Act, as it does with respect to all prisoners—(See 18 U.S.C. 3621(a) (''A person who has been sentenced to a term of imprisonment . . . shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed . . . . . .'')—following the end of the covered emergency period. In a December 2021 opinion, the Office of Legal Counsel (''OLC'') concluded that section 12003(b)(2) and BOP's preexisting authorities does not require that prisoners in extended home confinement be returned en masse to correctional facilities when the emergency period ends. Even if the relevant provision of the CARES Act were considered ambiguous, however, the Department's interpretation represents a reasonable one that would warrant deference under Chevron, U.S.A., Inc.

Alternatives: The alternative to this rule would be for the Bureau to return inmates currently in home confinement to secure custody en masse, at the end of the covered emergency period without making an individualized assessment or identifying a penological, rehabilitative, public health, or public safety basis for the action.

Anticipated Cost and Benefits: Although placements under the CARES Act were not made for reentry purposes, the Department concludes that the best use of Bureau resources and the best outcome for affected inmates is to allow the agency to make individualized assessments of CARES Act placements, with a focus on supporting inmates' eventual reentry into the community. Allowing the Bureau discretion to determine whether inmates who have been successfully serving their sentences in the community should remain in home confinement will allow the Bureau to ground those decisions upon case-by-case assessments consistent with penological, rehabilitative, public health, and public safety goals, rather than categorically requiring all inmates placed on CARES Act home confinement to be treated the same.

Risks: An inmate placed in home confinement is not considered released from Bureau custody. Rather, the inmate continues serving their sentence at home in their community. These

individuals must follow a set of rules designed to aid in their management, facilitate their reintegration into society, and support their rehabilitative efforts. For example, they are required to remain in the home during specified hours and are permitted to leave only for work or other preapproved activities, such as occupational training or therapy. Moreover, inmates in home confinement must submit to drug and alcohol testing and counseling requirements. Supervision staff monitor inmates' compliance with the conditions of home confinement by electronic monitoring equipment or, in a few cases for medical or religious accommodations, frequent telephone and in-person contact. Data show that these procedures have been working to preserve public safety where inmates were placed on extended home confinement under the CARES Act, and the De

Timetable:

Action	Date	FR Cite
Final Rule	02/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Agency Contact: Daniel J. Crooks, III, Assistant General Counsel, Department of Justice, Bureau of Prisons, HOLC Building, 320 First Street NW, Washington, DC 20534, *Phone:* 202 451–7992, *Fax:* 202 235–4577, *Email: dcrooks@bop.gov.*

RIN: 1120–AB79

DOJ—CIVIL RIGHTS DIVISION (CRT)

Proposed Rule Stage

119. Implementation of the ADA Amendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973) [1190–AA73]

Priority: Other Significant.

Legal Authority: Pub. L. 110–325; 29 U.S.C. 794 (sec. 504 of the Rehab. Act of 1973); E.O. 12250 (45 FR 72855)

CFR Citation: 28 CFR 39.

Legal Deadline: None.

Abstract: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability in programs and activities conducted by an Executive agency. The Department plans to revise its 504 Federally conducted regulation at 28 CFR part 39 to incorporate amendments to the statute, including the changes in the meaning and interpretation of the applicable definition of disability required by the ADA Amendments Act of 2008, Public Law 110–325, 122 Stat. 3553 (Sep. 25, 2008); incorporate requirements and limitations stemming from judicial decisions; and make other non-substantive clarifying edits, including updating outdated terminology and references.

Statement of Need: This rule is necessary to bring the Department's prior section 504 Federally conducted regulation, which has not been updated in three decades, into compliance with judicial decisions establishing rights and limitations under section 504, as well as statutory amendments to the Rehabilitation Act, including the new definition of disability provided by the ADA Amendments Act of 2008, which became effective on January 1, 2009. Additionally, following the passage of the Americans with Disabilities Act (ADA), amendments to the Rehabilitation Act sought to ensure that the same precepts and values embedded in the ADA were also reflected in the Rehabilitation Act. To ensure the intended parity between the two laws, it is also necessary to update the Federally conducted regulation to align it with the relevant provisions of Title II of the ADA. An updated Federally conducted regulation would consolidate the existing Section 504 requirements in one place for easy reference.

Summary of Legal Basis: The summary of the legal basis of authority for this regulation is set forth above in the abstract.

Alternatives: There are no appropriate alternatives to issuing this NPRM since it implements requirements and limitations arising from the statute and judicial decisions.

Anticipated Cost and Benefits: Because the NPRM would incorporate existing legal requirements and limitations in the Department's section 504 Federally conducted regulation, the Department does not anticipate any costs from this rule.

Risks: Failure to update the Department's section 504 Federally conducted regulation to conform to legal requirements and limitations provided under 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	12/00/22	
NPRM Comment Period End.	02/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Additional Information: Transferred from RIN 1190–AA60.

Agency Contact: Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307–0663.

RIN: 1190–AA73

DOJ—CRT

120. Nondiscrimination on the Basis of Disability by State and Local Governments: Medical Diagnostic Equipment [1190–AA78]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 12101 *et seq.*

CFR Citation: 28 CFR 35.

Legal Deadline: None.

Abstract: The Americans with Disabilities Act (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. The Department will seek public comment on proposed changes to its regulations to adopt the U.S. Architectural and Transportation Barriers Compliance Board's (Access Board) Standards for Medical Diagnostic Equipment (MDE) to ensure that MDE is accessible to persons with disabilities in their participation in or benefit of services, programs, and activities provided by public entities and public accommodations. The Department previously announced that it intends to issue an ANPRM, titled Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture (RIN 1190–AA76) addressing possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture generally. However, given the specialized nature of this equipment, the Department has decided to publish a separate NPRM that addresses the accessibility of MDE.

Statement of Need: MDE that is accessible to individuals with disabilities is often critical to a public entity's or public accommodation's ability to provide an individual with a disability with equal access to its health care programs, services, and activities. The Department's ADA regulations

contain the ADA Standards for Accessible Design (the ADA Standards), which include accessibility standards for some types of fixed or built-in equipment and furniture. However, there are no specific provisions in the ADA Standards or the ADA regulations explicitly addressing the accessibility of MDE. While manufacturers have begun to offer MDE that is more accessible to and usable by people with disabilities and the Department has sought to ensure people with disabilities have equal access to medical care under the ADA's general regulatory provisions through enforcement and the issuance of technical assistance, the Department recognizes that more specific standards are necessary to guarantee full and equal access to health care services, programs, and activities. This rule is necessary to ensure that inaccessible MDE does not prevent people with disabilities from accessing title II and title III entities' programs, services, and activities.

Summary of Legal Basis: The summary of the legal basis for this regulation is set forth in the above abstract.

Alternatives: There are no appropriate alternatives to issuing this NPRM. The Access Board has issued standards on MDE, but these standards only become legally enforceable under the ADA when the Department adopts them through a rulemaking. Alternatively, the Department could create its own technical standards and implement them through a rulemaking.

Anticipated Cost and Benefits: The Department anticipates costs to covered entities (*i.e.,* State and local governments). Entities may need to acquire new MDE to meet technical standards that the Department includes in its regulations. The Department also anticipates significant benefits to people with disabilities, who may obtain greater access to public entities' services, and activities, which may improve their health or potentially save their lives.

Risks: Failure to adopt technical standards to ensure that people with disabilities have access to MDE in public entities' programs, services, and activities will prevent people with disabilities from having the full and equal access to which they are entitled. The health of people with disabilities may suffer as a result of unequal access to medical care.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	
NPRM Comment Period End.	06/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307–0663.

Related RIN: Split from 1190–AA76

RIN: 1190–AA78

DOJ—CRT

121. Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments [1190–AA79]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 12101 *et seq.*

CFR Citation: 28 CFR 35.

Legal Deadline: None.

Abstract: The Americans with Disabilities Act (ADA) states that: no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity 42 U.S.C. 12132. However, many websites from public entities (*i.e.,* State and local governments) fail to incorporate or activate features that enable users with disabilities to access the public entity's services, programs, and activities. The Department intends to publish a Notice of Proposed Rulemaking (NPRM) to amend its Title II ADA regulation to provide technical standards to assist public entities in complying with their existing obligations to make their websites accessible to individuals with disabilities.

Statement of Need: Just as steps exclude people who use wheelchairs from a building, inaccessible websites can exclude people with a range of disabilities from accessing critical State and local government services. The Department is proposing technical requirements to provide concrete standards to public entities on how to fulfill their obligations under title II to provide access to all of their services, programs, and activities that are provided via the web. The Department believes the requirements described in this rule are necessary to ensure the equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities as set forth in the ADA. 42 U.S.C. 12101(a)(7). This is particularly necessary now that public entities increasingly rely on the web to provide their services, programs, and activities.

Summary of Legal Basis: The summary of the legal basis for this regulation is set forth in the above abstract.

Alternatives: The Department intends to consider various alternatives for ensuring full access to websites of State and local Governments and will solicit public comments addressing these alternatives.

Anticipated Cost and Benefits: The Department anticipates that this rule will be ''economically significant,'' that is, that the rule will have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, the environment, public health or safety, or State, local or tribal governments or communities. However, the Department believes that revising its title II rule to clarify the obligations of State and local governments to provide accessible websites will significantly increase equal access by providing citizens with disabilities the opportunity to participate in, and benefit from, State and local government services, programs, and activities. It will also ensure that individuals with disabilities have access to important services and information that are provided over the web, such as benefit applications and emergency information. In drafting this NPRM, the Department will attempt to minimize the compliance costs to State and local governments while maximizing the benefits of compliance to persons with disabilities.

Risks: If the Department does not revise its ADA title II regulations to address website accessibility, persons with disabilities in many communities will continue to be unable to access their State and local governmental services in the same manner available to citizens without disabilities, and in some cases will not be able to access those services at all. And State and local governments will not have specific information about how to meet their ADA obligations with respect to website accessibility.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	
NPRM Comment Period End.	07/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Local, State.

Agency Contact: Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307–0663.

RIN: 1190–AA79

DOJ—CRT

Long-Term Actions

122. Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way [1190–AA77]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

CFR Citation: 28 CFR 35.

Abstract: The Department of Justice anticipates issuing a Notice of Proposed Rulemaking that would establish accessibility requirements to help public entities meet their existing Americans with Disabilities Act (ADA) obligations to ensure that sidewalks and other pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. The Architectural and Transportation Barriers Compliance Board (Access Board) intends to issue accessibility guidelines for pedestrian facilities in the public right-of-way, and the Department of Justice is required under the ADA to promulgate regulations that include standards that are consistent with the Access Board's minimum guidelines.

Statement of Need: This rule is necessary to help public entities meet their existing ADA obligations to ensure that pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. The Access Board intends to issue minimum accessibility guidelines for pedestrian facilities in the public right-of-way, and the ADA requires the Department of Justice to include standards in its regulations implementing 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 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 help ensure that people with disabilities have access to sidewalks, curb ramps, pedestrian street crossings, and other pedestrian facilities in the public right-of-way.

Summary of Legal Basis: The summary of the legal basis for this regulation is set forth in the above abstract.

Alternatives: There are no appropriate alternatives to issuing this NPRM because the ADA requires the Department of Justice to include standards in its regulations implementing 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 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 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	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307–0663.

RIN: 1190–AA77

DOJ—DRUG ENFORCEMENT ADMINISTRATION (DEA)

Proposed Rule Stage

123. Medications To Prevent Narcotic Opioid Withdrawal Symptoms [1117–AB73]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 821, 827, 871(b)

CFR Citation: 21 CFR 1306.

Legal Deadline: Final, Statutory, June 9, 2021.

Abstract: DEA proposes to revise the existing regulations found in 21 CFR 1306.07(b), regarding the administration of narcotic drugs to prevent or mitigate opioid withdrawal, as instructed by Congress in Public Law 116–215 (effective December 11, 2020). The existing regulation is inadequate for emergency treatment purposes, as practitioners are prohibited from administering narcotic drugs, for the purpose of relieving acute withdrawal symptoms, to a patient for not more than one day at a time for not more than three consecutive days. In accordance with the statute, DEA proposes to allow non-pharmacy individual practitioners to dispense (including prescribe) up to a three-day supply of opioid medications in schedules III, IV, or V at one time to prevent or mitigate opioid withdrawal.

Statement of Need: The Drug Enforcement Administration (DEA) is revising existing regulations to expand access to medications for the treatment of opioid use disorder pursuant to the Easy Medication Access and Treatment for Opioid Addiction Act (the Act). The Act directed DEA to revise its regulation to allow practitioners to dispense not more than a three-day supply of narcotic drugs to one person or for one person's use at one time for the purpose of relieving acute withdrawal symptoms associated with opioid use disorder. DEA is amending the relevant regulation by allowing all DEA-registered non-pharmacy individual practitioners, subject to certain conditions, to dispense up to a three-day supply of narcotic medications in schedules III, IV, or V approved by the Food and Drug Administration specifically for use in maintenance or treatment of opioid use disorder, for the purpose of relieving acute withdrawal symptoms while arrangements are being made for referral for treatment, along with adding a new record keeping requirement. Additionally, DEA is redesignating the relevant subsections within the affected regulation in order to achieve greater organization and clarity.

Summary of Legal Basis: DEA implements and enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA), and the Controlled Substances Import and Export Act (CSIEA), as amended.[1]

As mandated by the CSA, DEA establishes and maintains a closed system of control for the manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822. The CSA authorizes the Administrator of DEA (by delegation of authority from the Attorney General) to register an applicant to manufacture, distribute or dispense controlled substances if the Administrator determines such registration is consistent with the public interest. The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA.

Alternatives: There are no feasible alternatives to this proposed rule.

Anticipated Cost and Benefits: Under the IFR, the patient will be able to receive three days of medication with just one visit to the emergency department (ED). The increased medication may lead to an improved patient outcome, resulting in benefits associated with lower societal cost of opioid abuse, discussed below. Furthermore, additional physician's time will not be needed to dispense medication, resulting in time and cost savings to the ED. However, practitioners must check the individual's PDMP, and maintain a record that the PDMP was reviewed, which will increase costs to the ED.

Additionally, the expansion to include all DEA-registered non-pharmacy individual practitioners allows an individual to be treated not only by a physician, but also by other non-pharmacy practitioners. This greatly expands access to treatment and helps alleviate the burden on hospitals and urgent care centers that are short-staffed or that do not always have a physician on duty. The intent of this regulation is to provide non-DATA waived practitioners, and those not registered as an NTP, with a means to treat individuals experiencing acute withdrawal symptoms on an emergency basis while future, continued treatment is coordinated.

Risks: DEA believes any risks associated with this IFR will be minimal and will be greatly outweighed by the benefits this IFR will provide.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

URL For More Information: DRW@dea.gov.

URL For Public Comments: www.regulations.gov.

Agency Contact: Scott A. Brinks, Section Chief, Regulatory Drafting and Support Section, Diversion Control Division, Department of Justice, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, *Phone:* 571 362–8209, *Email: scott.a.brinks@dea.gov.*

RIN: 1117–AB73

DOJ—DEA

124. Expansion of Induction of Buprenorphine Via Telemedicine Encounter [1117–AB78]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 802(54)(G)

CFR Citation: 21 CFR 1300; 21 CFR 1304; 21 CFR 1306.

Legal Deadline: None.

Abstract: DEA is promulgating regulatory changes which would clarify the rights and obligations for DATA-waived registrants when prescribing buprenorphine to patients with Opioid Use Disorder pursuant to a telemedicine encounter which utilizes audio-only telecommunication systems.

Statement of Need: During the current opioid epidemic, there is a shortage of data-waived health care providers. This proposed rule will allow for expanded access to opioid addiction treatment.

Summary of Legal Basis: The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act) was enacted to prevent the illegal distribution and dispensing of controlled substances by means of the internet. It did so by amending the Controlled Substances Act (CSA) to require, among other things, that the dispensing of controlled substances by means of the internet be predicated on a valid prescription involving at least one in-person medical evaluation, with limited exceptions. One of those exceptions is when the Drug Enforcement Administration (DEA) and the Department of Health and Human Services (HHS) have jointly, by regulation, determined a practice is being conducted under circumstances consistent with effective controls against diversion and otherwise consistent with the public health and safety. DEA is amending its regulations, in concert with HHS, to expand the circumstances under which individual practitioners are authorized to prescribe schedule III–V controlled substances which are approved for treating opioid use disorder, either as medication maintenance or treatment for withdrawal management, referred to as maintenance or detoxification treatment via a telemedicine encounter, including an audio-only telemedicine encounter.

Alternatives: There are no feasible alternatives to this proposed rule.

Anticipated Cost and Benefits: The estimated costs for opioid use disorder and fatal opioid overdose in 2017 were estimated to be $1.02 trillion. With regards to the opioid epidemic, the majority of the economic burden is due to reduced quality of life from opioid use disorder and the value of life lost due to fatal opioid overdose. Non-fatal costs include costs associated with health care, substance use disorder treatment, criminal justice, lost productivity, and the value of reduced quality of life. While DEA is unable to quantify how many of the affected patients will be successfully treated for opioid use disorder or how many fatal opioid overdoses will be avoided as a result of this proposed rule, the potential economic benefit is disproportionately large compared to any cost associated with this rule.

Risks: The proposed rule will reduce the requirements imposed on practitioners who wish to prescribe schedule III–V controlled substances as part of medication treatment for opioid use disorders. DEA understands that there is a risk of misuse and diversion of drugs approved for the use in maintenance treatment or withdrawal management, which could be increased by expanded prescribing.

While the proposed rule may increase the risk of diversion, with the proposed safeguards, and given the safety profile of buprenorphine, DEA estimates this increased risk will be minimal. Requirements to check the PDMP prior to issuance of a prescription, 30-day limitations, in-person requirements for follow-up appointments, and more

[1] DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

detailed requirements for record-keeping are expected to minimize the diversion of buprenorphine via telemedicine, including audio-only telemedicine.

Timetable:

Action	Date	FR Cite
NPRM	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

URL For More Information: DRW@dea.gov.

URL For Public Comments: www.regulations.gov.

Agency Contact: Scott A. Brinks, Section Chief, Regulatory Drafting and Support Section, Diversion Control Division, Department of Justice, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, *Phone:* 571 362–8209, *Email: scott.a.brinks@dea.gov.*

RIN: 1117–AB78

DOJ—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR)

Proposed Rule Stage

125. Bars to Asylum Eligibility and Related Procedures [1125–AB12]

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 1208; 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 1615–AC41), 85 FR 67202 (Oct. 21, 2020), and Asylum Eligibility and Procedural Modifications (RINs 1125–AA91 and 1615–AC44), 85 FR 82260 (Dec. 17, 2020), final rules. The Departments propose to modify or rescind the regulatory changes promulgated in these two 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 feasible alternatives to revising those two rules. Relying on litigation to address these rules could be extremely time-consuming and may introduce confusion as to whether the regulations remain in effect. Thus, the Departments consider this alternative to be a burdensome and inadvisable course of action and, therefore, not feasible.

Anticipated Cost and Benefits: The Departments 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 conclude. Thus, the Department strongly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

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

126. Particular Social Group and Related Definitions and Interpretations for Asylum and Withholding of Removal [1125–AB13]

Priority: Other Significant.

Legal Authority: 8 U.S.C. 1101(a)(42); 8 U.S.C. 1158; 8 U.S.C. 1225; 8 U.S.C. 1231 and 1231 note; Executive Order 14010, 86 FR 8267 (Feb. 2, 2021)

CFR Citation: 8 CFR 208; 8 CFR 235; 8 CFR 244; 8 CFR 1208; 8 CFR 1244.

Legal Deadline: None.

Abstract: This rule proposes to amend Department of Homeland Security (DHS) and Department of Justice (DOJ) (collectively, ''the Departments'') regulations that govern eligibility for asylum and withholding of removal. The amendments focus on portions of the regulations that address the definitions of membership in a particular social group and the interpretation of several other elements of eligibility for asylum that are often determinative in particular social group claims, including the requirements of a failure of State protection, and determinations about whether persecution is on account of a protected ground. The rule will also propose to modify or rescind portions of the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42).

This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a particular social group.

Statement of Need: This rule provides guidance on a number of key interpretive issues of the refugee definition used by adjudicators deciding asylum and withholding of removal (withholding) claims. The interpretive issues include whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This rule will aid in the adjudication of claims made by

applicants whose claims fall outside of the rubric of the protected grounds of race, religion, nationality, or political opinion. One example of such claims 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, DOJ Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals.

Furthermore, on February 2, 2021, President Biden issued Executive Order 14010 that directs DOJ and DHS [to] promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a ''particular social group,'' as that term is used in 8 U.S.C. 1101(a)(42)(A), as derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Summary of Legal Basis: The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin ''who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' Section 101(a)(42) of the Immigration and Nationality Act.

Alternatives: Because this rulemaking is mandated by executive order, there are no feasible alternatives at this time.

Anticipated Cost and Benefits: DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

Risks: Without this rulemaking, the circumstances by which a person is considered a member of a particular social group will continue to be subject to judicial and agency interpretation, which may differ by circuit and changes in administration.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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–AA94, Related to 1615–AC65, Related to 1615–AC42

RIN: 1125–AB13

DOJ—EOIR

127. Procedures for Asylum and Withholding of Removal [1125–AB15]

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; 8 CFR 1208; 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 asylum and for withholding of removal 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 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 feasible alternatives to revising the regulations. Relying on litigation could be extremely time-consuming and may introduce confusion as to whether the regulation is in effect. Thus, the Department considers this alternative to be an inadequate and inadvisable course of action.

Anticipated Cost and Benefits: The Department 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 the proposed rule, although, as previously stated, the proposed rule restores most of the regulatory language to that which was in effect before the December 2020 rule. Further, an immigration judge's ability to set filing deadlines is already established by

regulation, and filing deadlines for both applications and supporting documents are already well-established aspects of immigration court proceedings guided by regulations and the Office of the Chief Immigration Judge Practice Manual. Thus, the Department expects little in the proposed rule to require extensive familiarization.

Risks: Without this rulemaking, the regulations will remain enjoined pending litigation (as described in the Alternatives section). This is inadvisable, as litigation is unpredictable and often takes a long time to conclude. The Department strongly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

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.

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–AA93

RIN: 1125–AB15

DOJ—EOIR

128. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure [1125–AB18]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1154–1155; 8 U.S.C. 1158; 8 U.S.C. 1182; 8 U.S.C. 1226; 8 U.S.C. 1229; 8 U.S.C. 1229a; 8 U.S.C. 1229b; 8 U.S.C. 1229c; 8 U.S.C. 1231; 8 U.S.C. 1254a; 8 U.S.C. 1255; 8 U.S.C. 1324d; 8 U.S.C. 1330; 8 U.S.C. 1361–1362; 28 U.S.C. 509–510; 28 U.S.C. 1746; sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953, Comp. p. 1002; sec. 203 of Pub. L. 105–100, 111 Stat. 2196–200; secs. 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; sec. 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328

CFR Citation: 8 CFR 1003; 8 CFR 1239; 8 CFR 1240; . . .

Legal Deadline: None.

Abstract: On December 16, 2020, by a rule titled Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure (RIN 1125–AA96) the Department of Justice (Department) amended its regulations regarding finality of case disposition at both the immigration court and appellate levels. The Department is planning to modify or rescind those regulations under this RIN.

Statement of Need: On December 16, 2020, the 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 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 feasible alternatives to revising the regulations. Relying on litigation could be extremely time-consuming and may introduce confusion as to the regulations' efficacy. 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 conclude. The Department strongly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

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.

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–AA96

RIN: 1125–AB18

DOJ—EOIR

Final Rule Stage

129. Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers [1125–AB20]

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 212; 8 CFR 235; 8 CFR 1003; 8 CFR 1208; 8 CFR 1230; 8 CFR 1235; 8 CFR 1240.

Legal Deadline: None.

Abstract: On August 20, 2021, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) (collectively the ''Departments'') published a notice of proposed rulemaking (NPRM or proposed rule) 86 FR 46906 that proposed amending regulations governing the procedures for determining certain protection claims and available parole procedures for certain individuals subject to expedited removal and found to have a credible fear of persecution or torture. After a careful review of the comments received, on March 29, 2022, the Departments issued an interim final rule (rule or IFR) that responds to comments received in response to the NPRM and adopts the proposed rule with changes. Significantly, the IFR established timelines for the consideration of applications for asylum and related protection by DHS's U.S. Citizenship and Immigration Services (USCIS) and, as needed, DOJ's Executive Office for Immigration Review (EOIR). The IFR also provided that DHS will refer noncitizens whose applications are denied by USCIS to EOIR for streamlined removal proceedings. The Departments solicited further public comment on the IFR, which the Departments intend to consider and address in a final rule.

Statement of Need: There is wide agreement that the system for handling 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 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 more effective and 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.

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 lengthy waits 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 the 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
Correction	10/18/21	86 FR 57611
NPRM Comment Period End.	10/19/21	
Interim Final Rule	03/29/22	87 FR 18078
Interim Final Rule Effective.	05/31/22	
Interim Final Rule Comment Period End.	05/31/22	
Final Action	03/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

URL For More Information: http://regulations.gov.

URL For Public Comments: http://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–AC67

RIN: 1125–AB20

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U.S. DEPARTMENT OF LABOR

Fall 2022 Statement of Regulatory Priorities

Introduction

The Department's Fall 2022 Regulatory Agenda represents Secretary Walsh's commitment to serve American workers and empower workers morning, noon, and night. These rules will 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. The Department's rulemaking is focused on building opportunity and equity for all; ensuring safe jobs, essential protections, and fair workplaces for workers; and improving the administration of and strengthening the safety net for workers.

Since the start of the Biden Administration, the Department of Labor has begun historic rulemaking 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 have expeditiously withdrawn or rescinded rules as necessary to protect and strengthen workers' economic security, including rescinding the Joint Employer Rule.

• We issued a Final Rule implementing President Biden's Executive Order 14026 that increased the minimum wage for workers on federal contracts to $15 an hour as of January 30, 2022, and will phase out the subminimum wage for tipped workers on federal contracts by January 1, 2024. This will improve the economic security of workers on federal contracts and their families, many of whom are women and people of color.

• We issued a proposal to update the regulations implementing Davis-Bacon and Related Acts— the most comprehensive review of the regulation in 40 years—to ensure employers on federally funded or assisted construction projects pay locally prevailing wages to construction workers. The proposed rules would speed up prevailing wage updates, creating efficiencies in the current system and ensuring that prevailing wages keep up with actual wages. Over time, this would mean higher wages for workers, which is especially important given the administration's investments under the Bipartisan Infrastructure Law.

• 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 proposed a rule on determining employee or independent contractor status under the Fair Labor Standards Act. Protecting employees from being misclassified as independent contractors is critically important to ensure those workers receive the wages, benefits, and workplace protections they are entitled to under the law.

The 2022 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 vision to empower all workers morning, noon, and night. In the morning, this means investing in and valuing the nation's care economy so workers can thrive in their jobs, knowing their family's care needs are met. At noon, we are building a safe, modern, and inclusive workforce so workers have good jobs, opportunities for advancement, and a seat at the table. At night, we are supporting a lifetime of worker empowerment so workers have peace of mind and a safety net to protect against setbacks.

Under Secretary Walsh's leadership, the Department's regulatory efforts are informed by our commitments to advance equity for all workers, create a strong culture of evidence-based decision making, and engage and seek input from stakeholders. Our Regulatory Agenda additionally reflects our ongoing commitment to the Biden Administration's prioritization of economic security, raising wages, supporting worker organizing and empowerment, 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. 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. It also means supporting care economy workers to have safe and healthy jobs with fair pay.

• EBSA's joint rulemaking with the Departments of Health and Human Services and Treasury, implementing the Mental Health Parity and Addiction Equity Act (MHPAEA) will promote compliance and address amendments to the Act from the Consolidated Appropriations Act of 2021 to ensure parity of mental health and substance abuse disorder benefits so workers can access mental health care as easily as other types of care.

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 issue a Final Rule later this year to protect healthcare workers and healthcare support service workers from occupational exposure to COVID–19 in the workplace.

• 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 Prevention of 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 building a safe, modern, inclusive workforce means people can have a job that is safe and healthy, 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 launch small business consultations as its next step in advancing rulemaking on heat illness prevention to protect workers from heat hazards in the workplace. Increased temperatures are posing a serious threat to workers laboring outdoors and in non-climate controlled indoor settings. Exposure to excessive heat is not only a hazard in itself, causing heat illness and even death; it is also an indirect hazard linked to the loss of cognitive skills which can also lead to workplace injuries and worker deaths. Protecting workers will help to save lives while we confront the growing threat of climate change.

• MSHA will propose a new silica standard to effectively assess health concerns and prevent irreversible diseases with a goal of ensuring that all miners are safe at their workplaces.

• MSHA will promulgate a rule establishing that mine operators must develop and implement a written safety program for mobile and power haulage equipment used at surface mines and surface areas of underground mines, in order to reduce accidents and provide safer workplaces for miners.

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. OFCCP and WHD will focus on regulatory changes that will have significant impact on workers of color, immigrant workers, and workers with disabilities.

• OFCCP will finalize the proposal to rescind certain provisions related to the religious exemption for federal contractors and subcontractors. The rescission will return OFCCP to its longstanding approach of ensuring that the religious exemption contained in Executive Order 11246 is applied consistently with nondiscrimination principles of Title VII of the Civil Rights Act of 1964, as amended. The rescission will reaffirm nondiscrimination protections for employees of federal contractors.

• OFCCP will finalize the proposal to modify the agency's procedures for using resources strategically to remove barriers to equal employment opportunity. The rule will strengthen OFCCP's ability to resolve potential employment discrimination at federal contractor workplaces, which is creating hurdles to effective enforcement.

• WHD will finalize the proposal 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 executive, administrative, and professional exemption in the overtime regulations for the Fair Labor Standards Act. Updating the salary threshold will ensure that middle class jobs pay middle class wages, extending important overtime pay protections to millions of workers and raising their pay.

• WHD will finalize regulations that offer certain employees employed under the federal service contracts a right of first refusal of employment when contracts change over, thereby promoting the retention of skilled workers in the federal services workforce.

• ETA is proposing regulations that will ensure that H–2 visa programs promote worker voice and worker protections.

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 issuing final rules updating the Wagner-Peyser Employment Service regulations.

• ETA is focused on ensuring high-quality apprenticeship programs, and as part of this, has finalized the proposed rescission of the Industry Recognized Apprenticeship Programs (IRAP) rule in order to renew focus on Registered Apprenticeship.

The Department is committed to ensuring workers have a voice on the job 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.

• OLMS will consider finalizing regulations that require employers to check a box disclosing whether they are federal contractors or subcontractors on their ''LM–10'' forms, which are filed if they hire a consultant to persuade their workers about labor relations activities or to ''surveil'' employees or unions involved in a labor dispute.

Supporting a Lifetime of Worker Empowerment

The Department's regulatory priorities reflect the Secretary's focus 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 protect worker's pensions from the threats of climate-related financial risk by implementing two executive orders that focus on the impacts of climate change and climate-related financial risk. 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 finalized its proposal to address 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 to help fiduciaries safeguard the interests of participants and beneficiaries in the plan benefits.

• EBSA is proposing to update the definition of the term for a retirement plan ''fiduciary'' to ensure retirement savers get sound investment advice free from conflicts of interest.

• EBSA, along with the Departments of Health and Human Services and Treasury, is proposing regulations to implement the advanced explanation of benefits requirements of the No Surprises Act to ensure patients have transparency in their health care treatment options and expected costs before a scheduled service.

DOL—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)

Final Rule Stage

130. Final Action on Proposal To Rescind Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption [1250–AA09]

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 taking a final action on its proposal to rescind the December 8, 2020, final rule, ''Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption'' (85 FR 79324). 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 is issuing a final rule regarding its proposal to rescind the regulations established in the final rule titled ''Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption''. The NPRM proposed to return to the agency's traditional approach, which applies Title VII principles and applicable case law and thus would 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	
Final Rule	12/00/22	

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

131. Pre-Enforcement Notice and Conciliation Procedures [1250–AA14]

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 final rule 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 final rule would promote effective enforcement through OFCCP's regulatory procedures.

Statement of Need: The Office of Federal Contract Compliance Programs intends to issue a final rule to modify regulations that delineate procedures and standards the agency follows when issuing pre-enforcement notices and securing compliance through conciliation. This final rule 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: OFCCP considered the alternative of maintaining the current regulations established in the 2020 rule.

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	03/22/22	87 FR 16138
NPRM Comment Period End.	04/21/22	
Final Rule	03/00/23	

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—OFFICE OF LABOR-MANAGEMENT STANDARDS (OLMS)

Final Rule Stage

132. Form LM–10 Employer Report [1245–AA13]

Priority: Other Significant.

Legal Authority: 29 U.S.C. 433, 438

CFR Citation: 29 CFR 405.

Legal Deadline: None.

Abstract: The Department intends to review the layout of the Form LM–10 and will consider proposing a requirement for employers to disclose on the Form LM–10 whether the filer is a federal contractor and other related information.

Statement of Need: The Department proposes this change in response to the increased prevalence of, and public interest in, persuader activities in recent years. Disclosing contractor status is consistent with Congress's intent in enacting the LMRDA: [I]t continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection. 29 U.S.C. 401(a). Further, such disclosure is also consistent with the LMRDA's employer reporting requirements, which require a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a). The revision here proposes that one of the circumstances that must be explained is whether the payments concerned employees of Federal contractors or subcontractors and, if so, the filer would provide its Unique Entity Identity (UEI) and the relevant Federal contracting agency(ies) if applicable.

Summary of Legal Basis: The legal authority for this notice of proposed rulemaking is set forth in sections 203 and 208 of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. 433, 438.

Alternatives: There are three significant possible alternatives to the one checkbox and two lines that the Department is considering in drafting this proposed Form LM–10 modification: (1) no modification of Item 12, (2) only utilizing the checkbox modification, and (3) only requiring the employer to identify the UEI and contracting agencies. See the proposed revision for complete explanations of why the department chose not to pursue these alternatives.

Anticipated Cost and Benefits: This proposed amendment to the Form LM–10 has an approximated 10-year cost of between $55,642.00 and $166,926.00 spread across 647 separate yearly Form LM–10 filers. By updating the form and instructions to propose this change and to clearly and accurately describe the information employers must disclose, the proposed revision will support harmonious labor relations and will facilitate filers' understanding and compliance, thereby reducing incidents of noncompliance and associated costs incurred when noncompliant.

Risks: The Department of Labor has found no significant risk associated with the addition to Form LM–10 codified in this proposed revision.

Timetable:

Action	Date	FR Cite
NPRM	09/13/22	87 FR 55952
NPRM Comment Period End.	10/13/22	
Final Rule	02/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Agency Contact: Andrew R. Davis, Director of the Office of Program Operations, Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue NW, FP Building, Room N–5609, Washington, DC 20210, *Phone:* 202 693–0123, *Fax:* 202 693–1340, *Email: olms-public@dol.gov*.

RIN: 1245–AA13

DOL—WAGE AND HOUR DIVISION (WHD)

Proposed Rule Stage

133. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees [1235–AA39]

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 they pay for those services. In prior rulemakings, the Department explained its commitment to update the standard salary level and Highly Compensated Employees (HCE) total compensation levels more frequently. Regular updates promote greater stability, avoid disruptive salary level increases that can result from lengthy gaps between updates and provide appropriate wage protection.

Summary of Legal Basis: Section 13(a)(1) of the FLSA, codified at 29 U.S.C. 213(a)(1), exempts any employee employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the [Administrative Procedure Act.]) The FLSA does not define the terms executive, administrative, professional, or outside salesman. However, 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	05/00/23	

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

134. Nondisplacement of Qualified Workers Under Service Contracts [1235–AA42]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: E.O. 14055

CFR Citation: 29 CFR 9.

Legal Deadline: None.

Abstract: On November 18, 2021, President Biden signed Executive Order 14055 requiring the Secretary of Labor to issue final regulations on the nondisplacement of qualified workers under service contracts. This Executive Order will promote retention of experienced and skilled employees working on federal service contracts. Service work supporting federal government functions occurs all over the country, from federal building maintenance to services provided on military bases to skilled technicians operating and maintaining federal equipment. Under this Executive Order, when a federal service contract transitions from one contractor to another, the new contractor will be required to offer jobs to qualified employees who worked for the previous contractor and performed their jobs well. This prevents disruptions in federal services, makes it easier for employers to find workers who are already trained for the job, and saves taxpayer dollars.

Statement of Need: Executive Order 14055 requires the Secretary of Labor to issue regulations on the nondisplacement of qualified workers under service contracts.

Summary of Legal Basis: President Biden issued Executive Order 14055 pursuant to his authority under ''the Constitution and the laws of the United States,'' expressly including the Procurement Act. 86 FR 66397. The Procurement Act authorizes the President to ''prescribe policies and directives that the President considers necessary to carry out'' the statutory purposes of ensuring ''economical and efficient'' government procurement and administration of government property. 40 U.S.C. 101.121(a). Executive Order 14055 directs the Secretary to issue regulations to ''implement the requirements of this order.'' 86 FR 66399.

Alternatives: The Department has discussed a few specific provisions in which limited alternatives are possible.

First, in cases where a prime contract is above the simplified acquisition threshold, but their subcontract falls below this threshold, the Department could potentially have discretion to exclude these subcontracts from the requirements of this proposed rule. However, the Department believes that based on the way the Executive Order is worded, the intent was not to exclude these subcontracts. Second, the Department has some discretion in defining the specific analysis that must be completed by contracting agencies regarding location continuity. The Department is considering whether to require contracting officers to analyze additional factors when determining whether to decline to require location continuity. Any requirement of a more in-depth analysis could potentially increase costs for contracting agencies.

Anticipated Cost and Benefits: The proposed rule could result in costs for small business firms in the form of rule

familiarization costs, implementation costs, and recordkeeping costs.

Using a carryover workforce reduces disruption in the delivery of services during the period of transition between contractors, maintains physical and information security, and provides the Federal Government with the benefits of an experienced and well-trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements.

Risks: This action does not affect the public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/15/22	87 FR 42552
NPRM Comment Period End.	08/15/22	
NPRM Analyze Comments.	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Agency Contact: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406.

RIN: 1235–AA42

DOL—WHD

Final Rule Stage

135. Updating the Davis-Bacon and Related Acts Regulations [1235–AA40]

Priority: Economically Significant. Major under 5 U.S.C. 801.

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 proposed 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 were developed in considering proposed revisions to the current regulations. As part of the NPRM, one alternative the Department considered was requiring all contracting agencies—not just Federal agencies—that use wage determinations under the DBRA to submit an annual report to the Department outlining proposed construction programs for the coming year. But in the proposed rule, the Department noted that this requirement would be unnecessarily onerous for non-Federal contracting agencies, particularly as major construction projects such as those related to road and water quality infrastructure projects may be dependent upon approved funding or financial assistance from a Federal partner. The Department's proposal to require only Federal agencies to submit these annual reports would be simpler and less burdensome for the regulated community as some Federal agencies have already been submitting these reports pursuant to AAM (Dec. 27, 1985) and AAM 224 (Jan. 17, 2017).

Another alternative that was considered was the use of a different index instead on the Employment Cost index (ECI) for updating out-of-date non-collectively bargained wage rates. The Department considered proposing to use the Consumer Price Index (CPI) but considers the data source to be a less appropriate index to use because the CPI measures movement of consumer prices as experienced by day-to-day living expenses, unlike the ECI, which measures changes in the costs of labor in particular. The CPI does not track changes in wages or benefits, nor does it reflect the costs of construction workers nationwide.

The Department welcomed comments on these and other alternatives to the proposed rule.

Anticipated Cost and Benefits: The Department prepared estimates of the anticipated costs and benefits associated with the proposed rule. The Department considered employer costs associated with both (a) the return to the ''three-step'' method for determining the prevailing wage (*i.e.,* the change from a 50 percent threshold to a 30 percent threshold) and (b) the incorporation of a mechanism to periodically update certain non-collectively bargained prevailing wage rates. Costs presented are combined for both provisions. However, the Department believes most of the costs will be associated with the second provision. The Department estimated both regulatory familiarization costs and implementation costs. Year 1 costs are estimated to total $12.6 million. Average annualized costs across the first 10 years of implementation are estimated to be $3.9 million (using a 7 percent discount rate).

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/18/22	87 FR 15698
NPRM Comment Period End.	05/17/22	
Final Rule	02/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406.

RIN: 1235–AA40

DOL—EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)

Final Rule Stage

136. Wagner-Peyser Act Staffing [1205–AC02]

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 proposed to revise the Wagner-Peyser Act regulations regarding Employment Services (ES) staffing to require that states use state merit staff to provide ES services, including Migrant and Seasonal Farmworker (MSFW) services, and to improve service delivery.

Statement of Need: The Department identified areas of the regulation that changed to create a uniform standard of ES services provision for States.

Summary of Legal Basis: The Department is undertaking this rulemaking pursuant to its authority under section 12 of the Wagner-Peyser Act (29 U.S.C. 49k).

Alternatives: Two alternatives will be considered, and the public had the opportunity to comment on these alternatives during the comment period of the NPRM.

Anticipated Cost and Benefits: The proposed rule was estimated to have one-time rule familiarization costs of $4,205 in 2020 dollars, as well as unknown transition costs. The proposed rule also estimated the rule to have annual transfer payments of $9.6 million for three of the five States that currently have non-State merit staff providing some labor exchange services; transfer payments are monetary payments from one group to another, such as wages shifting from one employer to another, that do not affect total resources available to society. The transfer payments for this proposed rule were the estimated wage cost increases to the States associated with employee wages and fringe benefits. In the NPRM, the Department I solicited comments from stakeholders and the public on the unknown transition costs, plus transfer payments that would be incurred by any States with some non-State merit staff providing labor exchange services.

Risks: This action does not affect the public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/20/22	87 FR 23700
NPRM Comment Period End.	06/21/22	
Final Rule	06/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: State.

Agency Contact: Kimberly Vitelli, Administrator, Office of Workforce Investment, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, FP Building, Room C–4526, Washington, DC 20210, *Phone:* 202 693–3980, *Email: vitelli.kimberly@dol.gov*.

RIN: 1205–AC02

DOL—EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA)

Proposed Rule Stage

137. Definition of the Term ''Fiduciary'' [1210–AC02]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 29 U.S.C. 1002; 29 U.S.C. 1135; Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 252 (2020)

CFR Citation: 29 CFR 2510.3–21.

Legal Deadline: None.

Abstract: This rulemaking would amend the regulatory definition of the term fiduciary set forth at 29 CFR 2510.3–21(c) to more appropriately define when persons who render investment advice for a fee to employee benefit plans and IRAs are fiduciaries within the meaning of section 3(21) of ERISA and section 4975(e)(3) of the Internal Revenue Code. The amendment would take into account practices of investment advisers, and the expectations of plan officials and participants, and IRA owners who receive investment advice, as well as developments in the investment marketplace, including in the ways advisers are compensated that can subject advisers to harmful conflicts of interest. In conjunction with this rulemaking, EBSA also will evaluate available prohibited transaction class exemptions and propose amendments or new exemptions to ensure consistent protection of employee benefit plan and IRA investors.

Statement of Need: Many protections, duties, and liabilities in ERISA hinge on fiduciary status; therefore, the determination of who is a fiduciary is of central importance. The Department's existing regulatory definition of an investment advice fiduciary, adopted in 1975, established a five-part test for status as a fiduciary. The 1975 regulation's five-part test is not founded in the statutory text of ERISA, does not take into account the current nature and structure of many individual account retirement plans and IRAs, is inconsistent with the reasonable expectations of plan officials and participants, and IRA owners who receive investment advice, and allows many investment advice providers to avoid status as a fiduciary under federal pension laws. Under ERISA, fiduciaries must avoid conflicts of interest or comply with a prohibited transaction exemption with conditions designed to protect retirement investors. A wide and compelling body of evidence shows that conflicts of interest and forms of compensation that can subject advisers to harmful conflicts of interest, if left unchecked, too often result in biased investment advice and resulting harm to retirement investors. In conjunction with this rulemaking, EBSA also will evaluate available prohibited transaction class exemptions and consider proposing amendments or new exemptions to ensure consistent protection of employee benefit plan and IRA investors.

Summary of Legal Basis: The Department is proposing the amendment to its regulation defining a fiduciary pursuant to authority in ERISA section 505 (29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 252 (2020).

Alternatives: The Department considered as an alternative leaving the 1975 regulation in place without change.

Anticipated Cost and Benefits: The proposed amendment to the 1975 regulation would extend the protections associated with fiduciary status to more advice arrangements. The proposed regulation and associated prohibited transaction exemptions are expected to require providers of investment advice to adhere to a best interest standard, charge no more than reasonable compensation, eliminate or mitigate conflicts of interest, and make important disclosures to their customers, among other things. These protections would deliver substantial gains for retirement investors and economic benefits that more than justify the costs. The costs of the regulation are largely expected to stem from compliance with the associated prohibited transaction exemptions. Estimates of the cost of compliance are still under development and will be reflected in the notice of proposed rulemaking.

Risks: The Department believes that the 1975 regulation must be revised to align with retirement investors' reasonable expectations regarding their relationships with investment advice providers and to reflect developments in the investment advice marketplace since the 1975 regulation was adopted. Failure to appropriately define an investment advice fiduciary under ERISA is likely to expose retirement investors to conflicts of interest that will erode retirement savings. The risks are especially great with respect to recommendations to roll assets out of ERISA-covered plans to IRAs because of the central importance of retirement plan savings to workers, the relative size

of rollover transactions, and the technical requirements of the current fiduciary regulation, which have encouraged advisers to argue that their advice falls outside the regulation's purview regardless of its importance.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Karen E. Lloyd, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N–5655, Washington, DC 20210, *Phone:* 202 693–8510.

RIN: 1210–AC02

DOL—EBSA

138. Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 [1210–AC11]

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	12/00/22	

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: 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—MINE SAFETY AND HEALTH ASMINISTRATION (MSHA)

Proposed Rule Stage

139. Respirable Crystalline Silica [1219–AB36]

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	04/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, State.

Agency Contact: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 201 12th Street S, Suite 401, Arlington, VA 22202, *Phone:* 202 693–9440, *Fax:* 202 693–9441.

RIN: 1219–AB36

DOL—MSHA

Final Rule Stage

140. Safety Program for Surface Mobile Equipment [1219–AB91]

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 would reduce fatal and nonfatal injuries involving surface mobile equipment used at mines and improve miner safety and health.

Statement of Need: Although mine accidents are declining, accidents involving mobile and powered haulage equipment are still a leading cause of fatalities in mining. To reduce fatal and nonfatal injuries involving surface mobile equipment used at mines, MSHA is proposing a regulation that would require mine operators employing six or more miners to develop a written safety program for mobile and powered haulage equipment (excluding belt conveyors) at surface mines and surface areas of underground mines. The written safety program would include actions mine operators would take to identify hazards and risks to reduce accidents, injuries, and fatalities related to surface mobile equipment.

Summary of Legal Basis: Sections 101(a), 103(h), and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended (30 U.S.C. 811(a), 813(h), and 957).

Alternatives: MSHA considered requiring all mines, regardless of size, to develop and implement a written safety program for surface mobile equipment. Based on the Agency's experience, MSHA concluded that a mine operator with five or fewer miners would generally have a limited inventory of surface mobile equipment. These operators would also have less complex mining operations, with fewer mobile equipment hazards that would necessitate a written safety program. Thus, these mine operators are not required to have a written safety program, although MSHA would encourage operators with five or fewer miners to have safety programs. MSHA will consider comments and suggestions received on alternatives or best practices that all mines might use to develop safety programs (whether written or not) for surface mobile equipment.

Anticipated Cost and Benefits: The proposed rule would not be economically significant, and it would have some net benefits.

Risks: Miners operating mobile and powered haulage equipment or working nearby face risks of workplace injuries, illnesses, or deaths. The proposed rule would allow a flexible approach to reducing hazards and risks specific to each mine so that mine operators would be able to develop and implement safety programs that work for their operation, mining conditions, and miners.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	06/26/18	83 FR 29716
Notice of Public Stakeholder Meetings.	07/25/18	83 FR 35157
Stakeholder Meeting—Birmingham, AL.	08/07/18	
Stakeholder Meeting—Dallas, TX.	08/09/18	
Stakeholder Meeting (Webinar)—Arlington, VA.	08/16/18	
Stakeholder Meeting—Reno, NV.	08/21/18	
Stakeholder Meeting—Beckley, WV.	09/11/18	
Stakeholder Meeting—Albany, NY.	09/20/18	
Stakeholder Meeting—Arlington, VA.	09/25/18	
RFI Comment Period End.	12/24/18	
NPRM	09/09/21	86 FR 50496
NPRM Comment Period End.	11/08/21	
NPRM Reopening of the Rulemaking Record for Public Comments.	12/20/21	86 FR 71860
Virtual Public Hearing.	01/11/22	
NPRM Comment Period Extension End.	02/11/22	
Final Rule	07/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 201 12th Street S, Suite 401, Arlington, VA 22202, *Phone:* 202 693–9440, *Fax:* 202 693–9441.

RIN: 1219–AB91

DOL—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

Prerule Stage

141. Prevention of Workplace Violence in Health Care and Social Assistance [1218–AD08]

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 ..	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Local, State.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Email: levinson.andrew@dol.gov.*

RIN: 1218–AD08

DOL—OSHA

142. Heat Illness Prevention in Outdoor and Indoor Work Settings [1218–AD39]

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 U.S. workers and seriously injured more than 70,000 workers from 1992 through 2017, according to the Bureau of Labor Statistics. However, this is likely a vast underestimate, given that injuries and illnesses are under reported in the U.S., especially in the sectors employing vulnerable and often undocumented workers. Further, heat is not always recognized as a cause of heat-induced injuries or deaths and can easily be misclassified, because many of the symptoms overlap with other more common diagnoses.

To date, California, 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), OSHA published an ANPRM on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (October 27, 2021) to begin a dialogue and engage with stakeholders to explore the potential for rulemaking on this topic.

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 being the 6th hottest on record. Although official figures for 2022 are not yet available, we already know that in many states heat related deaths 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 an instead rely upon the General Duty Clause (OSH Act Section 5(a)(1) for select enforcement activity). As OSHA develops more information, it will also make decisions relating to the scope of the standard and the requirements it may impose.

Anticipated Cost and Benefits: The estimates of costs and benefits are still under development.

Risks: Analysis of risks is still under development.

Timetable:

Action	Date	FR Cite
ANPRM	10/27/21	86 FR 59309
ANPRM Comment Period Extended.	12/02/21	86 FR 68594
ANPRM Comment Period Extended End.	01/26/22	
Initiate SBREFA ..	01/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202–693–1950, *Email: levinson.andrew@dol.gov.*

RIN: 1218–AD39

DOL—OSHA

Proposed Rule Stage

143. Infectious Diseases [1218–AC46]

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	09/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: Local, State.

Federalism: Undetermined.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Email: levinson.andrew@dol.gov.*

RIN: 1218–AC46

DOL—OSHA

Final Rule Stage

144. Occupational Exposure to COVID–19 in Healthcare Settings [1218–AD36]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Occupational Safety and Health Act of 1970 (Public Law 91–596)

CFR Citation: 29 CFR 1910.501; 29 CFR 1910.502; 29 CFR 1910.504; 29 CFR 1910.505; 29 CFR 1910.506.

Legal Deadline: None.

Abstract: In accordance with President Biden's Executive Order 13999 on Protecting Worker Health and Safety (January 21st, 2021), OSHA issued an emergency temporary standard to address the grave danger of COVID–19 in healthcare workplaces. This standard contains provisions necessary to ensure the health and safety of workers. The agency believes the danger faced by healthcare workers continues to be of the highest concern and measures to prevent the spread of COVID–19 are still needed to protect them. OSHA announced on December 27, 2021 that it intended to continue to work expeditiously to issue a final standard that will protect healthcare workers from COVID–19 hazards.

However, given that OSHA anticipated a final rule could not be completed in a timeframe approaching the one contemplated by the OSH Act, the agency has stopped enforcing the non-recordkeeping provisions. OSHA has continued to work expeditiously to issue a final standard that will protect workers from COVID–19.

Statement of Need: Since the ETS was first issued, there have been successive waves of new COVID–19 variants, including the delta and omicron variants, as well as numerous subvariants of omicron. New cases of COVID–19 peaked at an average of over 800,000 cases a day in January, 2022 and from mid-May 2022 to present there has been an average of more than 100,000 new COVID–19 cases each day. As the public seeks medical care for their infections, healthcare workers continue to be exposed to COVID–19 in the course of their employment.

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 formally withdrawing the ETS and not finalizing it to a permanent standard. If it does issue a permanent standard, the agency could also consider expanding the scope so that the rule would include many ambulatory care settings that are engaged in direct COVID–19 care of patients or include not only maintenance activities, but also construction activities at healthcare facilities. The agency could also consider altering its regulatory approach by allowing more employer flexibility through performance-oriented provisions, rather than more prescriptive specifications. Lastly, the agency could consider the addition of new provisions, such as new requirements related to the control of outbreaks in healthcare facilities, or the removal of provisions, such as medical removal benefits.

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
Interim Final Rule	06/21/21	86 FR 32376
Interim Final Rule Effective.	06/21/21	
Interim Final Rule; Correction.	07/14/21	86 FR 37038
Interim Final Rule Comment Period Extended.	06/21/21	86 FR 38232
Interim Final Rule Comment Period Extended End.	08/20/21	
Final Rule	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202–693–1950, *Email: levinson.andrew@dol.gov.*

RIN: 1218–AD36

BILLING CODE 4510–HL–P

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 make our transportation the safest in the world for the benefit of all who use it, grow an inclusive and sustainable economy, reduce inequities across our transportation systems and the communities they affect, help tackle the climate crisis, and spur research and innovation.

Our focus on making ensuring the United States has the safest and most efficient transportation system in the world is as urgent as ever. For example, the Department recently finalized a rule to ensure that flight attendants are well rested when they perform their safety-critical duties. After decades of declines in the number of fatalities on our roads, the United States has seen 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 is also working to rapidly address the other urgent challenges facing our Nation. To help address climate change, in May 2022, the Department finalized a rulemaking setting more stringent vehicle emission limits for vehicle model years 2024–2026 than those set by the ''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).

In addition, the Department is working to greatly improve the transportation system experience for both users and people whose communities are served by or are near the transportation network. To that end, The Department is considering the following rulemakings: (1) Enhancing Transparency of Airline Ancillary Service Fees; (2) Airline Ticket Refunds; and (3) fuel economy standards for passenger cars, light-duty trucks, heavy-duty pickup trucks, and vans, as well as fuel efficiency standards for medium- and heavy-duty engines and vehicles.

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.

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. For example, the Department is engaged in rulemakings to measure and reduce emissions from transportation projects and improve emissions related to movement of natural gas.

Equity. Ensuring that the transportation system equitably benefits underserved communities is a top priority. This work is guided by the Departmental and interagency work being done pursuant to Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. 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: (1) a rulemaking to ensure that people with disabilities can access lavatories on single-aisle aircraft; (2) a rulemaking to enhance the safety of air travel for individuals with disabilities who use wheelchairs; and (3) a rulemaking to ensure that disabled persons have equitable access to transit facilities. In the rulemaking to enhance air travel safety for wheelchair users, the Department is considering, among other things, options to ensure that assistance provided to individuals with disabilities be provided in a safe manner and that disabled individuals' assistive devices not be mishandled.

The Department is prioritizing its regulatory actions to make sure those regulations 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.

Executive Order 14036 directs the Department to take actions that would promote competition and deliver benefits to America's consumers, including initiating a rulemaking to ensure that air consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' ''cancellation fees,'' and fees for seating adjacent to young children at the time of ticket purchase. Among a number of steps to further the Administration's goals in this area, the Department has initiated a rulemaking to enhance consumers' ability to determine the true cost of travel, titled ''Enhancing Transparency of Airline Ancillary Service Fees.''

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 also intends to propose that rulemaking requiring a safety management system for certain aircraft, engine, and propeller manufacturers; certificate holders conducting common carriage operations; and persons conducting certain, specific types of air tour operations. In addition, FAA will proceed with a rulemaking to further advance the integration of unmanned aircraft systems into the national airspace system.

Federal Highway Administration

FHWA carries out the Federal highway program in partnership with State and local agencies to meet the Nation's transportation needs. FHWA's mission is to improve the quality and performance of our Nation's highway system and its intermodal connectors.

Consistent with this mission, FHWA is scheduled to finalize its National Electric Vehicle Infrastructure (NEVI) Formula Program regulation as required by the Bipartisan Infrastructure Law (BIL) (enacted as the Infrastructure Investment and Jobs Act) (Pub. L. 117–

58) (Nov. 15, 2021). This regulation would enable States to implement federally-funded charging station projects in a standardized fashion across a national Electric Vehicle (EV) charging network that can be utilized by all EVs regardless of vehicle brand. Such standards would provide consumers with reliable expectations for travel in an EV across and throughout the United States and support a national workforce skilled and trained in EV supply equipment installation and maintenance.

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

NHTSA pursues policies that enable safety; establish light-, medium-, and heavy-duty vehicle fuel economy and fuel efficiency standards in furtherance of climate and energy conservation; enhance equity; and improve mobility in order to save lives, prevent injuries, and reduce economic and social costs due to roadway crashes. The statutory responsibilities of NHTSA relating to motor vehicles include reducing the number, and mitigating the effects, of motor vehicle crashes and related fatalities and injuries; providing safety-relevant information to aid prospective purchasers of vehicles, child restraints, and tires; and improving fuel economy and fuel efficiency standards requirements. NHTSA develops safety standards and other regulations driven by data and research, including those mandated by Congress under the Infrastructure Investment and Jobs Act, Moving Ahead for Progress in the 21st Century Act, the Fixing America's Surface Transportation Act, and the Energy Independence and Security Act, among others. NHTSA's regulatory priorities for Fiscal Year 2023 focus on issues related to safety, climate, equity, and vulnerable road users.

Relative to climate and equity, NHTSA plans to propose a rulemaking to address the next phase of Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles, pursuant to Executive Order 14037. Also pursuant to Executive Order 14037, NHTSA plans to propose the next phase of NHTSA's corporate average fuel economy (CAFE) standards for passenger cars and light trucks. To enhance the safety of vulnerable road users and vehicle occupants, NHTSA plans to issue a proposal to require automatic emergency braking (AEB) on light vehicles, including Pedestrian AEB. For heavy trucks, NHTSA plans to propose a rulemaking to require AEB.

Federal Railroad Administration

FRA exercises regulatory authority over all areas of railroad safety and, where feasible, incorporates flexible performance standards. The current FRA regulatory program continues to reflect a number of pending proceedings to satisfy mandates resulting from the Bipartisan Infrastructure Law (2021), Rail Safety Improvement Act of 2008 (RSIA08), and the FAST Act. These actions support a safe, high-performing passenger rail network, protect worker safety, and encourage innovation and the adoption of new technology to improve rail safety.

Federal Transit Administration

The mission of FTA is to improve public transportation for America's communities. To further that end, FTA provides financial and technical assistance to local public transit systems, including buses, subways, light rail, commuter rail, trolleys, and ferries, oversees safety measures, and helps develop next-generation technology research. FTA's regulatory activities implement the laws that apply to recipients' uses of Federal funding and the terms and conditions of FTA grant awards.

Maritime Administration

MARAD administers Federal laws and programs to improve and strengthen the maritime transportation system to meet the economic, environmental, and security needs of the Nation. To that end, MARAD's efforts are focused upon ensuring a strong American presence in the domestic and international trades and to expanding maritime opportunities for American businesses and workers.

MARAD's regulatory objectives and priorities reflect the Agency's responsibility for ensuring the availability of water transportation services for American shippers and consumers and, in times of war or national emergency, for the U.S. armed forces.

For Fiscal Year 2023, 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 2023, 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 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

145. +Enhancing Transparency of Airline Ancillary Service Fees [2105–AF10]

Priority: Other Significant.
Legal Authority: 49 U.S.C. 41712
CFR Citation: 14 CFR 399.
Legal Deadline: None.
Abstract: This rulemaking would amend DOT's aviation consumer protection regulations to ensure that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' ''cancellation fees,'' and seat fees that impact families traveling with children 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: The rule would yield societal benefits if it reduced deadweight loss from inaccurate price calculations or reduced search costs. Inaccurate price calculations lead to over consumption and can distort consumer perceptions in ways that confer a competitive advantage to producers who produce a lower-quality product. While we lack information to estimate benefits, we calculated a hypothetical example range using methods from earlier rulemakings. At the same time, the rule could lead to crowding out of other relevant information for some consumers. The potential effect represents an offset to benefits, and it is possible that it equals or outweighs the benefits.

The primary costs of the proposed rule are the costs that carriers and ticket agents would incur to share ancillary fee data, modify websites, and allow transactability for assigned seats for children 13 or under. These costs include startup implementation costs as well as ongoing costs. Third parties involved in data exchange, such as global distribution systems (GDS) and direct-channel companies, would incur costs as well despite not being directly regulated by the rule. Because these entities are already starting to upgrade systems for market reasons, the cost properly associated with the proposed rule is the cost of requiring them to upgrade earlier than they would without the rule.
Risks: n/a.
Timetable:

Action	Date	FR Cite
NPRM	10/20/22	87 FR 63718
NPRM Comment Period End.	12/19/22	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
URL For More Information: *www.regulations.gov*.
URL For Public Comments: *www.regulations.gov*.
Agency Contact: 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—OST

Final Rule Stage

146. +Accessible Lavatories on Single-Aisle Aircraft: Part II [2105–AE89]

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 would require 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	03/28/22	87 FR 17215
NPRM Comment Period End.	05/27/22	
Final Rule	04/00/23	

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*.
Related RIN: Split from 2105–AE32, Related to 2105–AE88
RIN: 2105–AE89

DOT—FEDERAL AVIATION ADMINISTRATION (FAA)

Proposed Rule Stage

147. +Safety Management System for Parts 21, 91, 135 and 145 [2120–AL60]

Priority: Economically Significant. Major under 5 U.S.C. 801.
Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 44701(a)(5)
CFR Citation: 14 CFR 135; 14 CFR 145; 14 CFR 21; 14 CFR 91.
Legal Deadline: None.
Abstract: This rulemaking would apply the requirements of 14 CFR part 5, with appropriate modifications. As a result, this rulemaking would require persons engaged in the design and production of aircraft, engines, or propellers; certificate holders that conduct common carriage operations under part 135; persons engaged in maintaining part 121 aircraft under part 145; and persons conducting certain, specific types of air tour operations under part 91 to implement a Safety Management System.
Statement of Need: Recent incidents and accidents have indicated the need

for action to improve safety in the National Airspace System (NAS). In addition, recommendations from the National Transportation Safety Board (NTSB), mandates in the Aircraft Certification Safety and Accountability (ACSA) Act (Pub. L. 116–260, December 27, 2020), agreements in International Civil Aviation Organization (ICAO) Annexes and Standards and Recommended Practices (SARPs), and recommendations from previous Aviation Rulemaking Committees (ARCs) indicate that expanded application of SMS is needed. Further, the successful implementation of Safety Management Systems (SMS) in part 121 suggests the potential benefit to expansion of SMS into other sectors of the aviation system. Therefore, the Federal Aviation Administration has determined that expanding the application of part 5 is necessary.

Summary of Legal Basis: The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. This rulemaking is also promulgated under 49 U.S.C. 44701(a)(5), 49 U.S.C. 44701(d)(1)(A), 49 U.S.C. 44701(a)(2), 49 U.S.C. 44707(2), 49 U.S.C. 44702 and 49 U.S.C. 44704. In addition, the Airport Certification, Safety, and Accountability Act, (the Act), Public Law 116–260, division V, title I, sec. 102 (December 27, 2020) requires the FAA to initiate a rulemaking to require that manufacturers that hold both a type certificate and a production certificate issued pursuant to 49 U.S.C. 44704 have a safety management system consistent with standards and recommended practices established by ICAO. This rulemaking is within the scope of the aforementioned authorities because it requires certain entities to develop and maintain an SMS to improve the safety of their operations. The development and implementation of SMS ensures safety in air transportation, manufacturing, and maintenance by helping certain entities proactively identify and mitigate safety hazards, thereby reducing the possibility or recurrence of accidents in air transportation.

Alternatives: The proposed expansion of the applicability of part 5 furthers the Administrator's mission of promoting the safe flight of civil aircraft in air commerce and reducing or eliminating the possibility or recurrence of accidents in air transportation. The FAA is currently exploring several alternatives to determine how the revised applicability would extend SMS requirements to parts 21, 91, 135, and 145.

Anticipated Cost and Benefits: The FAA is in the process of determining the costs and benefits associated with the proposed rule.

Risks: An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies. An SMS provides an organization's management with a set of decision-making tools that can be used to plan, organize, direct, and control its business activities in a manner that enhances safety and ensures compliance with regulatory standards. Adherence to standard operating procedures, proactive identification and mitigation of hazards and risks, and effective communications are crucial to continued operational safety. The FAA envisions an SMS would provide those covered by the proposed rule with an added layer of safety to help reduce the number of incidents, and accidents.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	

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: Scott VanBuren, Office of Accident Investigation and Prevention, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 494–8417, *Email:* *scott.vanburen@faa.gov*.

RIN: 2120–AL60

DOT—FEDERAL HIGHWAY ADMINISTRATION (FHWA)

Final Rule Stage

148. +National Electric Vehicle Infrastructure Formula Program [2125–AG10]

Priority: Other Significant.

Legal Authority: Infrastructure Investment and Jobs Act, Pub. L. 117–58 (Nov. 15, 2021), Pa

CFR Citation: Not Yet Determined.

Legal Deadline: NPRM, Statutory, May 13, 2022, The BIL requires establishment of minimum standards and requirements of the NEVI Formula Program within 180 days.

Abstract: This rulemaking would establish minimum standards and requirements for the implementation of the NEVI Formula Program under Title 23 of the United States Code, as required by the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021), Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J.

Statement of Need: The FHWA is directed by Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of the Bipartisan Infrastructure Law (BIL) (enacted as the Infrastructure Investment and Jobs Act) (Pub. L. 117–58) (Nov. 15, 2021) to create minimum standards and requirements for NEVI-funded projects. As outlined in statute, the purpose of the NEVI Formula Program is to ''provide funding to States to strategically deploy EV charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability.'' This purpose would be satisfied by creating a convenient, affordable, reliable, and equitable network of chargers throughout the country. Currently, there are no national standards for the installation, operation, or maintenance of EV charging stations, and wide disparities exists among EV charging stations in key components, such as operational practices, payment methods, site organization, display of price to charge, speed and power of chargers, cybersecurity and resilience of charger components and software, and information communicated about the availability and functioning of each charging station. The FHWA is directed by section 11129 of BIL, which amends 23 U.S.C. 109, by adding a requirement that EV charging station standards apply to all projects that install EV charging infrastructure using funds provided under title 23, United States Code. This proposed rule does not conflict with or

supersede other title 23, United States Code statutory requirements or their implementing regulations. This regulation would enable States to implement federally-funded charging station projects in a standardized fashion across a national EV charging network that can be utilized by all EVs regardless of vehicle brand. Such standards would provide consumers with reliable expectations for travel in an electric vehicle across and throughout the United States and support a national workforce skilled and trained in EVSE installation and maintenance.

Summary of Legal Basis: The FHWA is directed by Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of the Bipartisan Infrastructure Law (BIL) (enacted as the Infrastructure Investment and Jobs Act) (Pub. L. 117–58) (Nov. 15, 2021) to create minimum standards and requirements for NEVI-funded projects. The FHWA is directed by Section 11129 of BIL, which amends 23 U.S.C. 109, by adding a requirement that EV charging station standards apply to all projects that install EV charging infrastructure using funds provided under title 23, United States Code.

Alternatives: In the development of its proposal, FHWA considered alternatives to its published proposal including recommendations received as part of its Request for Information published in the **Federal Register** at 86 FR 67782 on November 29, 2021. Discussion is included in the preamble of the NPRM and in the preliminary Regulatory Impact Analysis document found at the docket for this rulemaking.

Anticipated Cost and Benefits: The preliminary Regulatory Impact Analysis document provided in the docket for this rulemaking provides a national estimate of the costs and benefits to implement this rulemaking. All of these minimum requirements are required by BIL. Many of the costs and benefits in the proposed rule are difficult to quantify, although for some provisions break even analysis and other illustrative calculations comparing the costs and benefits of alternative requirements have been provided. These illustrative calculations and qualitative analyses show that proposed requirements have advantages over other possible alternatives when considering costs and benefits.

Risks: None identified.

Timetable:

Action	Date	FR Cite
NPRM	06/22/22	87 FR 37262
Final Rule	12/00/22	
Final Action Effective.	01/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Undetermined.

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–AG10

DOT—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

Proposed Rule Stage

149. +Heavy Vehicle Automatic Emergency Braking [2127–AM36]

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: Final, Statutory, November 15, 2023, Complete rulemaking.

Abstract: Pursuant to a statutory mandate in the Bipartisan Infrastructure Law, 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 final rule.

Risks: The agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	01/00/23	

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: Lori Summers, Chief, Light Duty Vehicle Division, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–1740, *Email: lori.summers@dot.gov*.

Related RIN: Related to 2126–AC49

RIN: 2127–AM36

DOT—NHTSA

150. +Light Vehicle Automatic Emergency Braking (AEB) With Pedestrian AEB [2127–AM37]

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: Final, Statutory, November 15, 2023, Complete rulemaking.

Abstract: Pursuant to a statutory mandate in the Bipartisan Infrastructure Law, 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	12/00/22	

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: Lori Summers, Chief, Light Duty Vehicle Division, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–1740, *Email: lori.summers@dot.gov*.

RIN: 2127–AM37

DOT—NHTSA

151. +Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles [2127–AM39]

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 notice addresses coordination between NHTSA and the Environmental Protection Agency related to fuel efficiency and greenhouse gas standards for medium and heavy-duty engines and vehicles.

Statement of Need: This action is directed under Executive Order 14037.

Summary of Legal Basis: This rulemaking would respond to requirements of the Energy Independence and Security Act of 2007 (EISA).

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	05/00/23	

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–AM39

DOT—NHTSA

152. +Light Vehicle Cafe Standards Beyond MY 2026 [2127–AM55]

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: In response to Executive Order 14037, this notice proposes the next phase of NHTSA's corporate average fuel economy (CAFE) standards for passenger cars and light trucks.

Statement of Need: This action is directed under Executive Order 14037.

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 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	03/00/23	

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–AM55

DOT—FEDERAL RAILROAD ADMINISTRATION (FRA)

Proposed Rule Stage

153. +Train Crew Staffing (Section 610 Review) [2130–AC88]

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 train crews, 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, as well as the patchwork of State laws concerning minimum crew staffing requirements, FRA is considering a final rule 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 estimated the costs associated with special approvals, risk assessments, annual railroad responsibilities after receipt of special approval, and Government administration. FRA estimated the 10-year costs of the proposed rule to be $2.0 million, discounted at 7 percent. The estimated annualized costs of the proposed rule are $0.3 million discounted at 7 percent. The primary benefit of this rule is to ensure any railroad, seeking to operate a train with fewer than two crewmembers identifies, evaluates, and addresses, in a comprehensive and standardized manner, safety concerns that may arise from such operation. A second crewmember performs important safety functions that could be lost when reducing crew size below two. The benefits are discussed qualitatively, but not quantified for this rule.

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	07/28/22	87 FR 45564
NPRM Comment Period End.	12/21/22	
Final Rule	02/00/24	

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)

Final Rule Stage

154. +Pipeline Safety: Class Location Requirements [2137–AF29]

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: Preliminary estimated annual cost savings are $149 million.

Risks: The alternative conditions PHMSA is proposing to allow operators to manage class location changes through integrity management 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	06/00/23	

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 2023, TTB will continue its multi-year Regulations Modernization effort by prioritizing projects that reduce regulatory burdens, streamline and simplify requirements, and improve service to regulated businesses. These actions include rulemaking on streamlining permit and qualification requirements for distilled spirits plants, wineries, and breweries, and completing rulemaking to modernize the regulations regarding wine labeling and to authorize additional wine treating materials and processes. TTB will also prioritize rulemaking to implement provisions of 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, and transferred administration of tax benefits on imported alcohol from U.S. Customs and Border Protection (CBP).

In addition, TTB will also prioritize publishing rulemaking to implement recommendations of the Department of the Treasury's February 2022 report on Competition in the Markets for Beer, Wine, and Spirits, which was issued in response to Executive Order 14036, ''Promoting Competition in the American Economy.'' These actions focus on soliciting public comment on trade practice regulations that prevent anticompetitive practices and maintain a ''level playing field'' across the alcohol industry, and labeling and advertising regulations that would require alcohol beverage labels to include specific, content-related information on alcohol content, allergens, and other ingredients. They also include finalizing rulemaking on proposed new approved container sizes (''standards of fill'') for wine and distilled spirits.

The specific projects TTB plans to prioritize in FY23 are described below:

• *Streamlining and Modernizing the Permit Application Process (RINs: 1513–AC46, 1513–AC47, and 1513–AC48, Modernization of Permit and Registration Application Requirements for Distilled Spirits Plants, Permit Applications for Wineries, and Qualification Requirements for Brewers, respectively).*

In FY 2022, TTB proposed regulatory changes to eliminate or streamline application and qualification requirements for distilled spirits plants and breweries. In FY 2023, TTB intends to publish similar proposals for wineries, and to publish final rules to implement the changes for distilled spirits plants and breweries. These changes are expected to reduce the amount of information industry members must submit to TTB in connection with permit and similar applications to engage in regulated businesses, and reduce the types of operational activities that require prior approval, and overall reduce the regulatory burden on both new and existing businesses.

• *Modernizing the Alcohol Beverage Labeling and Advertising Requirements (RIN: 1513–AC67, Modernization of Wine Labeling and Advertising Regulations).*

The Federal Alcohol Administration Act requires that alcohol beverages introduced in interstate commerce have a label approved under regulations prescribed by the Secretary of the Treasury. TTB conducted an analysis of its alcohol beverage labeling regulations to identify any that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with that analysis. These regulations were also reviewed to assess their applicability to the modern alcohol beverage marketplace. As a result of this review, in FY 2019, TTB proposed revisions to the regulations concerning the labeling requirements for wine, distilled spirits, and malt beverages. TTB anticipated that these regulatory changes would assist industry in voluntary compliance, decrease industry burden, and result in the regulated industries being able to bring products to market without undue delay. TTB received over 1,100 comments in response to the notice, which included suggestions for further revisions. In FY 2020, TTB published in the **Federal Register** (85 FR 18704) a final rule amending its regulations to make permanent certain of the proposed liberalizing and clarifying changes, and to provide certainty with regard to certain other proposals that commenters generally opposed and that TTB did not intend to adopt. In FY 2022, TTB published in the **Federal Register** (87 FR 7526) a final rule that addressed remaining issues related to the labeling of distilled spirits and malt beverages and reorganized those regulations to make them easier to read and understand, for which industry members expressed support. In FY 2023, TTB intends to complete this modernization initiative by publishing a final rule to similarly reorganize the wine labeling regulations, address the remaining labeling issues related to wine, and finalize the regulations related to the advertising of wine, distilled spirits, and malt beverages.

• *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 intends to propose to amend 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 provided reduced excise taxes on certain quantities of beer, wine,

and distilled spirits produced in or imported into the United States. 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. In FY 2022, TTB published a temporary rule (87 FR 58021) establishing procedures for foreign producers to assign tax benefits to importers, and for importers to receive and apply the tax benefits applicable to specified limits of imported alcohol products entered for consumption in the United States beginning on January 1, 2023. In a concurrent notice of proposed rulemaking (87 FR 58043), TTB solicited comments on these amendments. In FY 2023, TTB intends to propose amendments to its regulations to address the application of the CBMA tax benefits to domestic beer, wine, and distilled spirits that were previously provided on a temporary basis, as well as 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.

• *Authorizing the Use of Additional Wine Treating Materials and Soliciting Comments on Proposed Changes to the Limits on the Use of Wine Treating Materials to Reflect ''Good Manufacturing Practice'' (1513–AC75).*

TTB intends to propose to amend its regulations pertaining to the production of wine to authorize additional treatments that may be applied to wine and to juice from which wine is made. These proposed amendments are in response to requests from wine industry members. Although TTB may administratively approve such treatments without amending the regulations, administrative approval does not guarantee acceptance in foreign markets of any wine so treated. Under certain international agreements, authorization of wine treatments through public notice facilitates the acceptance of exported wine made using those treatments in foreign markets. TTB also intends to propose for public comment additional changes to the regulations in response to a petition to allow more wine treating materials to be used within the limitations of ''good manufacturing practice'' rather than within specified numerical limits, thereby providing additional flexibility to winemakers.

• *Consideration of Updates to Trade Practice Regulations (RIN: 1513–AC92).*

TTB is seeking public comment on TTB's trade practice regulations related to the Federal Alcohol Administration Act's exclusive outlet, tied house, commercial bribery, and consignment sales prohibitions. Executive Order 14036 (''Promoting Competition in the American Economy''), the Department of the Treasury's related February 2022 report (''Competition in the Markets for Beer, Wine, and Spirits''), and public comments related to that report have raised questions about whether these regulations could be improved. TTB is publishing in FY 2023 an advance notice of proposed rulemaking and then will be considering the comments to assist the agency in formulating potential proposals to amend the regulations.

• *Labeling and Advertising of Alcohol Beverages with Alcohol and Nutritional Content, Allergens, and Ingredients (RIN: 1513–AC93, Labeling and Advertising of Distilled Spirits, Wines, and Malt Beverages With Statements of Alcohol and Nutritional Content; RIN: 1513–AC94, Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages; and 1513–AC95, Ingredient Labeling of Distilled Spirits, Wines, and Malt Beverages).*

TTB intends to request public comment on possible changes to its labeling and advertising regulations governing alcohol beverage products related to statements of alcohol and nutritional content, allergen labeling, and ingredient labeling. The February 2022 report issued by the Department of the Treasury (''Competition in the Markets for Beer, Wine, and Spirits'') discussed past and potential future proposals related to the labeling of alcohol beverage products with ''serving facts'' information. The report stated that TTB should revive or initiate rulemaking proposing mandatory information on alcohol content, nutritional content, and appropriate serving sizes for alcohol beverage products, as well as ingredient labeling. TTB intends to publish two notices of proposed rulemaking (one on alcohol-content and nutrition facts, and another on allergens) and an advance notice of proposed rulemaking on ingredient-labeling.

• *Standards of Fill for Wine and Distilled Spirits (RIN: 1513–AC86).*

TTB plans to publish a final rule to address its proposal published May 25, 2022 (87 FR 31787) to amend the regulations governing wine and distilled spirits containers. TTB proposed to add 10 additional authorized standards of fill for wine in response to requests it has received for such standards, and to be consistent with a Side Letter included as part of a U.S.-Japan Trade Agreement that addresses issues related to market access and, specifically, to alcohol beverage standards of fill. TTB also solicited comments on an alternative proposal to eliminate all but a minimum standard of fill for wine containers and all but a minimum and maximum for distilled spirits.

• *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 FY23.

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 2023 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 part 25).*

Along with the Federal Deposit Insurance Agency and the Board of Governors of the Federal Reserve, the OCC the OCC is considering whether to issue a joint final rule to modernize the Community Reinvestment Act regulations. A notice of proposed rulemaking was published on June 3, 2022 (87 FR 63884).

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.

• *Merchandise Produced by Convict or Forced Labor or Indentured Labor under Penal Sanctions.*

Treasury and CBP plan to publish a proposed rule to update, modernize, and streamline the process for enforcing the prohibition in 19 U.S.C. 1307 against the importation of merchandise that has been mined, produced, or manufactured, wholly or in part, in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions. The proposed rule would generally bring the forced labor regulations and detention procedures into alignment with other statutes, regulations, and procedures that apply to the enforcement of restrictions against other types of prohibited merchandise.

• *Non-Preferential Origin Determinations for Merchandise Imported From Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA).*

Treasury and CBP plan to finalize a proposed rule to harmonize non-preferential origin determinations for merchandise imported from Canada or Mexico. Such determinations would be made using certain tariff-based rules of origin to determine when a good imported from Canada or Mexico has been substantially transformed resulting in an article with a new name, character, or use. Once finalized, the rule is intended to reduce administrative burdens and inconsistency for non-preferential origin determinations for merchandise imported from Canada or Mexico for purposes of the implementation of the USMCA.

• *Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings.*

Treasury and CBP plan to finalize interim regulations (80 FR 61278) which amended CBP regulations to name the Automated Commercial Environment (ACE) as a CBP-authorized electronic data interchange (EDI) system for the processing of electronic entry and entry summary filings.

• *Elimination of Paper-Based Bond Applications and the Automated Processing of Bond Applications.*

Treasury and CBP plan to publish a proposed rule to replace the paper-based bond application and approval process with a streamlined electronic process. The proposed rule would implement the successful National Customs Automation Program (NCAP) test of the electronic bond process.

Financial Crimes Enforcement Network

As administrator of the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) is responsible for developing and implementing regulations that are the core of the Department's anti-money laundering (AML) and countering the financing of terrorism (CFT) efforts. FinCEN's responsibilities and objectives are linked to, and flow from, that role. In fulfilling this role, FinCEN seeks to enhance U.S. national security by making the financial system increasingly resistant to abuse by money launderers, terrorists and their financial supporters, and other perpetrators of crime.

The Secretary of the Treasury, through FinCEN, is authorized by the BSA to issue regulations requiring financial institutions to file reports and keep records that are highly useful in criminal, tax, or regulatory investigations, risk assessments, or proceedings, or intelligence or counter-intelligence activities, including analysis, to protect against terrorism. The BSA also authorizes FinCEN to require that designated financial institutions establish AML/CFT programs and compliance procedures. 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 2023 include:

• *Beneficial Ownership Information Reporting Requirements.*

On September 30 2022, FinCEN is issued a final rule entitled ''Beneficial Ownership Information Reporting Requirements'' (BOI reporting rule), requiring certain entities to file with FinCEN reports that identify two categories of individuals: the beneficial owners of the entity, and individuals who have filed an application with specified governmental authorities to create the entity or register it to do business. These regulations implement Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), and describe who must file a report, what information must be provided, and when a report is due. This final rule is the first of three rulemakings FinCEN is required to issue pursuant to the CTA. The other two required rulemakings which are discussed elsewhere in this regulatory plan are: (i) a regulation focused on establishing protocols to protect the security and confidentiality of beneficial ownership information (BOI) that will be reported to FinCEN, establishing the terms of access by authorized recipients to the BOI reported, and the use of FinCEN identifiers in making BOI reports; and (ii) revisions to FinCEN's customer due diligence (CDD) requirements for financial institutions. The final BOI reporting rule is effective January 1, 2024.

• *Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities*

FinCEN intends to issue a Notice of Proposed Rulemaking (NPRM) entitled ''Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities.'' The proposed regulations will establish protocols to protect the security and confidentiality of the beneficial ownership information (BOI) that will be reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act (CTA), and will establish the framework for access by authorized recipients to the BOI reported. The proposed regulations will also specify when and how reporting companies can use FinCEN identifiers to report the BOI of entities. The CTA was enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). This proposed rule is the second of three rulemakings FinCEN is required to issue under the CTA. With regard to the first required rulemaking, FinCEN issued a final rule entitled ''Beneficial Ownership Information Reporting Requirements'' (BOI reporting rule). The third required rulemaking will revise the customer due diligence (CDD) requirements for financial institutions. FinCEN previously issued an Advance Notice of Proposed Rulemaking (ANPRM) entitled ''Beneficial Ownership Information Reporting Requirements'' on April 5, 2021, that solicited comments on a wide range of questions that concerned all three rulemakings. FinCEN also previously issued a Notice of Proposed Rulemaking with the same title on December 8, 2021 (BOI Reporting NPRM) that addressed only the first of the three rulemakings, but the comments FinCEN received related to all three subjects. This proposed rule reflects FinCEN's consideration of public comments that have been received in response to the ANPRM and BOI Reporting NPRM. The proposed rule will also re-issue certain provisions of the BOI Reporting NPRM related to the use of FinCEN identifiers.

• *Section 6314. Updating Whistleblower Incentives and Protection.*

FinCEN intends to issue an 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 establishes a whistleblower program that requires FinCEN to pay an award, under regulations prescribed by FinCEN and subject to certain limitations that include availability of funding, 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 repeals 31 U.S.C. 5328, the previous whistleblower protection provision, and replaces 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 6101. Establishment of National Exam and Supervision Priorities.*

FinCEN intends to issue a Notice of Proposed Rulemaking (NPRM) as part of the establishment of national exam and supervision priorities. The proposed rule implements Section 6101(b) of the Anti-Money Laundering Act of 2020 (AML Act), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), that requires the Secretary of the Treasury (Secretary) to issue and promulgate rules for financial institutions to carry out the government-wide anti-money laundering and countering the financing of terrorism priorities (AML/CFT Priorities). The proposed rule: (i) incorporates a risk assessment requirement for financial institutions; (ii) requires financial institutions to incorporate AML/CFT Priorities into risk-based programs; and (iii) provides for certain technical changes. Once finalized, this proposed rule will affect all financial institutions subject to regulations under the Bank Secrecy Act and have AML/CFT program obligations.

• *Section 6212. Pilot Program on Sharing Information Related to Suspicious Activity Reports (SARs) Within a Financial Group.*

FinCEN intends to issue a Final Rule in order to implement Section 6212 of 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.

• *Real Estate Transaction Reports and Records.*

FinCEN intends to issue an NPRM to address money laundering threats in the U.S. real estate sector.

• *Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies 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.

• *Voluntary Information Sharing Among Financial Institutions Under Section 314(b) of the USA PATRIOT Act.*

FinCEN is considering issuing this rulemaking 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.

• *Revisions to Customer Due Diligence Requirements for Financial Institutions.*

FinCEN intends to issue an NPRM entitled ''Revisions to Customer Due Diligence Requirements for Financial Institutions,'' relating to Section 6403(d) of the Corporate Transparency Act (CTA). The CTA was enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). Section 6403(d) of the CTA requires FinCEN to revise its customer due diligence (CDD) requirements for financial institutions to account for the changes created by the two other rulemakings FinCEN is required to issue pursuant to the CTA. With regard to the first required rulemaking, FinCEN issued a final rule entitled ''Beneficial Ownership Information Reporting Requirements'' (BOI reporting rule). The second required rulemaking relates to access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN and the use of FinCEN identifiers. FinCEN previously issued an ANPRM entitled ''Beneficial Ownership Information Reporting Requirements'' on April 5, 2021, that solicited comments on a wide range of questions that concerned all three rulemakings. FinCEN also previously issued a Notice of Proposed Rulemaking with the same title on December 8, 2021 (BOI Reporting NPRM) that addressed only the first of the three rulemakings, but the comments FinCEN received related to all three subjects. The proposed rule reflects FinCEN's consideration of public comments that have been received in response to the ANPRM and BOI Reporting NPRM. The CTA requires that the revisions to the CDD requirements be finalized within one year after the effective date of the BOI reporting rule.

• *Section 6110. BSA Application to Dealers in Antiquities and Assessment of BSA Application to Dealers in Arts.*

FinCEN intends to issue a Notice of Proposed Rulemaking (NPRM) 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.

• *Section 6305. No Action Letter Program.*

FinCEN intends to issue an NPRM following the implementation of Section 6305 of the AML Act. This section requires 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. FinCEN issued an Advance Notice of Proposal Rulemaking (ANPRM) on June 6, 2022 with a 60 day comment period closing on August 5, 2022. The ANPRM solicited public comment on questions pertinent to the implementation of a no-action letter process at FinCEN. Given that the addition of a no-action letter process at FinCEN may impact or overlap with other forms of regulatory guidance and relief that FinCEN already offers, including exceptive or exemptive relief and administrative rulings, the ANPRM also sought public input on whether this process should be implemented and, if so, how a no-action letter process should interact with these other tools. FinCEN is reviewing the comments submitted in response to the ANPRM and considering the structure and timing of the issuance of the NPRM.

• *Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets.*

FinCEN is amending the regulations implementing the 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.

• *Amendment to the Bank Secrecy Act Regulations—Reports of Foreign Bank and Financial Accounts.*

FinCEN is amending the regulations implementing the BSA regarding reports of foreign bank and 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.

• *Amendments to the Definitions of Broker or Dealer in Securities (Crowdfunding).*

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.

• *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.

• *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 2023, Fiscal Service will accord priority to the following regulatory projects:

• *Revision of the Federal Claims Collection Standards*

Fiscal Service is proposing to amend the Federal Claims Collections Standards (FCCS), codified in 31 CFR parts 900–904, which is jointly administered by Treasury and the Department of Justice. The FCCS set standards for administrative collection, compromise, and suspension or termination of collection activity for federal nontax debts. They also set standards for referring federal nontax debts to DOJ for litigation. The proposed amendments, which have been jointly prepared by Treasury and DOJ, include revisions for equity and updates to conform to developments since the last publication of the regulations in 2000.

• *Regulations Governing Securities Held in Treasury Electronic Book-Entry Systems*

Fiscal Service is amending its regulations to include the governing of securities held in Treasury Electronic Book-Entry Systems, to be found at 31 CFR part 364. These regulations will inform customers of their rights with regard to marketable Treasury securities held in any system developed by Treasury after the effective date of these regulations. Fiscal Service intends to revise these regulations in the future to include the governing of United States Savings Bonds within these systems.

Internal Revenue Service

The Internal Revenue Service (IRS), working with Treasury's Office of Tax Policy, promulgates regulations that interpret and implement the Internal Revenue Code (Code), and other internal revenue laws of the United States. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible, which reduces the burdens on taxpayers and the IRS.

During fiscal year 2023, the priority of the IRS and the Office of Tax Policy is to provide guidance regarding implementation of key provisions of several public laws, including Public Law 117–169, known as the Inflation Reduction Act, the Infrastructure Investment and Jobs Act, Public Law 117–58, the American Rescue Plan Act of 2021, Public Law 117–2, the Taxpayer First Act, Public Law 116–25, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, and the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted as Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116–94. Treasury and the IRS intend to issue guidance, including NPRMs and TDs, with regard to the following key provisions of the Code:

• The energy efficient home improvement credit under § 25C of the Code.

• The residential clean energy credit under § 25D of the Code.

• The credit for alternative fuel refueling property under § 30C of the Code.

• The consumer vehicle credits under §§ 25 and 30D of the Code.

• The credit for sustainable aviation fuel under § 40B of the Code.

• The extension and modification of the production tax credit (PTC) for producing electricity from certain renewable resources under § 45 of the Code.

• The prevailing wage rate and apprenticeship requirements in § 45(b) as applicable for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 48, 48C, 48E, and 179D of the Code.

• The domestic content enhancements for purposes of §§ 45, 45Y, 48, 48E.The energy community enhancements for purposes of §§ 45, 45Y, 48, 48E.

• The new energy efficient home credit under § 45L of the Code.The extension and modification of the credit for carbon oxide sequestration under § 45Q of the Code.The zero-emission nuclear power PTC under § 45U of the Code.

• The clean hydrogen PTC under § 45V of the Code.

• The credit for qualified commercial clean vehicles under § 45W of the Code.The advanced manufacturing PTC under § 45X of the Code.

• The clean electricity PTC under § 45Y of the Code.

• The clean fuels production credit under § 45Z of the Code.

• The extension and modification of the investment tax credit (ITC) for energy property under § 48 of the Code.

• The allocation of amounts of environmental justice solar and wind capacity limitation to qualified solar and wind facilities under § 48(e) of the Code.

• The qualifying advanced energy project credit under § 48C of the Code. The advanced manufacturing ITC under § 48D of the Code as enacted by the CHIPS Act of 2022.The clean electricity ITC under § 48E of the Code.The corporate alternative minimum tax under §§ 53, 55, 56, and 56A of the Code.

• The energy efficient commercial buildings deduction under § 179D of the Code.

• The excise tax on the repurchase of corporate stock under § 4501 of the Code.

• The elective payment and transfer of credits for energy property & electricity produced from certain renewable resources under §§ 6417 and 6418 of the Code.

Consistent with the Administration's goals of equity and fairness in tax administration, using new funding provided by the Inflation Reduction Act, the IRS will seek to reduce burdens for taxpayers.

Underpayments by tax evaders shift burdens onto honest, hard-working Americans who follow the law as well as onto future generations. The new funding will be used to help ensure that everyone pays their fair share. Pursuant to the Inflation Reduction Act, billions of dollars will go toward substantial service improvements for taxpayers as they interact with the IRS. The IRS will improve customer service, answer more

calls, process returns and refunds faster, update computer systems, and simplify tax filing. The IRS will also expand the customer callback capability, which gives taxpayers an alternative to waiting on hold. This reduces burden and frustration for taxpayers.

The IRS will also transition to digital platforms, with better data tools to make more filings and processes available electronically, reduces audits and retires paper-based processes. IRS employees still need to manually transcribe millions of paper returns. Taxpayers can still choose to use paper, however, in this coming filing season, the IRS will automate the scanning of millions of individual paper returns into a digital copy. For taxpayers, this means faster processing and, ultimately, faster refunds for paper filers.

The IRS will expand the use of issue resolution tools so that taxpayers can access their own online account and get the information they need without the need of an IRS assistor. The new IRS Online Account features will make it easier to communicate with the IRS where most issues can be resolved online. Currently, when taxpayers receive a notice from the IRS, they generally need to respond via mail. The IRS is improving this, and during the 2023 filing season, millions of taxpayers will be able to receive and respond to notices online.

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 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 2022–21* (May 16, 2022). We also invite the public to provide us with their comments and suggestions for guidance projects throughout the year.

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DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) administers services and benefit programs that serve to honor our sacred obligation 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 honor the legacy of eligible veterans, members of the Reserve components, and their dependents through burial 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 twelve (12) high priority regulations that serve to facilitate the President's and Secretary's priorities for supporting veterans and improving VA programs and policies. These priorities include addressing the harmful effects associate with toxic exposure during military service, ending Veteran homelessness, reducing Veteran suicide, addressing the safety and well-being of veterans, caregivers, and VA clinical staff as the circumstances regarding COVID–19 continue to evolve, and promoting equity amongst underserved, vulnerable, and marginalized communities and veteran populations. VA is prioritizing these key Administration priorities by developing a structured plan as well as increasing resources to implement the provisions of these regulations and publish them as quickly as possible.

Additionally, the goal of VA's structured plan effectively implements statutory responsibilities, including those authorized through the [insert full name of PACT, and cite Pub. L.], by providing a ''One-VA'' experience for all Veterans, family members, survivors, and caregivers to proactively receive timely benefits, services, and high-quality health care through an empowered and engaged workforce. This process highlights VA priorities, promotes planning and coordination, and encourages public participation in the regulatory process.

These priority regulations are listed below in order of chronological RIN assignment, not by priority.

• *RIN 2900–AQ30 Final Rule—Modifying Copayments for Veterans at High Risk for Suicide*

VA amends its medical regulations that govern copayments for outpatient medical care and medications by effectively eliminating the copayment for outpatient care and reducing the copayment for medications dispensed to veterans identified as being at high risk for suicide. These amendments are in accordance with the President's priorities of reducing suicide.

• *RIN 2900–AQ96 Final Rule—Home Visits in Family Caregivers During COVID–19 National Emergency*

VA is revising its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) to relax the requirement for in-person home visits during the National Emergency related to Coronavirus Disease–2019 (COVID–19 and to ensure the safety and well-being of veterans, caregivers, and VA clinical staff as the circumstances regarding COVID–19 continue to evolve.

• *RIN 2900–AR10 Proposed Rule—Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Exposure to Certain Herbicide Agents*

The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations relating to exposure to herbicides, such as Agent Orange, in order to incorporate the provisions of the Blue Water Navy Vietnam Veterans Act of 2019 (the BWN Act). This proposed rule would extend the presumed area of exposure to the offshore waters of the Republic of Vietnam and expand the date ranges for presumption of exposure in the Republic of Vietnam and Korea. This rule would also clarify the definition of a *Nehmer* class member and establish entitlement to spina bifida benefits for children of certain veterans who served in Thailand. On the basis of VA's general rulemaking authority, VA also proposes to establish a presumption of herbicide exposure for certain veterans who served in Thailand and also proposes to codify longstanding procedures for searching for payees entitled to *Nehmer* class action

settlement payments. Lastly, this proposed rule incorporates the provisions contained in VA's RIN 2900–AR45, titled, Diseases Associated with Exposure to Certain Herbicide Agents (Bladder Cancer, Parkinsonism, and Hypothyroidism)'' as a result of VA withdrawing RIN 2900–AR45 from the Fall 2022 Unified Agenda. The proposed amendments in this regulation are in accordance with the President's priorities to address military toxic exposures.

• *RIN 2900–AR16 Final Rule—Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program*

The Department of Veterans Affairs (VA) amends it's regulations to reduce veteran suicide through 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. These amendments are in accordance with the President's priorities of reducing suicide.

• *RIN 2900–AR48 Interim Final Rule—Copayment Exemption for Indian Veterans*

The Department of Veterans Affairs (VA) is amending its medical regulations to implement a statute exempting Indian veterans from copayment requirements for the receipt of hospital care or medical services under laws administered by VA. These amendments are in accordance with the President's priorities by advancing equity and support to underserved, vulnerable and marginalized communities.

• *RIN 2900–AR60 Proposed Rule—Pilot Veterans Services Organization Complementary and Integrative Health Self-Care Well-Being Center Grant*

The Department of Veterans Affairs is proposing regulations to implement legislation authorizing VA to conduct a new, two-year grant program to fund eligible veterans services organizations (VSOs) to upgrade their community facilities, through construction or repair, to serve as complementary and integrative health self-care well-being (CIH W–B) centers to promote and expand CIH W–B programs. These regulations would specify grant eligibility criteria, the number of grants available, their maximum amount, constraints on the allocation and use of the funds, and other requirements necessary to implement this pilot grant program. These proposed amendments are in accordance with the President's priorities by advancing equity and support to underserved, vulnerable and marginalized communities.

• *RIN 2900–AR69 Proposed Rule—Expanded Burial Benefits Under Public Law 116–315*

The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations pertaining to burial benefits. Amendments include expanding reimbursement of transportation expenses to include covered Veterans' cemeteries, a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death, and extending the VA Plot or Interment Allowance to a tribal organization for interment of an eligible Veteran on trust land owned by, or held in trust for, a tribal organization. As amended, the regulations will conform to statutory changes enacted by sections 2201 and 2202 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 and Division CC of the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2022. The changes expand reimbursement of transportation expenses to include covered Veterans' cemeteries and provide a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death and will coincide with the effective date for the amendments to the United States Code (January 5, 2023), which is the date that is two years after the date of enactment of the Public Law. Furthermore, the changes extending the VA Plot or Interment Allowance to a tribal organization for interment of eligible Veterans on trust land owned by, or held in trust for, a tribal organization will coincide with the effective date for the amendments to the United States Code (March 15, 2022), which is the date of the enactment of the Public Law. These proposed amendments are in accordance with the President's priorities by advancing equity and support to underserved, vulnerable and marginalized communities.

• *RIN 2900–AR73 Final Rule—Technical Revisions To Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service*

The Department of Veterans Affairs (VA) is issuing this rule to amend its medical regulations governing eligibility for VA health care and copayment requirements to conform to recent statutory changes made by section 103 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). VA is changing its medical benefits enrollment criteria to include toxic-exposed veterans and veterans who supported certain overseas contingency operations, to exempt such veterans from copayments for certain care, and to provide per diem for nursing home care for such veterans. The amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

• *RIN 2900–AR74 Final Rule—Procedural Updates for the PACT Act*

The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulations to add additional presumptive exposure locations for radiation, as indicated in the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022. The intended effect of this amendment is to ease the evidentiary burden of this population of Veterans who file claims with VA based on radiation exposure in these locations. The amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

• *RIN 2900–AR75 Proposed Rule—Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure*

The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modified or established presumptions of service connection related to toxic exposure. Pursuant to the Act, VA is proposing to remove the manifestation period requirement and the minimum compensable evaluation requirement from Gulf War claims based on undiagnosed illness and medically unexplained chronic multisymptom illnesses. VA is also proposing to expand the definition of a Persian Gulf Veteran and update the list of locations eligible for a presumption of exposure to toxic substances, chemicals, or hazards based on Gulf War service. To implement additional provisions of the Act, VA is also proposing to codify the procedure for determining when

examinations and medical nexus opinions are required for claims based on toxic exposure. The proposed amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

• *RIN 2900–AR76 Proposed Rule—Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117–168*

The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning certain awards of Dependency and Indemnity Compensation (DIC). Relevant claimants will be eligible to elect a reevaluation of certain previously denied DIC determinations pursuant to changes that establish or modify a presumption of service-connection. Any award following reevaluation may be made retroactive to the date of a previously denied claim as if the establishment or modification of the presumption of service-connection had been in effect on the date of the submission of the original claim. With respect to new or initial awards of DIC pending before VA on or after August 10, 2022, VA proposes to utilize the most advantageous effective date amongst 38 CFR 3.114 and 3.400, to potentially grant an award earlier than August 10, 2022, if applicable. Lastly, as the PACT Act is silent with respect to changes in the accrued or substitution process as it relates to the reevaluation of DIC claims, VA proposes utilizing the regular processes regarding accrued and substitution benefits contained in 38 U.S.C. 5121 and 5121A. The amendments within this proposed rulemaking incorporate legislative updates enacted by the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (Pub. L. 117–168) (PACT Act) and will bring federal regulations into conformance with the statutory changes. The proposed amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

• *RIN 2900–AR77 Proposed Rule—Authorization of Electronic Notice in Claims Under Laws Administered by the Secretary of Veterans Affairs*

The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). VA is proposing how to obtain a claimant's election to opt-in to receive electronic notifications, how to revoke this option, and how electronic notification will be administered to eligible claimants. (Compensation, Pension, Insurance, Fiduciary, Veteran Readiness & Employment, Loan Guaranty, and Education). The proposed amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

VA

Proposed Rule Stage

155. Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure [2900–AR10]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 38 U.S.C. 1116; 38 U.S.C. 1116A; 38 U.S.C. 1116B; 38 U.S.C. 1821; 38 U.S.C. 1822

CFR Citation: 38 CFR 3.30; 38 CFR 3.309; 38 CFR 3.105; 38 CFR 3.114; 38 CFR 3.313; 38 CFR 3.81.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations relating to exposure to herbicides, such as Agent Orange, in order to incorporate the provisions of the Blue Water Navy Vietnam Veterans Act of 2019 (the BWN Act). This proposed rule would extend the presumed area of exposure to the offshore waters of the Republic of Vietnam and expand the date ranges for presumption of exposure in the Republic of Vietnam and Korea. This rule would also clarify the definition of a *Nehmer* class member and establish entitlement to spina bifida benefits for children of certain veterans who served in Thailand. On the basis of VA's general rulemaking authority, VA also proposes to establish a presumption of herbicide exposure for certain veterans who served in Thailand and also proposes to codify longstanding procedures for searching for payees entitled to *Nehmer* class action settlement payments. Lastly, this proposed rule incorporates the provisions contained in VA's RIN 2900–AR45, titled, ''Diseases Associated with Exposure to Certain Herbicide Agents (Bladder Cancer, Parkinsonism, and Hypothyroidism)'' as a result of VA withdrawing RIN 2900–AR45 from the Fall 2022 Unified Agenda. The proposed amendments in this regulation are in accordance with the President's priorities to address military toxic exposures.

Statement of Need: The Department of Veterans Affairs (VA) is proposing to amend its regulations for the following purposes: (1) extend the presumption of herbicide exposure to the offshore waters of the Republic of Vietnam and to define those boundaries; (2) expand the dates for presumption of herbicide exposure for service in the Korean Demilitarized Zone; (3) establish entitlement to spina bifida benefits for children of certain Veterans who served in Thailand; (4) codify the presumption of herbicide exposure for certain locations identified where herbicide agents were used, tested, or stored outside of Vietnam; (5) codify longstanding procedures for searching for payees entitled to class-action settlements under *Nehmer* v. *Department of Veterans Affairs*; (6) apply the definition of Republic of Vietnam offshore waters to presumptive service connection claims for non-Hodgkin's lymphoma; (7) add bladder cancer, hypothyroidism, and Parkinsonism as presumptive herbicide diseases; and (8) recognize hypertension and monoclonal gammopathy of undetermined significant as presumptive herbicide diseases.

Summary of Legal Basis: Promulgation of these regulations is necessitated by the Blue Water Navy Vietnam Veterans Act of 2019, Public Law 116–123; Fiscal Year 2021 National Defense Authorization Act; and the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act), Public Law 117–168. VA's general rulemaking authority under 38 U.S.C. 501(a) is also utilized in effectuating these regulations.

Alternatives: The comprehensive framework of the enacted laws requires VA to issue regulations to ensure that claims processors accurately and consistently adjudicate claims pursuant to the intent and text of the legislation. The absence of regulations would cause confusion amongst adjudicators leading to benefit decision errors, as well as incurring significant litigation risk if the only instruction concerning application of the aforementioned laws is sub-regulatory guidance that did not go through notice-and-comment as required by the Administrative Procedures Act.

Anticipated Cost and Benefits: VA has estimated that there are both transfers and costs associated with the provisions of this rulemaking.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	10/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.
Government Levels Affected: None.
URL For More Information: *www.regulations.gov.*
Agency Contact: Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, *Phone:* 202 461–9700, *Email:* *robert.parks3@va.gov.*
RIN: 2900–AR10

VA

156. • Pilot Veterans Services Organization Complementary and Integrative Health Self-Care Well-Being Center Grant Program [2900–AR60]

Priority: Other Significant.
Legal Authority: 38 U.S.C. 5902; 5 U.S.C. 601–612; 2 U.S.C. 1532
CFR Citation: 38 CFR 64.40; 38 CFR 64.90; 13 CFR 301.3.
Legal Deadline: None.
Abstract: The Department of Veterans Affairs is proposing regulations to implement legislation authorizing VA to conduct a new, two-year grant program to fund eligible veterans services organizations (VSOs) to upgrade their community facilities, through construction or repair, to serve as complementary and integrative health self-care well-being (CIH W–B) centers to promote and expand CIH W–B programs. These regulations would specify grant eligibility criteria, the number of grants available, their maximum amount, constraints on the allocation and use of the funds, and other requirements necessary to implement this pilot grant program. These amendments are in accordance with the President's priorities by advancing equity and support to underserved, vulnerable and marginalized communities.
Statement of Need: The Consolidated Appropriations Act, 2018 (the Act). Public Law 115–141, 132 Stat. 825 (2018). Section 252 of the Act authorized VA to carry out a two-year pilot program of grants to nonprofit veterans services organizations (VSOs) recognized by the Secretary in accordance with section 5902 of title 38, United States Code (U.S.C.) in accordance with section 5902 of title 38, United States Code (U.S.C.) to upgrade, through construction or repair, VSO community facilities to serve as health and wellness centers to promote and expand complementary and integrative wellness programs.
Summary of Legal Basis: On March 23, 2018, the President signed into law the Consolidated Appropriations Act, 2018 (the Act), Public Law (Pub. L.) 115–141, 132 Stat. 825 (2018). Section 252 of the Act authorized VA to carry out a two-year pilot program of grants to nonprofit veterans services organizations (VSOs) recognized by the Secretary in accordance with section 5902 of title 38, United States Code (U.S.C.) to upgrade, through construction or repair, VSO community facilities to serve as health and wellness centers to promote and expand complementary and integrative wellness programs. Section 252 of the Act is codified at 38 U.S.C. 1701 note. The Act provided limitations in administering this pilot grant program, including that no single grant may exceed $500,000 total, no more than 20 grants may be provided, the grant may not be used to purchase real estate or carry out repairs of facilities leased by the VSO or to construct facilities on property leased by the VSO, and that the grant funds must be used to construct or repair facilities located in at least 10 different geographic locations and are either in economically depressed areas or areas designated as highly rural that are not in close proximity to a VA medical center. 38 U.S.C. 1701 note. In this rulemaking, we propose to establish and implement this two-year program in part 64 of title 38, Code of Federal Regulations (CFR).
Alternatives: The legislation defines that the Program shall be a 2-year pilot which will not exceed $5 million funding per fiscal year, for a total of $10 million for the duration. While a number of parts of the proposed rule are required by the statutory authority, we did have discretion in how we defined the complementary and integrative wellness programs that would be covered by this grant program. That term wasn't defined in the law and we have decided to allow grants to upgrade facilities to promote, expand, and provide complementary and integrative health self-care well-being services which is consistent with established VA policy and practice. We could have defined it broader that that to include what we consider CIH treatment services, however, that could lead to issues of the safety and well-being of the veteran and would circumvent VHA's community care program if we were to do so.
Anticipated Cost and Benefits: VA has determined that there are transfers of $5 million in FY 2023 and $10 million over the 2-year window ending in FY 2024 based off the limits set forth in the legislation. Additionally, there are PRA costs, which are indicated below. This pilot program will have no costs beyond FY 2024.
Risks: The risks would be non-compliance with statutory authority and/or not being able to provide benefits pursuant to our statutory authority.
Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.
Small Entities Affected: No.
Government Levels Affected: None.
URL for More Information: *www.regulations.gov.*
Agency Contact: Thomas Klobucar, Executive Director, Office of Rural Health, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 632–8581, *Email:* *thomas.klobucar@va.gov.*
RIN: 2900–AR60

VA

157. • Expanded Burial Benefits [2900–AR69]

Priority: Other Significant.
Legal Authority: 38 U.S.C. 2303(b)(1); 38 U.S.C. 501(a), 2303(b)); 38 U.S.C. 2303
CFR Citation: 38 CFR 3.1700; 38 CFR 3.1703; 38 CFR 3.1704; 38 CFR 3.1705; 38 CFR 3.1707.
Legal Deadline: None.
Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations pertaining to burial benefits. Amendments include expanding reimbursement of transportation expenses to include covered Veterans' cemeteries, a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death, and extending the VA Plot or Interment Allowance to a tribal organization for interment of an eligible Veteran on trust land owned by, or held in trust for, a tribal organization. As amended, the regulations will conform to statutory changes enacted by sections 2201 and 2202 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 and Division CC of the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2022. The changes expand reimbursement of transportation expenses to include covered Veterans' cemeteries and provide a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death and will coincide with the effective date for the amendments to

the United States Code (January 5, 2023), which is the date that is two years after the date of enactment of the Public Law. Furthermore, the changes extending the VA Plot or Interment Allowance to a tribal organization for interment of eligible Veterans on trust land owned by, or held in trust for, a tribal organization will coincide with the effective date for the amendments to the United States Code (March 15, 2022), which is the date of the enactment of the Public Law. These amendments are in accordance with the President's priorities by advancing equity and support to underserved, vulnerable and marginalized communities.

Statement of Need: The Department of Veteran Affairs (VA) has determined these amendments are needed to incorporate legislative updates enacted by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Public Law (Pub. L.) 116–315) and Division CC, section 102(c) of the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2022 (Public Law (Pub. L.) 117–103).

Summary of Legal Basis: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations to incorporate legislative updates enacted by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Public Law (Pub. L.) 116–315) and Division CC, section 102(c) of the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2022 (Public Law (Pub. L.) 117–103). The updates include expanding reimbursement of transportation expenses to include covered Veterans' cemeteries, instituting a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death, and extending the VA Plot or Interment Allowance to a tribal organization for interment of an eligible Veteran on trust land owned by, or held in trust for, a tribal organization.

Alternatives: VA considered an alternative policy to the proposed rule. VA could choose not to act at this time, defer the amendment, and revise the regulation at a later date. However, this would have a negative effect on VA's effectiveness in processing benefits claims as the current regulations are outdated and do not align with the updated statutes. These amendments are needed to appropriately determine eligibility to certain VA benefits based on these statutory changes. Therefore, the proposed rule of amending adjudication regulations by expanding reimbursement of transportation expenses to include covered Veterans' cemeteries, providing a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death, and extending the VA Plot or Interment Allowance to a tribal organization for interment of an eligible Veteran on trust land owned by, or held in trust for, a tribal organization to conform with the statutory changes in Public Law 116–315 and Public Law 117–103 is VA's preferred policy approach.

Anticipated Cost and Benefits: Under the new statutory changes, transportation reimbursement will now be payable for a Veteran buried in a covered Veterans' cemetery defined as a Veterans' cemetery in which a deceased Veteran is eligible to be buried that is owned by a State or is on trust land owned by, or held in trust for, a tribal organization, and for which the Secretary has made a grant under 38 U.S.C. 2408. This allows for the reimbursement of transportation expenses to State Veteran cemeteries and tribal cemeteries which both have eligibility requirements for a Veteran's burial that are similar to the requirements for burial in a national cemetery.

Additionally, there are currently two different non-service-connected burial monetary allowances paid which are dependent on the location of the Veteran's death: $300.00 for the basic non-service-connected burial benefit and $828.00 if the Veteran meets the eligibility requirements of a VA hospitalization death. The new changes will provide a single payment rate for non-service-connected burial benefits and pay the greater of the two monetary allowances currently in effect for all non-service-connected burial benefits. Finally, effective March 15, 2022, the amendments in Public Law 117–103 now extend eligibility for the VA Plot or Interment Allowance to tribal organizations for the burial of an eligible Veteran on trust land owned by, or held in trust for, a tribal organization. This change aligns with the 'covered Veterans' cemetery' amendment in Public Law 116–315, and ultimately provides tribal trust lands and tribal organizations the same eligibility to burial benefits as State Veteran cemeteries and organizations.

Risks: We do not anticipate any publication risks as this rulemaking is conforming VA regulations to the statutory changes enacted by Public Law 116–315 and Public Law 117–103.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Eric Baltimore, Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 633–8863, *Email: eric.baltimore@va.gov.*

RIN: 2900–AR69

VA

158. • Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure [2900–AR75]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1117; 38 U.S.C. 1119; 38 U.S.C. 1120; 38 U.S.C. 501

CFR Citation: 38 CFR 3.159; 38 CFR 3.317; 38 CFR 3.320; 38 U.S.C. 501.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modified or established presumptions of service connection related to toxic exposure. Pursuant to the Act, VA is proposing to remove the manifestation period requirement and the minimum compensable evaluation requirement from Gulf War claims based on undiagnosed illness and medically unexplained chronic multisymptom illnesses. VA is also proposing to expand the definition of a Persian Gulf Veteran and update the list of locations eligible for a presumption of exposure to toxic substances, chemicals, or hazards based on Gulf War service. To implement additional provisions of the Act, VA is also proposing to codify the procedure for determining when examinations and medical nexus opinions are required for claims based on toxic exposure. The proposed amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

Statement of Need: The Department of Veterans Affairs is proposing to amend

its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modifies or establishes presumptions of service connection related to toxic exposure.

Summary of Legal Basis: The new provisions of regulation are authorized by sections 302, 303, 405 and 406 of Public Law 117–168. VA must publish regulations to carry out the laws administered by the Department as required by 38 U.S.C. 501(a).

Alternatives: The comprehensive framework of the enacted law requires VA to issue regulations to ensure that claims processors accurately and consistently adjudicate claims pursuant to the intent and text of the legislation. The absence of regulations would cause confusion amongst adjudicators leading to benefit decision errors, as well as incurring significant litigation risk if the only instruction concerning application of the aforementioned law is sub-regulatory guidance that did not go through notice-and-comment as required by the Administrative Procedures Act.

Anticipated Cost and Benefits: VA has estimated that there are both transfers and costs associated with the provisions of this rulemaking. Actual costs and transfers to be determined.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	07/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL for More Information: *www.regulations.gov.*

Agency Contact: Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, *Phone:* 202 461–9700, *Email: robert.parks3@va.gov.*

RIN: 2900–AR75

VA

159. • Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117–168 [2900–AR76]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 501; 38 U.S.C. 1305

CFR Citation: 38 CFR 3.817.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning certain awards of Dependency and Indemnity Compensation (DIC). Relevant claimants will be eligible to elect a reevaluation of certain previously denied DIC determinations pursuant to changes that establish or modify a presumption of service-connection. Any award following reevaluation may be made retroactive to the date of a previously denied claim as if the establishment or modification of the presumption of service-connection had been in effect on the date of the submission of the original claim. With respect to new or initial awards of DIC pending before VA on or after August 10, 2022, VA proposes to utilize the most advantageous effective date amongst 38 CFR 3.114 and 3.400, to potentially grant an award earlier than August 10, 2022, if applicable. Lastly, as the PACT Act is silent with respect to changes in the accrued or substitution process as it relates to the reevaluation of DIC claims, VA proposes utilizing the regular processes regarding accrued and substitution benefits contained in 38 U.S.C. 5121 and 5121A. The amendments within this proposed rulemaking incorporate legislative updates enacted by the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (Pub. L. 117–168) (PACT Act) and will bring federal regulations into conformance with the statutory changes. The proposed amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

Statement of Need: The Department of Veteran Affairs has determined the need to amend its regulations, in accordance with 38 U.S.C. 501, to incorporate legislative updates enacted by Section 204 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 or the Honoring our PACT Act of 2022 (Pub. L. 117–168).

Summary of Legal Basis: This amendment to the Dependency and Indemnity Compensation benefit program is authorized by section 204 of Public Law 117–168. VA must publish regulations for matters related to benefits as required by 38 U.S.C. 501(d).

Alternatives: VBA has considered an alternative policy to the proposed rule. VBA could choose not to act at this time and codify a new regulation at a later date. However, this would have a negative effect on VA's effectiveness in processing benefits claims as the current regulations do not align with the updated statutes. This new adjudication regulation is needed to appropriately determine eligibility to certain VA benefits based on these statutory changes. Therefore, the proposed rule of adding a new adjudication regulation which will provide relevant claimants the ability to elect a reevaluation of certain previously denied DIC determinations pursuant to changes that establish or modify a presumption of service connection to conform with the statutory changes within the PACT Act is VA's preferred policy approach.

Anticipated Cost and Benefits: To be determined.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	06/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Eric Baltimore, Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 633–8863, *Email: eric.baltimore@va.gov.*

RIN: 2900–AR76

VA

160. • Authorization of Electronic Notice in Claims Under Laws Administered by the Secretary of Veterans Affairs [2900–AR77]

Priority: Other Significant.

Legal Authority: Pub. L. 117–168; 38 U.S.C. 501(a); 38 U.S.C. 5100

CFR Citation: 38 CFR 3; 38 CFR 8; 38 CFR 10; 38 CFR 13; 38 CFR 21; 38 CFR 36.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). VA is proposing how to obtain a claimant's election to opt-in to receive electronic notifications, how to revoke this option, and how electronic notification will be administered to eligible claimants. (Compensation, Pension, Insurance, Fiduciary, Veteran Readiness & Employment, Loan Guaranty, and Education). The proposed

amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

Statement of Need: The Department of Veterans Affairs (VA) is issuing regulations for the implementation of section 807 of Public Law 117–168, the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxins (PACT Act). Title 38 of United States Code (U.S.C.) section 501(d) requires VA to publish regulations for matters related to benefits under a law administered by the Secretary, notwithstanding section 553(a)(2) of the Administration Procedure Act.

Summary of Legal Basis: The regulation amendment is authorized by section 807 of Public Law 117–168. VA must publish regulations for matters related to benefits under a law administered by the Secretary as required by 38 U.S.C. 501(d).

Alternatives: None as this amendment is required by statute.

Anticipated Cost and Benefits: The statute will enable VBA to communicate with Veterans and claimants thru an omni-channel communications framework (*i.e.,* mail, text, and email). Anticipated costs account for two primary costs: the development of a managed service, or the amendment of an existing managed service, to ensure a minimum of 30 million communications are delivered each year and the actual market costs associated with the delivery of those communications. These communications consist of approximately 12 million notifications acknowledging receipt of materials submitted to VBA's central claims intake center, as well as 18 million required notifications. VBA currently spends more than $10M per year sending paper-based communications and anticipates long-term cost savings by leveraging electronic communications for claimants who opt-in, but will require up-front funding to acquire the service to maintain this operational framework.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Korrie Shivers, Policy Analyst, Part 3 Regulations and Forms Staff, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 461–9720, *Email: korrie.shivers@va.gov.*

RIN: 2900–AR77

VA

Final Rule Stage

161. Modifying Copayments for Veterans at High Risk for Suicide [2900–AQ30]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1710(g); 38 U.S.C. 1722A

CFR Citation: 38 CFR 17.108; 38 CFR 17.110.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) amends its medical regulations that govern copayments for outpatient medical care and medications for at-risk veterans. These amendments are in accordance with the President's priorities of reducing suicide.

Statement of Need: This rulemaking is needed because a change in the current regulation is called for by the policy outlined in Executive Order 13822, which provides that our Government must improve mental healthcare and access to suicide prevention resources available to veterans. Healthcare research has provided extensive evidence that copayments can be barriers to healthcare for vulnerable patients, which places the change in line with the goals of the Executive Order.

Summary of Legal Basis: Executive Order 13822.

Alternatives: The express intent of the rulemaking is to reduce barriers to mental health care for Veterans at high risk for suicide. To defer implementation of the regulation would be to undermine its purpose. However, alternative regulatory approaches were considered. It was considered whether VHA national or local policy changes could effectively meet the intent of the regulation. It was found that policy change is not a viable alternative due to regulatory constraints that prevent changes to copayment requirements. The timing of rulemaking was considered. There were no potential cost savings or other net benefits identified that would lead to a more beneficial option.

A phase-in period for the regulation was considered. There were no burdens, likely failures, or negative comments identified that a phase-in period would help mitigate. There were no potential cost savings or other net benefits identified that would make phasing in the regulation a more beneficial option.

Anticipated Cost and Benefits: Outpatient medical care and medication copayments will be reduced for Veterans determined to be at high risk for suicide. VA strongly believes, based on extensive empirical evidence, that the provisions of this rulemaking will decrease the likelihood of fatal or medically serious overdoses from VA prescribed medications among Veterans who are at a high risk of suicide. VA also strongly believes, based on the evidence, that the provisions of this rulemaking will significantly increase the engagement of Veterans who are at a high risk or 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	01/05/22	87 FR 418
NPRM Comment Period End.	03/07/22	
Final Action	07/00/23	

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

162. Home Visits in Program of Comprehensive Assistance for Family Caregivers During Covid–19 National Emergency [2900–AQ96]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1720G(a)(3); 5 U.S.C. 553(d)

CFR Citation: 38 CFR 71.40; 38 CFR 71.25(e); 38 CFR 71.40(b)(2).

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) is revising its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) to relax the requirement for in-person home visits during the National Emergency related to Coronavirus Disease–2019 (COVID–19). This change is required to address the safety and well-being of veterans, caregivers, and VA clinical staff as the circumstances regarding COVID–19 continue to evolve, which is in line with the President's priorities.

Statement of Need: The Caregivers and Veterans Omnibus Health Services Act of 2010 (Pub. L. 111–163) established 38 U.S.C. 1720G, which directed VA to establish a Program of Comprehensive Assistance for Family Caregivers (PCAFC) and a Program of General Caregiver Support Services. Both programs are managed by the VA's Caregiver Support Program Office. On March 13, 2020, a National Emergency was declared by the President in response to COVID–19.

COVID–19 is a new disease that causes respiratory illness in people and can spread from person to person. Many individuals and communities across the country have taken steps to reduce the spread of COVID–19, including isolating individuals diagnosed with the disease and implementing physical distancing measures. The priority goal in the VA response to COVID–19 is the protection of veterans, their caregivers, and VA clinical staff. This rulemaking is intended to reduce the risk of exposure to and transmission of COVID–19 to individuals involved in PCAFC, as well as members of their households and others with whom they come into contact who may be affected, by providing the facilities flexibility in the modalities used to conduct home visits other than in-person visits. The intent of this rulemaking is to protect veterans, their families, and VA clinical staff by reducing the spread of COVID–19 for the duration of the COVID–19 National Emergency.

Summary of Legal Basis: The legal basis for this rule is Title 1 of Public law 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010 (the Caregivers Act) which established section 1720G(a) of title 38 of the United States Code requiring VA, in part, to establish the PCAFC program. As a result of the National Emergency related to COVID–19 declared by the President on March 13, 2020, VA added a new section 71.60 to title 38 of the Code of Federal Regulations to provide flexibility in the mode by which VA conducts PCAFC home visits during the duration of the National Emergency. These flexibilities include videoconference or other available telehealth modalities.

Alternatives: Through the interim final rule, VA relaxed the requirements of in-person home visits during the National Emergency related to COVID–19. VA considered leaving the requirement as is, however, it would have the potential to put veterans, their families, and VA staff at greater risk of contracting COVID–19.

Anticipated Cost and Benefits: The final rulemaking adds flexibility to the required in-home assessments and allows VA clinical staff to conduct in-home assessments through other modalities while remaining compliant with current regulations and policies. Through this rulemaking, VA minimizes risk of exposure and spreading of COVID–19 to VA clinical staff, veterans, their caregivers, their families, and other household members during this National Emergency.

Risks: The addition of 71.60 was through an IFR. Finalizing the rule will allow us to comply with APA; but the regulation was effective upon publication on June 5, 2020.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/05/20	85 FR 34522
Interim Final Rule Effective.	06/05/20	
Interim Final Rule Comment Period End.	07/06/20	
Final Action	03/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: *www.regulations.gov.*

Agency Contact: Elyse Kaplan, National Deputy Director, Caregiver Support Program, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 461–7337, *Email: elyse.kaplan@va.gov.*

RIN: 2900–AQ96

VA

163. Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program [2900–AR16]

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 Public Law 116–171. Required consultation pursuant to section 201 of Public Law 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 a 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. These amendments are in accordance with the President's priorities of reducing suicide.

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	03/10/22	87 FR 13806
Interim Final Rule; Correction.	03/22/22	87 FR 16101
Interim Final Rule Effective.	04/11/22	
Interim Final Rule Comment Period End.	05/09/22	
Final Action	08/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: https://www.federalregister.gov.

Agency Contact: Sandra Foley, Supervisory Grants Manager—Suicide Prevention Program, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 266–4653, *Email: sandra.foley@va.gov.*

RIN: 2900–AR16

VA

164. Copayment Exemption for Indian Veterans [2900–AR48]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1730A; 25 U.S.C. 1603; 25 U.S.C. 1612

CFR Citation: 42 CFR 438.14; 42 CFR 447.51; 38 CFR 17.30(a).

Legal Deadline: NPRM, Statutory, January 5, 2021, Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (the ''Act''). Public Law (Pub. L.) 116–315.

Pursuant to section 1730A of title 38, United States Code (U.S.C.), catastrophically disabled veterans are exempt from copayment for the receipt of hospital care or medical services under laws administered by VA. On January 5, 2021, the President signed into law the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (the ''Act''). Public Law (Pub. L.) 116–315.

Abstract: VA is amending its medical regulations to implement a statute exempting Indian veterans from copayment requirements for the receipt of hospital care or medical services under laws administered by VA. These amendments are in accordance with the President's priorities by advancing equity and support to underserved, vulnerable and marginalized communities.

Statement of Need: This rulemaking is needed to amend the Department of Veteran Affairs (VA)'s medical regulations, in accordance with rulemaking authority established in 38 U.S.C. 501, to reflect current changes in law as a result of the Veterans Health Care and Benefits Improvement Act of 2020. In addition, this rulemaking is essential to VA's attempt to validate veterans who are an Indian and eligible for this new benefit.

Summary of Legal Basis: On January 5, 2021, the President signed into law the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (the Act). Public Law (Pub. L.) 116–315. Section 3002 of the Act amended section 1730A to add a copayment exemption for veterans who are either Indian or urban Indian, as those terms are defined in section 4 of the Indian Health Care Improvement Act. Thus, veterans who are Indians or urban Indians will be exempt from copayments for the receipt of hospital care or medical services under laws administered by VA. This amendment to section 1730A takes effect one year after the date of enactment of the Act (that is, the statutory amendment became effective on January 5, 2022). This rulemaking revises several VA regulations concerning copayment exemptions to be consistent with the amendment made to 38 U.S.C. 1730A by section 3002 of the Act.

Alternatives: One alternative policy approach considered was the possibility that VA could require veterans who identify as Indian and applying for VA health care enrollment to provide documentation to identify their tribal affiliation. VA could also implement this rulemaking as a two-stage proposed rule instead of an interim final rule which would notify the public of this regulatory action and provide the opportunity for notice and comment from interested parties. Veterans would be asked to indicate their tribal affiliation on VA Form 10–10EZ or VA Form 10–10EZR.

This would add a measure of assurance that the benefit will reach the intended population and reduce the risk that a non-eligible veteran receives the copayment exemption and retroactive reimbursements. However, this places a reporting burden upon veterans who identify as Indian and could delay their enrollment for VA health care. In addition, VA would need additional changes to the enrollment system to capture tribal information for potentially 574 possible responses, including the necessary form changes. Lastly, VA would create a reputational risk by requiring documentation for a specific group who received unique benefits but not all groups that receive unique benefits.

Anticipated Cost and Benefits: This rulemaking will be an essential part to VA's attempt to validate veterans who identify as an Indian. This rulemaking will assist Indian veterans by eliminating a cost barrier, which will help increase utilization of VA health care among this veteran population. Public Law (Pub. L.) 116–315, sec. 3002 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (signed January 5, 2021) amended section 1730A of title 38 of the United States Code (U.S.C.) eliminating the copayment requirements for inpatient hospital care, outpatient medical care, outpatient medications, noninstitutional extended care services and the first three visits for urgent care in a calendar year provided by VA for veterans who are either Indian or urban Indian, as those terms are defined in section 4 of the Indian Health Care Improvement Act.

This amendment to section 1730A takes effect one year after the date of enactment of the Act (that is, the statutory amendment became effective on January 5, 2022). This rulemaking revises several VA regulations concerning copayment exemptions to be consistent with the amendment made to section 1730A by section 3002 of the Act.

For the purposes of the copayment exemption, VA has adopted the Centers for Medicare and Medicaid Services' (CMS) definition of the term Indian found in 447.51 of title 42 of the Code of Federal Regulations (CFR) for purposes of copayment exemption for Indian and urban Indians under 38 U.S.C. 1730A. VA will amend 38 CFR 17.108, 17.110, 17.111 and 17.4600.

VA will update VA Form 10–10EZ, Enrollment Application for Health Benefits, and VA Form 10–10EZR, Health Benefits Update Form to include Veteran self-attestation to meet the requirements of section 3002 of the Act as well as updates for ancillary systems needed to implement this rulemaking. VA will reimburse Indian veterans for copayments paid to VA for hospital care and medical services provided on or after January 5, 2022. VA will implement an audit process to periodically review its enrollment records.

Risks: The risks would be non-compliance with statutory authority and/or not being able to provide benefits pursuant to our statutory authority.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: www.regulations.gov.

Agency Contact: Joseph Duran, Director of Policy and Planning (10D1A1), Department of Veterans Affairs, 3773 Cherry Creek North Drive, Denver, CO 80209, *Phone*: 303 370–1637, *Email: joseph.duran2@va.gov.*

RIN: 2900–AR48

VA

165. • Technical Revisions To Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service [2900–AR73]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1710; Pub. L. 117–168 sec. 103(a)

CFR Citation: 38 CFR 17.36; 38 CFR 17.108; 38 CFR 17.110; 38 CFR 17.111; 38 CFR 51.50.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) is issuing this rule to amend its medical regulations governing eligibility for VA health care and copayment requirements to conform to recent statutory changes made by section 103 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). VA is changing its medical benefits enrollment criteria to include toxic-exposed veterans and veterans who supported certain overseas contingency operations, to exempt such veterans from copayments for certain care, and to provide per diem for nursing home care for such veterans. The amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

Statement of Need: VA must amend its medical regulations governing eligibility for VA health care and copayment requirements to conform to recent statutory changes made by section 103 of the Honoring our PACT Act of 2022. VA would change its medical benefits enrollment criteria to include toxic-exposed veterans and veterans who supported certain overseas contingency operations, to exempt such veterans from copayments for certain care, and to provide per diem for nursing home care for such veterans.

Summary of Legal Basis: These changes are authorized in accordance with section 103(a) of Public Law 117–168 and the related amendments to 38 U.S.C. 1710.

Alternatives: None.

Anticipated Cost and Benefits: The initial estimate for the additional medical enrollment (including the cost of care) pursuant to section 103(a) is $966,347,000 from FY23 to FY32.

Risks: None anticipated, as the authority has been codified in statute.

Timetable:

Action	Date	FR Cite
Final Action	09/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: www.regulations.gov.

Agency Contact: Ryan Heiman, Acting Deputy Director, VHA Member Services, Department of Veterans Affairs, 3401 SW 21st Street, Building 9, Topeka, KS 66604, *Phone:* 785 817–2719, *Email: ryan.heiman@va.gov.*

RIN: 2900–AR73

VA

166. • Procedural Updates for the PACT Act [2900–AR74]

Priority: Other Significant.

Legal Authority: 38 U.S.C. 1112

CFR Citation: 38 CFR 3.309.

Legal Deadline: None.

Abstract: The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulations to add additional presumptive exposure locations for radiation, as indicated in the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022. The intended effect of this amendment is to ease the evidentiary burden of this population of Veterans who file claims with VA based on radiation exposure in these locations. The amendments in this regulation are in accordance with the President's priorities to address toxic exposure.

Statement of Need: The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulations to add additional presumptive exposure locations for radiation, as indicated in the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (Pub. L. 117–168). The intended effect of this amendment is to ease the evidentiary burden of Veterans exposed to radiation at Thule Air Force Base, Palomares and Enewetak Atoll who file claims with VA based on radiation exposure in these locations.

Summary of Legal Basis: The new provisions of regulation are authorized by section 401 of Public Law 117–168. VA must publish regulations to carry out the laws administered by the department as required by 38 U.S.C. 501(a).

Alternatives: Section 401 of Public Law 117–168 added three new locations during the specified times as presumptive for radiation risk activity.The alternative to regulation is to allow Veterans and claims processors to process claims under the statute without the benefit of regulatory guidance, and to rely upon sub-regulatory clarification.

Anticipated Cost and Benefits: VA has estimated that there are both transfers and costs associated with the provisions of this rulemaking. Actual costs and transfers TBD.

Risks: None.

Timetable:

Action	Date	FR Cite
Final Action	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

URL For More Information: www.regulations.gov.

Agency Contact: Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, *Phone:* 202 461–9700, *Email: robert.parks3@va.gov.*

RIN: 2900–AR74

BILLING CODE 8320–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (AMERICORPS)

Fall 2022 Statement of Regulatory Priorities

Overview

The Corporation for National and Community Service, operating as AmeriCorps, is the Federal agency for national service and volunteerism. AmeriCorps provides opportunities for individuals to address some the nation's most pressing challenges, improve lives and communities, and strengthen civic engagement. AmeriCorps offers

individuals and organizations flexible ways to make a local and lasting impact through its programs, such as AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and the Volunteer Generation Fund, and AmeriCorps Seniors RSVP, Foster Grandparents, and Senior Companions programs. AmeriCorps also supports volunteerism through National Days of Service, including 9/11 Day and Martin Luther King, Jr., Day. AmeriCorps' authorizing statutes and regulations provide the necessary legal framework for its programs. AmeriCorps' regulatory priorities are guided by its Strategic Plan (available at *americorps.gov/about/agency-overview/strategic-plan*) and Administration priorities.

Highlights of AmeriCorps' Regulatory Plan

This Regulatory Plan provides highlights of AmeriCorps' upcoming regulatory actions. Please refer to AmeriCorps' Semiannual Regulatory Agenda for the full spectrum of AmeriCorps' upcoming regulatory actions.

AmeriCorps' Strategic Plan establishes a goal of partnering with communities to alleviate poverty and advance racial equity. Two proposed regulatory actions relate to this goal:

AmeriCorps State and National Updates (3045–NEW) will consider additional programmatic and grantmaking flexibilities, including waivers and exceptions for individuals who may benefit from additional education and training, such as those reentering society after incarceration, to participate in national service while acquiring skills and knowledge to ease their transition into the workplace. AmeriCorps' VISTA New Project Regulations (3045–AA79) will also consider additional programmatic and grantmaking flexibilities intended to better reach underserved communities, reduce barriers to participation in national service, and provide those communities with access to the benefits of service to reduce poverty. VISTA's underlying purpose also supports the Administration's goal to promote economic resilience and address persistent poverty, by encouraging and enabling persons from all walks of life to perform volunteer service to assist in the solution of poverty and poverty-related problems and secure and increase opportunities for self-advancement by persons affected by such problems.

BILLING CODE 6050–28–P

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

Overview

EPA works to ensure that all Americans are protected from significant risks to human health and the environment, including climate change, and that overburdened and underserved communities and vulnerable individuals—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 will use its regulatory authorities, along with grant- and incentive-based programs, technical and compliance assistance, and research and educational initiatives, to address the following priorities set forth in EPA's Strategic Plan:

- Tackle the Climate Crisis
- Take Decisive Action to Advance Environmental Justice and Civil Rights
- Enforce Environmental Laws and Ensure Compliance
- Ensure Clean and Healthy Air for All Communities
- Ensure Clean and Healthy Water for All Communities
- Safeguard and Revitalize Communities
- Ensure Safety of Chemicals for People and the Environment

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 continue to 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.

Further, these regulatory priorities complement the commitment to holistically and aggressively combat damaging climate pollution while supporting the creation of good jobs and lowering energy costs for families together with implementation of relevant climate provisions of the Inflation Reduction Act.

• *Standards of Performance for New, Reconstructed, and Modified Sources and Emission Guidelines for Oil and Natural Gas Sector Climate Review*. 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. On November 15, 2021, EPA proposed new source performance standards and emission guidelines for new and existing crude oil and natural gas facilities. (86 FR 63110). This action responded to the January 20, 2021, Executive Order (E.O.) 13990 titled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' which directed EPA to consider certain actions to reduce methane and volatile organic compound (VOC) emissions in the oil and natural gas sector. As a next step in the rulemaking process, EPA intends to issue a supplemental proposed rule that strengthens, expands and revises the November 2021 proposed rule in response to information and feedback received during the public comment period. EPA expects to issue a final rule in Spring 2023.

• *Emission Guidelines for Greenhouse Gas Emissions from Fossil Fuel-Fired Existing Electric Generating Units*. Fossil fuel-fired power plants are the nation's second largest source of GHG pollution. On June 30, 2022, the U.S. Supreme Court decision in *West Virginia* v. *EPA* faulted the 2015 Clean Power Plan rule and remanded it back to the D.C. Circuit. EPA is considering the implications of this Supreme Court decision and is now undertaking a new rulemaking to establish emission guidelines under CAA section 111(d) to limit GHG emissions from existing fossil fuel-fired EGUs. EPA anticipates issuing a proposed rule for this action in Spring 2023, and promulgating a final rule by Summer 2024.

• *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 purpose of this action is to conduct a comprehensive review of the NSPS and, if appropriate, amend the emission standards for new fossil fuel fired EGUs. EPA anticipates issuing a proposed rule in Spring 2023, and promulgating a final rule by Summer 2024.

• *Greenhouse Gas Emissions Standards for Heavy-Duty Engines and Vehicles—Phase 3*. Transportation is the largest source of GHG emissions in the United States, making up 29 percent of all emissions. Within the transportation sector, heavy-duty vehicles are the second-largest contributor, at 23 percent. EPA previously took action to reduce GHG emissions from heavy-duty trucks with its Phase 1 and Phase 2 GHG standards (76 FR 57106, 81 FR 73478). Many of these zero-emission technologies are available today, and the number of products available, as well as production volumes, are expected to accelerate in the next few years. EPA will assess the impact that these zero-emission technologies will have on the overall effectiveness of the Phase 2 program and whether targeted adjustments to GHG standards in 2027 may be warranted. Beyond 2027, heavy-duty truck manufacturers are already signaling a large-scale migration from gasoline and diesel engines to zero-emission technologies in their products. With this action, EPA would revise GHG standards for all heavy-duty vehicles and engines to go beyond the existing standards and leverage zero-emission and other advanced technologies. These new GHG standards would apply to Model Years 2027–2030+.

• *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*. Per EPA's authority under the CAA section 202(a), EPA will propose a comprehensive set of emissions standards for GHGs and criteria pollutants for the light-duty vehicle sector as well as the medium-duty vehicle Class 2B and 3 sectors. The standards will begin with model year 2027, with stringency levels set at least through model year 2030. This action is also supported by E.O. 14037, titled ''Strengthening American Leadership in Clean Cars and Trucks.'' EPA will coordinate with the Department of Transportation in developing this proposal as appropriate.

• *Volume Requirements for 2023 and Beyond under the Renewable Fuel Standard Program*. CAA section 211 requires EPA to set renewable fuel percentage standards every year. In this action EPA would propose the standards for 2023–2025 for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. This action would also address a judicial remand of the 2016 standard-setting rulemaking, as well as propose several regulatory changes and additions to the RFS program, including regulations governing the generation of Renewable Identification Numbers (RINs) representing renewable electricity (eRINs).

• *Restrictions on Certain Uses of Hydrofluorocarbons under Subsection (i) of the American Innovation and Manufacturing Act*. EPA is developing a proposed rule that will in part respond to eleven petitions for rulemaking granted in October 2021 under AIM Act subsection (i). Specifically, EPA is considering a rule restricting, fully, partially, or on a graduated schedule, the use 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. This proposal will facilitate and accelerate the phasedown of HFC consumption and production required by the AIM Act by restricting the use of HFCs where cost-effective substitutes are available.

• *Phasedown of Hydrofluorocarbons: Updates to the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act for 2024 and Later Years*. This rule will continue to implement the HFC phasedown under the AIM Act. In September 2021, EPA finalized a rule that established a framework for the allowance allocation and trading program to phase down HFC production and consumption over time, specifically determining an approach to allocate annual allowances 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 determine an approach to allocating annual allowances in 2024 and later years and make adjustments based on the lessons learned from implementation of the framework rule.

• *Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020*. EPA is considering a rulemaking to establish requirements for management of certain HFCs and their substitutes under AIM Act subsection (h). Specifically, EPA is considering a rulemaking to establish regulations to

control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purpose of maximizing the reclamation and minimizing the release of certain HFCs from equipment and ensuring the safety of technicians and consumers. Among these practices, processes, and activities, EPA is considering applying leak repair requirements to certain equipment using HFCs and their substitutes as refrigerants in this rulemaking. EPA also intends to consider options to increase opportunities for reclaiming regulated substances used as refrigerants and potential approaches to coordinate regulations carrying out AIM Act subsection (h) with similar EPA regulations, such as the refrigerant management program established under CAA Title VI.

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.

• *Ambient Air Quality Standards for Particulate Matter Reconsideration.* Under the CAA, 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. On June 10, 2021, EPA notified the public that it will reconsider the 2020 decision to retain the PM NAAQS because the available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the CAA. As part of this reconsideration, in May 2022 EPA released a Supplement to the 2019 p.m. ISA and a Policy Assessment which consider the most up-to-date science on the public health and welfare impacts of PM and were reviewed by the chartered Clean Air Scientific Advisory Committee (CASAC) and a newly constituted expert PM panel. EPA plans to issue a final decision on the reconsideration in Summer 2023.

• *NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding.* In 2012, EPA issued the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-fired Electric Utility Generating Units (EGUs) rule (40 CFR part 63, subpart UUUUU), commonly referred to as the Mercury and Air Toxics Standards (MATS), which 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. As part of the 2012 rule, and as required by CAA section 112(n), EPA found that it was appropriate and necessary to regulate coal- and oil-fired steam EGUs under CAA section 112. In a May 22, 2020, action, EPA found that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112. Consistent with Executive Order 13990, EPA is reviewing the May 22, 2020, finding. EPA issued a proposed revised reconsideration of the appropriate and necessary finding on February 9, 2022 (87 FR 7624).

• *NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of the Residual Risk and Technology Review.* On February 16, 2012, EPA promulgated the MATS rule. On May 22, 2020, in the **Federal Register** notice announcing the completion of a reconsideration of the appropriate and necessary finding for MATS, EPA also finalized the residual risk and technology review (RTR) conducted for the Coal- and Oil-Fired EGU source category regulated under MATS (85 FR 31286). Consistent with Executive Order 13990, EPA will review the RTR portion of the May 22, 2020, final action and, under this action, will take appropriate action resulting from that review.

• *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. On April 6, 2022, EPA issued a proposed ''Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard'' (87 FR 20036). EPA expects to issue the final rule in March 2023.

• *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. 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. On March 28, 2022, EPA published a proposed rule that would set new, more stringent standards to reduce pollution from heavy-duty vehicles and engines starting in model year (MY) 2027 (87 FR 17414). This proposal is consistent with President

Biden's Executive Order 14037, ''Strengthening American Leadership in Clean Cars and Trucks'' and would ensure the heavy-duty vehicles and engines that drive American commerce are as clean as possible while charting a path to advance zero-emission vehicles in the heavy-duty fleet.

• *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commerical Sterilization and Fumigation Operations.* In December 1994, pursuant to CAA section 112(d), EPA promulgated the NESHAP for Ethylene Oxide Commercial Sterilization and Fumigation Operations (59 FR 62585). The NESHAP established standards for both major and area sources. EPA completed a residual risk and technology review for the NESHAP in 2006 and, at that time, concluded that no revisions to the standards were necessary. In this action, EPA will conduct the second technology review for the NESHAP and 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, 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 and is conducting community outreach as part of the development of this action.

• *Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of 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). (85 FR 73854, November 19, 2020) Consistent with Executive Order 13990, EPA has decided to review the MM2A final rule as appropriate and consistent with the CAA section 112.

• *Revisions to the Air Emission Reporting Requirements (AERR).* This action proposes revisions to the existing AERR rule last revised on February 19, 2015 (80 FR 8787), and may include major revisions. EPA is considering how to improve the quality and completeness of HAP emissions data from stationary sources and all pollutant emissions from prescribed fires. Further, EPA is considering how best to quantify emissions from intermittent sources such as backup generators; how to obtain data from permitted facilities in Indian Country when a Tribe is not required to report emissions data; and how to address known data gaps, streamline processes, and improve data quality, documentation, and transparency for nonpoint and mobile sources.

Ensure Clean and Healthy Water for All Communities

The Nation's water resources are the lifeblood of our communities, supporting our health, economy, and way of life. Clean and safe water is a vital resource that is essential to the protection of human health. EPA is committed to ensuring clean and safe water for all, including low-income communities and communities of color, children, the elderly, tribes, and indigenous people. Since the enactment of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA), EPA and its state and tribal partners have made significant progress toward improving the quality of our waters and ensuring a safe drinking water supply. Along with the full set of water actions listed in the regulatory agenda, the regulatory initiatives listed below will help ensure that this important progress continues.

• *Revised Definition of ''Waters of the United States''—Rule 1:* In April 2020, 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) Consistent with the directives of Executive Order 13990, the agencies reviewed the NWPR, and, as a result, the agencies initiated the development of regulations that are founded on the familiar framework of the pre-2015 regulations, are consistent with the statute and informed by relevant Supreme Court decisions, and that reflect a reasonable interpretation based on the record before the agencies, including the best available science. The proposal was open for public comment between December 2021 and February 2022. It is planned that this rule will be finalized by the end of 2022.

• *Revised Definition of ''Waters of the United States''—Rule 2:* The agencies intend to pursue a second rule defining ''Waters of the United States'' to consider further revisions to the agencies' first rule. This second rule proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, litigation, 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 CWA section 401. Congress provided authority to states and tribes under 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. A proposed rule was released for public comment in June 2022. It is planned that this rule will be finalized in the spring of 2023.

• *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. EPA intends to develop a proposed national primary drinking water regulation (NPDWR) for PFOA and PFOS, and, as appropriate, take final action. Additionally, EPA will continue to consider other PFAS as part of this action. EPA expects to issue the proposed PFAS NPDWR in Fall 2022. The Agency anticipates issuing a final regulation in Fall 2023 after considering public comments on the proposal.

• *National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions.* EPA promulgated the final Lead and Copper Rule Revision (LCRR) on January 15, 2021, (86 FR 4198) and subsequently reviewed those revisions to further evaluate if the LCRR protected families and communities (86 FR 71574; December 17, 2021) particularly those that have been disproportionately impacted by lead in drinking water. Through this review, the Agency concluded that there are significant opportunities to improve the LCRR. EPA is developing a new proposed NPDWR, the Lead and Copper Rule Improvements (LCRI), to strengthen the regulatory framework and address lead in drinking water.

• *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. Fifty years after enactment of the CWA, over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the CWA for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Promulgating baseline WQS would provide more scientific rigor and regulatory certainty to National Pollutant Discharge Elimination System (NPDES) permits for discharges to these waters. Consistent with EPA's regulations, the baseline WQS 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.

• *Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights.* Many tribes hold reserved rights to resources on lands and waters where states establish WQS, through treaties, statutes, or other sources of federal law. The U.S. Constitution defines treaties as the supreme law of the land. EPA is pursuing a change to its WQS regulations to ensure that WQS do not impair tribal reserved rights by giving clear direction on how to develop WQS where tribes hold reserved rights. This will help EPA ensure protection of resources reserved to tribes in treaties, statutes, or other sources of federal law when establishing, revising, and reviewing WQS. The development of this rule will help advance President Biden's commitment to strengthening the nation-to-nation relationships with tribes. EPA has and will continue to consult with tribes.

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 acts under several different statutory authorities, including the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA's regulatory program works to incorporate new technologies and approaches to cleaning up land to provide for an environmentally sustainable future more efficiently and effectively, as well as to strengthen climate resilience and to integrate environmental justice and equitable development when returning sites to productive use. Along with the other land and emergency management actions in the regulatory agenda, EPA will take the following priority actions to address the contamination of soil, sediment, surface water, and groundwater.

• *PFAS: RCRA Listing and CERCLA Designation.* Based on public health and environmental protection concerns and in response to petitions from the Governor of New Mexico, Public Employees for Environmental Responsibility, and Berkeley School of Law on behalf of five other organizations, which request EPA to take regulatory action on PFAS under RCRA, EPA is evaluating the existing toxicity and health effects data on four PFAS constituents to determine if they should be listed as RCRA Hazardous Constituents. If the existing data for the four PFAS constituents support listing any or all of these constituents as RCRA hazardous constituents, EPA will propose to list the constituents in a **Federal Register** notice for public comment. The four PFAS chemicals EPA will evaluate are: PFOA, PFOS, perfluorobutane sulfonic acid (PFBS), and hexafluoropropylene oxide dimer acid (HFPO–DA, or and GenX).

On October 18, 2021, EPA released its PFAS Strategic Roadmap which builds on and accelerates implementation of existing plans to address PFAS and commits to bolder new policies to address PFAS in the environment. EPA is developing an Advance Notice of Proposed Rulemaking in which the Agency will seek public input on further PFAS-related designations under CERCLA. As examples, the Agency may request input regarding the potential hazardous substance designation of additional PFAS; and designation, or designations of classes or sub-classes of PFAS as hazardous substances.

• *Hazardous and Solid Waste Management System: Addressing Coal Combustion Residues from Electric Utilities.* On April 17, 2015, 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,* which vacated and remanded certain provisions of the 2015 rule.

The D.C. Circuit vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR rule. 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. 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. Finally, EPA is considering proposing corrective action requirements for all CCR contamination (regardless of how or when that CCR was placed) on site of a regulated facility.

The D.C. Circuit also vacated and remanded provisions related to the closure of unlined impoundments and classifying ''clay-lined'' impoundments as lined. On March 3, 2020, EPA proposed a number of revisions and flexibilities to the CCR regulations. In particular, 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. EPA has since taken final action on one of

the four proposed issues. Specifically, on November 12, 2020, EPA issued a final rule that would allow a limited number of facilities to demonstrate to 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 (85 FR 72506). EPA is developing a rulemaking that would consider taking final action on the remaining proposed issues.

The Water Infrastructure Improvements for the Nation (WIIN) Act established a new CCR regulatory structure under which states may seek approval from 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 EPA has determined are ''at least as protective as'' the federal regulations. Furthermore, the WIIN Act established a requirement for 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.

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. EPA is developing a regulatory action to revise the current RMP regulations. EPA will consider the administration's priorities and focus on regulatory revisions completed since 2017. EPA will also consider stakeholder feedback received from RMP public listening sessions held on June 16 and July 8, 2021.

• *Reporting Requirements for Emissions from Animal Waste under the Emergency Planning and Community Right-to-Know Act.* EPA is considering rescinding the June 13, 2019, final rule, which exempted reporting of air emissions from animal waste under the Emergency Planning and Community Right-to-Know Act (EPCRA). On March 23, 2018, the President signed into law the ''Fair Agricultural Reporting Method Act'' or the ''FARM Act.'' The FARM Act expressly exempts reporting of air emissions from animal waste (including decomposing animal waste) at a farm from CERCLA section 103. In the June 13, 2019, final rule, the Agency applied the CERCLA exemption to reporting under EPCRA. The Agency is now reconsidering that action.

• *Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives.* This rulemaking will consider revisions to the regulations that allow for the open burning and detonation (OB/OD) of waste explosives. The allowance or ''variance'' to the prohibition on the open burning of hazardous waste was established at a time when there were no alternatives to the safe disposal of waste explosives. However, recent findings from the National Academies of Sciences, Engineering, and Medicine and EPA have determined that safe alternatives are now available for many energetic/explosive waste streams. Because there are safe alternatives in use today that capture and treat emissions prior to release, EPA is considering revising regulations to promote the broader use of these alternatives, where applicable.

• *Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units.* EPA is considering a proposed rule that would modify the regulations at 40 CFR part 264 to clarify that the definition of hazardous waste found in RCRA section 1004(5) is applicable to corrective action for releases from solid waste management units. The proposed rule would more clearly implement EPA's longstanding interpretation of its authority under RCRA section 3004(u) and (v).

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 FY2023:

• *Collecting Data to Better Understand the Environmental and Human Health Impacts of Perfluorooctanoic and Perfluorooctanesulfonic Acids.* As part of the actions identified in the PFAS Strategic Roadmap that the EPA Administrator announced on October 18, 2021, the Agency is considering whether to add certain PFAS chemicals to the list of chemicals required to report to the Toxics Release Inventory (TRI) Program under EPCRA section 313, and whether to remove TRI reporting exemptions and exclusions for PFAS. TRI information may be helpful to inform decision-making by communities, government agencies, companies and others.

Also identified in the 2021 PFAS Strategic Roadmap, the Agency is developing a proposal for a significant new use rule (SNUR) under TSCA section 5(a) for PFAS that are designated as ''Inactive'' on the TSCA Inventory. Such a rule would ensure that EPA is notified at least 90 days before the manufacture or processing of legacy PFAS designated as ''inactive'' on the TSCA Inventory for any use that EPA might determine in the rulemaking is a significant new use. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Manufacture and processing for the significant new use would be unable to commence until EPA has conducted a review of the submitted notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination. EPA intends to issue the proposal in the first quarter of FY 2023.

Finally, the Agency is developing a final rule to establish reporting and recordkeeping requirements for persons that manufacture (including import) or have manufactured these chemical

substances in any year since January 1, 2011, in accordance with TSCA section 8(a)(7) and the 2021 PFAS Roadmap. The information received by EPA in response to the final rule is expected to support the Agency's efforts to better characterize the sources and quantities of manufactured PFAS in the United States. EPA expects to promulgate the final rule in early 2023.

• *Addressing the Unreasonable Risk of Existing Chemical Substances under TSCA.* Upon determining that an existing chemical presents an unreasonable risk of injury to health or the environment, the Agency must immediately initiate an action to apply, by rule, requirements under TSCA to eliminate the unreasonable risk. EPA may consider a range of risk management options under TSCA in such a rule, including labeling, recordkeeping or notice requirements, actions to reduce human exposure or environmental release, or a ban of the chemical or of certain uses. After determining that the chemical substances present unreasonable risk under their conditions of use, the Agency intends to promulgate a final rule addressing the unreasonable risks of chrysotile asbestos (RIN 2070–AK86) in the coming year and also expects to propose risk management regulations for Methylene Chloride (RIN 2070–AK70), 1-Bromopropane (RIN 2070–AK73), Carbon Tetrachloride (RIN 2070–AK82), Trichloroethylene (RIN 2070–AK83), Perchloroethylene (RIN 2070–AK84), and N-Methylpyrrolidone (RIN 2070–AK85) throughout 2023.

• *Improving Procedures for Assessing the Risks of New and Existing Chemical Substances and Mixtures under TSCA.* As amended in 2016, TSCA requires EPA to assess the risks of each new chemical substance for which a notice was received under TSCA section 5(a)(1) of the law make an affirmative determination on whether such a new chemical substance presents an unreasonable risk to human health or the environment under known, intended or reasonably foreseen conditions of use before the submitter may commence manufacturing or processing of the chemical substance that is the subject of the submitted notice, and to take action as required in association with the determination. EPA is developing a proposed rule to amend the new chemicals procedural regulations in 40 CFR parts 720, 723, and 725 for the purpose of aligning EPA's processes and procedures with the 2016 TSCA amendments and to clarify and improve the efficiency of the Agency's review process. The major objectives of the proposed rule are to increase the quality of information initially submitted in new chemicals notices, ensure that the Agency's processes result in the timely, effective completion of new chemical risk assessments, and improve EPA's existing practices related to the review of certain groups of chemical substances under Pre-Manufacture Notification (PMN) exemptions.

The 2016 TSCA amendments require EPA to evaluate the safety of existing chemicals via a three-stage process: prioritization, risk evaluation, and risk management. EPA first prioritizes chemicals as either high- or low-priority for risk evaluation. EPA evaluates high-priority chemicals for unreasonable risk. Consistent with the directives of Executive Order 13990, 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. EPA is in the process of reissuing unreasonable risk determinations for several of the first 10 chemicals that reflect, as appropriate, a determination that a whole chemical substance presents an unreasonable risk of injury to health when evaluated under its conditions of use rather than making a risk determination for each of the specific conditions of use of a chemical substance. In addition, the Agency's approach to the risk determination will no longer involve an assumption that all workers always appropriately wear personal protective equipment.

As EPA continues to implement the 2016 TSCA amendments and in consideration of Executive Order 13990, the Agency also intends to propose to amend a 2017 final rule that established a process for conducting existing chemical risk evaluations under TSCA. The proposed rule is expected to address requirements for manufacturer-requested risk evaluations and related information-gathering provisions, provisions addressing violations and penalties, and other rule changes based on lessons learned in the process carrying out the first 10 TSCA risk evaluations.

• *Updating Certain Pesticide Exemptions to Reflect Newer Technologies.* To fulfill the requirement in section 4(b) of Executive Order 13874, entitled ''Modernizing the Regulatory Framework for Agricultural Biotechnology Products'' (84 FR 27899, June 14, 2019), EPA intends to finalize updates to the existing exemptions from regulation under FIFRA and FFDCA for certain plant incorporated protectant (PIP) products to reflect newer technologies, *i.e.,* the exemptions are from the requirements to obtain a pesticide registration under FIFRA and establish a tolerance or tolerance exemption for residues in or on food commodities under FFDCA. EPA regulations define a PIP as a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce thereof. EPA currently regulates all PIPs except those exempted by regulation. In October 2020, EPA proposed to allow certain PIPs created through biotechnology to also be exempt under existing regulations, in cases where those PIPs (1) pose no greater risk than PIPs that meet EPA safety requirements, and (2) could have otherwise been created through conventional breeding. EPA also proposed a process through which developers of PIPs based on sexually compatible plants created through biotechnology submit either a self-determination letter or request for EPA confirmation that their PIP meets the criteria for exemption. EPA intends to promulgate a final rule in 2023.

• *Reevaluating Changes to the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels under TSCA.* The Agency's dust-lead hazard standards (DLHS) provide the basis for risk assessors to determine whether dust-lead hazards are present, and apply to target housing (*i.e.,* most pre-1978 housing) and child-occupied facilities (pre-1978 non-residential properties where children 6 years of age or under spend a significant amount of time such as daycare centers and kindergartens). EPA's dust-lead clearance levels (DLCL) indicate the amount of lead in dust on a surface following the completion of an abatement activity. On July 9, 2019, EPA promulgated a final rule to lower the DLHS, and on January 6, 2021, EPA promulgated a final rule to lower the DLCL. The Agency is now considering further revisions of the DLHS and DLCL to bolster the protection of children's health and to further reduce lead exposures in overburdened communities in consideration of the directives of Executive Order 13990. In addition, on May 14, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 DLHS final rule and directed EPA to reconsider the 2019 DLHS rule in conjunction with a reconsideration of the DLCL. EPA expects to propose additional revisions to the DLHS and DLCL in early 2023.

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)

Prerule Stage

167. • Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020 [2060–AV84]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 7675

CFR Citation: 40 CFR 84.

Legal Deadline: None.

Abstract: EPA is considering a rulemaking to establish requirements for management of certain hydrofluorocarbons (HFCs) and their substitutes under the American Innovation and Manufacturing (AIM) Act of 2020 (42 U.S.C. 7675). Specifically, EPA is considering a rulemaking under subsection (h) of the AIM Act to establish regulations to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purpose of maximizing the reclamation and minimizing the release of certain HFCs from equipment and ensuring the safety of technicians and consumers. Among these practices, processes, and activities, EPA is considering applying leak repair requirements to certain equipment using HFCs and their substitutes as refrigerants in this rulemaking. EPA also intends to consider options to increase opportunities for reclaiming regulated substances used as refrigerants and potential approaches to coordinate regulations carrying out subsection (h) of the AIM Act with similar EPA regulations, such as the refrigerant management program established under Title VI of the Clean Air Act.

Statement of Need: This rule is required to meet the statutory provisions of subsection (h) of the American Innovation and Manufacturing (AIM) Act of 2020.

Summary of Legal Basis: The American Innovation and Manufacturing (AIM) Act, enacted on December 27, 2020, provides EPA new authorities to address hydrofluorocarbons (HFCs) in three main areas: phasing down the production and consumption of listed HFCs, maximizing reclamation and minimizing releases of these HFCs and their substitutes in equipment (*e.g.,* refrigerators and air conditioners), and facilitating the transition to next-generation technologies by restricting the use of HFCs in particular sectors or subsectors. Subsection (h) of the AIM Act requires EPA to establish regulations to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purpose of maximizing the reclamation and minimizing the release of certain HFCs from equipment and ensuring the safety of technicians and consumers. Among these practices, processes, and activities, EPA is considering applying leak repair requirements to certain equipment using HFCs and their substitutes as refrigerants in this rulemaking.

Alternatives: Subsection (h) of the AIM Act requires EPA to promulgate regulations to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment. The AIM Act allows EPA to consider coordinating any regulations promulgated under subsection (h) with any regulations promulgated by EPA that involve a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment; or reclaiming.

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
Notice	12/00/22	
NPRM	09/00/23	
Final Rule	09/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Federalism: Undetermined.

Agency Contact: Annie Kee, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Ave. NW, Washington, DC 20460, *Phone:* 202 564–2056, *Email: kee.annie@epa.gov.*

Christian Wisniewski, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Ave. NW, Washington, DC 20460, *Phone:* 202 564–0417, *Email: wisniewski.christian@epa.gov.*

RIN: 2060–AV84

EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

Prerule Stage

168. PFAS-Related Designations as CERCLA Hazardous Substances [2050–AH25]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 9602

CFR Citation: 40 CFR 302.

Legal Deadline: None.

Abstract: On October 18, 2021, EPA released its PFAS Strategic Roadmap which builds on and accelerates implementation of existing plans to address PFAS and commits to bolder new policies to address PFAS in the environment. The EPA is developing an Advance Notice of Proposed Rulemaking in which the Agency will seek public input on further PFAS-related designations under CERCLA. As examples, the Agency may request input regarding the potential hazardous substance designation of additional PFAS; and designation, or designations of classes or sub-classes of PFAS as hazardous substances.

Statement of Need: EPA plans to publish in the **Federal Register** an advance notice of proposed rulemaking requesting public input on whether the agency should consider designating as hazardous substances precursors to PFOA and PFOS, whether the agency should consider designating other PFAS as CERCLA hazardous substances and whether there is information that would allow the agency to designate PFAS as a class or subclass.

Summary of Legal Basis: Not evaluated.

Alternatives: Not evaluated.

Anticipated Cost and Benefits: Not evaluated.

Risks: Not evaluated.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations.

Government Levels Affected: Tribal, State, Federal, Local.

Sectors Affected: 488119 Other Airport Operations; 811192 Car Washes; 322121 Paper (except Newsprint) Mills; 332813 Electroplating, Plating, Polishing, Anodizing, and Coloring; 325510 Paint and Coating Manufacturing; 314110 Carpet and Rug Mills; 922160 Fire Protection; 322130 Paperboard Mills; 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing; 562212 Solid Waste Landfill; 325992 Photographic Film, Paper, Plate, and Chemical Manufacturing; 324110 Petroleum Refineries; 424710 Petroleum Bulk Stations and Terminals.

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–AH25

EPA—OFFICE OF AIR AND RADIATION (OAR)

Proposed Rule Stage

169. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations [2060–AU37]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: secs. 112 and 307(d)(7)(B) of the CAA as amended (42 U.S.C. 7412 and 7607(d)(7)(B)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)); 42 U.S.C. 7414, 7601

CFR Citation: 40 CFR 63, subpart O.

Legal Deadline: None.

Abstract: In December 1994, pursuant to section 112(d) of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide Commercial Sterilization and Fumigation Operations (59 FR 62585). The NESHAP established standards for both major and area sources. EPA completed a residual risk and technology review for the NESHAP in 2006 and, at that time, concluded that no revisions to the standards were necessary. In this action, EPA will conduct the second technology review for the NESHAP and 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, 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 and is conducting 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	03/00/23	
Final Rule	10/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Additional Information: EPA–HQ–OAR–2019–0178.

Sectors Affected: 311423 Dried and Dehydrated Food Manufacturing; 33911 Medical Equipment and Supplies Manufacturing; 561910 Packaging and Labeling Services; 325412 Pharmaceutical Preparation Manufacturing; 311942 Spice and Extract Manufacturing.

Agency Contact: Jon Witt, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code E143–05, Research Triangle Park, NC 27709, *Phone:* 919 541–5645, *Email: witt.jon@epa.gov.*

Steve Fruh, Environmental Protection Agency, Office of Air and Radiation, E143–01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, *Phone:* 919 541–2837, *Email: fruh.steve@epa.gov.*

RIN: 2060–AU37

EPA—OAR

170. Amendments to the NSPS for GHG Emissions From New, Modified, & Reconstructed Stationary Sources: EGUS [2060–AV09]

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; 42 U.S.C. 7414, 7601

CFR Citation: 40 CFR 60, subpart TTTT.

Legal Deadline: None.

Abstract: 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. That rulemaking determined that the best system of emission reduction (BSER) for greenhouse gases (GHGs) for newly constructed coal-fired steam generating units (*i.e.,* EGUs) is efficient generation in combination with partial carbon capture and storage, the BSER for natural gas-fired base load combustion turbine EGUs is efficient generation (*i.e.,*

the use of combined cycle technology), and the BSER for non-base load and multi-fuel-fired combustion turbine EGUs is the use of clean fuels. In 2018, EPA proposed to revise the BSER for coal fired EGUs to be efficient generation. To date, that proposed action has not been finalized. The purpose of this action is to conduct a comprehensive review of the NSPS and, if appropriate, amend the emission standards for new fossil fuel fired EGUs. EPA anticipates issuing a proposed rule in spring 2023, and promulgating a final rule by Summer 2024.

Statement of Need: New EGUs are a significant source of GHG emissions. This action will evaluate options to reduce those emissions.

Summary of Legal Basis: Clean Air Act section 111(b) provides the legal framework for establishing greenhouse gas emission standards for new electric generating units.

Alternatives: EPA evaluated several options for reducing GHG emissions from new EGUs.

Anticipated Cost and Benefits: Undetermined.

Risks: Undetermined.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	
Final Rule	06/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information:

Sectors Affected: 22111 Electric Power Generation; 221112 Fossil Fuel Electric Power Generation.

Agency Contact: Christian Fellner, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243–01, Research Triangle Park, NC 27711, *Phone:* 919 541–4003, *Fax:* 919 541–4991, *Email: fellner.christian@epa.gov.*

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.*

Related RIN: Related to 2060–AT56

RIN: 2060–AV09

EPA—OAR

171. Emission Guidelines for Greenhouse Gas Emissions From Fossil Fuel-Fired Existing Electric Generating Units [2060–AV10]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 42 U.S.C. 7411 Clean Air Act; 42 U.S.C. 7414, 7601

CFR Citation: 40 CFR 60, subpart UUUUa.

Legal Deadline: None.

Abstract: Fossil fuel-fired power plants are the nation's second largest source of GHG pollution. On August 3, 2015, EPA promulgated its first emission guideline regulating greenhouse gases (GHGs) from existing fossil fuel-fired electric generating units (EGUs) in the Clean Power Plan (40 CFR part 60 UUUU), which was subsequently stayed by the U.S. Supreme Court. On June 19, 2019 EPA issued a new rule, the Affordable Clean Energy Rule (40 CFR part 60, subpart UUUUa) and a repeal of the Clean Power Plan. On January 19, 2021, the D.C. Circuit Court vacated the Affordable Clean Energy Rule and remanded the rule to EPA for further consideration consistent with its decision. On February 12, 2021, considering the D.C. Circuit's decision, the EPA published a memorandum on the status of the Affordable Clean Energy 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. The U.S. Supreme Court then overturned the D.C. Circuit's decision in the *WV* v. *EPA* opinion in June 2022. EPA is considering the implications of this U.S. Supreme Court decision and is now undertaking a new rulemaking to establish emission guidelines under CAA 111(d) to limit GHG emissions from existing fossil fuel-fired EGUs. EPA anticipates issuing a proposed rule for this action in Spring 2023, and promulgating a final rule by Summer 2024.

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	04/00/23	
Final Rule	06/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Agency Contact: Nicholas Swanson, Environmental Protection Agency, Office of Air and Radiation, E143–03, Research Triangle Park, NC 27711, *Phone:* 919 541–4080, *Email: swanson.nicholas@epa.gov.*

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.*

RIN: 2060–AV10

EPA—OAR

172. Volume Requirements for 2023 and Beyond Under the Renewable Fuel Standard Program [2060–AV14]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7401 *et seq.,* Clean Air Act

CFR Citation: 40 CFR 80.

Legal Deadline: Final, Statutory, October 31, 2021, By statute, the Set Rule is required to establish applicable volumes 14 months ahead of the first year (2023).

Abstract: The statutory provisions in the Clean Air Act 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, EPA must set those volumes based on an analysis of factors specified

in the statute. This rulemaking will establish volume requirements beginning in 2023.

Statement of Need: Under the statute, target volumes of renewable fuel for the RFS program are provided only through 2022. For years 2023 and thereafter, EPA must set those volumes based on an analysis of factors specified in the statute.

Summary of Legal Basis: CAA section 211(o).

Alternatives: EPA may request comment to address alternative options in the proposed rule.

Anticipated Cost and Benefits: EPA will analyze costs and benefits in the proposed rule.

Risks: EPA will evaluate the risks of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	
Final Rule	06/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Additional Information:

Sectors Affected: 32411 Petroleum Refineries; 324110 Petroleum Refineries; 324 Petroleum and Coal Products Manufacturing; 3241 Petroleum and Coal Products Manufacturing.

Agency Contact: David Korotney, Environmental Protection Agency, Office of Air and Radiation, N27, Ann Arbor, MI 48105, *Phone:* 734 214–4507, *Email: korotney.david@epa.gov*.

Dallas Burkholder, Environmental Protection Agency, Office of Air and Radiation, N26, 2565 Plymouth Road, Ann Arbor, MI 48105, *Phone:* 734 214–4766, *Email: burkholder.dallas@epa.gov*.

RIN: 2060–AV14

EPA—OAR

173. New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review [2060–AV16]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7411

CFR Citation: 40 CFR 60; subpart OOOOa.

Legal Deadline: None.

Abstract: On November 15, 2021, the EPA proposed new source performance standards and emission guidelines for crude oil and natural gas facilities. (86 FR 63110). This action was in response to the January 20, 2021, Executive Order titled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' 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 that action. The Executive Order further directs the EPA to consider proposing new regulations to establish comprehensive emission guidelines for emissions from the exploration and production, transmission, processing, and storage segments.

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 Extended.	12/17/21	86 FR 71603
Supplemental NPRM.	12/06/22	87 FR 74702
SNPRM Comment Period End.	02/13/23	
Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, State, Tribal.

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Additional Information: EPA–HQ–OAR–2021–0317. *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry*.

Sectors Affected: 213111 Drilling Oil and Gas Wells; 2111 Oil and Gas Extraction; 211 Oil and Gas Extraction; 237120 Oil and Gas Pipeline and Related Structures Construction; 23712 Oil and Gas Pipeline and Related Structures Construction; 213112 Support Activities for Oil and Gas Operations.

Agency Contact: Karen Marsh, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code E143–01, Research Triangle Park, NC 27711, *Phone:* 919 541–1065, *Email: marsh.karen@epa.gov*.

Steve Fruh, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code E143–01, Research Triangle Park, NC 27711, NC 27711, *Phone:* 919 541–2837, *Email: fruh.steve@epa.gov*.

RIN: 2060–AV16

EPA—OAR

174. Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act [2060–AV20]

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 7401 *et seq.*, CAA; 42 U.S.C. 7414, 7601

CFR Citation: 40 CFR 63.1.

Legal Deadline: None.

Abstract: The final rule, Reclassification of Major Sources as Area Sources Under section 112 of the Clean Air Act (Major MACT to Area-MM2A final rule), was promulgated on November 19, 2020. (See 85 FR 73854) The MM2A final rule became effective on January 19, 2021. On January 20,

2021, President Biden issued Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. The EPA has identified the MM2A final rule as an action being considered pursuant section (2)(a) of Executive Order 13990. Under this review, EPA, as appropriate and consistent with the Clean Air Act section 112, will publish for comment a notice of proposed rulemaking reconsidering 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: The EPA will take comments on the review of the final MM2A and EPA's proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

Anticipated Cost and Benefits: The 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	04/00/23	
Final Rule	02/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, Tribal.

Federalism: Undetermined.

Additional Information:

Agency Contact: Nathan Topham, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243–02, Research Triangle Park, NC 27711, *Phone:* 919 541–0483, *Fax:* 919 541–4991, *Email: topham.nathan@epa.gov*.

Brian Shrager, Environmental Protection Agency, Office of Air and Radiation, E143–01, Research Triangle Park, NC 27711, *Phone:* 919 541–7689, *Fax:* 919 541–5450, *Email: shrager.brian@epa.gov*.

Related RIN: Related to 2060–AM75

RIN: 2060–AV20

EPA—OAR

175. Revisions to the Air Emission Reporting Requirements (AERR) [2060–AV41]

Priority: Other Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: Clean Air Act

CFR Citation: 40 CFR 51.

Legal Deadline: None.

Abstract: This action proposes revisions to the existing Air Emissions Reporting Requirements (AERR) rule last revised on February 19, 2015 (80 FR 8787), and may include major revisions. The EPA is considering how to improve the quality and completeness of hazardous air pollutant (HAP) emissions from stationary sources and all pollutant emissions from prescribed fires. Further, the EPA is considering how best to quantify emissions from intermittent sources such as backup generators; how to obtain data from permitted facilities in Indian Country when a Tribe is not required to report emissions data; and how to address known data gaps, streamline processes, and improve data quality, documentation, and transparency for nonpoint and mobile sources.

Statement of Need: Since 2015, many aspects of emissions data collection and use have evolved. The EPA has continued to review hazardous air pollutant (HAP) emissions levels and associated public health risk through the Residual Risk and Technology (RTR) program, which in many cases has required Information Collection Requests (ICRs) under Section 114 of the Act. Such collection efforts have proven very time consuming and limited EPA's ability to act quickly. Furthermore, as the EPA gains insight into the risks posed by certain chemicals, such as Ethylene Oxide, we have found ourselves limited by the data available on emissions sources. New compounds continue to be identified as public health threats, such as per- and polyfluoroalkyl substances (PFAS), which may be listed as HAPs in the future. Currently, States are required to report the emissions from sources in their state to EPA. In practice, that has meant emissions are reported only for facilities permitted at the state level. Facilities permitted at the federal level technically do not fall under the reporting requirements, and consequently, some never report emissions to the EPA, which does not allow for proper EPA and state program implementation. Requiring HAPs for point sources is essential to addressing continued public health risks and environmental justice issues.

Summary of Legal Basis: Section 114(a)(1) of the CAA authorizes the Administrator to, among other things, require certain persons (explained below) on a one-time, periodic, or continuous basis to keep records, make reports, undertake monitoring, sample emissions, or provide such other information as the Administrator may reasonably require. The EPA may require this information of any person who (i) owns or operates an emission source, (ii) manufactures control or process equipment, (iii) the Administrator believes may have information necessary for the purposes set forth in CAA section 114, or (iv) is subject to any requirement of the Act (except for manufacturers subject to certain Title II requirements). The information may be required for the purposes of developing an implementation plan, an emission standard under sections 111, 112, or 129, determining if any person is in violation of any standard or requirement of an implementation plan or emissions standard, or ''carrying out any provision'' of the Act (except for a provision of Title II with respect to manufacturers of new motor vehicles or new motor vehicle engines).

Alternatives: These proposed reporting requirements also propose options and alternatives that may allow the States to report for owners/operators of regulated facilities.

Anticipated Cost and Benefits: To be determined.

Risks: No risks are associated with this action as these are proposed reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	
Final Rule	10/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses, Governmental Jurisdictions.

Government Levels Affected: State, Local, Tribal.

Federalism: Undetermined.

Additional Information: EPA–HQ–OAR–2004–0489.

Agency Contact: Marc Houyoux, Environmental Protection Agency, Office of Air and Radiation, C339–02, Research Triangle Park, NC 27711, *Phone:* 919 541–3649, *Fax:* 919 541–0684, *Email: houyoux.marc@epa.gov*.

RIN: 2060–AV41

EPA—OAR

176. Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years [2060–AV45]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7675

CFR Citation: 40 CFR 84.

Legal Deadline: Final, Statutory, October 1, 2021, Rule must be signed and in part effective no later than September 2023 so EPA can issue allowances for 2024 by October 1, 2023.

Abstract: This rule will continue to implement the hydrofluorocarbon (HFC) phasedown under the American Innovation and Manufacturing (AIM) Act. A prior rulemaking established a framework for the allowance allocation and trading program to phase down HFC production and consumption over time, and also established the production and consumption baselines, codified the list of controlled substances that will be covered by those baselines, determined an approach to allocating annual allowances for 2022 and 2023 and allowing for trading of those allowances, established recordkeeping and reporting requirements, introduced a robust, agile, and innovative compliance and enforcement system, and addressed other related elements. To continue phasing down the production and consumption of listed HFCs on the schedule listed in the AIM Act, this rulemaking will determine an approach to allocating annual allowances in 2024 and later years and make adjustments based on the lessons learned from implementation of the framework rule.

Statement of Need: This rule is required to meet the statutory provisions of subsection (e), among other provisions, of the AIM Act.

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. This rule focuses on the first of these areas.

Alternatives: The AIM Act provides discretion and flexibility for how EPA may establish allowance and trading programs. However, the Agency must adhere to the stepdown schedule prescribed in the AIM Act, and must also issue allowances for each calendar year by October 1 of the prior calendar year.

Anticipated Cost and Benefits: For this rulemaking, EPA will prepare and update a Regulatory Impact Analysis (RIA) to provide the public with estimates of the potential costs and benefits of our proposed and final provisions.

Risks: EPA is still evaluating the scope and risks associated with a prospective rule.

Timetable:

Action	Date	FR Cite
NPRM	11/03/22	87 FR 66372
NPRM Comment Period End.	12/19/22	
Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Additional Information:

Agency Contact: Wei-An Chang, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–6658, *Email: chang.andy@epa.gov*.

RIN: 2060–AV45

EPA—OAR

177. Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act [2060–AV46]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: American Innovation and Manufacturing (AIM) Act of 2020

CFR Citation: 40 CFR 84.

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	12/00/22	
Final Rule	09/00/23	

Regulatory Flexibility Analysis Required: No.

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.

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

178. Implementing Regulations Under 40 CFR Part 60 Subpart Ba Adoption and Submittal of State Plans for Designated Facilities [2060–AV48]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 7411 Clean Air Act; 42 U.S.C. 7414, 7601

CFR Citation: 40 CFR 60, subpart Ba.

Legal Deadline: None.

Abstract: The Clean Air Act (CAA) section 111(d) directs the EPA to promulgate a procedure ''similar'' to that provided by CAA section 110, under which states submit 111(d) plans for regulatory implementation to the EPA. In 1975, EPA addressed this requirement by promulgating ''implementing regulations'' under 40 CFR part 60, subpart B. These implementing regulations contain, among other things, deadlines for the submission of, and for EPA's action on, ''state plans'', as well as deadlines for the promulgation of related ''federal plans''. In 2019 the EPA finalized 40 CFR part 60, subpart Ba, a new subpart that updated the implementing regulations for prospective emission guidelines. However, the United States Court of Appeals for the District of Columbia Circuit (in *American Lung Ass'n* v. *EPA,* No. 19–1140) vacated the subpart Ba state and federal plan timelines due to a finding of inadequate justification. This action will amend the timelines in Subpart Ba consistent with the court vacatur, and will propose additional updates and tools to aid in implementation of emission guidelines.

Statement of Need: In January 2021, the D.C. Circuit Court vacated the timelines in 40 CFR part 60, subpart Ba. The Supreme Court subsequently reversed and remanded the D.C. Circuit Court's opinion (*West Virginia* v. *EPA,* 142 S. Ct. 2587, June 30, 2022); however, no Petitioner sought certiorari on, and the West Virginia decision did not implicate, the D.C. Circuit's vacatur of portions of subpart Ba. This action will replace the timelines vacated by the D.C. Circuit Court. These amendments, when finalized, will apply to any emission guideline promulgated after July 8, 2019, and will provide the complete framework for state implementation of upcoming emission guidelines.

Summary of Legal Basis: Clean Air Act section 111(d) provides the legal framework for the development and implementation of state plans to implement emission guidelines.

Alternatives: There are no alternatives at this time.

Anticipated Cost and Benefits: There are no anticipated costs or benefits because the implementing regulations do not impose any pollution control requirements.

Risks: There are no anticipated risks because the implementing regulations do not impose any pollution control requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/22	
Final Rule	04/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: State.

Additional Information:

Agency Contact: Michelle Bergin, Environmental Protection Agency, Office of Air and Radiation, D205–02, Research Triangle Park, NC 27711, *Phone:* 919 541–2726, *Email: bergin.michelle@epa.gov.*

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.*

RIN: 2060–AV48

EPA—OAR

179. Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles [2060–AV49]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7401 to 7671q

CFR Citation: 40 CFR 86; 40 CFR 600.

Legal Deadline: None.

Abstract: Per EPA's authority under the Clean Air Act section 202(a), EPA will propose a comprehensive set of emissions standards for greenhouse gases and criteria pollutants for the light-duty vehicle sector as well as the heavy-duty vehicle Class 2B and 3 sectors. The standards will begin with model year 2027 light-duty vehicles, with stringency levels set at least through model year 2030. This action is also supported by the President's Executive Order 14037, titled ''Strengthening American Leadership in Clean Cars and Trucks.'' EPA will coordinate with the Department of Transportation in developing this proposal as appropriate.

Statement of Need: On August 5, 2021, President Biden issued Executive Order 14307 on Strengthening American Leadership in Clean Cars and Trucks which ordered the Administrator of the Environmental Protection Agency (EPA) to ''establish new multi-pollutant emissions standards, including for greenhouse gas emissions, for light- and medium-duty vehicles beginning with model year 2027 and extending through and including at least model year 2030.'' This rulemaking will establish standards beyond 2026.

Summary of Legal Basis: Clean Air Act (42 U.S.C. 7401).

Alternatives: EPA will asses alternative standards in the development of the proposal.

Anticipated Cost and Benefits: EPA will assess costs and benefits in the development of the proposal.

Risks: EPA will assess risks in the development of the proposal.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal.

Additional Information:

Sectors Affected: 811198 All Other Automotive Repair and Maintenance; 336111 Automobile Manufacturing; 423110 Automobile and Other Motor Vehicle Merchant Wholesalers; 811112 Automotive Exhaust System Repair; 81111 Automotive Mechanical and Electrical Repair and Maintenance; 336112 Light Truck and Utility Vehicle Manufacturing; 335312 Motor and Generator Manufacturing.

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.*

Christopher Lieske, Environmental Protection Agency, Office of Air and

Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, *Phone:* 734 214–4584, *Email: lieske.christopher@epa.gov.*

RIN: 2060–AV49

EPA—OAR

180. Reconsideration of the National Ambient Air Quality Standards for Particulate Matter [2060–AV52]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 7401 *et seq.*, Clean Air Act

CFR Citation: 40 CFR 50.

Legal Deadline: None.

Abstract: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, the EPA published a final decision retaining the NAAQS for particulate matter (PM), which was the subject of several petitions for reconsideration as well as petitions for judicial review. As directed in Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' signed by President Biden on January 20, 2021, EPA is undertaking a reconsideration of the December 2020 decision to retain the PM NAAQS because the available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. As part of this reconsideration, EPA developed a Supplement to the 2019 PM Integrated Science Assessment (ISA) and a Policy Assessment to take into account the most up-to-date science on public health impacts of PM, and engaged with the chartered Clean Air Scientific Advisory Committee (CASAC) and a newly-constituted expert CASAC PM panel.

Statement of Need: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, EPA published a final rule retaining the NAAQS for particulate matter, without revision. On June 10, 2021, EPA announced that it is reconsidering the December 2020 decision on the air quality standards for PM.

Summary of Legal Basis: Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years.

Alternatives: The main alternative for the Administrator's decision on the review of the national ambient air quality standards for particulate matter is whether to retain or revise the existing standards.

Anticipated Cost and Benefits: When the Agency proposes revisions to the standards, the Agency prepares a Regulatory Impact Analysis (RIA) to provide the public with illustrative estimates of the potential costs and health and welfare benefits of attaining the revised standards. However, the Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of state plans to implement the standards.

Risks: The reconsideration builds on the review completed in 2020, which included the preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, and a Policy Assessment, which includes a risk/exposure assessment, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. These documents informed the Administrator's final decision to retain the PM standards in 2020. As a part of the reconsideration, EPA prepared a Supplement to the 2019 PM Integrated Science Assessment and a Policy Assessment, which was reviewed at a public meeting by the CASAC. These documents informed the Administrator's proposed decisions on whether to revise the PM NAAQS, and the Administrator's final decisions on whether to revise the PM NAAQS will take into consideration these documents, CASAC advice, and public comment on the proposed decision.

Timetable:

Action	Date	FR Cite
Notice	10/08/21	86 FR 56263
Notice	05/26/22	87 FR 31965
NPRM	01/00/23	
Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: None.

Additional Information:

Agency Contact: Karen Wesson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code C504–06, Research Triangle Park, NC 27711, *Phone:* 919 541–3515, *Email: wesson.karen@epa.gov.*

Nicole Hagan, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code C504–06, Research Triangle Park, NC 27709, *Phone:* 919 541–3153, *Email: hagan.nicole@epa.gov.*

RIN: 2060–AV52

EPA—OAR

181. NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of the Residual Risk and Technology Review [2060–AV53]

Priority: Economically 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 part 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 RTR portion of the May 22, 2020 final action and, under this action, will take appropriate action resulting from that review. EPA is reviewing the Reconsideration of the Supplemental Finding in a separate action.

Statement of Need: Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,'' directs EPA to review the May 2020 RTR. EPA will issue the results of the review in a notice of proposed rulemaking and will solicit comment on the review.

Summary of Legal Basis: CAA section 112, 42 U.S.C. 7412, provides the legal framework and basis for regulatory actions addressing emissions of hazardous air pollutants from stationary sources.

Alternatives: EPA has evaluated several options for reviewing the RTR and will take comment on the review.

Anticipated Cost and Benefits: EPA is still evaluating the scope and risks of a prospective rule.

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	03/00/23	
Final Rule	03/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Additional Information:

Sectors Affected: 221112 Fossil Fuel Electric Power Generation; 221122 Electric Power Distribution.

Agency Contact: 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.*

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.*

RIN: 2060–AV53

EPA—OAR

182. • Methane Emissions and Waste Reduction Incentive Program and Revisions to the Mandatory Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems [2060–AV83]

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.* Clean Air Act

CFR Citation: 40 CFR 98.

Legal Deadline: None.

Abstract: The Inflation Reduction Act of 2022 adds section 136, ''Methane Emissions and Waste Reduction Incentive Program'' to title I of the Clean Air Act. Section 136(c) directs the Administrator to impose and collect a charge for excess methane emissions from applicable facilities that report to the Greenhouse Gas Reporting Program petroleum and natural gas systems source category (40 CFR part 98, subpart W) and that exceed statutorily specified waste emissions thresholds. Section 136(h) requires revisions to the requirements of 40 CFR part 98, subpart W to ensure that reporting and calculation of charges are based on empirical data and accurately reflect total emissions from applicable facilities. The purpose of this action is to amend 40 CFR part 98, subpart W and meet directives set forth in section 136 with respect to the Methane Emissions and Waste Reduction Incentive Program.

Statement of Need: This rule implements Clean Air Act section 136, which was added by the Inflation Reduction Act of 2022.

Summary of Legal Basis: The Inflation Reduction Act of 2022 adds section 136, ''Methane Emissions and Waste Reduction Incentive Program'' to the Clean Air Act. Section 136(c) directs the Administrator to impose and collect a charge for excess methane emissions from applicable facilities that report to the Greenhouse Gas Reporting Program petroleum and natural gas systems source category (40 CFR part 98, subpart W) and that exceed statutorily specified waste emissions thresholds. Section 136(h) requires revisions to the requirements of 40 CFR part 98, subpart W to ensure that reporting and calculation of charges are based on empirical data and accurately reflect total emissions from applicable facilities. The purpose of this action is to amend 40 CFR part 98, subpart W and meet directives set forth in section 136 with respect to the Methane Emissions and Waste Reduction Incentive Program.

Alternatives: The EPA will evaluate several options related to calculation of reported emissions and charges and will solicit comment on those options.

Anticipated Cost and Benefits: The Agency will prepare an analysis 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	03/00/23	
Final Rule	10/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

Agency Contact: Jennifer Bohman, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 343–9548, *Email: bohman.jennifer@epa.gov.*

RIN: 2060–AV83

EPA—OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSPP)

Proposed Rule Stage

183. Fees for the Administration of the Toxic Substances Control Act (TSCA) [2070–AK64]

Priority: Other Significant.

Legal Authority: 15 U.S.C. 2625 Toxic Substances Control Act

CFR Citation: 40 CFR 700.

Legal Deadline: Final, Statutory, October 1, 2021, TSCA section 26(b)(4)(F) requires EPA to review and adjust the fees established in its 2018 rule every three years to reflect changes in program costs.

Abstract: In January 2021, EPA proposed updates and adjustments to the 2018 fees rule established under the Toxic Substances Control Act (TSCA). TSCA requires EPA to review and, if necessary, adjust the fees every three years, after consultation with parties potentially subject to fees. EPA proposed modifications to the TSCA fees and fee categories for fiscal years 2022, 2023 and 2024, and explained the methodology by which the proposed TSCA fees were determined. EPA proposed to add three new fee categories: A Bona Fide Intent to Manufacture or Import Notice, a Notice of Commencement of Manufacture or

Import, and an additional fee associated with test orders. In addition, EPA proposed exemptions for entities subject to certain fee triggering activities; including: An exemption for research and development activities; an exemption for entities manufacturing less than 2,500 lbs. of a chemical subject to an EPA-initiated risk evaluation fee; an exemption for manufacturers of chemical substances produced as a non-isolated intermediate; and exemptions for manufacturers of a chemical substance subject to an EPA-initiated risk evaluation if the chemical substance is imported in an article, produced as a byproduct, or produced or imported as an impurity. EPA updated its cost estimates for administering TSCA, relevant information management activities and individual fee calculation methodologies. EPA proposed a volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario where a consortium is not formed and is proposing to require export-only manufacturers to pay fees for EPA-initiated risk evaluations. EPA also proposed various changes to the timing of certain activities required throughout the fee payment process. However, in light of public comments, EPA has decided to issue a supplemental proposal and seek additional public comment on changes to the January 2021 proposal.

Statement of Need: The Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act of 2016 (Pub. L. 114–182) provides EPA with authority to establish fees to defray approximately but not more than 25 percent of the costs associated with administering TSCA sections 4, 5, and 6, as amended, as well as the costs of collecting, processing, reviewing, and providing access to and protecting information about chemical substances from disclosure as appropriate under TSCA section 14.

Summary of Legal Basis: This rule is being promulgated under TSCA section 26(b), 15 U.S.C. 2625(b).

Alternatives: EPA is considering options for setting fees for each of the fee-trigger activities as well as allocating the fees more equitably among fee payers.

Anticipated Cost and Benefits: The proposed fee levels will be determined by estimating the total annual costs of administering relevant activities under TSCA sections 4, 5, 6 and 14; identifying the full amount to be defrayed (*i.e.,* 25% of those annual costs); and allocating that amount across the fee-triggering activities. The principal benefit of the rule is to provide EPA a sustainable source of funding necessary to implement TSCA as mandated under the Frank R. Lautenberg Chemical Safety for the 21st Century.

Risks: This action will not establish an environmental standard intended to mitigate environmental health risks or safety risks.

Timetable:

Action	Date	FR Cite
NPRM	01/11/21	86 FR 1890
Supplemental NPRM.	11/16/22	87 FR 68647
SNPRM Comment Period End.	01/17/23	
Final Rule	09/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: None.

Additional Information: EPA–HQ–OPPT–2020–0493.

Sectors Affected: 325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing; 424 Merchant Wholesalers, Nondurable Goods.

URL For More Information: https://www.epa.gov/tsca-fees.

URL For Public Comments: https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0493-0001.

Agency Contact: Marc Edmonds, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460, *Phone:* 202 566–0758, *Email: edmonds.marc@epa.gov.*

Victoria Ellenbogen, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Mail Code 7404T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–2053, *Email: ellenbogen.victoria@epa.gov.*

RIN: 2070–AK64

EPA—OCSPP

184. Methylene Chloride; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK70]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, June 24, 2021, TSCA section 6(c).

Final, Statutory, June 24, 2022, TSCA section 6(c).

Abstract: This proposed rulemaking will address the unreasonable risk of injury to health identified in the final risk evaluation for methylene chloride (MC). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to eliminate unreasonable risks of injury to health or the environment that the Administrator has determined in a TSCA section 6(b) risk evaluation are presented by a chemical substance under the conditions of use. EPA's risk evaluation for methylene chloride, describing the conditions of use and presenting EPA's determinations of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0437, with additional information in docket EPA–HQ–OPPT–2016–0742.

Statement of Need: This rulemaking is needed to address the unreasonable risks of methylene chloride that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of methylene chloride, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit

or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. 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, methylene chloride presents unreasonable risks to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	02/00/23	
Final Rule	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0465.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-methylene-chloride.

Agency Contact: Ingrid Feustel, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Mail Code 7405M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–3199, *Email: feustel.ingrid@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–AK70

EPA—OCSPP

185. 1-Bromopropane; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK73]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, August 12, 2021, TSCA section 6(c).

Final, Statutory, August 12, 2022, TSCA section 6(c).

Abstract: The proposed rulemaking will address the unreasonable risk of injury to health identified in the final risk evaluation for 1-bromopropane (1–BP). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to eliminate unreasonable risks of injury to health or the environment that the Administrator has determined in a TSCA section 6(b) risk evaluation are presented by a chemical substance under the conditions of use. 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.

Statement of Need: This rulemaking is needed to address the unreasonable risks of 1-bromopropane that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of 1-bromopropane, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA will consider one or more primary alternative regulatory actions as part of the development of a proposed rule.

Anticipated Cost and Benefits: EPA will prepare a regulatory impact analysis as the Agency develops the proposed rule.

Risks: As EPA determined in the TSCA section 6(b) risk evaluation, 1-bromopropane presents unreasonable risks to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	09/00/23	
Final Rule	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0471.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-1-bromopropane-1-bp.

Agency Contact: Amy Shuman, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–2978, *Email: shuman.amy@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

EPA—OCSPP

186. Carbon Tetrachloride; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK82]

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, November 4, 2021, TSCA section 6(c). Final, Statutory, November 4, 2022, TSCA section 6(c).

Abstract: This proposed rulemaking will address the unreasonable risks of injury to health identified in the final risk evaluation for carbon tetrachloride (CTC). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to eliminate unreasonable risks of injury to health or the environment that the Administrator has determined in a TSCA section 6(b) risk evaluation are presented by a chemical substance under the conditions of use. EPA's risk evaluation for carbon tetrachloride, describing the conditions of use and presenting EPA's determinations of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0499, with additional information in docket EPA–HQ–OPPT–2016–0733.

Statement of Need: This rulemaking is needed to address the unreasonable risks of Carbon Tetrachloride (CTC) that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of Carbon Tetrachloride uses, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. 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, Carbon Tetrachloride presents unreasonable risks to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	
Final Rule	08/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0592.

Sectors Affected: 325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-carbon-tetrachloride.

Agency Contact: Claudia Menasche, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, *Phone:* 202 564–3391, *Email: menasche.claudia@epa.gov*

RIN: 2070–AK82

EPA—OCSPP

187. Trichloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK83]

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, November 30, 2021, TSCA section 6(c). Final, Statutory, November 30, 2022, TSCA section 6(c). *Abstract:* This proposed rulemaking will address the

unreasonable risk of injury to health identified in the final risk evaluation for trichloroethylene (TCE). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to eliminate unreasonable risks of injury to health or the environment that the Administrator has determined in a TSCA section 6(b) risk evaluation are presented by a chemical substance under the conditions of use. EPA's risk evaluation for TCE, describing the conditions of use and presenting EPA's determination of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0500, with additional information in docket EPA–HQ–OPPT–2016–0737.

Statement of Need: This rulemaking is needed to address the unreasonable risks of TCE that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of TCE, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance if required.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. 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, TCE presents unreasonable risks to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	06/00/23	
Final Rule	09/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0642.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-trichloroethylene-tce.

Agency Contact: Katelan McNamara, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–4361, *Email: mcnamara.katelan@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–AK83

EPA—OCSPP

188. Perchloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK84]

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, 2021, TSCA sec. 6(c).

Abstract: This proposed rulemaking will address the unreasonable risk of injury to health identified in the final risk evaluation for perchloroethylene (PCE). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to address eliminate unreasonable risks of injury to health or the environment that the Administrator has determined in a TSCA section 6(b) risk evaluation are presented by a chemical substance under the conditions of use EPA's risk evaluation for PCE, describing the conditions of use and presenting EPA's determination of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0502, with additional information in docket EPA–HQ–OPPT–2016–0732.

Statement of Need: This rulemaking is needed to address the unreasonable risks of PCE that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of PCE, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution

in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. 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, PCE presents unreasonable risks to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	
Final Rule	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0720.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-perchloroethylene.

Agency Contact: Kelly Summers, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, *Phone:* 202 564–2201, *Email: summers.kelly@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–AK84

EPA—OCSPP

189. N-Methylpyrrolidone; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK85]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 751.

Legal Deadline: NPRM, Statutory, December 23, 2021, TSCA sec. 6(c). Final, Statutory, December 23, 2022, TSCA sec. 6(c).

Abstract: This proposed rulemaking will address the unreasonable risk of injury to health identified in the final risk evaluation for n-methylpyrrolidone (NMP). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to eliminate unreasonable risks of injury to health or the environment that the Administrator has determined in a TSCA section(b) risk evaluation are presented by a chemical substance under the conditions of use. EPA's risk evaluation for NMP, describing the conditions of use and presenting EPA's determination of unreasonable risk, is in docket EPA–HQ–OPPT–2019–0236, with additional information in docket EPA–HQ–OPPT–2016–0743.

Statement of Need: This rulemaking is needed to address the unreasonable risks of n-methylpyrrolidone (NMP) that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of NMP, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 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 of the substance, or the limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA will consider one or more primary alternative regulatory actions as part of the development of a proposed rule.

Anticipated Cost and Benefits: EPA will prepare a regulatory impact analysis as the Agency develops the proposed rule.

Risks: As EPA determined in the TSCA section 6(b) risk evaluation, NMP presents unreasonable risks to human health. EPA must issue risk management requirements so that this

chemical substance no longer presents an unreasonable risk. For more information, visit: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca.*

Timetable:

Action	Date	FR Cite
NPRM	09/00/23	
Final Rule	08/00/24	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, State.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2020–0744.

Sectors Affected: 325 Chemical Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-n-methylpyrrolidone-nmp.

Agency Contact: 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.*

Clara Hull, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, *Phone:* 202 564–3954, *Email: hull.clara@epa.gov.*

RIN: 2070–AK85

EPA—OCSPP

190. Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA) [2070–AK90]

Priority: Other Significant.

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

CFR Citation: 40 CFR 702.

Legal Deadline: None.

Abstract: As required under section 6(b)(4) of the Toxic Substances Control Act (TSCA), EPA published a final rule on July 20, 2017, that established a process for conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use. This process incorporates the science requirements of the amended statute, including best available science and weight of the scientific evidence. The final rule established the steps of a risk evaluation process including: scope, hazard assessment, exposure assessment, risk characterization, and risk determination. The Agency is now considering revisions to that final rule and will solicit public comment through a notice of proposed rulemaking.

Statement of Need: EPA's 2017 final rule that established a process for conducting risk evaluations under TSCA was challenged by a group of environmental and public health organizations. In November 2019, the court in *Safer Chemicals, Healthy Families* v. *US EPA,* 943 F.3d 397 (9th Cir. 2019) remanded to EPA without vacatur certain provisions of the rule. Additionally, the 2017 rule was identified for review in accordance with Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 25, 2021). Consistent with direction by the 9th Circuit and incorporating lessons learned in the process carrying out the first ten TSCA risk evaluations, the Agency is now considering revisions to the final rule and will solicit public comment through a notice of proposed rulemaking.

Summary of Legal Basis: TSCA section 6(b)(4) directed EPA to establish the process for conducting risk evaluations on chemical substances under TSCA to identify any unreasonable risk of injury to health or the environment. Agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). EPA is now exercising its inherent authority to reconsider past decisions and as such is considering revisions to that final rule based on 9th Circuit's opinion in *Safer Chemicals, Healthy Families* v. *US EPA*, 943 F.3d 397 (9th Cir. 2019) to ensure that TSCA risk evaluations are supported by the best available science, aligned with the statutory requirements, and consistent with Congress' intent in the 2016 amendments.

Alternatives: Alternatives will be developed as part of the development of a proposed rule.

Anticipated Cost and Benefits: EPA will prepare a regulatory impact analysis as part of the development of a proposed rule.

Risks: This is a procedural rule related to risk evaluations and is not intended to directly address any particular risk. However, the rule would establish procedures by which EPA will evaluate whether a chemical substance presents an unreasonable risk of injury to health or the environment, including unreasonable risk to a potentially exposed or susceptible subpopulation. Rigorous procedures that support accurate identification of unreasonable risk are necessary to inform subsequent risk management action.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Additional Information:

Sectors Affected: 325 Chemical Manufacturing; 324110 Petroleum Refineries.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca.

Agency Contact: Susanna Blair, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7401M, Washington, DC 20460, *Phone:* 202 564–4371, *Email: blair.susanna@epa.gov.*

RIN: 2070–AK90

EPA—OCSPP

191. Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels [2070–AK91]

Priority: Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 15 U.S.C. 2681; 15 U.S.C. 2682; 15 U.S.C. 2683; 15 U.S.C. 2684

CFR Citation: 40 CFR 745.

Legal Deadline: None.

Abstract: EPA's dust-lead hazard standards (DLHS) support the lead-based paint (LBP) activities and disclosure programs under Residential Lead-Based Paint Hazard Reduction Act of 1992 by providing the basis for risk assessors to determine whether dust-lead hazards are present, and apply to target housing (*i.e.,* most pre-1978 housing) and child-occupied facilities

(pre-1978 non-residential properties where children 6 years of age or under spend a significant amount of time such as daycare centers and kindergartens). On July 9, 2019, EPA promulgated a final rule to lower the DLHS from 40 micrograms of lead per square foot (µg/ft2) to 10 µg/ft2 for floors, and from 250 µg/ft2 to 100 µg/ft2 for window sills. EPA's dust-lead clearance levels (DLCL) indicate the amount of lead in dust on a surface following the completion of an abatement activity. On January 6, 2021, EPA promulgated a final rule to lower the DLCL from 40 µg/ft2 to 10 µg/ft2 for floors, and from 250 µg/ft2 to 100 µg/ft2 for window sills. The Agency is now in the process of reconsidering the July 2019 and January 2021 final rules in keeping with Executive Order 13990 (addressing the protection of public health and the environment and restoring science to tackle the climate crisis). In addition, on May 14, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 DLHS final rule and directed EPA to reconsider the 2019 DLHS rule in conjunction with a reconsideration of the DLCL. Additionally, EPA is considering revising the regulatory definition of target housing to implement a change to the statutory definition to include zero-bedroom dwellings if a child is a resident. This rulemaking will also propose several amendments to the lead-based paint regulations. EPA intends to solicit public comment through a notice of proposed rulemaking.

Statement of Need: On July 9, 2019, EPA promulgated a final rule to lower the DLHS from 40 micrograms of lead per square foot (µg/ft2) to 10 µg/ft2 for floors, and from 250 µg/ft2 to 100 µg/ft2 for window sills. EPA's dust-lead clearance levels (DLCL) indicate the amount of lead in dust on a surface following the completion of an abatement activity. On January 6, 2021, EPA promulgated a final rule to lower the DLCL from 40 µg/ft2 to 10 µg/ft2 for floors, and from 250 µg/ft2 to 100 µg/ft2 for window sills. The Agency is now in the process of reconsidering the July 2019 and January 2021 final rules in keeping with Executive Order 13990 (addressing the protection of public health and the environment and restoring science to tackle the climate crisis). In addition, on May 14, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 DLHS final rule and directed EPA to reconsider the 2019 DLHS rule in conjunction with a reconsideration of the DLCL.

Summary of Legal Basis: EPA is proposing this rule under the authority of sections 401, 402, 403, 404, and 406 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* as amended by Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or ''Title X'') (Pub. L. 102–550), and section 237(c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), as well as sections 1004 and 1018 of Title X (42 U.S.C. 4851b, 4852d), as amended by section 237(b) of Title II of Division K of the Consolidated Appropriations Act, 2017.

Alternatives: To update the DLHS and DLCL, EPA must take a number of steps including health, exposure, and economic analyses related to various DLHS and DLCL. An analysis estimating the health implications of possible revisions of applicable DLHS and DLCL will be conducted.

Anticipated Cost and Benefits: An economic analysis of candidate DLHS and DLCL will be conducted for purposes of evaluating the potential costs and benefits of possible revisions. EPA's economic analysis will involve establishing a baseline lead hazard profile for facilities affected by the rule based on knowledge of any applicable existing rules and standards and levels of compliance with those rules and standards. Candidate DLHS and DLCL will then need to be analyzed with reference to this baseline. Economic modeling will be performed to link each candidate DLHS and DLCL to the associated scenario of health endpoints and their associated aggregated ''benefit'' valuations for the whole affected population. Using assumptions about the scope of interventions, scenarios will be developed to measure aggregate costs of compliance for each candidate clearance level.

Risks: This rulemaking addresses the risk of adverse health effects associated with dust-lead. exposures in children living in pre-1978 housing and child-occupied facilities, as well as associated potential health effects in this subpopulation.

Timetable:

Action	Date	FR Cite
NPRM	05/00/23	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: Undetermined.

Additional Information: Related to RIN 2070–AK66.

Sectors Affected: 92511 Administration of Housing Programs; 541350 Building Inspection Services; 624410 Child Day Care Services; 236 Construction of Buildings; 611110 Elementary and Secondary Schools; 541330 Engineering Services; 531110 Lessors of Residential Buildings and Dwellings; 92811 National Security; 611519 Other Technical and Trade Schools; 531 Real Estate; 562910 Remediation Services; 531311 Residential Property Managers; 238 Specialty Trade Contractors; 541380 Testing Laboratories.

URL For More Information: https://www.epa.gov/lead.

Agency Contact: Claire Brisse, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460–0001, *Phone:* 202 564–9004, *Email: brisse.claire@epa.gov.*

Michelle Price, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460, *Phone:* 202 566–0744, *Email: price.michelle@epa.gov.*

RIN: 2070–AK91

EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

Proposed Rule Stage

192. Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments [2050–AH14]

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. 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. 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. Finally, EPA is considering proposing corrective action requirements for all CCR contamination (regardless of how or when that CCR was placed) on site of a regulated facility.

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	06/00/23	
Final Rule	06/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State.

Additional Information: EPA–HQ–OLEM–2020–0107.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation.

URL For More Information: https://www.epa.gov/coalash.

URL For Public Comments: https://www.regulations.gov/docket/EPA-HQ-OLEM-2020-0107.

Agency Contact: Michelle Lloyd, Environmental Protection Agency, Office of Land and Emergency Management, Mail Code 5304T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–0560, *Email: long.michelle@epa.gov.*

Frank Behan, Environmental Protection Agency, Office of Land and Emergency Management, Mail Code 5304T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1730, *Email: behan.frank@epa.gov.*

RIN: 2050–AH14

EPA—OLEM

193. Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives [2050–AH24]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 40 CFR 131; 42 U.S.C. 6924

CFR Citation: 40 CFR 264 and 265.

Legal Deadline: None.

Abstract: This rulemaking will consider revisions to the regulations that allow for the open burning and detonation (OB/OD) of waste explosives. The allowance or ''variance'' to the prohibition on the open burning of hazardous waste was established at a time when there were no alternatives to the safe disposal of waste explosives. However, recent findings from the National Academies of Sciences, Engineering, and Medicine and the EPA have determined that safe alternatives are now available for many energetic/explosive waste streams. Because there are safe alternatives in use today that capture and treat emissions prior to release, the EPA is considering revising regulations to promote the broader use of these alternatives, where applicable.

Statement of Need: Technological advances have been made since the 1980 Interim Status regulations were issued that banned the open burning of hazardous wastes but created an exception to allow open burning/open detonation (OB/OD) of waste explosives due to a lack of other safe modes of treatment. In 2019, EPA and the National Academies of Science, Engineering, and Medicine published reports documenting safe and available alternative treatment technologies that could be used in lieu of OB/OD. A rulemaking would clarify how a demonstration of eligibility must be made before OB/OD can be used or continued, in light of safe and available alternative treatment technologies.

Summary of Legal Basis: The proposed rule would be established under the authority of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HWSA).

Alternatives: Based on recent information regarding availability of safe alternatives, we are considering revising the existing regulation to explicitly state how a demonstration of eligibility must be made. We have not identified at this time any alternatives for analysis.

Anticipated Cost and Benefits: The Agency will evaluate anticipated costs and benefits as part of the rule development process.

Risks: The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently too early in the process to make such determinations.

Timetable:

Action	Date	FR Cite
NPRM	07/00/23	
Final Rule	12/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Local, State, Federal.

Federalism: Undetermined.

Additional Information:

Sectors Affected: 56291 Remediation Services; 562910 Remediation Services; 562211 Hazardous Waste Treatment and Disposal; 325920 Explosives Manufacturing; 56221 Waste Treatment and Disposal; 926150 Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors.

Agency Contact: Paul Diss, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5303T, Washington, DC 20460, *Phone:* 202 566–0321, *Email: diss.paul@epa.gov.*

Sasha Gerhard, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5304T, Washington, DC 20460, *Phone:* 202 566–0346, *Fax:* 703 308–8686, *Email: gerhard.sasha@epa.gov.*

RIN: 2050–AH24

EPA—OLEM

194. Listing of PFOA, PFOS, PFBS, and GENX as Resource Conservation and Recovery Act (RCRA) Hazardous Constituents [2050–AH26]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 6912(a)(1); 42 U.S.C. 6912; 42 U.S.C. 6921; 42 U.S.C. 6905; 42 U.S.C. 6924; 42 U.S.C. 6938; 42 U.S.C. 6922

CFR Citation: 40 CFR 261.

Legal Deadline: None.

Abstract: Based on public health and environmental protection concerns and in response to petitions from the Governor of New Mexico, Public Employees for Environmental Responsibility, and Berkeley School of Law on behalf of five other organizations, which request EPA to take regulatory action on PFAS under RCRA, EPA is evaluating the existing toxicity and health effects data on four PFAS constituents to determine if they should be listed as RCRA Hazardous Constituents. If the existing data for the four PFAS constituents support listing any or all of these constituents as RCRA hazardous constituents, EPA will propose to list the constituents in a **Federal Register** notice for public comment. The four PFAS chemicals EPA will evaluate are: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS), hexafluoropropylene oxide dimer acid (HFPO–DA, and/or GenX).

Statement of Need: EPA has received three petitions recently requesting regulatory action on PFAS under the Resource Conservation and Recovery Act (RCRA), including a petition from the Governor of New Mexico on June 23, 2021. The New Mexico petition incorporated by reference the two other petitions received previously by EPA from Public Employees for Environmental Responsibility (PEER) and the Environmental Law Clinic at the University of California, Berkeley School of Law (et al.). This proposed rulemaking is in response to the three petitions and, if finalized, will list specific PFAS as RCRA hazardous constituents subject to corrective action requirements at hazardous waste treatment, storage, and disposal facilities (TSDFs).

Summary of Legal Basis: EPA has received three petitions recently requesting regulatory action on PFAS under the Resource Conservation and Recovery Act (RCRA), including a petition from the Governor of New Mexico on June 23, 2021. The New Mexico petition incorporated by reference the two other petitions received previously by EPA from Public Employees for Environmental Responsibility (PEER) and the Environmental Law Clinic at the University of California, Berkeley School of Law (et al.). This proposed rulemaking is in response to the three petitions and, if finalized, will list specific PFAS as RCRA hazardous constituents subject to corrective action requirements at hazardous waste treatment, storage, and disposal facilities (TSDFs).

Alternatives: We have reviewed and evaluated the toxicity and health effects information for specific PFAS to determine if they should be proposed to be listed as RCRA hazardous constituents on Appendix VIII, and there are no other alternatives.

Anticipated Cost and Benefits: The Agency will evaluate anticipated costs and benefits as part of the rule development process.

Risks: The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently too early in the process to make such determinations.

Timetable:

Action	Date	FR Cite
NPRM	08/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Agency Contact: Narendra Chaudhari Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5304T, Washington, DC 20460, *Phone:* 202 566–0495, *Email: chaudhari.narendra@epa.gov.*

Daniel Lowrey, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5304T, Washington, DC 20460, *Phone:* 202 566–1015, *Email: lowrey.daniel@epa.gov.*

RIN: 2050–AH26

EPA—OLEM

195. Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units [2050–AH27]

Priority: Other Significant.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 6905; 42 U.S.C. 6921; 42 U.S.C. 6930; 42 U.S.C. 6912; 42 U.S.C. 6938; 42 U.S.C. 6934; 42, U.S.C. 6939g; 42 U.S.C. 6937; 42 U.S.C. 6939; 42 U.S.C. 6935; 42 U.S.C. 6974; 42 U.S.C. 6924; 42, U.S.C. 6925; 42 U.S.C. 6927

CFR Citation: 40 CFR 260; 40 CFR 261; 40 CFR 270.

Legal Deadline: None.

Abstract: EPA is considering a proposed rule that would modify the regulations at 40 CFR part 264 to clarify that the definition of hazardous waste found in RCRA section 1004(5) is applicable to corrective action for releases from solid waste management units. The proposed rule would more clearly implement EPA's longstanding interpretation of its authority under RCRA section 3004(u) and (v).

Statement of Need: This regulatory modification is necessary so that 40 CFR 264.101 appropriately reflects the scope of corrective action cleanup requirements for hazardous waste treatment, storage, and disposal facilities as required by RCRA section 3004(u) and (v). The revision is expected to clarify that releases of hazardous wastes that are not regulatory hazardous wastes but meet the definition of hazardous waste in RCRA section 1004(5), must be addressed in the same manner as regulatory hazardous wastes under the corrective action program. This rulemaking is expected to impact the release of certain PFAS substances and is included as part of EPA's broader PFAS Strategic Roadmap.

Summary of Legal Basis: The proposed rule would be established under the authority of sections 3004(u) and (v) of the Solid Waste Disposal Act of 1965, as amended by subsequent enactments including the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HWSA).

Alternatives: We have reviewed the applicable regulations and no alternatives have been identified.

Anticipated Cost and Benefits: The Agency will evaluate anticipated costs and benefits as part of the rule development process.

Risks: The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently

too early in the process to make such determinations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, State.

Federalism: Undetermined.

Agency Contact: Barbara Foster, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–0382, *Email: foster.barbara@epa.gov.*

RIN: 2050–AH27

EPA—OLEM

196. Reporting Requirements for Emissions From Animal Waste Under the Emergency Planning and Community Right-to-Know Act [2050–AH28]

Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 11048; 42 U.S.C. 11002; 42 U.S.C. 11004; 42 U.S.C. 11003; 42 U.S.C. 11049; 42 U.S.C. 11045; 42 U.S.C. 11047

CFR Citation: 40 CFR 355.31.

Legal Deadline: None.

Abstract: The Environmental Protection Agency (EPA) is considering rescinding the June 13, 2019 final rule, which exempted reporting of air emissions from animal waste under the Emergency Planning and Community Right-to-Know Act (EPCRA). On March 23, 2018, the President signed into law the ''Fair Agricultural Reporting Method Act'' or the ''FARM Act.'' The FARM Act expressly exempts reporting of air emissions from animal waste (including decomposing animal waste) at a farm from CERCLA section 103. In the June 13, 2019 final rule, the Agency applied the CERCLA exemption to reporting under EPCRA. The Agency is now reconsidering that action.

Statement of Need: EPA is considering reinstating the reporting requirements for animal waste air emissions at farms under the Emergency Planning and Community Right-to-Know Act (EPCRA). This action would propose to rescind the June 13, 2019 final rule exempting EPCRA reporting of animal waste air emissions at farms. Farms with air emissions from animal waste exceeding the reportable quantity of certain extremely hazardous substances defined under EPCRA, would be required to report to state, tribal and local emergency planning and response agencies. Any proposed rule would not impact the current Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) reporting exemption for animal waste air emissions at farms.

Summary of Legal Basis: No statutory or judicial deadlines apply to this rule. The agency is taking this action in response to the U.S. District Court for D.C. granting EPA a voluntary remand on February 14, 2022, to reconsider the June 2019 rule.

Alternatives: The Agency has not identified at this time any significant alternatives for analysis.

Anticipated Cost and Benefits: The EPA is analyzing the potential costs and benefits associated with this action with respect to the reporting of animal waste air emissions at farms that exceed the reportable quantity to the State, Tribal, and local authorities.

Risks: This is a reporting rule and would enable State, Tribal and local authorities to collect information regarding the location and extent of releases of animal waste air emissions at farms that exceed the reportable quantity.

Timetable:

Action	Date	FR Cite
NPRM	04/00/23	
Final Rule	01/00/24	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Local, State, Tribal.

Federalism: Undetermined.

Agency Contact: Mark Douglas, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–5572, *Email: douglas.mark@epa.gov.*

RIN: 2050–AH28

EPA—OFFICE OF WATER (OW)

Proposed Rule Stage

197. Federal Baseline Water Quality Standards for Indian Reservations [2040–AF62]

Priority: Other Significant.

Legal Authority: 33 U.S.C. 1313(c)(4)(B)

CFR Citation: 40 CFR 131.

Legal Deadline: None.

Abstract: EPA is developing a proposed rule to establish water quality standards (WQS) for waters on Indian reservations that do not have WQS under the Clean Water Act. Fifty years after enactment of the CWA, over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the CWA for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Promulgating baseline WQS would provide more scientific rigor and regulatory certainty to National Pollutant Discharge Elimination System permits for discharges to these waters. The baseline WQS would fulfill requirements for WQS under EPA's regulations, including establishing designated uses, water quality criteria to protect those uses, and antidegradation policies to protect high quality waters. EPA initiated pre-proposal tribal consultation on June 15th, 2021 and engaged in coordination and consultation with tribes throughout the consultation period, which ended September 13th, 2021. EPA welcomes consultation with tribes both during and after the consultation period.

Statement of Need: The federal government has recognized 574 tribes. More than 300 of these tribes have reservation lands and are eligible to apply for ''treatment in a similar manner as a state'' (TAS) to administer a WQS program. Only 80 tribes, out of over 300 tribes with reservations, currently have such TAS authorization to administer a WQS program. Of these 80 tribes, only 47 tribes to date have adopted WQS and submitted them to EPA for review and approval under the Clean Water Act (CWA). As a result, 50 years after enactment of the CWA, over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the CWA for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Although it is EPA's preference for tribes to obtain TAS and develop WQS tailored to the tribes' individual environmental goals and reservation waters, EPA's promulgation of baseline WQS would serve to safeguard water quality until tribes obtain TAS and adopt and administer CWA WQS themselves.

Summary of Legal Basis: While CWA section 303 clearly contemplates WQS for all waters of the United States, it does not explicitly address WQS for

Indian country waters where tribes lack CWA-effective WQS. Under CWA section 303(a) states were required to adopt WQS for all interstate and intrastate waters. Where a state does not establish such standards, Congress directed EPA to do so under the CWA section 303(b). These provisions are consistent with Congress' design of the CWA as a general statute applying to all waters of the United States, including those within Indian country. Several provisions of the CWA provide EPA with the authority to propose this rule. Section 501(a) of the CWA provides that ''[t]he Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.'' Section 303(c)(4)(B) of the CWA provides that ''[t]he Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved . . . in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of [the Act].'' In 2001 the EPA Administrator made an Administrator's Determination that new or revised WQS are necessary for certain Indian country waters. Today's action is the first step toward fulfilling that outstanding Determination.

Alternatives: 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	03/00/23	
Final Rule	03/00/24	

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/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act.

Agency Contact: James Ray, Environmental Protection Agency, Office of Water, Mail Code 4305T, 200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1433, *Email: ray.james@epa.gov.*

Danielle Anderson, Environmental Protection Agency, Office of Water, Mail Code 4305T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–1631, *Email: anderson.danielle@epa.gov.*

RIN: 2040–AF62

EPA—OW

198. Revised Definition of ''Waters of the United States'' [2040–AG13]

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 that revised the previously-codified definition of ''waters of the United States'' (WOTUS). The agencies are in the process of revising the definition of WOTUS to include the waters defined by the familiar regulations that were in place prior to the 2015 WOTUS rule, with amendments to reflect the agencies' determination of the statutory limits on the scope of the ''waters of the United States'' informed by Supreme Court precedent, the best available science, and the agencies' experience and technical expertise. The agencies also intend to consider further refinements in a second rule (Rule 2) in light of additional stakeholder engagement and implementation considerations, scientific developments, litigation and environmental justice values. This effort will also be informed by the experience of implementing the pre-2015 rule, the 2015 Clean Water Rule, the 2020 Navigable Waters Protection Rule, and Rule 1.

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	11/00/23	
Final Rule	07/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

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

199. National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI) [2040–AG16]

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 reviewed the LCRR and decided to initiate a new rulemaking process to improve the rule. This new National Primary Drinking Water Regulation is called the Lead and Copper Rule Improvements (LCRI). EPA is developing LCRI to strengthen the regulatory framework and address lead in drinking water.

Statement of Need: The EPA promulgated the final Lead and Copper Rule Revision (LCRR) on January 15, 2021 (86 FR 4198). Consistent with the directives of Executive Order 13990, the EPA is currently considering revising this rulemaking. The EPA will complete its review of the rule in accordance with those directives and conduct important consultations with affected parties. The EPA understands that the benefits of clean water are not shared equally by all communities and this review of the LCRR will be consistent with the policy aims set forth in Executive Order 13985, ''Advancing Racial Equity and Support

for Underserved Communities through the Federal Government.''

Summary of Legal Basis: The Safe Drinking Water Act, section 1412, National Primary Drinking Water Regulations, authorizes EPA to initiate the development of a rulemaking if the agency has determined that the action maintains or improves the public health.

Alternatives: To be determined.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	08/00/23	
Final Rule	10/00/24	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Federal, Local, State, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Additional Information:

Sectors Affected: 23711 Water and Sewer Line and Related Structures Construction; 2213 Water, Sewage and Other Systems.

Agency Contact: Ethan Schwartz, Environmental Protection Agency, Office of Water, 4601M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–2537, *Email: schwartz.ethan@epa.gov.*

Related RIN: Related to 2040–AF15, Related to 2040–AG15

RIN: 2040–AG16

EPA—OW

200. Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights [2040–AG17]

Priority: Other Significant

Legal Authority: 33 U.S.C. 1371

CFR Citation: 40 CFR 131.

Legal Deadline: None.

Abstract: Many tribes hold reserved rights to resources on lands and waters where states establish water quality standards, through treaties, statutes, or other sources of federal law. The U.S. Constitution defines treaties as the supreme law of the land. EPA is pursuing a change to its water quality standards regulations to ensure that water quality standards do not impair tribal reserved rights by giving clear direction on how to develop water quality standards where tribes hold reserved rights. This will help EPA ensure protection of resources reserved to tribes in treaties, statutes, or other sources of federal law when establishing, revising, and reviewing water quality standards.

Statement of Need: This proposed rule would establish a durable and transparent national framework outlining how tribal reserved rights to aquatic-dependent resources must be protected in water quality standards for waters in which such rights apply. In 2016 EPA took actions in Maine and Washington to protect tribal reserved rights, requiring that human health criteria for waters in those states where tribes reserved the rights to fish for subsistence be set at more stringent levels to protect tribal fish consumers. In 2019 EPA disavowed the approach it took to protecting tribal reserved rights in the 2016 Maine and Washington actions and concluded that states and EPA can always protect tribal reserved rights by simply applying EPA's existing regulations and guidance, with no additional consideration of such rights. EPA has now reconsidered the assertions it made under the previous Administration that tribal reserved rights do not impose any additional requirements in the WQS context. The changes in EPA's position regarding consideration of reserved rights in the water quality standards context over the years have resulted in confusion for tribes, states, stakeholders and the public about how tribal reserved rights must be considered in establishment of WQS. In addition, states and industry groups criticized EPA for taking its actions in 2016 without first going through a national notice and comment rulemaking on its approach.

Summary of Legal Basis: To be determined.

Alternatives: To be determined.

Anticipated Cost and Benefits: To be determined.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	12/05/22	87 FR 74361
NPRM Comment Period End.	03/06/23	
Final Rule	09/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: State, Federal, Tribal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

Additional Information:

Agency Contact: Jennifer Brundage, Environmental Protection Agency, Office of Water, 4305T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1265, *Email: brundage.jennifer@epa.gov.*

Erica Fleisig, Environmental Protection Agency, Office of Water, 4305T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1057, *Email: fleisig.erica@epa.gov.*

RIN: 2040–AG17

EPA—OW

201. Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation Rulemaking [2040–AG18]

Priority: Economically 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. This action provides a key commitment in EPA's 'PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024.'

Statement of Need: EPA has determined that PFOA and PFOS may have adverse health effects; that PFOA and PFOS occur in public water systems with a frequency and at levels of public health concern; and that, in the sole judgment of the Administrator, regulation of PFOA and PFOS presents a meaningful opportunity for health risk reduction for persons served by public water systems.

Summary of Legal Basis: The EPA is developing a PFAS NPDWR under the

authority of the Safe Drinking Water Act (SDWA), including sections 1412, 1413, 1414, 1417, 1445, and 1450 of the SDWA. Section 1412 (b)(1)(A) of the SDWA requires that EPA shall publish a maximum contaminant level goal and promulgate a NPDWR if the Administrator determines that (1) the contaminant may have an adverse effect on the health of persons, (2) is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at a level of public health concern, and (3) in the sole judgment of the Administrator there is a meaningful opportunity for health risk reduction for persons served by public water systems. EPA published a final determination to regulate PFOA and PFOS on March 3, 2021 after considering public comment (86 FR 12272). Section 1412 (b)(1)(E) of the SDWA requires that EPA publish a proposed Maximum Contaminant Level Goal and a NPDWR within 24 months of a final regulatory determination and that the Agency promulgate a NPDWR within 18 months of proposal.

Alternatives: Undetermined.

Anticipated Cost and Benefits: Undetermined.

Risks: Studies indicate that exposure to PFOA and/or PFOS above certain exposure levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breast-fed infants (*e.g.,* low birth weight, accelerated puberty, skeletal variations), cancer (*e.g.,* testicular, kidney), liver effects (*e.g.,* tissue damage), immune effects (*e.g.,* antibody production and immunity), and other effects (*e.g.,* cholesterol changes). Both PFOA and PFOS are known to be transmitted to the fetus via the placenta and to the newborn, infant, and child via breast milk. Both compounds were also associated with tumors in long-term animal studies.

Timetable:

Action	Date	FR Cite
Notice	02/09/22	87 FR 7412
NPRM	12/00/22	
Final Rule	01/00/24	

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: Ethan Schwartz, Environmental Protection Agency, Office of Water, 4601M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–2537, *Email: schwartz.ethan@epa.gov*.

RIN: 2040–AG18

EPA—OW

202. Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category [2040–AG23]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 33 U.S.C. 1361 33 U.S.C. 1318 33 U.S.C. 1317 33 U.S.C. 1316 33 U.S.C. 1311 33 U.S.C. 1314

CFR Citation: 40 CFR 423.

Legal Deadline: None.

Abstract: On 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 wastestreams addressed in the 2020 final rule as well as wastestreams 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.

Statement of Need: Under Executive Order 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (January 20, 2021), EPA was directed to review the 2020 Steam Electric Reconsideration Rule.

Summary of Legal Basis: Sections 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

Alternatives: To Be Determined.

Anticipated Cost and Benefits: To Be Determined.

Risks: To Be Determined.

Timetable:

Action	Date	FR Cite
Notice	08/03/21	86 FR 41801
NPRM	01/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: State, Local, Federal.

Federalism: Undetermined.

Additional Information: EPA–HQ–OW–2009–0819.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation.

Agency Contact: Jesse Pritts, Environmental Protection Agency, Office of Water, Mail Code 4303T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1038, *Email: pritts.jesse@epa.gov*.

Related RIN: Related to 2040–AF77, Merged with 2040–AG11

RIN: 2040–AG23

EPA—OFFICE OF AIR AND RADIATION (OAR)

Final Rule Stage

203. Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards [2060–AU41]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Unfunded Mandates: Undetermined.

Legal Authority: 42 U.S.C. 7401 *et seq.,* Clean Air Act

CFR Citation: 40 CFR 86.

Legal Deadline: None.

Abstract: The Environmental Protection Agency (EPA) is finalizing a major program to further reduce air pollution, including ozone and particulate matter (PM), from heavy-duty engines and vehicles across the United States. The final program includes new emission standards that are significantly more stringent and that cover a wider range of heavy-duty engine operating conditions compared to today's standards; further, the final program requires these more stringent emissions standards to be met for a longer period of when these engines operate on the road. Heavy-duty vehicles and engines are important contributors to concentrations of ozone and particulate matter and their resulting threat to public health, which includes premature death, respiratory illness (including childhood asthma), cardiovascular problems, and other adverse health impacts. The final rulemaking promulgates new numeric standards and changes key provisions of the existing heavy-duty emission control program, including the test procedures, regulatory useful life, emission-related warranty, and other requirements. Together, the provisions in the final rule will further reduce the air quality impacts of heavy-duty engines across a range of operating conditions and over a longer period of the operational life of heavy-duty engines. The requirements in the final rule will lower emissions of NO_X and other air pollutants (PM, hydrocarbons (HC), carbon monoxide (CO), and air toxics) beginning no later than model year 2027. We are also finalizing limited amendments to the regulations that

implement our air pollutant emission standards for other sectors (*e.g.,* light-duty vehicles, marine diesel engines, locomotives, various other types of nonroad engines, vehicles, and equipment).

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	03/28/22	87 FR 17414
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: 811198 All Other Automotive Repair and Maintenance; 336999 All Other Transportation Equipment Manufacturing; 336111 Automobile Manufacturing; 423110 Automobile and Other Motor Vehicle Merchant Wholesalers; 811112 Automotive Exhaust System Repair; 811111 General Automotive Repair; 336120 Heavy Duty Truck Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 336213 Motor Home Manufacturing; 336211 Motor Vehicle Body Manufacturing; 335312 Motor and Generator Manufacturing; 333618 Other Engine Equipment Manufacturing; 336611 Ship Building and Repairing; 336212 Truck Trailer Manufacturing.

Agency Contact: Christy Parsons, Environmental Protection Agency, Office of Air and Radiation, USEPA National Vehicle and Fuel Emissions Laboratory, Ann Arbor, MI 48105, *Phone:* 734 214–4243, *Email: parsons.christy@epa.gov.*

Tuana Phillips, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania NW, Washington, DC 20460, *Phone:* 202 565–0074, *Email: phillips.tuana@epa.gov.*

Related RIN: Split from 2060–AV85

RIN: 2060–AU41

EPA—OAR

204. 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]

Priority: Other Significant.

Legal Authority: secs. 112 and 307(d)(7)(B) of the CAA as amended (42 U.S.C. 7412 and 7607(d)(7)(B)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)); 42 U.S.C. 7414, 7601

CFR Citation: 40 CFR 63, subpart UUUUU.

Legal Deadline: None.

Abstract: On February 16, 2012, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units (77 FR 9304). The rule (40 CFR part 63, subpart UUUUU), commonly referred to as the Mercury and Air Toxics Standards (MATS), includes standards to control hazardous air pollutant (HAP) emissions from new and existing coal- and oil-fired electric utility steam generating units (EGUs) located at both major and area sources of HAP emissions. There have been several regulatory actions regarding MATS since February 2012, including a May 22, 2020, action that completed a reconsideration of the appropriate and necessary finding for MATS and finalized the residual risk and technology review (RTR) conducted for the Coal- and Oil-Fired EGU source category regulated under MATS (85 FR 31286). The Biden Administration's Executive Order (E.O.) 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). EPA issued a proposed revised reconsideration of the appropriate and necessary finding on February 9, 2022 (87 FR 7624). Results of EPA's review of the May 2020 RTR will be presented in a separate action.

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 is issuing its final determination regarding the review of the May 2020 finding, after considering public comment on the proposed determination.

Summary of Legal Basis: CAA section 112, 42 U.S.C. 7412, provides the legal framework and basis for regulatory actions addressing emissions of hazardous air pollutants from stationary sources.

Alternatives: EPA has considered two bases for the appropriate and necessary determination, one preferred and one alternative.

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	02/09/22	87 FR 7624
Final Rule	03/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: None.

Additional Information: EPA–HQ–OAR–2018–0794.

Sectors Affected: 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation.

URL For More Information: https://www.epa.gov/mats/regulatory-actions-final-mercury-and-air-toxics-standards-mats-power-plants.

Agency Contact: 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.*

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.*

Related RIN: Related to 2060–AT99

RIN: 2060–AV12

EPA—OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSPP)

Final Rule Stage

205. Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPS) Derived From Newer Technologies [2070–AK54]

Priority: Other Significant.

Legal Authority: 21 U.S.C. 346a, Federal Food, Drug, and Cosmetic Act 7 U.S.C. 136 *et seq.* Federal Insecticide Fungicide and Rodenticide Act; 7 U.S.C. 136(w) Federal Insecticide Fungicide and Rodenticide Act

CFR Citation: 40 CFR 174.

Legal Deadline: None.

Abstract: In 2020, EPA proposed regulations that would allow for an exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) for certain plant-incorporated protectant (PIP) products that are created in plants using biotechnology, as long as their pesticidal substances are found in plants that are sexually compatible with the recipient plant and meet the proposed exemption criteria, ensuring their safety. The current exemption for PIPs is limited to PIPs that are moved through conventional breeding. EPA's proposed rule would allow certain PIPs created through biotechnology to also be exempt under existing regulations, in cases where those PIPs (1) pose no greater risk than PIPs that meet EPA safety requirements, and (2) could have otherwise been created through conventional breeding. The proposed rule also includes a process through which developers of PIPs based on sexually compatible plants created through biotechnology submit either a self-determination letter or request for EPA confirmation that their PIP meets the criteria for exemption. For increased flexibility in bringing PIPs to market, a developer can also submit both. EPA is reviewing the comments received and is planning to issue a final rule.

Statement of Need: This rule implements the policy goals articulated by multiple administrations to improve, clarify, and streamline regulations of biotechnology, beginning with the White House Office of Science and Technology Policy in a policy statement in 1986 on the ''Coordinated Framework for the Regulation of Biotechnology'' (51 FR 23302; June 26, 1986), the update to the Coordinated Framework in 2017, and, more recently, the June 11, 2019, Executive Order 13874 (84 FR 27899) on ''Modernizing the Regulatory Framework for Agricultural Biotechnology Products.'' This rulemaking is intended to further implement section 4(b) of Executive Order 13874.

Summary of Legal Basis: This action is being developed under the authority of sections 3, 5, 10, 12 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 and 136y), and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a).

Alternatives: The main alternative is to continue to consider individual requests for exempting these PIPs on a case-by-case basis.

Anticipated Cost and Benefits: An assessment of the incremental impacts of this action is provided in greater detail in the economic analysis that will accompany the final rule. As described for the proposed rule, the primary benefits to society associated with the exemptions of these PIPs from FIFRA and FFDCA requirements are the reduction of overall registration costs (fees plus data requirement costs) to developers of PIPs exempted in the rulemaking with a per-product cost saving estimated to range from $472,000–$886,000 using a 3% discount rate on future maintenance fees. These exemptions may also result in increased commercialization of new pest control options for farmers, particularly in minor crops, and reduced use of conventional pesticides, which could provide environmental benefits.

Risks: EPA did not identify any risks to humans or the environment as a result of this action.

Timetable:

Action	Date	FR Cite
NPRM	10/09/20	85 FR 64308
Final Rule	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: 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.

Additional Information: EPA–HQ–OPP–2019–0508.

Sectors Affected: 111 Crop Production; 325320 Pesticide and Other Agricultural Chemical Manufacturing.

URL For More Information: https://www.epa.gov/regulation-biotechnology-under-tsca-and-fifra/overview-plant-incorporated-protectants.

Agency Contact: Wiebke Striegel, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Mail Code 7511P, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 703 347–0556, *Email: striegel.wiebke@epa.gov.*

Cameo Smoot, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7101M, Washington, DC 20460, *Phone:* 202 566–1207, *Email: smoot.cameo@epa.gov.*

RIN: 2070–AK54

EPA—OCSPP

206. Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK86]

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: 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: On April 12, 2022, EPA proposed a rule under the Toxic Substances Control Act (TSCA) to address the unreasonable risk of injury to health that EPA identified for conditions of use of chrysotile asbestos following completion of the TSCA Risk Evaluation for Asbestos, part 1: Chrysotile Asbestos. TSCA requires that EPA address the unreasonable risks of injury to health and environment by rule and to apply requirements to the extent necessary so that chrysotile asbestos no longer presents such risks. Therefore, to address the unreasonable risk identified in the TSCA Risk Evaluation for Asbestos, part 1 from

chrysotile asbestos, EPA proposed to prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms for use in the chlor-alkali industry, chrysotile asbestos-containing sheet gaskets used in chemical production, chrysotile asbestos-containing brake blocks used in the oil industry, aftermarket automotive chrysotile asbestos-containing brakes/linings, other chrysotile asbestos-containing vehicle friction products, and other chrysotile asbestos-containing gaskets. EPA also proposed to prohibit manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use, and other chrysotile asbestos-containing gaskets for consumer use. Finally, EPA also proposed disposal and recordkeeping requirements for these conditions of use. EPA is reviewing the comments received and intends to develop a final rule.

Statement of Need: This rulemaking is needed to address the unreasonable risk of chrysotile asbestos identified in the Risk Evaluation for Asbestos Part I: Chrysotile Asbestos completed under TSCA section 6(b). EPA reviewed the exposures and hazards of the chrysotile asbestos uses evaluated in the risk evaluation, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

Summary of Legal Basis: In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce; (2) Prohibit or otherwise restrict for a particular use or above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors and replace or repurchase products if required.

Alternatives: TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA considered one or more primary alternative regulatory actions as part of the development of the proposed rule. The primary alternative regulatory action considered by EPA in the proposed rule is to: prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos in bulk form or as part of: Chrysotile asbestos diaphragms in the chlor-alkali industry and for chrysotile asbestos-containing sheet gaskets in chemical production (with prohibitions taking effect five years after the effective date of the final rule) and require, prior to the prohibition taking effect, compliance with an existing chemicals exposure limit (ECEL) for the processing and commercial use of chrysotile asbestos for these uses; and to prohibit manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; and other vehicle friction products (with prohibitions taking effect two years after the effective date of the final rule and with additional requirements for disposal). The primary alternative regulatory action considered in the proposed rule also included prohibitions on manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use and other chrysotile asbestos-containing gaskets for consumer use (with prohibitions taking effect two years after the effective date of the final rule). The primary alternative regulatory action also would require disposal of chrysotile asbestos-containing materials in a manner identical to the proposed option, with additional provisions for downstream notification and signage and labeling. EPA did not consider additional alternative regulatory actions in the proposed rule.

Anticipated Cost and Benefits: As estimated in the proposed rule, converting the asbestos diaphragm cells to membrane cells in response to the proposed rule is predicted to require an incremental investment of approximately $1.8 billion across all nine plants predicted to be using asbestos diaphragms when the rule goes into effect. Compared to this baseline trend, the incremental net effect of the proposed rule on the chlor-alkali industry over a 20-year period using a 3 percent discount rate is estimated to range from an annualized cost of about $49 million per year to annualized savings of approximately $35 million per year, depending on whether the higher grade of caustic soda produced by membrane cells continues to command a premium price. Using a 7 percent discount rate, the incremental annualized net effect ranges from a cost of $87 million per year to savings of approximately $40,000 per year, again depending on whether there are revenue gains from the caustic soda production. EPA also estimates that approximately 1,800 sets of automotive brakes or brake linings containing asbestos may be imported into the U.S. each year, representing 0.002% of the total U.S. market for aftermarket brakes. The cost of a prohibition would be minimal due to the ready availability of alternative products that are only slightly more expensive (an average cost increase of $4 per brake). The proposed rule is estimated to result in total annualized costs for aftermarket automotive brakes of approximately $25,000 per year using a 3% discount rate and $18,000 per year using a 7% discount rate. EPA did not have information to estimate the costs of prohibiting asbestos for the remaining uses subject to the proposed rule (sheet gaskets used in chemical production, brake blocks in the oil industry, other vehicle friction products, or other gaskets), so there are additional unquantified costs. EPA believes that the use of these asbestos-containing products has declined over time, and that they are now used in at most small segments of the industries. EPA's Economic Analysis for the proposed rule quantified the benefits from avoided cases of lung cancer, mesothelioma, ovarian cancer, and laryngeal cancer due to reduced asbestos exposures to workers, occupational non-users (ONUs), and DIYers related to the rule's requirements for chlor-alkali diaphragms, sheet gaskets for chemical production, and aftermarket brakes. The combined national quantified benefits of avoided cancer cases associated with these products are approximately $3,100 per year using a 3% discount rate and $1,200 per year using a 7% discount rate, based on the cancer risk estimates from the Part 1 risk evaluation. EPA did not estimate the aggregate benefits of the requirements for oilfield brake blocks,

other vehicle friction products or other gaskets because the Agency did not have sufficient information on the number of individuals likely to be affected by the proposed rule. Thus, as proposed, the rule may yield additional unquantified benefits from reducing exposures associated with these uses. There would also be unquantified benefits due to other avoided adverse health effects associated with asbestos exposure including respiratory effects (*e.g.,* asbestosis, non-malignant respiratory disease, deficits in pulmonary function, diffuse pleural thickening and pleural plaques) and immunological and lymphoreticular effects. In addition to the benefits of avoided adverse health effects associated with chrysotile asbestos exposure, the proposed rule is expected to generate significant benefits from reduced air pollution associated with electricity generation. Based on a sensitivity screening-level analysis that EPA conducted, converting asbestos diaphragm cells to membrane cells could yield tens of millions of dollars per year in environmental and health benefits from reduced emissions of particulate matter, sulfur dioxide, nitrogen oxides, and carbon dioxide.

Risks: In the TSCA Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, EPA determined there is unreasonable risk of injury to health from conditions of use of chrysotile asbestos. The health endpoint driving EPA's determination of unreasonable risk for chrysotile asbestos under the conditions of use is cancer from inhalation exposure. This unreasonable risk includes the risk of mesothelioma, lung cancer, and other cancers from chronic inhalation.

Timetable:

Action	Date	FR Cite
NPRM	04/12/22	87 FR 21706
Final Rule	10/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Federalism: This action may have federalism implications as defined in E.O. 13132.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information: EPA–HQ–OPPT–2021–0057.

Sectors Affected: 8111 Automotive Repair and Maintenance; 325 Chemical Manufacturing; 332 Fabricated Metal Product Manufacturing; 339991 Gasket, Packing, and Sealing Device Manufacturing; 4231 Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers; 441 Motor Vehicle and Parts Dealers; 211 Oil and Gas Extraction; 336 Transportation Equipment Manufacturing.

URL For More Information: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-asbestos-part-1-chrysotile-asbestos.

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.*

Peter Gimlin, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460, *Phone:* 202 566–0515, *Fax:* 202 566–0473, *Email: gimlin.peter@epa.gov.*

RIN: 2070–AK86

EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

Final Rule Stage

207. Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program [2050–AH07]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 6945

CFR Citation: 40 CFR 124; 40 CFR 257; 40 CFR 22.

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	07/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Federal, Local, Tribal.

Additional Information: 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.

Agency Contact: Stacey Yonce, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5304T, Washington, DC 20460, *Phone:* 202 566–0568, *Email: yonce.stacey@epa.gov.*

RIN: 2050–AH07

EPA—OLEM

208. Hazardous and Solid Waste Management System: Disposal of CCR; a Holistic Approach to Closure Part B: Implementation of Closure [2050–AH18]

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	08/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: Businesses.

Government Levels Affected: Tribal, State, Local, Federal.

Additional Information: EPA–HQ–OLEM–2019–0173. The action is related to 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.

Agency Contact: Mary Jackson, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5304P, Washington, DC 20460, *Phone:* 703 308–8453, *Email: jackson.mary@epa.gov.*

Frank Behan, Environmental Protection Agency, Office of Land and Emergency Management, Mail Code 5304T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 566–1730, *Email: behan.frank@epa.gov.*

RIN: 2050–AH18

EPA—OLEM

209. Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention [2050–AH22]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 7412

CFR Citation: 40 CFR 68.

Legal Deadline: None.

Abstract: The Environmental Protection Agency (EPA) is proposing to amend its Risk Management Program (RMP) regulations as a result of Agency review. The proposed revisions include several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. These proposed amendments seek to improve chemical process safety; assist in planning, preparedness, and responding to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources.

Statement of Need: On January 13, 2017, the EPA published a final RMP rule (2017 Amendments) to prevent and mitigate the effect of accidental releases of hazardous chemicals from facilities that use, manufacture, and store them. The 2017 Amendments were a result of Executive Order 13650, Improving Chemical Facility Safety and Security, which directed EPA (and several other federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 Amendments rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements, emergency coordination with local responders, and information availability to the public. EPA received three petitions for reconsideration of the 2017 Amendments rule under CAA section 307(d)(7)(B). On December 19, 2019, EPA promulgated a final RMP rule (2019 Revisions) that acts on the reconsideration. The 2019 Revisions rule repealed several major provisions of the 2017 Amendments and retained other provisions with modifications.

On January 20, 2021, Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis (E.O. 13990), directed federal agencies to review existing regulations and take action to address priorities established by the new administration including bolstering resilience to the impact of climate change and prioritizing environmental justice. The EPA is considering developing a regulatory action to revise the current RMP regulations. The proposed rule would address the administration's priorities and focus on regulatory revisions completed since 2017. The proposed rule would also expect to contain a number of proposed modifications to the RMP regulations based in part on stakeholder feedback received from RMP public listening sessions held on June 16 and July 8, 2021.

Summary of Legal Basis: The CAA section 112(r)(7)(A) authorizes the EPA Administrator to promulgate accidental release prevention, detection, and correction requirements, which may include monitoring, record keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. The CAA section 112(r)(7)(B) authorizes the Administrator to promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

Alternatives: The EPA currently plans to prepare a notice of proposed rulemaking that would provide the public an opportunity to comment on the proposal, and any regulatory alternatives that may be identified within the preamble to the proposed rulemaking.

Anticipated Cost and Benefits: Costs may include the burden on regulated entities associated with implementing new or revised requirements including program implementation, training, equipment purchases, and recordkeeping, as applicable. Some costs could also accrue to implementing agencies and local governments, due to new or revised provisions associated with emergency response. Benefits will result from avoiding the harmful accident consequences to communities and the environment, such as deaths, injuries, and property damage, environmental damage, and from mitigating the effects of releases that may occur. Similar benefits will accrue to regulated entities and their employees.

Risks: The proposed action would address the risks associated with accidental releases of listed regulated toxic and flammable substances to the air from stationary sources. Substances regulated under the RMP program include highly toxic and flammable substances that can cause deaths, injuries, property and environmental damage, and other on- and off-site consequences if accidentally released. The proposed action would reduce these risks by potentially making accidental releases less likely, and by mitigating the severity of releases that may occur. The proposed action would not address the risks of non-accidental chemical releases, accidental releases of non-regulated substances, chemicals released to other media, and air releases from mobile sources.

Timetable:

Action	Date	FR Cite
NPRM	08/31/22	87 FR 53556
Final Rule	08/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Additional Information:

Sectors Affected: 311411 Frozen Fruit, Juice, and Vegetable Manufacturing; 325 Chemical Manufacturing; 221112 Fossil Fuel Electric Power Generation; 211112 Natural Gas Liquid Extraction; 322 Paper Manufacturing; 42469 Other Chemical and Allied Products Merchant Wholesalers; 22131 Water Supply and Irrigation Systems; 22132 Sewage Treatment Facilities; 311615 Poultry Processing; 49312 Refrigerated Warehousing and Storage; 311612 Meat Processed from Carcasses; 311 Food Manufacturing; 49313 Farm Product Warehousing and Storage; 32411 Petroleum Refineries; 42491 Farm Supplies Merchant Wholesalers; 31152 Ice Cream and Frozen Dessert Manufacturing; 49319 Other Warehousing and Storage; 42471 Petroleum Bulk Stations and Terminals; 49311 General Warehousing and Storage; 311511 Fluid Milk Manufacturing; 32519 Other Basic Organic Chemical Manufacturing; 11511 Support Activities for Crop Production

Agency Contact: Deanne Grant, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564–1096, *Email: grant.deanne@epa.gov.*

Veronica Southerland, Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Mail Code 5104A, Washington, DC 20460, *Phone:* 202 564–2333, *Email: southerland.veronica@epa.gov.*

RIN: 2050–AH22

EPA—OFFICE OF WATER (OW)

Final Rule Stage

210. Clean Water Act Section 401: Water Quality Certification [2040–AG12]

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 2022, consistent with Executive Order 13990, EPA proposed ''Clean Water Act Section 401 Water Quality Certification Improvement Rule'' to revise the 2020 Rule. The proposed rule would update the existing regulations to be more consistent with the statutory text of the 1972 CWA; to clarify, reinforce, and provide a measure of consistency with respect to elements of section 401 certification practice that have evolved over the 50 years since the 1971 Rule was promulgated; and to support an efficient and predictable certification process that is consistent with the water quality protection and cooperative federalism principles central to CWA section 401. EPA plans to finalize a revised rule after reviewing public comments on the proposed rule (published on June 9, 2022).

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	06/09/22	87 FR 35318
Final Rule	06/00/23	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Tribal, Federal, State.

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

211. Revised Definition of ''Waters of the United States'' [2040–AG19]

Priority: Other Significant.

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 that revised the previously-codified definition of ''waters of the United States'' (WOTUS). The agencies initiated this rulemaking to exercise their authority to interpret ''waters of the United States'' to mean the waters defined by the familiar regulations in place prior to the 2015 WOTUS rule, with amendments to reflect the agencies' determination of the statutory limits on the scope of the WOTUS informed by Supreme Court precedent, the best available science, and the agencies' experience and technical expertise. The proposal was open for public comment between December 2021 and February 2022. It is planned that this rule will be finalized by the end of 2022.

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, litigation, 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
Notice	08/04/21	86 FR 41911
Notice	10/25/21	86 FR 58829
Notice	11/08/21	86 FR 61730
NPRM	12/07/21	86 FR 69372
Final Rule	12/00/22	

Regulatory Flexibility Analysis Required: No.

Government Levels Affected: Federal, Local, State, Tribal.

Additional Information:

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.*

RIN: 2040–AG19

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION (GSA)

Regulatory Plan—October 2022

The U.S. General Services Administration (GSA) delivers value and savings in real estate, acquisition, technology, and other mission-support services across the Federal Government. GSA's acquisition solutions supply Federal purchasers with cost-effective, high-quality products and services from commercial vendors. GSA provides workplaces for Federal employees and oversees the preservation of historic Federal properties. GSA helps keep the nation safe and efficient by providing tools, equipment, and non-tactical vehicles to the U.S. military, and by providing State and local governments with law enforcement equipment, firefighting and rescue equipment, and disaster recovery products and services.

GSA serves the public by delivering products and services directly to its Federal customers through the Federal Acquisition Service (FAS), the Public Buildings Service (PBS), and the Office of Government-wide Policy (OGP). GSA has a continuing commitment to its Federal customers and the U.S. taxpayers by providing those products and services in the most cost-effective manner possible.

Federal Acquisition Service

FAS is the lead organization for procurement of products and services (other than real property) for the Federal Government. The FAS organization leverages the buying power of the Government by consolidating Federal agencies' requirements for common

goods and services. FAS provides a range of high-quality and flexible acquisition services to increase overall Government effectiveness and efficiency by aligning resources around key functions.

Public Buildings Service

PBS is the largest public real estate organization in the United States. As the landlord for the civilian Federal Government, PBS acquires space on behalf of the Federal Government through new construction and leasing and acts as a manager for Federal properties across the country. PBS is responsible for over 370 million rentable square feet of workspace for Federal employees' has jurisdiction, custody, and control over more than 1,600 federally owned assets totaling over 180 million rentable square feet; and contracts for more than 7,000 leased assets, totaling over 180 million rentable square feet.

In FY23, GSA expects to update the existing internal guidance and issue a new PBS Order following the release of Implementing Instructions on Executive Order (E.O.) 14057 on Federal Sustainability that was issued on December 8, 2021.

Office of Government-Wide Policy

OGP sets Government-wide policy in the areas of personal and real property, mail, travel, motor vehicles, relocation, transportation, information technology, regulatory information, and the use of Federal advisory committees. OGP also helps direct how all Federal supplies and services are acquired, as well as GSA's own acquisition programs. Pursuant to Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993) and Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), the Regulatory Plan and Unified Agenda provides notice regarding OGP's regulatory and deregulatory actions within the Executive Branch.

GSA prepared a list of actions in the areas of Climate Risk Management, Resilience, and Adaptation; Environmental Justice; Greenhouse Gas (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 14008 were provided in GSA's Executive Order 13990 90-day response, the GSA Climate Change Risk Management Plan, and the GSA 2021 Sustainability Plan. More specifics will be known on the Sustainability Plan when feedback is obtained from CEQ and OMB.

Office of Asset and Transportation Management

The Office of Asset and Transportation Management, and Office of Acquisition Policy are prioritizing rulemaking focused on initiatives that:

- Promote the country's economic resilience and improve the buying power of U.S. citizens;
- Support underserved communities, promoting equity in the Federal Government; and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

The Fall 2022 Unified Agenda consists of fourteen (14) active Office of Asset and Transportation Management (MA) agenda items, of which six (6) active actions are included in the Federal Travel Regulation (FTR) and eight (8) 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/*. The FTR is 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 Federal Management Regulation (FMR) is contained in title 41 of the CFR, Chapter 102, and establishes policy for Federal aircraft management, mail management, transportation, personal property, real property, motor vehicles, and committee management.

Rulemaking That Tackles Climate Change

FMR Case 2020–102–2, Location of Space, promotes economy and efficiency in the planning, acquisition, utilization, and management of Federal facilities. The rule will implement Executive Order 13946 (Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations) and Executive Order 14057 (Catalyzing Clean Energy Industry and Jobs Through Federal Sustainability). This rule will help reduce emissions across Federal workplaces by ensuring that all new construction, modernization projects, and leases implement a number of energy efficient, sustainable, and climate-resilient building practices for Federal facilities.

FTR Case 2022–03, Alternative Fuel Vehicle During Relocations, allows greater agency flexibility for authorizing shipment of a relocating employee's alternative fuel-based privately owned vehicle (POV), as some POVs, primarily electric vehicles, cannot be driven more than a short distance without being recharged.

Rulemaking That Supports Equity and Underserved Communities

Federal Travel Regulation (FTR): FTR Case 2022–05, Updating the FTR With Diversity, Equity, Inclusion, and Accessibility Language, updating the entirety of the FTR to ensure that its language reflects inclusivity in terms of primarily gender, as well as any other language that reflects inclusivity and equity.

Other minor technical adjustments unrelated to inclusivity, such as updated website and physical addresses, will be included as well.

Federal Management Regulation (FMR); FMR Case 2022–01, Federal Advisory Committee Management, FACA is a transparency statute designed to provide Congress, interested stakeholders, and the public with information on, and access to the activities, membership, meetings, costs, etc. of federal advisory committees established by the Executive Branch. Under Section 7 of the Act, GSA is responsible for preparing regulations for implementing FACA. The proposed rule revisions will provide updates and clarification to policies and processes, and further incorporate diversity, equity, inclusion, and accessibility policies into the federal advisory committee program governmentwide, which is an Administration priority.

FMR Case 2021–01, Use of Federal Real Property to Assist the Homeless'' will streamline the process by which excess Federal real property is screened for potential conveyance to homeless interests. FMR Case 2022–02, Union Organizer Access to Private Sector Contractors' Employees on Federal Property will implement Executive Order 14025 of April 26, 2021, titled ''Worker Organizing and Empowerment,'' to make clear that worker organizing and collective bargaining among employees of contractors working in Federal Government facilities are not covered or restricted by the general prohibition on soliciting, posting and distributing materials in property under the jurisdiction, custody, or control of GSA.

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 2022 Unified Agenda consists of seventeen (17) active Office of Acquisition Policy (MV) agenda items, all of which are for the General Services Administration Acquisition Regulation (GSAR).

Office of Acquisition Policy—General Services Administration Acquisition Regulation

GSA's rules and practices on how it buys goods and services from its business partners are covered by the General Services Administration Acquisition Regulation (GSAR), which implements and supplements the Federal 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.

Rulemaking That Tackles Climate Change

GSAR Case 2022–G517, Single-use Plastic Packaging Reduction, explores regulation that will reduce single-use plastic consumption by the agency. Single-use plastic poses an environmental risk that is documented as having the potential to impact biodiversity. The case focuses on packaging materials with the overall intent of addressing not only the items that the Government intentionally consumes, but those products that the Government unintentionally consumes (such as packaging) that then has to be disposed of once the item is delivered.

Rulemaking That Promotes Economic Resilience

GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment (EPA), will clarify, update, and incorporate Federal Supply Schedule (FSS) program policies and procedures regarding economic price adjustment, including updating related prescriptions and clauses. Ultimately, the case aims to streamline the EPA process for FSS business partners and our acquisition workforce.

GSAR Case 2021–G530, Extension of Federal Minimum Wage to Lease Acquisitions, will increase efficiency and cost savings in the work performed for leases with the Federal Government by increasing the hourly minimum wage paid to those contractors in accordance with Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors'' dated April 27, 2021, and Department of Labor regulations at 29 CFR part 23.

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.

Rulemaking That Supports National Security

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 23, 2022.

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 2022 Strategic Plan. The Agency's mission is to ''explore the unknown in air and space, innovate for the benefit of humanity, and inspire the world through discovery.'' The 2022 Strategic Plan (available at 2022 NASA Strategic Plan) guides NASA's program activities through a framework of the following four strategic goals:

- *Strategic Goal 1:* Expand human knowledge through new scientific discoveries.
- *Strategic Goal 2:* Extend human presence deeper into space and to the Moon for sustainable long-term exploration and utilization.
- *Strategic Goal 3:* Catalyze economic growth and drive innovations to address national challenges.
- *Strategic Goal 4:* Enhance capabilities and operations to catalyze current and future mission success.

NASA's Regulatory Philosophy and Principles

The Agency's rulemaking program strives to be responsive, efficient, and transparent. NASA adheres to the general principles set forth in Executive Order 12866, ''Regulatory Planning and Review.'' NASA is a signatory to the Federal Acquisition Regulatory (FAR) Council. The FAR at 48 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 several of their statutory authorities.

NASA is also mindful of the importance of international regulatory cooperation, consistent with domestic law and United States (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 also has been a key participant in interagency efforts to overhaul and streamline the U.S. Munitions List and the Commerce Control List.

These efforts help facilitate transfers of goods and technologies to allies and partners while helping prevent transfers to countries of national security and proliferation concerns.

NASA Priority Regulatory Actions

NASA is highlighting the priorities summarized below in this agenda.

Procedures for Implementing the National Environmental Policy Act (NEPA)

NASA is revising its policy and procedures for implementing the National Environmental Policy Act of 1969 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 NEPA, 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.

Social Security Number Fraud Prevention

NASA is revising its regulations at 14 CFR part 1212.6 under the Privacy Act. The revisions would clarify and update the language of procedural requirements pertaining to the inclusion of Social Security Numbers (SSN) on documents that the Agency sends by mail. These revisions are necessary to implement the Social Security Number Fraud Prevention Act of 2017, (Pub. L. 115–59; 42 U.S.C. 405 note), signed on September 15, 2017, which restricts Federal agencies from including individuals' SSNs on documents sent by mail, unless the head of the agency determines that the inclusion of the SSN on the document is necessary (section 2(a) of the Act).

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 the Freedom of Information Act (FOIA) dispute resolution services and FOIA ombudsman functions; and through the Office of the Federal Register, NARA issues regulations concerning publishing Federal documents in the **Federal Register**, *Code of Federal Regulations,* and other publications.

NARA regulations directed to the public primarily address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and other Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

In 2014, the Federal Records Act required the Archivist of the United States to issue regulations with standards for the reproduction of records by photographic, microphotographic, or digital processes with a view to the disposal of the original records. In 2019, NARA issued 36 CFR 1236, Subchapter D, Digitizing Temporary Records. In 2020, NARA drafted a new Subchapter E, Digitizing Permanent Records. These regulations contain digitization standards for permanent paper records. In Fall 2022, these standards will be issued as a final rule. In Spring 2023, NARA will issue a draft rule with digitization standards for permanent film records. Furthermore, in Fall 2022, NARA will issue a new final rule for Subchapter F, Metadata Requirements for Permanent Records that will be required when agencies transfer permanent electronic records to NARA.

In Fall 2022, NARA will issue a draft rule with changes to 1225.22 regarding when agencies are required to reschedule their records. When agencies have digitized records in the past that do not meet the requirements established in § 1236, the rescheduling process will help NARA and the public determine if the digitized versions are acceptable as permanent records. NARA will remove 1225.24 to eliminate the media neutral notification requirement, which is no longer relevant.

In January 2021, the Federal Records Act (44 U.S.C. 3302) required the Archivist of the United States to promulgate regulations governing Federal agency preservation of electronic messages that are records. The law states that the regulations must require agencies to electronically capture, manage, and preserve electronic message records, and must require that they can readily access such records through electronic searches. Additionally, the regulations should include timelines for Federal agencies to implement the resulting regulatory requirements as expeditiously as practicable. Therefore, we are amending 36 CFR 1220, Federal Records; General, and 36 CFR 1222, Creation and Maintenance of Federal Records, to define electronic messages and to expressly clarify records management requirements for electronic records. We are adding new requirements to 36 CFR 1222, Creation and Maintenance of Federal Records because the capture, management, and preservation of electronic messages is an essential part of a federal records management program.

These records management regulatory priorities align with the goals and initiatives of our Strategic Plan 2022–2026.

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Overview

The National Science Foundation (NSF) is an independent federal agency created by Congress in 1950 ''to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense . . .'' NSF is vital because we support basic

research and people to create knowledge that transforms the future. This type of support:

- Is a primary driver of the U.S. economy
- Enhances the nation's security
- Advances knowledge to sustain global leadership

With an annual budget of $8.8 billion (FY 2022), we are the funding source for approximately 27% of the total federal budget for basic research conducted at U.S. colleges and universities. In many fields such as mathematics, computer science and the social sciences, NSF is the major source of federal backing.

We fulfill our mission chiefly by issuing limited-term grants—currently about 12,000 new awards per year, with an average duration of three years—to fund specific research proposals that have been judged the most promising by a rigorous and objective merit-review system. Most of these awards go to individuals or small groups of investigators. Others provide funding for research centers, instruments and facilities that allow scientists, engineers, and students to work at the outermost frontiers of knowledge.

NSF's goals—discovery, learning, research infrastructure and stewardship—provide an integrated strategy to advance the frontiers of knowledge, cultivate a world-class, broadly inclusive science and engineering workforce and expand the scientific literacy of all citizens, build the nation's research capability through investments in advanced instrumentation and facilities, and support excellence in science and engineering research and education through a capable and responsive organization. We like to say that NSF is ''where discoveries begin.''

NSF is committed to expanding the opportunities in STEM to people of all racial, ethnic, geographic and socioeconomic backgrounds, sexual orientations, gender identities and to persons with disabilities.

We value diversity and inclusion, demonstrate integrity and excellence in our devotion to public service and prioritize innovation and collaboration in our support of the work of the scientific community and of each other.

While broadening participation in STEM is included in NSF's merit review criteria, some programs go beyond the standard review criteria. These investments—which make up NSF's Broadening Participation in STEM Portfolio—use different approaches to build STEM education and research capacity, catalyze new areas of STEM research, and develop strategic partnerships and alliances.

Many of the discoveries and technological advances have been truly revolutionary. In the past few decades, NSF-funded researchers have won some 236 Nobel Prizes as well as other honors too numerous to list. These pioneers have included the scientists or teams that discovered many of the fundamental particles of matter, analyzed the cosmic microwaves left over from the earliest epoch of the universe, developed carbon-14 dating of ancient artifacts, decoded the genetics of viruses, and created an entirely new state of matter called a Bose-Einstein condensate.

NSF also funds equipment that is needed by scientists and engineers but is often too expensive for any one group or researcher to afford. Examples of such major research equipment include giant optical and radio telescopes, Antarctic research sites, high-end computer facilities and ultra-high-speed connections, ships for ocean research, sensitive detectors of very subtle physical phenomena and gravitational wave observatories.

Another essential element in NSF's mission is support for science and engineering education, from pre-K through graduate school and beyond. The research we fund is thoroughly integrated with education to help ensure that there will always be plenty of skilled people available to work in new and emerging scientific, engineering, and technological fields, and plenty of capable teachers to educate the next generation.

No single factor is more important to the intellectual and economic progress of society, and to the enhanced well-being of its citizens, than the continuous acquisition of new knowledge. NSF is proud to be a major part of that process.

Specifically, the Foundation's organic legislation authorizes us to engage in the following activities:

A. Initiate and support, through grants and contracts, scientific and engineering research, and programs to strengthen scientific and engineering research potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

B. Award graduate fellowships in the sciences and in engineering.

C. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

D. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

E. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating our research and educational programs with other federal and non-federal programs.

F. Provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other federal agencies.

G. Determine the total amount of federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

H. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

I. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

J. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education innovation in the sciences and engineering, including independent research by individuals, throughout the United States.

K. Support activities designed to increase the participation of women and minorities and others underrepresented in science and technology. The Louis Stokes Alliances for Minority Participation (LSAMP) program is an alliance-based program. The program's theory is based on the Tinto model for student retention referenced in the 2005 LSAMP program evaluation (cleared under 3145–0190 and now covered by 3145–0226). The overall goal of the program is to assist universities and colleges in diversifying the nation's science, technology, engineering and mathematics (STEM) workforce by increasing the number of STEM baccalaureate and graduate degrees awarded to populations historically underrepresented in these disciplines: African Americans, Hispanic Americans, American Indians, Alaska Natives, Native Hawaiians, and Native Pacific Islanders. LSAMP's efforts to increase diversity in STEM are aligned

with the goals of the Federal Government's five-year strategic plan for STEM education, Charting a Course for Success: America's Strategy for STEM Education.

With This Fall Regulation Agenda, NSF Highlights Two Rules

CyberCorps Scholarship for Service Program (RIN 3145–AA64)

NSF, in consultation with the Secretary of Education, will be finalizing regulations on the process of converting scholarships to student loans when the scholarship recipients fail to meet their required service obligations of the CyberCorps Scholarship for Service (SFS) Program. This program provides scholarships for cybersecurity undergraduate, and graduate (MS or Ph.D.) education. In return for the financial support, recipients must agree to work for the U.S. Government or a State, local, or Tribal government after graduation in a cybersecurity-related position, for a period equal to the length of the scholarship. Under the statute, NSF, must issue.

Robert Noyce Teacher Scholarship (Noyce) Program (RIN 3145–AA65)

NSF, in consultation with the Secretary of Education, will propose regulations on the process of converting scholarships to student loans when the scholarship recipients fail to meet their required service obligations under the Robert Noyce teacher Scholarship (Noyce) Program. This program provides funding to institutions of higher education to provide scholarships to STEM major undergraduates and professionals to become effective certified K–12 STEM teachers and experienced, exemplary K–12 teachers to become master teacher leaders in high-need school districts. Undergraduate and post-baccalaureate STEM professionals receiving funding through the Scholarships and Stipends Track must teach two years in a high-need school district for each year in which they have received financial support. Post-baccalaureate STEM professionals receiving funding through the NSF Teaching Fellowship Track are supported for one year in obtaining a master's degree with certification and then must teach for four years in a high-need school district during which time they receive annual salary supplements from the grant funds. Experienced, exemplary K–12 teachers of mathematics or science in high-need school districts receiving financial support through the Master Teaching Fellowship Track may be supported for one year in obtaining a master's degree and then receive a salary supplement from grant funds for four years as they continue to teach in a high-need school district. Individuals who already possess a master's degree can be supported for five years with salary supplements from grant funds as they continue to teach in a high-need school district.

BILLING CODE 7555–01–P

U.S. OFFICE OF PERSONNEL MANAGEMENT

Statement of Regulatory and Deregulatory Priorities

Fall 2022 Unified Agenda

The Office of Personnel Management (OPM) serves as the chief human resources agency and personnel policy manager for the federal government. We are champions of talent for the federal government, leading federal agencies in workforce policies, programs, and benefits in service to the American people. We seek to position the federal government as a model employer through innovation, inclusivity, and leadership, as we build a rewarding culture that empowers the federal workforce to tackle some of our nation's toughest challenges.

OPM's regulatory agenda is aligned with this core mission and advances multiple Biden-Harris Administration priorities. Indeed, each of OPM's regulations are focused on improving the efficiency and effectiveness of government—a key Administration priority. In addition, several of OPM's regulations are:

- Actions that create and sustain good jobs with a free and fair choice to join a union and promote economic resilience in general;
- Actions that advance equity and support underserved, vulnerable, and marginalized communities; and
- Actions that advance the country's economic recovery and continue to address any necessary COVID–19 related issues.

I. Actions That Create and Sustain Good Jobs With a Free and Fair Choice To Join a Union and Promote Economic Resilience in General

OPM is committed to recruiting, retaining, and supporting a world-class federal workforce. This means providing pathways to federal service, working to make every federal job a good job, and strengthening federal labor unions. OPM's regulatory agenda advances each of these goals.

Providing Pathways to Federal Service

- Pathways Programs (3206–AO25)

OPM is proposing modifications to the Pathways Programs to better meet the Federal government's needs for recruiting and hiring interns, recent graduates, and Presidential Management Fellows. OPM is proposing these changes to allow agencies greater flexibility when making appointments. The rule will update reporting requirements, training requirements for Internship positions, and rotational assignments for Presidential Management Fellows. The rule will also make changes to the public notification requirement for appointing Interns and Recent Graduates.

The intended effect is to facilitate a better applicant experience, to improve developmental opportunities for Pathways Program participants, and to streamline agency ability to hire Pathways Program participants, especially those that have successfully completed their Pathways requirements and are eligible for conversion to a permanent position in the competitive service.

- Hiring Authority for Post-Secondary Students (3206–AN86)

OPM is finalizing revisions to implement section 1108 of Public Law 115–232, John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. The statute requires OPM to issue regulations establishing hiring authorities for post-secondary students to positions in the competitive service to provide additional flexibility in hiring eligible and qualified individuals.

- Hiring Authority for College Graduates (3206–AN79)

OPM is finalizing regulations 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. This rule will provide additional flexibility in hiring eligible and qualified individuals.

- Rule of Many (3206–AN80)

OPM is proposing regulations to implement changes—known as the ''rule of many''—authorized by the National Defense Authorization Act (NDAA) for Fiscal Year 2019 governing the selection of candidates from competitive lists of eligibles. The statute eliminates the requirement that an agency select only from the top three

candidates at any given juncture (the rule of three) in numerical rating and ranking and instead authorizes agencies to certify and consider a sufficient number of candidates, no fewer than three, to be considered, using a cut-off score or other mechanism established by the Office of Personnel Management by regulation. This change also affects how agencies may make selections under 5 Code of Federal Regulations (CFR) part 302 Employment in the Excepted Service. These changes will provide expanded flexibility to agencies in the selection of candidates.

Strengthening Federal Labor Unions

Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions (3206–AO23)

Per Executive Order 14003, Protecting the Federal Workforce, the Office of Personnel Management (OPM) is finalizing regulations governing probation on initial appointment to a competitive position, performance-based reduction in grade and removal actions, and adverse actions. The rule strengthens the federal workforce and rescinds certain regulatory changes made in an OPM final rule published at 85 FR 65940 on November 16, 2020. This rule also identifies 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.

Making Every Federal Job a Good Job

• Postal Service Health Benefits Program (3206–AO43)

The U.S. Office of Personnel Management (OPM) will issue an interim final rule to administer the Postal Service Health Benefits (PSHB) Program within the Federal Employees Health Benefits Program pursuant to the Postal Service Reform Act of 2022. This regulation will ensure continuity of health insurance coverage for Postal Service employees, annuitants, and their family members who will no longer be eligible for FEHB in January 2025; enable enrollees access to more prescription drug coverage options and potential reduction in prescription drug costs for Medicare Part D eligible enrollees; reduce the Postal Service's premiums by approximately $5.7 billion over 10 years (CBO Analysis) and reduce its future liability for retiree health benefits; enable use of a central enrollment portal that will reduce administrative burden for enrollment, ensure more accurate payment of plans, allow more frequent sharing of enrollment data with plans, and limit human error.

• 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 finalizing a rule to expand eligibility for enrollment in the Federal Employees Dental and Vision Insurance Program (FEDVIP) to additional categories of Federal employees. The 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. It 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. Finally, this rule adds 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.

II. Actions That Advance Equity and Support Underserved, Vulnerable, and Marginalized

In fact, many of the regulations noted above—in particular, those focused on providing pathways into the federal government—emphasize equity.

• Advancing Pay Equity in Governmentwide Pay Systems (3206–AO39)

In response to the two Executive orders concerning the advancement of pay equity. OPM is issuing a proposed rule to advance pay equity in the General Schedule (GS) pay system, Prevailing Rate Systems, Administrative Appeals Judge (AAJ) pay system, and Administrative Law Judge (ALJ) pay system by revising the criteria for making salary determinations based on salary history. The Fair Chance to Compete for Jobs (3206–AO00).

The Office of Personnel Management (OPM) is finalizing regulations governing implementation of the Fair Chance to Compete for Jobs Act of 2019 (Act). These regulations are a core part of OPM's work to reduce barriers to federal employment for individuals with a criminal record. The regulations seek to accomplish this goal by expanding the positions covered by the federal government's ''ban the box'' policy, which delays inquiries into an applicant's criminal history until a conditional offer has been made. The regulations also create new procedures that outline due process and accountability steps for hiring officials who are alleged to have violated the ''ban the box'' procedures.

• Elijah E. Cummings Federal Employee Anti-Discrimination Act of 2020 (3206–AO26)

The Office of Personnel Management (OPM) is finalizing regulations governing implementation of the Elijah E. Cummings Federal Employee Discrimination Act of 2020, which became law on January 1, 2021. This rule amends existing or adds new requirements to the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002. Among other things, this rule establishes a new requirement to post findings of discrimination that have been made, establishes new electronic format reporting requirements for Agencies, and establishes a new disciplinary action reporting requirements for Agencies.

III. Actions That Advance the Country's Economic Recovery and Continue To Address Any Necessary COVID–19 Related Issues

OPM has helped to lead the federal government throughout the COVID–19 pandemic—serving as a co-chair of the Safer Federal Workforce Task Force, supporting agencies with implementation of a maximum telework posture, and providing meaningful benefits to federal employees. OPM will continue this important work through its regulatory agenda.

• Scheduling of Annual Leave for Employees Responding to COVID–19 (3206–AO04)

OPM is finalizing regulations to assist agencies and employees responding to the National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak and for future national emergencies. The regulations provide

that employees who would forfeit annual leave in excess of the maximum annual leave allowable carryover because of their work to support the nation during a national emergency will have their excess annual leave deemed to have been scheduled in advance and subject to leave restoration.

• Evacuation During a Public Health Emergency (3206–AO34)

OPM is proposing a new subpart Q within part 550 of title 5, Code of Federal Regulations, which would amend, expand, and reorganize regulations that currently provide agencies with the authority to evacuate employees during a pandemic health crisis. The revised regulations will provide agencies with the authority to evacuate an employee or groups of employees during either a public health emergency declaration or a pandemic health crisis. The current authority to evacuate employees during a pandemic health crisis is found at 5 CFR 550.409. This revision and reorganization of the regulations will enable OPM to capitalize on lessons learned from the COVID–19 pandemic.

OPM

Final Rule Stage

212. Postal Service Health Benefits Program [3206–AO43]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: Pub. L. 117–108; 5 U.S.C. 89

CFR Citation: 5 CFR 890; 48 CFR Ch. 16.

Legal Deadline: Final, Statutory, April 6, 2023, Section 101 of the Postal Service Reform Act of 2022 requires rulemaking no later than 1 year after enactment.

Abstract: The U.S. Office of Personnel Management (OPM) is issuing an interim final rule to administer the Postal Service Health Benefits (PSHB) Program within the Federal Employees Health Benefits Program pursuant to the Postal Service Reform Act of 2022. Under 5 U.S.C. Section 8903c, OPM must establish a PSHB Program for Postal Service employees, Postal Service annuitants, and their eligible family members, and not later than one year after the date of enactment, the OPM Director must issue regulations to carry out section 8903c.

Statement of Need: OPM is issuing this rule to administer the PSHB Program. The Postal Service Reform Act of 2022, Public Law 117–108 establishes the PSHB Program for Postal Service employees, Postal Service annuitants, and their eligible family members, which will be administered by OPM and the first contract year will begin January 2025.

Summary of Legal Basis: Sections 101 and 102 of the Postal Service Reform Act of 2022, Public Law 117–108, amended chapter 89 of title 5 and added section 8903c to establish the Postal Service Health Benefits Program.

Alternatives: N/A.

Anticipated Cost and Benefits: This regulation affects OPM as the administrator of the PSHBP and other agencies that it may consult with during rulemaking and implementation of the PSHBP such as USPS, HHS, VA, DOL, and SSA. It is estimated that the rule would require individuals employed by these agencies to spend time providing information to OPM regarding eligibility, enrollment, and other necessary information. For the purpose of this cost analysis, OPM is focusing on OPM's costs of administering the PSHBP. The Act allocates $70.5 million to OPM for start-up costs to carry out the PSHBP. This encompasses three program offices within OPM: Healthcare and Insurance (HI), which will have the largest impact as a result of this Act; Retirement Services (RS); and the Chief Financial Officer (CFO). OPM will incur additional costs (apart from the $70.5 million start-up costs) for ongoing administration of the PSHBP, including operations and maintenance of information systems (such as the central enrolment portal) and continuous data exchanges with partnering agencies, staffing for oversight and engagement with health plans, and maintaining separate systems for PSHBP financial transactions.

With respect to benefits, this regulation will ensure continuity of health insurance coverage for Postal Service employees, annuitants, and their family members who will no longer be eligible for FEHB in January 2025; enable enrollees access to more prescription drug coverage options and potential reduction in prescription drug costs for Medicare Part D eligible enrollees; reduce the Postal Service's premiums by approximately $5.7 billion over 10 years (CBO Analysis) and reduce its future liability for retiree health benefits; enable use of a central enrollment portal that will reduce administrative burden for enrollment, ensure more accurate payment of plans, allow more frequent sharing of enrollment data with plans, and limit human error.

Risks: N/A.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal.

Agency Contact: Rina Shah, Senior Policy Analyst, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, *Phone:* 202 606–2128, *Email: rina.shah@opm.gov.*

Louise Yinug, Planning and Policy Analysis, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–8200, *Phone:* 202 606–0036, *Fax:* 202 606–4640, *Email: louise.yinug@opm.gov.*

RIN: 3206–AO43

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 protect the retirement security of over 33 million American workers, retirees, and beneficiaries in both single-employer and multiemployer private-sector pension plans. PBGC administers two insurance programs—one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans.

• *Single-Employer Program.* Under the single-employer program, when a plan terminates with insufficient assets to cover all plan benefits (distress and involuntary terminations), PBGC pays plan benefits that are guaranteed under title IV. PBGC also pays nonguaranteed plan benefits to the extent funded by plan assets or recoveries from employers. In fiscal year (FY) 2022, PBGC paid over $7.0 billion in benefits to more than 960,000 participants. Operations under the single-employer program are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

• *Multiemployer Program.* The multiemployer program covers collectively bargained plans involving more than one unrelated employer. PBGC provides financial assistance (technically in the form of a loan, though almost never repaid) to the plan

if the plan is insolvent and thus unable to pay benefits at the guaranteed level. The guarantee is structured differently from, and is generally significantly lower than, the single-employer guarantee. In FY2022, PBGC provided $217 million in traditional financial assistance to 115 multiemployer plans covering 93,525 participants, as well as a final payment of $9 million in financial assistance to facilitate the merger of two multiemployer plans. Operations under the multiemployer program generally are financed by insurance premiums and investment income. 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.

For the second year in a row, both PBGC's Multiemployer Program and Single-Employer Program have a positive net position at fiscal year-end. The financial status of the single-employer program improved from a positive net financial position of $30.9 billion at the end of FY 2021 to $36.6 billion at the end of FY 2022. The net financial position of the multiemployer program improved from a positive net position of $481 million at the end of FY 2021 to $1.1 billion at the end of FY 2022.

ARP substantially improves the financial condition and the outlook for PBGC's multiemployer program. By forestalling the near-term insolvency of the most troubled multiemployer plans, the multiemployer program is no longer expected to go insolvent in FY 2026 and can accumulate a greater level of reserve assets in its insurance fund in the near-term.

To carry out its statutory functions, PBGC issues regulations on such matters as how to pay premiums, when reports are due, what benefits are covered by the insurance 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 provide funding to severely underfunded multiemployer pension plans to ensure that millions of America's workers, retirees, and their families receive the pension benefits they earned through many years of hard work.

Under new section 4262 of ERISA, PBGC was required within 120 days to prescribe in regulations or other guidance the requirements for SFA applications. To implement the program, on July 9, 2021, PBGC released an interim final rule (RIN 1212–AB53) adding a new part 4262 to its regulations, ''Special Financial Assistance by PBGC,'' which was published in the **Federal Register** on July 12, 2021. Part 4262 provides guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an application for SFA, the process of applying, PBGC's review of applications, and restrictions and conditions on plans that receive SFA. PBGC received over 100 public comments on many provisions of the interim rule including the methodology plans must use to calculate the amount of SFA, permissible investments of SFA funds, and the conditions imposed on plans that receive SFA. PBGC published a final rule on July 8, 2022, that makes various changes to part 4262 in response to public comments. The provisions of the final rule became effective on August 8. PBGC included a 30-day public comment period solely on the change to the conditions to require a phased recognition of SFA assets for purposes of computing employer withdrawal liability. PBGC received seven comments, six of which related to the withdrawal liability condition.

Multiemployer Plans

PBGC plans to publish a final 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.

Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. Withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

The rulemaking is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability in all circumstances. The rulemaking would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates.

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 ''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. PBGC's regulatory review also identified a need to improve PBGC's recoupment of benefit overpayment rules (''Improvements to Rules on Recoupment of Benefit Overpayments,'' RIN 1212–AB47). Other rulemakings would modernize PBGC's regulations and policies by adopting up-to-date assumptions and methods that are more consistent with best practices within the pension community. For example, PBGC is considering modernizing the interest, mortality, and expense load assumptions used to determine the present value of benefits under the asset allocation regulation (for single-employer plans) and for determining mass withdrawal liability payments (for multiemployer plans) (RIN 1212–AA55) among other purposes.

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

Proposed Rule Stage

213. Actuarial Assumptions for Determining an Employer's Withdrawal Liability [1212–AB54]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 29 U.S.C. 1393; 29 U.S.C. 1302(b)(3)

CFR Citation: 29 CFR 4213.

Legal Deadline: None.

Abstract: This final rule would prescribe actuarial assumptions which may be used by a multiemployer plan actuary in determining an employer's withdrawal liability.

Statement of Need: Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. Withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

This rulemaking is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability in all circumstances. The rulemaking would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates.

Anticipated Cost and Benefits: PBGC estimates that, in the 20 years following the final rule's effective date, there will be a nominal increase in cumulative withdrawal liability payments ranging between $804 million and $2.98 billion. While PBGC expects that the rulemaking will deter employer withdrawals, it will do so only at the margin, and this impact is difficult to estimate. Accordingly, this analysis does not model any change to the rate of employer withdrawals or decrease in contributions due to improved plan funding attributable to these changes because doing so would be too speculative.

The major expenses associated with a withdrawal liability dispute are attorney fees, arbitration fees (including fees to initiate arbitration and fees charged by an arbitrator), and fees charged by expert witnesses. Though costs will vary greatly from plan to plan based on the plan's benefit formula, size of the plan, attorney and expert witness rates, and other factors, PBGC estimates that a withdrawal liability arbitration, measuring from a request for plan sponsor review of a withdrawal liability determination through the end of arbitration would range from $82,500 to $222,000. For lengthy litigation, costs can be over $1 million. Assuming some arbitrations and litigation would be avoided entirely, and others would be less complex because they would not include disputes over interest assumptions, PBGC estimates that this rulemaking would result in an annual savings of $500,000 to $1 million, split evenly between plans and employers.

Timetable:

Action	Date	FR Cite
NPRM	10/14/22	87 FR 62316
NPRM Comment Period End.	11/14/22	
NPRM Comment Period Extended.	11/10/22	87 FR 67853
NPRM Comment Period End.	12/13/22	
Final Rule	06/00/23	

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–AB54

PBGC

Final Rule Stage

214. Special Financial Assistance by PBGC [1212–AB53]

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) 2021 Projections Report, published in September 2022, PBGC estimated a range of possible outcomes for the total amount of SFA payments under the provisions of the final rule. The program is likely to provide an estimated $74 billion to $91 billion in assistance. The estimated impact of the final rule is an increase of $5.6 billion in the mean total amount of SFA. The overall transfer under the SFA Program is uncertain because the amount of SFA each plan will receive is calculated at the time the plan applies to PBGC, and that SFA calculation is based on plan projections and economic conditions at the time of application. PBGC 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 severely underfunded multiemployer pension plans covering millions of 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 Rule with Request for Comment on 29 CFR 4262.16(g)(2).	07/08/22	87 FR 40968
Final Rule with Request for Comment Period End.	08/08/22	
Final Rule Effective.	08/08/22	
Analyzing Comments.	12/00/22	

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 or Agency) is to maintain and strengthen the nation's economy by helping Americans start, grow and build resilient businesses, and by helping communities and small businesses recover after disasters. In accomplishing this mission, SBA strives to improve the economic environment for small businesses including those in underserved communities.

SBA has several capital, market access, 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 capital 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 helps small businesses access federal government contracting opportunities and funds various certification, training and mentoring programs to help small businesses, particularly businesses owned by women, service-disabled veterans, minorities, and other historically underrepresented groups. SBA also helps promote export trade opportunities for small businesses looking to expand through global trade. The Agency also provides management and technical assistance to existing or potential small business owners through various grants, cooperative agreements, or contracts with resource partners. Finally, as a vital part of its purpose, SBA also provides direct disaster assistance to businesses for economic and physical damages, to homeowners and renters to repair or replace their property in the aftermath of a disaster, and to both residents and businesses to mitigate for future disasters.

Reducing Burden on Small Businesses

SBA's regulatory policy reflects a commitment to developing regulations that simplify the experience in navigating its programs, in particular for the Agency's core customers—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, investment, 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 FY22–24 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 with business revenue and job growth. The plan sets out three strategic goals: (1) Ensure equitable and customer-centric design and delivery of programs to support small businesses and innovative startups; (2) Build resilient businesses and a sustainable economy; (3) Implement strong stewardship of resources for greater impact. The regulations reported in SBA's semi-annual Regulatory Agenda and Plan are intended to facilitate achievement of these goals and objectives.

Since March 2020, SBA's regulatory activities have placed significant focus on rulemakings that are necessary to further advance the country's economic recovery from the Coronavirus (COVID–19) pandemic. These rulemakings have included those implementing the Paycheck Protection Program and the Economic Injury Disaster Loan program, making 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 continue to advance the country's economic recovery. Many of these regulatory activities, in particular, will focus on enhancing SBA's programs and increasing access to those offerings in underserved and underrepresented communities across the country.

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 2022 Data Call for the Unified Agenda of Federal Regulatory and Deregulatory Action* (09/02/2022), 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; (4) Actions that create and sustain good jobs with a free and fair choice to join a union and promote economic resilience in general; and (5) Actions that improve service delivery, customer experience, and reduce administrative burdens.

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 rule, Disaster Loan Program Changes (RIN: 3245–AH80) proposes to expand 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 proposes to expand the eligible uses of loan proceeds. These and other proposed amendments to the program will help 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. The Agency also remains committed to ensuring that COVID financial assistance programs 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 Action Plan,[1] 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 of our programs including addressing language and cultural differences and socio-economic factors; expanding the lending network including to 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. SBA continues to explore additional regulatory actions that can supplement its Equity Action Plan objectives and further support underserved, vulnerable, and marginalized communities.

Title: Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program

Pursuant to Sections 7(j)(10) and 8(a) of the small Business Act (15 U.S.C. 636(j)(10) and 637(a)), SBA operates the 8(a) Business Development Program. The program helps firms owned and controlled by socially and economically disadvantaged individuals strengthen their ability to compete effectively in the American economy by providing training and various forms of technical, financial, and procurement assistance. Through this proposed rulemaking, SBA proposes several changes to the ownership and control requirements for the 8(a) Business Development (BD) program, including recognizing a process for allowing a change of ownership for a former Participant that is still performing one or more 8(a) contracts and permitting an individual to own an applicant or Participant where the individual can demonstrate that financial obligations have been settled and discharged by the Federal Government. The rule also proposes to make several changes relating to 8(a) contracts, including clarifying that a contracting officer cannot limit an 8(a) competition to Participants having more than one certification and clarifying the rules pertaining to issuing sole source 8(a) orders under an 8(a) multiple award contract. The proposed rule would also make several other revisions to incorporate changes to SBA's other government contracting programs, including changes to implement a statutory amendment from the National Defense Authorization Act for Fiscal Year 2022, include blanket purchase agreements in the list of contracting vehicles that are covered by the definitions of consolidation and bundling, and more clearly specify the requirements relating to waivers of the nonmanufacturer rule.

Actions That Tackle the Climate Change Emergency and Promote Economic Resilience

To help combat the climate change crisis, SBA is implementing a multi-year

[1] SBA, *Equity Action Plan, available at https://assets.performance.gov/cx/equity-action-plans/2022/E.O.%2013985_SBA_Equity%20Action%20Plan_2022.pdf* (Jan. 2022).

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.

Even so, SBA's continued regulatory activities to enhance and modernize its procurement and capital assistance programs will further these efforts to combat the climate crisis. For example, SBA's proposed rule, *Disaster Loan Program Changes to Maximum Loan Amounts and Miscellaneous Updates* (RIN 3245–AH91), intends to amend various regulations governing SBA's Disaster Loan Program in order to expand options for disaster loan recipients as well as reflect inflation. These changes, including the increase to the home loan lending limits, the extension of the deferment period, and the expansion of mitigation options, are intended to increase disaster survivors' access to needed disaster loan funds for the repair or replacement of a damaged property. The changes are necessary due to increased costs related to construction and labor, as well as increases in property values over time.

Other Priorities

SBA plans to prioritizes: (1) 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; (2) regulations for SBA's Small Business Investment Company program that will enhance investment in underserved communities and geographies, capital intensive investments, and technologies critical to national security and economic development access to SBA's capital and other financing programs; and (3) regulations that reduce barriers for small businesses seeking capital, lending, and other financial assistance from the Agency.

Title: Veteran-Owned Small Business and 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. Section 862 of the NDAA FY 2021 requires transfer of the program to SBA on January 1, 2023.

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. 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. On July 6, 2022, SBA published a Notice of Proposed Rulemaking (NPRM) 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 sought 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. SBA reviewed public comments received before the comment period closed on August 8, 2022, and issued a final rule on November 29, 2022 (87 FR 734000).

Title: Small Business Investment Company Investment Diversification and Growth (RIN 3245–AH90)

The U.S. Small Business Administration (''SBA'' or ''Agency'') is proposing to revise the regulations for the Small Business Investment Company (''SBIC'') program to significantly reduce barriers to program participation in order to stimulate participation of new SBIC fund managers and funds investing in underserved communities and geographies, capital intensive investments, and technologies critical to national security and economic development. This rulemaking will enhance SBIC programmatic participation and further the Administration's ongoing objectives of Advancing the Country's Economic Recovery, Advancing Equity and Supporting Underserved, Vulnerable, and Marginalized Communities, and Tackling the Climate Change Emergency and Promoting Economic Resilience.

Through this rulemaking, SBA intends to reduce the regulatory burden on new SBIC fund managers who are oftentimes small businesses themselves. This proposed rule introduces an additional type of SBIC (''Accrual SBICs'') to increase program investment diversification and patient capital financing for small businesses and modernize rules to lower financial barriers to program participation. SBA intends to implement a regulatory framework in support for Administration priorities by reducing financial and administrative barriers to participate in the SBIC program and modernizing the program's license and capital commitment offerings to align with a more diversified set of private funds investing in underserved small businesses, capital-intensive small businesses and technologies and industries critical to our national security and global competitiveness. In addition, the proposed rule also incorporates the statutory requirements of the Spurring Business in Communities Act of 2017, which was enacted on December 19, 2018.

Title: Affiliation and Lending Criteria for the SBA Business Loan Programs (RIN 3245–AH87)

In response to continuing requests by SBA's participating lenders and the public, SBA intends to revise its affiliation standards and certain other lending criteria restricting access to

SBA's capital programs. SBA believes that revising its affiliation regulations would result in expansion of credit to those who cannot obtain credit elsewhere and would increase understanding of and compliance with program rules while decreasing time spent reviewing an applicant for eligibility. SBA also intends to address these challenges in financing changes of ownership, such as partial ownership purchases. Orderly transitions of business ownership are beneficial both to the small business and its employees. The ability for employees to acquire partial ownership interest in small businesses can assist with business succession and ownership transitions, especially when there is more than one current owner and one of the current owners intends to sell their equity stake in the small business to one or more employees who may not then have an equity ownership interest. Through that acquisition, the small business concern would likely benefit from remaining in operation when it would otherwise be forced to close, and the employees would likely benefit by having a path to ownership of an operational small business.

Partial changes of ownership among existing owners of a small business may permit such businesses to attract new employees as partial owners (*e.g.,* allowing a dental group to attract a new dentist to the practice and providing the new dentist with partial ownership in the small business). Financing for these changes of ownership also permit family members to purchase partial ownership in a family-run small business and ensure continuation of the small business after the retirement or death of an owner. The costs associated with the creation of an ESOP and ongoing compliance with associated regulations may be cost-prohibitive for small businesses. Additionally, the organizational costs for unleveraged ESOPs start at $80,000 with additional annual compliance reporting obligations. In a leveraged ESOP transaction, the initial costs increase by 25 percent or more. SBA believes these costs to be prohibitive for many small businesses that qualify for SBA assistance.

Presently, SBA does not fully meet the financing needs of small businesses regarding partial changes of ownership due to current restrictions, necessitating this proposed rule. Historically, SBA has permitted loan proceeds for use only in three situations involving a change of ownership: (1) A complete change of ownership; (2) a Partner Buyout; and (3) where an ESOP purchases a controlling interest (51% or more) in the employer small business from the current owner(s). Outside of loans to ESOPs, SBA's current regulations do not permit 7(a) loan proceeds to be used for partial changes of ownership. Through this proposed rulemaking, SBA intends to address these challenges to financing ownership changes. SBA intends for the proposed rule change to allow for partial changes of ownership for employee ownership without the additional upfront and ongoing costs incurred by the small business in the formation and operation of an ESOP trust.

In addition, the proposed changes will reduce regulatory burdens, modernize program delivery through the use of data analytics tools and machine learning modelling, reduce the number of hours spent processing an application to deliver a loan for both SBA and lenders and increase access to capital.

Title: Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization (RIN 3245–AH92)

SBA has determined that certain markets, where there are capital market gaps, continue to struggle to obtain financing on non-predatory terms. Therefore, SBA is proposing to lift the moratorium on licensing new Small Business Lending Companies (SBLC) and create a new type of mission-based SBLC to help bridge this financing gap.

SBA is proposing to add a new definition for ''Mission-Based SBLC'' within its regulations, defining a Mission-Based SBLC as a specific type of SBLC that is a nonprofit organization with the purpose of filling an identified capital market gap, such as financing in underserved geographic areas or for socioeconomic groups, veterans, and certain types of business like startups and home-based ventures. Similar to regular SBLCs, SBA would license these Mission-Based SBLCs for the sole purpose of making 7(a) loans.

Mission-Based SBLCs as proposed would allow SBA to better meet the needs of underserved communities. Mission-Based SBLCs will increase opportunities for access to capital in precisely targeted capital market gaps as described more fully below in proposed revisions to section 120.470. SBA is proposing for Mission-Based SBLCs to be nonprofit entities because nonprofit lending organizations often specifically target the capital market gaps SBA intends to fill, yet nonprofits may be unable to meet SBA's current requirements for SBLCs, which are typically for-profit. Adding Mission-Based SBLCs to the possible types of 7(a) Lenders will also allow CA Lenders an opportunity to apply to permanently participate in the 7(a) Loan Program as a Mission-Based SBLC while continuing to meet the needs of underserved communities. When SBA authorizes an additional Mission-Based SBLC License to a CA Lender, the CA Lender will no longer be able to make CA loans, because SBLCs, including Mission-Based SBLCs, may only make regular (non-CA) 7(a) loans.

In addition, SBA intends to modify its documentation requirements for lending activities on 7(a) loans to enhance borrower experience and customer service as well as improve Agency operations. These modifications may include removal of duplicative forms and other information collections on applicants for the business loan programs, thereby lowering costs and reducing paperwork burdens on borrowers, lenders, and SBA.

Actions That Improve Service Delivery, Customer Experience, and Reduce Administrative Burdens

For example, SBA's proposed rule, *Affiliation and Lending Criteria for the SBA Business Loan Programs* (RIN 3245–AH87), discussed *supra,* intends to reduce regulatory burdens, modernize program delivery through the use of data analytics tools and machine learning modelling, reduce the number of hours spent processing an application to deliver a loan for both SBA and lenders and increase access to capital. For another example, SBA's proposed rule, *Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization* (RIN 3245–AH92), discussed *supra*, intends to modify its documentation requirements for lending activities on 7(a) loans to enhance borrower experience and customer service as well as improve Agency operations. These modifications may include removal of duplicative forms and other information collections on applicants for the business loan programs, thereby lowering costs and reducing paperwork burdens on borrowers, lenders, and SBA. For another example, SBA's final rule, *Veteran-Owned Small Business and Service-Disabled, Veteran-Owned Small Business—Certification* (RIN 3245–AH69), intends to improve the certification process for veteran-owned and service-disabled veteran-owned small businesses by reducing administrative burdens on these business concerns seeking certifications to ensure greater participation in federal procurement.

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION (SSA)

I. Statement of Regulatory Priorities

We administer the Retirement, Survivors, and Disability Insurance programs under title II of the Social Security Act (Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and the Special Veterans Benefits program under title VIII of the Act. As directed by Congress, we also assist in administering portions of the Medicare program under title XVIII of the Act. Our regulations codify the requirements for eligibility and entitlement to benefits and our procedures for administering these programs. Generally, our regulations do not impose burdens on the private sector or on State or local governments, except for the States' Disability Determination Services. However, our regulations can impose burdens on the private sector in the course of evaluating a claimant's initial or continued eligibility. We fully fund the Disability Determination Services in advance or via reimbursement for necessary costs in making disability determinations.

The entries in our regulatory plan represent issues of major importance to the Agency. Through our regulatory plan, we intend to:

A. Modify the medical criteria we use when evaluating digestive disorders and skin disorders for adults under titles II and XVI, and children under title XVI of the Act (RIN 0960–AG65);

B. Implement access to and use of information held by payroll data providers to help administer the title II disability insurance and title XVI supplemental security income programs, reduce reporting burdens on beneficiaries, and prevent improper payments (RIN 0960–AH88);

C. Simplify a specific policy within the SSI program by no longer considering food expenses as a source of In-Kind Support and Maintenance (ISM) (RIN 0960–AI60); and

D. Clarify the circumstances under which SSA may disclose social security numbers (SSN) to other Federal agencies (RIN 0960–AI80).

II. Regulations in the Proposed Rule Stage

Our proposed regulations would implement the Commissioner's access to and use of the information held by payroll data providers. We are required to publish regulations implementing our access and use of this data, which is to include: guidelines for the information exchanges, authorizations, reduced wage reporting responsibilities, and procedures for notifying individuals of reduced reporting (RIN 0960–AH88).

Also, our proposed regulations would clarify the circumstances under which SSA may disclose SSN information to other Federal agencies. We disclose to other Federal agencies certain SSN information as authorized pursuant to a framework of Federal statues, including the Act, the Privacy Act, and related regulations (RIN 0960–AI80).

Lastly, our proposed regulations would target changes to the ISM 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).

III. Regulations in the Final Rule Stage

Our regulation would modify the medical criteria we use when evaluating digestive disorders and skin disorders for adults under titles II and XVI, and children under title XVI of the Act. We are revising the criteria in these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment (RIN 0960–AG65).

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

215. Use of Electronic Payroll Data To Improve Program Administration [0960–AH88]

Priority: Other Significant.

Legal Authority: Bipartisan Budget Act of 2015, sec. 824

CFR Citation: Not Yet Determined.

Legal Deadline: None.

Abstract: We propose to implement the Commissioner's access to and use of the information held by payroll data providers. We will use this data to help administer the title II disability insurance (DI) and title XVI supplemental security income (SSI) programs and prevent improper payments. Under section 824 of the Bipartisan Budget Act of 2015, we are required to publish regulations implementing our access and use of this data, which is to include: guidelines for the information exchanges, authorizations, reduced wage reporting responsibilities, and procedures for notifying individuals of reduced reporting.

Statement of Need: In accordance with the Bipartisan Budget Act of 2015, section 824, the Commissioner of Social Security has the authority to enter into an information exchange with a payroll data provider, allowing us to efficiently administer monthly disability insurance and supplemental security income benefits, while preventing improper payments. Section 824(d) of the Bipartisan Budget Act of 2015 requires the agency to implement its access to and use of information held by payroll data providers.

Summary of Legal Basis: Bipartisan Budget Act of 2015, section 824.

Alternatives: To be determined.

Anticipated Cost and Benefits: To be provided with publication of the proposed rule.

Risks: To be determined.

Timetable:

Action	Date	FR Cite
NPRM	02/00/23	

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–AH88

SSA

216. Omitting Food From In-Kind Support and Maintenance Calculations [0960–AI60]

Priority: Other Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C.1382; 42 U.S.C. 1382a; 42 U.S.C. 1382b; 42 U.S.C. 1382c(f); 42 U.S.C. 1382j; 42 U.S.C. 1383; 42 U.S.C. 1382 note; . . .

CFR Citation: 20 CFR 416.1102; 20 CFR 416.1130; 20 CFR 416.1131; 20 CFR 416.1103; 20 CFR 416.1104; 20 CFR 416.1121; 20 CFR 416.1124; 20 CFR

416.1132; 20 CFR 416.1133; 20 CFR 416.1140; 20 CFR 416.1147; 20 CFR 416.1148; 20 CFR 416.1149; 20 CFR 416.1157; . . .

Legal Deadline: None.

Abstract: 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 Supplemental Security Income (SSI) program complexity.

Summary of Legal Basis: We are proposing a regulatory change to revise our definition of ISM by removing food from 20 CFR 416.1130. This will streamline the policy and reduce the program complexity of ISM.

Alternatives: In the absence of legislative changes, the current proposal streamlines the SSI process.

Anticipated Cost and Benefits: We estimate that implementation of these proposed rules for all eligibility and payment determinations effective April 1, 2023 and later will result in an increase in Federal SSI payments of a total of about $1.5 billion over the period of fiscal years 2023 through 2032.

Risks: We do not anticipate risk to the integrity of our program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	

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

217. • Social Security Number Use in Government Records [0960–AI80]

Priority: Other Significant.

Legal Authority: 5 U.S.C. 552a

CFR Citation: 20 CFR 401; 20 CFR 422.

Legal Deadline: None.

Abstract: The Social Security Administration (SSA) collects and maintains information regarding Social Security Number (SSN) applicants to administer the Social Security, Supplemental Security Income, and Special Veterans Benefits programs. SSA discloses to other Federal agencies certain SSN information as authorized pursuant to a framework of Federal statues, including the Privacy Act and the Social Security Act, and related regulations. This regulation clarifies the circumstances under which SSA may disclose SSN information to other Federal agencies.

Statement of Need: The public increasingly seeks to apply for and manage government services and benefits online. This regulation helps increase access to services while preserving privacy protections.

Summary of Legal Basis: TBD.

Alternatives: TBD.

Anticipated Cost and Benefits: This regulation may result in increased access to, and more efficient and effective administration of, Federal government services and benefits. Pursuant to Federal law, Federal agencies seeking data, including Social Security Number verifications, from the Social Security Administration (SSA) must reimburse SSA for its cost to provide the service.

Risks: TBD.

Timetable:

Action	Date	FR Cite
NPRM	11/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Elizabeth Tino, Senior Advisor, Social Security Administration, Office of the General Counsel, 6401 Security Boulevard, Woodlawn, MD 21235–6401, *Phone:* 443 519–8278.

RIN: 0960–AI80

SSA

Final Rule Stage

218. Revised Medical Criteria for Evaluating Digestive Disorders and Skin Disorders [0960–AG65]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 402; 42 U.S.C. 405(a); 42 U.S.C. 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(i); 42 U.S.C. 423; 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C. 1382c; 42 U.S.C. 1383; 42 U.S.C. 1383b

CFR Citation: 20 CFR 404, subpart P, app. 1.

Legal Deadline: None.

Abstract: Sections 5.00 and 105.00, Digestive System and sections 8.00 and 108.00, Skin Disorders, of appendix 1 to subpart P of part 404 of our regulations describe those disorders that we consider severe enough to prevent a person from engaging in any gainful activity, or that cause marked and severe functional limitations for a child claiming Supplemental Security Income payments under title XVI. We are revising the criteria in these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need: These changes would modernize our criteria for evaluating digestive and skin disorders, consistent with current medical and scientific evidence and standards of care.

Summary of Legal Basis: Sections 4.00 and 104.00, Cardiovascular System, of appendix 1 to subpart P of part 404 of our regulations.

Sections 8.00 and 108.00, Skin Disorders, of appendix 1 to subpart P of part 404 of our regulations.

This proposed rule is not required by statute or court order.

Alternatives: We considered continuing to use our current criteria. However, we believe these proposed revisions are necessary because of medical advances, technology, and treatment since we last revised these rules.

Anticipated Cost and Benefits: The results of the actuarial analysis indicate a small net increase in scheduled OASDI benefit payments for digestive disorders updates ($93 million), a small net decrease in Federal SSI payments ($4 million), and small net decreases in scheduled OASDI benefit payments for skin disorders updates ($83 million) and in Federal SSI payments ($40 million) over a ten year period.

Risks: None.

Timetable:

Action	Date	FR Cite
ANPRM	12/12/07	72 FR 70527
ANPRM Comment Period End.	02/11/08	
NPRM	07/25/19	84 FR 35936
NPRM Comment Period End.	09/23/19	
Final Action	12/00/22	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: Includes Retrospective Review under E.O. 13563.

URL For Public Comments: www.regulations.gov.

Agency Contact: Michael J. Goldstein Director, Social Security Administration, Office of Medical Policy, 6401 Security Boulevard, Woodlawn, MD 21235–6401, *Phone:* 410 966–2733, *Email: michael.j.goldstein@ssa.gov.*

Related RIN: Related to 0960–AG74, Related to 0960–AG91

RIN: 0960–AG65

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 2022 Unified Agenda consists of 52 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,
- Tackle the climate change emergency,
- Advance equity and support underserved, vulnerable and marginalized communities,
- Improve service delivery and customer experience, including reducing administrative burdens, enhancing transparency, and improving efficiency and effectiveness of government, and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

Rulemaking That Promotes Economic Resilience

FAR Case 2022–004, ''Enhanced Price Preference for Critical Components and Critical Items,'' will add a list of critical components and critical items, along with their associated enhanced price preference, that will apply to acquisitions subject to the Buy American statute. This rule completes the framework added to the FAR as part of implementation of section 8 of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

FAR Case 2022–011, ''Nondisplacement of Qualified Workers Under Service Contracts,'' will require contractors and subcontractors to offer qualified employees employed under predecessor contracts a right of first refusal of employment under successor contracts in accordance with Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts and the associated Department of Labor regulations at 29 CFR part 9.

FAR Case 2022–003, ''Use of Project Labor Agreement for Federal Construction Projects,'' will require the use of project labor agreements for large-scale construction projects with a total estimated value of $35 million or more in accordance with Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects.

Rulemaking That Tackles Climate Change

FAR Case 2022–006, ''Sustainable Procurement,'' will implement requirements for the procurement of sustainable products and services per Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, and Office of Management and Budget Memorandum M–22–06. The rule will also reorganize FAR part 23 for consistency and clarity.

FAR Case 2021–015, ''Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk,'' will 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 Advances Equity and Supports Underserved Communities

FAR Case 2022–009, ''Certification of Service-Disabled Veteran-Owned Small Businesses,'' will clarify the certification requirements for service-disabled veteran-owned small businesses (SDVOSB) following the transfer of the responsibility for SDVOSB certification from the Veterans Affairs to the Small Business Administration.

FAR Case 2021–011, ''Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors,'' will implement statute which requires contracting officers to consider the capabilities and past performance of first-tier subcontractors for bundled or consolidated contracts, and to consider the capabilities and past performance of first-tier subcontractors for multiple award contracts valued above the substantial bundling threshold. The rule will implement statute which provides two methods for small businesses to obtain past performance: (1) a small business may use the past performance of a joint venture of which it is a member, provided the small business worked on the joint venture's contract(s), or (2) a small business may use past performance it obtained as a first-tier subcontractor from a prime contractor when specifically identified under a subcontracting plan for the contract.

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.

Rulemakings That Improve Service Delivery and Customer Experience

FAR Case 2019–015, ''Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment,'' will bring the procedures on suspension and debarment in the FAR into closer alignment with the Non-procurement Common Rule (NCR) procedures, creating a more consistent experience for industry.

FAR Case 2021–001, ''Increased Efficiencies with Regard to Certified Mail, In-person Business, Mail, Notarization, Original Documents, Seals, and Signatures,'' will increase flexibilities and efficiencies regarding certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology.

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.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

BILLING CODE 6820–EP–P

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, CPSC, among other things:

- develops mandatory product safety standards or bans to address safety hazards, including where required by statute;
- obtains repairs, replacements, or refunds for defective products that present a substantial product hazard;
- develops information and education campaigns about the safety of consumer products;
- participates in the development or revision of voluntary product safety standards; and
- follows other statutory mandates.

Unless otherwise directed by congressional mandate, when deciding which of these approaches to take in any specific case, CPSC gathers and analyzes data about the nature and extent of the risk presented by the product. The Commission's rules at 16 CFR 1009.8 require the Commission to consider the following criteria, among other factors, when deciding the level of priority for any particular project:

- the frequency and severity of injuries;
- the causality of injuries;
- chronic illness and future injuries;
- costs and benefits of Commission action;
- the unforeseen nature of the risk;
- the vulnerability of the population at risk;
- the probability of exposure to the hazard; and
- additional criteria that warrant Commission attention.

Significant Regulatory Actions

Currently, the Commission is considering acting in the next 12 months on three rules, Regulatory Options for Table Saws (RIN 3041–AC31); Petition for Rulemaking to Eliminate Accessible Cords on Window Covering Products (RIN 3041–AD31); and Furniture Tip Overs: Clothing Storage Units (RIN 3041–AD65), which would constitute ''significant regulatory actions'' under the definition of that term in Executive Order 12866.

CPSC

Final Rule Stage

219. Regulatory Options for Table Saws [3041–AC31]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 5 U.S.C. 553(e); 15 U.S.C. 2051

CFR Citation: 16 CFR 1245.

Legal Deadline: None.

Abstract: In 2006, the Commission granted a petition asking that the Commission issue a rule to prescribe performance standards for an active injury mitigation (AIM) system to reduce or prevent injuries from contacting the blade of a table saw. The Commission subsequently issued a notice of proposed rulemaking (NPRM) that would establish a performance standard requiring table saws to limit the depth of cut to 3.5 millimeters when a test probe, acting as a surrogate for a human body/finger, contacts the table saw's spinning blade. Staff has conducted several studies to provide information for the rulemaking. Staff intends to submit a final rule briefing package to the Commission in fiscal year 2023.

Statement of Need: In the NPRM, the Commission preliminarily determined that there is an unreasonable risk associated with blade-contact injuries on table saws. Based on injury data reviewed in 2015, there were an estimated 33,400 table saw, emergency department treated injuries. Of these, staff estimated that 30,800 (92 percent) are likely related to the victim making contact with the saw blade. Of the 30,800 ED treated blade-contact injuries, an estimated 28,900 injuries (93.8 percent) involved the finger, with 4,700 amputations (15.2 percent).

Alternatives: The Commission could (1) pursue table saw voluntary standard activities; (2) extend the effective dates of a possible rule; (3) exempt certain categories of table saws from the draft proposed rule; (4) limit the applicability of the performance requirements to some, but not all, tables saws; or (5) pursue an information and education campaign to inform the public of the hazards of blade contact and the benefits of the AIM technology.

Anticipated Cost and Benefits: The expected gross benefits range from about $970 million to $2.45 billion over the product life of 1 year of sales. The expected costs of the draft proposed rule will range from about $168 million to about $345 million annually. Based on staff's benefit and cost estimates, net benefits (*i.e.,* benefits minus costs) for the market were estimated to amount to

about $625 million to $2.3 billion over the product life of 1 year of table saw sales.

Timetable:

Action	Date	FR Cite
Commission Decision to Grant Petition.	07/11/06	
ANPRM	10/11/11	76 FR 62678
Notice of Extension of Time for Comments.	12/02/11	76 FR 75504
Comment Period End.	02/10/12	
Notice to Reopen Comment Period.	02/15/12	77 FR 8751
Reopened Comment Period End.	03/16/12	
Staff Sent NPRM Briefing Package to Commission.	01/17/17	
Commission Decision.	04/27/17	
NPRM	05/12/17	82 FR 22190
NPRM Comment Period End.	07/26/17	
Public Hearing	08/09/17	82 FR 31035
Staff Sent 2016 NEISS Table Saw Type Study Status Report to Commission.	08/15/17	
Staff Sent 2017 NEISS Table Saw Special Study to Commission.	11/13/18	
Notice of Availability of 2017 NEISS Table Saw Special Study.	12/04/18	83 FR 62561
Staff Sends a Status Briefing Package on Table Saws to Commission.	08/28/19	
Commission Decision.	09/10/19	
Staff Sends Final Rule Briefing Package to Commission.	09/00/23	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2225, *Email: cpaul@cpsc.gov.*

RIN: 3041–AC31

CPSC

220. Petition for Rulemaking To Eliminate Accessible Cords on Window Covering Products [3041–AD31]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 5 U.S.C. 553(e); 15 U.S.C 2056; 15 U.S.C. 2058; 15 U.S.C. 2064(j)

CFR Citation: 16 CFR 1260; 16 CFR 1120.

Legal Deadline: None.

Abstract: The Commission received a petition from a group of nine organizations representing consumer groups, safety consultants, and legal counsel. The petition requested that the Commission initiate proceedings to promulgate a mandatory standard to eliminate accessible cords on window covering products. The petition asserts that a mandatory rule is necessary because attempts to develop a voluntary standard that adequately mitigates the risk of injury associated with window covering cords have been unsuccessful. The Commission voted to accept CPSC staff's recommendation to approve the petition and subsequently issued an advance notice of proposed rulemaking (ANPRM) for corded window coverings. The ANPRM begins a rulemaking proceeding under the Consumer Product Safety Act (CPSA) to address the risk of strangulation to young children that is associated with corded window covering products. Staff sent two notices of proposed rulemaking (NPRMs) to the Commission for consideration in October 2021. The first NPRM, under section 15(j) of the CPSA, would amend 16 CFR part 1120 to add hazardous operating and inner cords on stock window coverings, and hazardous inner cords on custom window coverings, to the list of substantial product hazards. The listed cords would be required to comply with the 2018 voluntary standard for window covering cords or else be subject to denial of admission and/or corrective action. The second NPRM, under sections 7 and 9 of the CPSA, proposes that operating cords on custom window coverings meet the same requirements as operating cords on stock window coverings under the 2018 voluntary standard. The Commission voted in January 2022 to issue both proposed rules. The comment period ends on March 23, 2022. On March 16, 2022, the Commission held a hearing for the presentation of oral comments on the rule for operating cords on custom window coverings. On September 28, 2022, staff submitted a final rule briefing package to the Commission.

Statement of Need: This rule is necessary to address the unreasonable risk of strangulation to children 8 years old and younger on custom window coverings with accessible operating cords longer than 8 inches.

Anticipated Cost and Benefits: For the final rule under sections 7 and 9 of the CPSA, using a value of statistical life (VSL) of 1, the aggregate benefits of the rule are estimated to be about $23 million annually; and the lowest cost of the rule is estimated to be about $54.4 million annually. However, increasing the VSL by a factor of 3, to estimate the loss of a child's life versus an adult's life, yields an estimated aggregate benefit of $68.7 million.

Timetable:

Action	Date	FR Cite
Petition Docketed	06/26/13	
Notice for Comment Published in **Federal Register**.	07/15/13	78 FR 42026
Comment Period End.	09/13/13	
Staff Sends ANPR Briefing Package to Commission.	09/30/14	
Commission Decision.	10/08/14	
ANPRM Published in the **Federal Register**.	01/16/15	80 FR 2327
Draft FR Notice to Commission to Extend ANPR Comment Period.	03/10/15	
FR Notice Announcing Extension of Comment Period.	03/23/15	80 FR 15173
Comment Period Closed.	06/01/15	
NPRM Briefing Package to Commission.	10/06/21	
Commission Decision.	12/14/21	
NPRM for Stock Window Coverings.	01/07/22	87 FR 891
NPRM for Custom Window Coverings.	01/07/22	87 FR 1014

Action	Date	FR Cite
Draft FR Notice to Commission to Extend NPRM Comment Period.	02/23/22	
Commission Decision Not To Extend Comment Period.	03/01/22	
Hearing to Present Oral Comments on NPRM re Custom Window Coverings.	03/16/22	
Staff Sends Final Rule Briefing Package to Commission.	09/28/22	
Commission Decision.	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Undetermined.

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact: Rana Balci-Sinha, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2584, *Email: rbalcisinha@cpsc.gov.*

RIN: 3041–AD31

CPSC

221. Furniture Tip Overs: Clothing Storage Units [3041–AD65]

Priority: Economically Significant. Major under 5 U.S.C. 801.

Legal Authority: 15 U.S.C. 2056; 15 U.S.C. 2058; 15 U.S.C. 2076(e)

CFR Citation: Not Yet Determined.

Legal Deadline: None.

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 nonfatal incidents involving CSUs tipping over. The majority of incidents involve children. In November 2017, the Commission issued an advance notice of proposed rulemaking (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. On January 19, 2022, the Commission approved publication of an NPRM addressing CSU tip overs. The NPRM was published in the **Federal Register** on February 3, 2022. The written comment period closes on April 19, 2022. On February 9, 2022, the Commission received a request to extend the written comment period on the NPRM. On February 23, 2022, staff forwarded to the Commission a draft notice to extend the written comment period. On March 1, 2022, the Commission voted not to extend the written comment period. On February 16, 2022, staff submitted to the Commission a draft notice announcing the opportunity for interested parties to make oral comments on the NPRM. On February 23, 2022, the Commission voted to approve publication of the oral comment notice. The oral comment notice was published in the **Federal Register** on March 1, 2022, and the Commission held the hearing on April 6, 2022. After reviewing comments on the NPRM, staff submitted a final rule briefing package to the Commission on September 28, 2022.

Statement of Need: This rule is necessary to address an unreasonable risk of injury and death, particularly to children, posed by clothing storage units tipping over.

Anticipated Cost and Benefits: In the final rule regulatory evaluation, CPSC assessed expected benefits to be about $307.17 million annually and the expected costs to be about $250.90 million.

Timetable:

Action	Date	FR Cite
Staff Sent Briefing Package to Commission.	09/30/16	
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 on NPRM.	01/19/22	
NPRM	02/03/22	87 FR 6246
Draft Notice of Oral Comment Hearing to Commission.	02/16/22	
Commission Decision on Notice of Oral Comment Hearing.	02/23/22	
Draft FR Notice to Commission to Extend NPRM Comment Period.	02/23/22	
Commission Decision Not To Extend Comment Period.	03/01/22	
Notice of Oral Comment Hearing.	03/01/22	87 FR 11366
Oral Comment Hearing.	04/06/22	
End of NPRM Comment Period.	04/19/22	
Staff Sends Final Rule Briefing Package to Commission.	09/28/22	
Commission Decision.	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: None.

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.*

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FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities (2022)

The Federal Trade Commission is an independent agency charged with rooting out unfair methods of competition and unfair or deceptive acts or practices. Its mission is vital to the national interest because, when markets are fair and competitive, honest businesses and the public all benefit. The Commission is committed to deploying all its tools, including issuing new rules and updating old ones, to achieve its mission.

I. The Commission Is Using All Available Tools To Advance Its Missions

In its 2021 Statement of Regulatory Priorities, the Commission explained

that it was considering initiating new rulemakings to advance its missions and respond to several changed circumstances and new developments.[1] First, the Supreme Court's April 2021 *AMG* decision held that the Commission cannot use section 13(b) of the FTC Act to seek consumer redress in federal court.[2] As the Supreme Court noted in *AMG,* however, consumer redress remains available for cases that involve a consumer-protection rule violation.[3] Second, the Commission, after careful study, had streamlined its own Rules of Practice, conforming its processes to the requirements set out by Congress in section 18 of the FTC Act, which governs the promulgation, amendment, and repeal of consumer-protection rules.[4] Third, the Commission, noting the limitations of case-by-case competition enforcement, committed to exploring the possibility of promulgating competition rules. These circumstances are all present in equal or greater force in 2022. Accordingly, the Commission and its staff have been hard at work studying the problems that rules can address, formulating rulemaking documents, reviewing public comments, and engaging with stakeholders.

As to consumer-protection rules, the Commission in the last year published three advance notices of proposed rulemaking (''ANPRs'') under its section 18 authority. First, in December 2021, the Commission published an ANPR focused on the impersonation of government and businesses, which could result in a rule that codifies the well-established principle that impersonation scams are unlawful.[5] This ANPR noted that the Commission expends significant resources combating impersonation fraud, with impersonation of government and businesses as two of the largest causes of consumer losses. Although some existing rules[6] outlaw impersonation of government and businesses in specific contexts, many impersonation cases are brought only under the Commission's Section 5 authority, so a potential rule would make redress far more readily obtainable for consumers harmed by impersonation scams. Public comments in response to the ANPR were enthusiastic, including support from companies that scammers frequently impersonate, such as Apple and Microsoft, as well as a bipartisan coalition of 49 state attorneys general. Notably, no public comment opposed proceeding with the rulemaking. Based on this record, the Commission concluded that these forms of impersonation are prevalent and proposed a rule to prohibit the impersonation of government and businesses and the providing of means and instrumentalities for such impersonation.[7]

The second new consumer-protection rulemaking focused on unfair or deceptive earnings claims.[8] As with impersonation scams, the Commission expends significant enforcement resources addressing misleading earnings claims, which are a persistent scourge to consumers and tend to flourish in times of economic distress in diverse forms. Enforcement cases have alleged ''misleading earnings claims were used to tout offers as diverse as coaching or mentoring, education, work-from-home, ''gig'' work, and other job opportunities, multi-level marketing opportunities, franchise, e-commerce or other business opportunities, chain referral schemes, and other investment opportunities, as well as other types of business or money-making opportunities.''[9] The Commission noted that a potential rule could deter wrongdoing, aid consumers, and provide useful guidance to honest businesses.

The Commission's 2021 Statement of Regulatory Priorities specifically previewed the third new consumer-protection rulemaking proceeding:

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.[10]

After careful consideration, the Commission published an ANPR focused on these issues, describing how Americans must routinely surrender their personal information to participate in basic aspects of modern life.[11] The ANPR canvassed the Commission's decades-long effort to protect Americans' privacy through case-by-case enforcement, policy work, and implementation of sectoral privacy laws, concluding that rulemaking could be a useful addition to the effort. The Commission asked 95 questions to ascertain whether unfair or deceptive practices relating to commercial surveillance and data security are prevalent and whether proceeding with one or more proposed rules is worthwhile.

A final new rulemaking initiated by the Commission concerns unfair and deceptive practices at auto dealerships.[12] This notice of proposed rulemaking (NPRM) describes how acquiring an automobile is among the most expensive and important transactions for consumers and how a variety of unfair or deceptive practices can harm those consumers. After cataloguing the Commission's extensive law-enforcement experience with respect to auto dealerships, the NPRM notes that ''many of the problems observed in the motor vehicle marketplace persist in the face of repeated federal and state enforcement actions, suggesting the need for additional measures to deter deceptive and unfair practices.''[13] The NPRM

[1] *See* Fed. Trade Comm'n, Statement of Regulatory Priorities (2021), *https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/202110/Statement_3084_FTC.pdf.*

[2] *See AMG Cap. 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 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.*

[3] *See AMG Capital,* 141 S. Ct. at 1352.

[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* Fed. Trade Comm'n, ANPR—Impersonation of Government and Businesses, 87 FR 72901 (Dec. 23, 2021), *https://www.federalregister.gov/documents/2021/12/23/2021-27731/trade-regulation-rule-on-impersonation-of-government-and-businesses.*

[6] *See, e.g.,* Telemarketing Sales Rule, 16 CFR 310.3(a)(2)(vii) (prohibiting misrepresentations with respect to a ''seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity'').

[7] *See* Press Release, Fed. Trade Comm'n, FTC Proposes New Rule to Combat Government and Business Impersonation Scams (Sept. 15, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-proposes-new-rule-combat-government-business-impersonation-scams.*

[8] *See* Fed. Trade Comm'n, ANPR—Deceptive or Unfair Earnings Claims, 87 FR 13951 (Mar. 11, 2022), *https://www.federalregister.gov/documents/2022/03/11/2022-04679/deceptive-or-unfair-earnings-claims.*

[9] *Id.,* 87 FR at 13953.

[10] 2021 Statement of Regulatory Priorities at 2.

[11] *See* Fed. Trade Comm'n, ANPR—Commercial Surveillance and Data Security, 87 FR 51273 (Aug. 22, 2022), *https://www.federalregister.gov/documents/2022/08/22/2022-17752/trade-regulation-rule-on-commercial-surveillance-and-data-security.*

[12] *See* Fed. Trade Comm'n, NPRM—Motor Vehicle Dealers, 87 FR 42012 (July 13, 2022), *https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule.* Unlike the three other new rulemakings, which each began with an ANPR under section 18, the Commission wass authorized by a specific enactment of Congress to begin this rulemaking with an NPRM. *See* 12 U.S.C. 5519(d).

[13] NPRM—Motor Vehicle Dealers, 87 FR at 42013.

contains proposed rule text and a preliminary regulatory analysis of the anticipated costs and benefits of the proposed rule. The Commission sought comment on these general subjects as well as on 49 specific questions to inform the Commission's determination as to whether, and if so how, to finalize a rule.

Updating existing rules to meet new challenges is another important part of the Commission's rulemaking work. A particularly noteworthy effort is potentially updating the Telemarketing Sales Rule (''TSR''). The Commission took two important actions on the TSR in 2022. First, the Commission published an NPRM that would, among other things, expand the TSR to cover misrepresentations made in business-to-business contexts and bolster recordkeeping requirements.[14] Second, the Commission published a corollary ANPR that seeks ''comment on whether to repeal all exemptions regarding telemarketing calls to businesses and inbound telemarketing of computer technical support services, and whether the TSR should provide consumers additional protections for negative option products or services.''[15] These potential updates to the TSR, and proposed updates to other rules such as the Amplifier Rule[16] and the Energy Labeling Rule,[17] demonstrate that the Commission is committed to ensuring that its rules keep pace with changing technological and economic circumstances.

The Commission's renewed use of its rulemaking authorities comes with a commitment to increase robust public participation at each step of the agency's rulemaking process. For example, the ANPR on commercial surveillance announced a well-attended virtual public forum, which began with a staff explanation of the ways in which the public can participate and concluded with hours of testimony from members of the public who signed up to speak.[18] In a similar vein, the Commission published, in English and in Spanish, new plain-language guides to facilitate public participation in rulemakings, especially from communities and perspectives that have not always been able to participate.[19] The Commission also accepted several petitions under its new process for public rulemaking petitions;[20] each received a notice in the **Federal Register**[21] and was posted for comment for 30 days on *https://www.regulations.gov.*

In the coming year, the Commission's consumer-protection rulemaking work will have much in common with the past year's: a continued focus on harmful and intractable practices that are prevalent, a continued commitment to furthering the Commission's ability to provide redress to harmed consumers and deter bad actors, and continued efforts to enable robust public participation and thoroughly and carefully consider the record evidence. New consumer-protection rulemakings the Commission recently initiated include one to address unfair or deceptive fees, such as mandatory fees added to the advertised price of a good or service during the course of a transaction, and another to address unfair or deceptive reviews and endorsements, such as fake reviews and seemingly independent endorsements that involve undisclosed relationships.

As for its competition mission, the Commission in the past year has been actively exploring whether new rules that specify ''unfair methods of competition'' prohibited by Section 5 of the FTC Act would help achieve the agency's mission. In its most recent strategic plan, the Commission observed that ''[r]ules . . . inform businesses and their legal advisers about antitrust risks and can deter anticompetitive mergers and business practices'' and that promoting competition can benefit all market participants, including workers.[22] Accordingly, the Commission is considering proposing a rule addressing non-compete clauses in the labor market.

In sum, the Commission has undertaken important rulemaking initiatives in the last year. In the next year, the Commission will focus on continuing to work on those initiatives. It will also continue seeking public input and learning from its law-enforcement, consumer-education, market-monitoring, and other work to identify additional opportunities for new or improved rules to complement its other tools and the vital work of partner agencies and the states. Rulemakings can deliver important benefits to the public and honest businesses—and they are especially likely to do so with a robust rulemaking record and meaningful public engagement, so the Commission will continue to seek the views of all affected communities.

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 of their significant regulations.[23] Under the Commission's program, rules and guides are typically 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

[14] *See* Fed. Trade Comm'n, NPRM—Telemarketing Sales Rule, 87 FR 33677 (June 3, 2022), *https://www.federalregister.gov/documents/2022/06/03/2022-09914/telemarketing-sales-rule.*

[15] Fed. Trade Comm'n, ANPR—Telemarketing Sales Rule, 87 FR 33662, 33662 (June 3, 2022).

[16] *See* Fed. Trade Comm'n, NPRM—Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 87 FR 45047 (July 27, 2022), *https://www.federalregister.gov/documents/2022/07/27/2022-16071/trade-regulation-rule-relating-to-power-output-claims-for-amplifiers-utilized-in-home-entertainment.*

[17] *See* Fed. Trade Comm'n, NPRM—Energy Labeling Rule, 87 FR 31754 (May 25, 2022), *https://www.federalregister.gov/documents/2022/05/25/2022-11126/energy-labeling-rule.*

[18] *See* Fed. Trade Comm'n, Commercial Surveillance and Data Security Public Forum (Sept. 8, 2022), *https://www.ftc.gov/news-events/events/2022/09/commercial-surveillance-data-security-anpr-public-forum.*

[19] *See* Fed. Trade Comm'n, Public Participation in the Rulemaking Process, *https://www.ftc.gov/enforcement/rulemaking/public-participation-rulemaking-process;* Participación Pública en el Proceso de Reglamentación de la FTC Conforme a la Sección 18, *https://www.ftc.gov/es/participacion-publica-en-el-proceso-de-reglamentacion-de-la-ftc-conforme-la-seccion-18* (printable versions available in both languages).

[20] *See* 16 CFR 1.31.

[21] *See* Fed. Trade Comm'n, Notices of Petitions for Rulemaking from Randall David Marks, 86 FR 70062 (Dec. 9, 2021); Inst. for Pol'y Integrity, 86 FR 73207 (Dec. 27, 2021); Accountable Tech, 86 FR 73206 (Dec. 27, 2021); NetChoice et al., 87 FR 12003 (Mar. 3, 2022).

[22] Fed. Trade Comm'n, FTC Strategic Plan for Fiscal Years 2022 to 2026, at 16 (Aug. 26, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf.* Other competition problems could also be addressed by new rules. *Cf.* Office of the President of the United States, Executive Order or Promoting Competition in the American Economy, section 5(h)(i)–(vii) (July 9, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.*

[23] 58 FR 51735 (Sept. 30, 1993).

''significant economic impact upon a substantial number of small entities.'' [24]

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 August 5, 2022, the Commission issued an updated ten-year review schedule.[25] Since the publication of the 2021 Regulatory Plan, the Commission has initiated or announced plans to initiate periodic reviews of the following rules and guides:

Business Opportunity Rule, 16 CFR part 437. On November 25, 2022, the Commission initiated periodic review of the Business Opportunity Rule as part of the Commission's systematic review of all current Commission rules and guides.[26] The Commission is seeking comments on, among other things, the economic impact, and benefits of this rule; possible conflict between the rule and State, local, or other Federal laws or regulations; and the effect on the rule of any technological, economic, or other industry changes. The comment period will close on January 24, 2023. 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 purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

Alternative Fuels Rule, 16 CFR part 309. During 2023, as part of the systematic review of all Commission rules, the Commission plans to initiate a periodic review of the Alternative Fuels Rule (formally ''Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles'') by publishing a notice seeking public comments on the effectiveness and impact of the Rule.

Cooling-Off Rule, 16 CFR part 429. During 2023, as part of the systematic review of all Commission rules, the Commission plans to initiate a periodic review of the Cooling-Off Rule (formally ''Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations'') by publishing a notice seeking public comments on the effectiveness and impact of the Rule. Most recently, on January 9, 2015, the Commission amended the Cooling-Off Rule by increasing the exclusionary limit for all door-to-door sales at locations other than a buyer's residence from $25 up to $130.[27] Under that final rule, the revised definition of door-to-door sale now distinguishes between sales at a buyer's residence and those at other locations. The revised definition retained coverage for sales made at a buyer's residence that have a purchase price of $25 or more. The final rule amendment was effective on March 13, 2015.

Guides. During the calendar year of 2022, the Commission plans to initiate periodic review of the Guides for the Use of Environmental Marketing Claims, 16 CFR part 260. During 2023, the Commission plans to initiate periodic review of the Guides for Private Vocational and Distance Education Schools, 16 CFR part 254.

(2) Ongoing Periodic Reviews of Rules and Guides

The following proceedings for the retrospective review of Commission rules and guides described in the 2021 Regulatory Plan are ongoing:

Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR parts 801–803. On December 1, 2020, the Commission initiated the periodic review of the Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules (''HSR Rules'') as part of the Commission's systematic review of all current Commission rules and guides.[28] The comment period closed on February 1, 2021, and staff has been 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 of time before consummating the transaction. By December 2022, staff anticipates sending the Commission a recommendation for a proposed rule on substantive HSR Form changes. By June 2023, staff anticipates that the Commission will issue a final rule to update the HSR Form and Instructions to the new cloud-based, e-filing system, which will eliminate paper filings.

Children's Online Privacy Protection Rule, 16 CFR part 312. On July 25, 2019, the Commission issued a request for public comment on its Children's Online Privacy Protection Rule (''COPPA Rule'').[29] Although the Commission's last COPPA Rule review ended in 2013, the Commission initiated this review early in light of changes in the marketplace. Following an extension, the public comment period closed on December 9, 2019.[30] The FTC sought comment on all major provisions of the COPPA Rule, including its definitions, notice and parental-consent requirements, exceptions to verifiable parental consent, and safe-harbor provision. The FTC hosted a public workshop to address issues raised during the review of the COPPA Rule on October 7, 2019. Staff is analyzing and reviewing public comments.

Endorsement Guides, 16 CFR part 255. On February 21, 2020, the Commission initiated a periodic review of the Endorsement Guides.[31] The comment period, as extended, closed on June 22, 2020.[32] On July 26, 2022, the Commission sough public comments on proposed changes to the Guides.[33] The comment period closed on September 26, 2022. 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

[24] 5 U.S.C. 610.

[25] Fed. Trade Comm'n, Regulatory Review Schedule, 87 FR 47947 (Aug. 5, 2022), *https://www.federalregister.gov/documents/2022/08/05/2022-16863/regulatory-review-schedule.*

[26] 87 FR 72428 (Nov. 25, 2022).

[27] 80 FR 1329 (Jan. 9, 2015).

[28] 85 FR 77042 (Dec. 1, 2020).

[29] 84 FR 35842 (July 25, 2019).

[30] 84 FR 56391 (Oct. 22, 2019).

[31] 85 FR 10104 (Feb. 21, 2020).

[32] 85 FR 19709 (Apr. 8, 2020).

[33] 87 FR 44288 (July 26, 2022).

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 part 436. On March 15, 2019, the Commission initiated periodic review of the Franchise Rule (officially ''Disclosure Requirements and Prohibitions Concerning Franchising'').[34] The comment period closed on April 21, 2019. The Commission then held a public workshop on November 10, 2020. The closing date for written comments related to the issues discussed at the workshop was December 17, 2020.[35] Staff continues to evaluate the record and anticipates sending a recommendation to the Commission by June 2023. The Rule is intended to give prospective purchasers of franchises the material information they need to weigh the risks and benefits of such an investment. The Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. Required disclosure topics include, for example, the franchise's litigation history; past and current franchisees and their contact information; any exclusive territory that comes with the franchise; assistance the franchisor provides franchisees; and the cost of purchasing and starting up a franchise.

Health Breach Notification Rule, 16 CFR part 318. On May 22, 2020, the Commission initiated a periodic review of the Health Breach Notification Rule.[36] The comment period closed on August 20, 2020. Commission staff has reviewed the comments and intends to submit a recommendation to the Commission by December 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 part 681. In December 2018, the Commission initiated a periodic review of the Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule.[37] FTC staff is reviewing the comments received and anticipates sending a recommendation to the Commission by December 2023. The Red Flags Rule requires financial institutions and creditors to develop and implement a written identity theft prevention program (a ''Red Flags Program''). By identifying red flags for identity theft in advance, businesses can be better equipped to spot suspicious patterns that may arise and take steps to prevent potential problems from escalating into a costly episode of identity theft. The Card Issuer Rule requires credit and debit card issuers to implement reasonable policies and procedures to assess the validity of a change of address if they receive notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards, also receive a request for an additional or replacement card for the same account.

Leather Guides, 16 CFR part 24. On March 6, 2019, the Commission initiated periodic review of the Leather Guides, formally known as the Guides for Select Leather and Imitation Leather Products.[38] The comment period closed on April 22, 2019, and staff anticipates submitting a recommendation for further action to the Commission during 2023. The Leather Guides apply to the manufacture, sale, distribution, marketing, or advertising of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. The Guides address misrepresentations regarding the composition and characteristics of specific leather and imitation leather products.

Negative Option Rule, 16 CFR part 425. On October 2, 2019, the Commission issued an Advance Notice of Proposed Rulemaking seeking public comment on the effectiveness and impact of the Trade Regulation Rule on Use of Prenotification Negative Option Plans (Negative Option Rule).[39] 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.

Eyeglass Rule, 16 CFR part 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.[40] 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 late 2022. 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.

b. Proposed Rules

Since the publication of the 2021 Regulatory Plan, the Commission has initiated or plans to take further steps as described below in the following rulemaking proceedings:

Energy Labeling Rule, 16 CFR part 305. The Energy Labeling Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. On October 25, 2022, the Commission issued an Advance Notice of Proposed Rulemaking that seeks public comment on potential amendments to the Rule, including energy labels for several new consumer product categories, other possible amendments to improve the Rule's effectiveness, and reducing unnecessary burdens.[41]

Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR part 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'').[42] The Commission sought comments on, among other things, the economic impact, and benefits of this Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Amplifier Rule establishes uniform test standards and disclosures so that consumers can make

[34] 84 FR 9051 (Mar. 13, 2019).

[35] 85 FR 55850 (Sept. 10, 2020).

[36] 85 FR 31085 (May 22, 2020).

[37] 83 FR 63604 (Dec. 11, 2018).

[38] 84 FR 8045 (Mar. 6, 2019).

[39] 84 FR 52393 (Oct. 2, 2019).

[40] 80 FR 53274 (Sept. 3, 2015).

[41] 87 FR 64399 (Oct. 25, 2022). See also II(c), *Final Actions,* below for information about two separate completed rulemaking proceedings for the Energy Labeling Rule.

[42] 85 FR 82391 (Dec. 18, 2020).

more meaningful comparisons of amplifier-equipment performance attributes. On July 27, 2022, the Commission sought public comment on a proposal to amend the Rule to require sellers making power-related claims to calculate power output using uniform testing methods to allow consumers to easily compare amplifier sound quality.[43] Additionally, for multichannel home theater amplifiers the Commission sought comment about how to set test conditions to reflect typical consumer use. The comment period closed on September 26, 2022, and staff is reviewing the comments.

Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR part 314. On December 9, 2021, the Commission amended the Safeguards Rule issued a final rule that provides additional requirements for financial institutions' information security programs.[44] 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. This rule was effective January 10, 2022, except that the provisions set forth in section 314.5 are applicable beginning June 9, 2023.[45]

Telemarketing Sales Rule, 16 CFR part 310. On August 11, 2014, the Commission initiated a periodic review of the Telemarketing Sales Rule (''TSR'').[44] The comment period as extended closed on November 13, 2014.[45] On June 3, 2022, the Commission issued a Notice of Proposed Rulemaking seeking public comment on proposed amendments to the TSR.[46] The proposed amendments would require telemarketers and sellers to maintain additional records of their telemarketing transactions, prohibit material misrepresentations and false or misleading statements in business-to-business telemarketing transactions, and add a new definition for the term ''previous donor.'' The comment period closed on August 2, 2022, and the Commission has received 25 comments to date. Also on June 3, 2022, the Commission issued an Advance Notice of Proposed Rulemaking seeking public comment on whether the TSR should continue to exempt telemarketing calls to businesses, whether the TSR should require a notice and cancellation mechanism with negative option sales, and whether to extend the TSR to apply to telemarketing calls that consumers initiate to a telemarketer (*i.e.,* inbound telemarketing calls) regarding computer technical support services.[47] The comment period closed on August 2, 2022, and the Commission has received 22 comments to date. Staff is reviewing the comments and will provide a recommendation to the Commission regarding both rulemakings by spring 2023.

Motor Vehicle Dealers Trade Regulation Rule, 16 CFR part 463. On July 13, 2022, the Commission issued a Notice of Proposed Rulemaking soliciting public comment on a proposed Rule regarding unfair or deceptive acts or practices under its authority with respect to motor vehicle dealers described in section 1029(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203.[48] The proposed rule would prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, require accurate pricing disclosures in dealers' advertising and sales discussions, require dealers to obtain consumers' express, informed consent for charges, prohibit the sale of any add-on product or service that confers no benefit to the consumer, and require dealers to keep records of advertisements and customer transactions. The public comment period closed on September 12, 2022. The staff is reviewing the public comments.

Trade Regulation Rule on Impersonation of Government and Businesses, 16 CFR part 461. On October 17, 2022, the Commission issued a Notice of Proposed Rulemaking to address certain deceptive or unfair acts or practices of impersonation of government and business officials.[49] The public comment period will close on December 16, 2022, and staff will review the comments before making a recommendation as to next steps.

Earnings Claims Trade Regulation Rule, 16 CFR part 462. On March 11, 2022, the Federal Trade Commission (FTC or Commission) issued an Advance Notice of Proposed Rulemaking seeking public comment about a proposed rule to address deceptive or unfair marketing using earnings claims.[50] The comment period closed on May 10, 2022, and staff is reviewing the comments.

Trade Regulation Rule on Commercial Surveillance, 16 CFR part undetermined. On August 22, 2022, the Commission initiated an Advance Notice of Proposed Rulemaking (ANPR) under section 18 of the FTC Act to limit privacy abuses, curb lax security practices, and ensure that algorithmic decision-making does not result in unlawful discrimination.[51] The Commission sought public comment on whether new rules are needed to protect people's privacy and information in the commercial surveillance economy. On September 8, 2022, the Commission hosted a public forum regarding its ANPR on commercial surveillance and data security practices that harm consumers and competition. The public forum included panel discussions and members of the public provided remarks. The ANPR's extended public comment period closed on November 21, 2022.[52] Staff is reviewing the public comments.

Funeral Rule, 16 CFR part 453. On February 14, 2020, the Commission initiated a periodic review of the Funeral Industry Practices Rule (Funeral Rule).[53] The comment period as extended closed on June 15, 2020.[54] Commission staff is reviewing the comments received and anticipates submitting a recommendation for further action to the Commission in fall 2022. The Funeral Rule, which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit or call a funeral home. On November 2, 2022, the Commission issued an Advance Notice of Proposed Rulemaking seeking comment on potential updates to modernize the Funeral Rule, including improvements to the public accessibility of funeral home price information.[55] The comment period will close on January 3, 2023. The Commission also issued a staff report that summarizes the results of their review of almost 200 funeral provider websites.[56]

Unfair or Deceptive Fees Trade Regulation Rule, 16 CFR part 464. On November 8, 2022, the Commission

[43] 87 FR 45047 (July 27, 2022).

[44] 86 FR 70272 (Dec. 9, 2021).

[45] See II(b), *Proposed Rules,* above for information about a separate and ongoing rulemaking under the Safeguards Rule.

[44] 79 FR 46732 (Aug. 11, 2014).

[45] 79 FR 61267 (Oct. 10, 2014).

[46] 87 FR 33677 (June 3, 2022).

[47] 87 FR 33662 (June 3, 2022).

[48] 87 FR 42012 (July 13, 2022).

[49] 87 FR 62741 (Oct. 17, 2022).

[50] 87 FR 13951 (Mar. 11, 2022).

[51] 87 FR 51273 (Aug. 22, 2022).

[52] 87 FR 63738 (Oct. 20, 2022).

[53] 85 FR 8490 (Feb. 14, 2020).

[54] 85 FR 20453 (Apr. 13, 2020).

[55] 87 FR 66096 (Nov. 2, 2022).

[56] *See* Fed. Trade Comm'n, FTC Seeks to Improve the American Public's Access to Funeral Service Prices Online (Oct. 20, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-seeks-improve-american-publics-access-funeral-service-prices-online.*

issued an Advance Notice of Proposed Rulemaking to address certain deceptive or unfair acts or practices related to fees.[57] The public comment period will close on January 9, 2023, and staff will review the comments before making a recommendation as to next steps.

Trade Regulation Rule on the Use of Reviews and Endorsements, 16 CFR part 465. On November 8, 2022, the Commission issued an Advance Notice of Proposed Rulemaking to address certain deceptive or unfair acts or practices concerning reviews and endorsements.[58] The public comment period will close January 9, 2023, and staff will review the comments before making a recommendation as to next steps.

c. Final Actions

Since the publication of the 2021 Regulatory Plan, the Commission has issued the following final agency actions in rulemaking proceedings:

Privacy of Consumer Financial Information Rule, 16 CFR part 313. The Privacy of Consumer Financial Information Rule (Privacy 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. Congress enacted the Fixing America's Surface Transportation Act (FAST Act) which included a provision amending the Gramm-Leach-Bliley Act to create a new exception to the annual notice requirement. On April 4, 2019, the Commission issued a Notice of Proposed Rulemaking to revise the Rule's scope, to modify the Rule's definitions of ''financial institution'' and ''federal functional regulator,'' and to update the Rule's annual customer privacy notice requirement.[59] The proposed update would remove certain examples in the Rule that apply to financial institutions that now fall outside the scope of the Commission's Rule. These changes were intended to conform the Rule to the current requirements of the Gramm-Leach-Bliley Act, as amended by the Dodd-Frank Act and the FAST Act. The public comment period closed on June 3, 2019. On December 9, 2021, the Commission issued a final rule to, among other changes, revise the Rule's scope, modify the Rule's definitions of ''financial institution'' and ''federal financial regulator,'' and update the Rule's annual customer privacy notice requirement.[60] This action was necessary to conform the Rule to the current requirements of the Gramm-Leach-Bliley Act. The amendments were effective on January 10, 2022.

Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR part 314. On December 9, 2021, the Commission issued a final rule amending the Safeguards Rule by providing additional requirements for financial institutions' information security programs.[61] 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. This rule was effective January 10, 2022, except that the provisions set forth in section 314.5 are applicable beginning June 9, 2022.[62]

Energy Labeling Rule, 16 CFR part 305. On June 2, 2021, the Commission proposed updates to comparability ranges and sample labels for central air conditioners.[63] The comment period closed on August 2, 2021. On October 20, 2021, the Commission issued a final rule updating the comparability ranges and sample labels for central air conditioners.[64] The amendments are effective on January 1, 2023. On May 25, 2022, the Commission sought public comments on proposed updates to the Rule which would allow consumers to compare the estimated annual energy consumption more accurately for appliances before they buy them.[65] The Rule requires the Commission to revise the comparability ranges and associated energy costs every five years for certain EnergyGuide labels. The Commission's Notice of Proposed Rulemaking sought comments on scheduled updates to the comparability ranges that were last revised in 2017. The public comment period closed on July 11, 2022. On October 12, 2022, the Commission issued a final rule updating the comparability ranges.[66] The amendments are effective on January 10, 2023, with the exception of amendatory instructions 9 (appendix E1) and 15 (appendix L), which are effective on October 1, 2023.[67]

d. Significant Regulatory Actions

The Commission has one proposed rule that would be a ''significant regulatory action'' under the definition in section 3(f) of Executive Order 12866, which is the Motor Vehicle Dealers Trade Regulation Rule discussed above. In the Notice of Proposed Rulemaking that contains the rule's proposed text, the Commission explored at length its regulatory objectives in initiating the rulemaking, the reasonable alternatives also under consideration, and the anticipated costs and benefits of the proposed rule and its alternatives.[68] The preliminary regulatory analysis concluded that the proposed rule would likely deliver significantly more benefits than it would impose costs, namely that it would produce net economic benefit of more than $29 billion over ten years. The Commission also requested comments on these issues and will carefully evaluate all evidence in the rulemaking record before determining whether to issue a final rule and if so in what form.

The Commission has no proposed rule that would have significant international impacts, or any international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, as defined in Executive Order 13609.

Summary

The actions under consideration advance the Commission's mission by informing and protecting consumers while minimizing burdens on honest businesses. The Commission continues to identify and weigh the costs and benefits of proposed regulatory actions and possible alternative actions.

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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

[57] 87 FR 67413 (Nov. 8, 2022); *see also* Fed. Trade Comm'n, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees.*

[58] 87 FR 67424 (Nov. 8, 2022); *see also* Fed. Trade Comm'n, Federal Trade Commission to Explore Rulemaking to Combat Fake Reviews and Other Deceptive Endorsements (Oct. 20, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-explore-rulemaking-combat-fake-reviews-other-deceptive-endorsements.*

[59] 84 FR 13150 (Apr. 4, 2019).

[60] 86 FR 70020 (Dec. 9, 2021).

[61] 86 FR 70272 (Dec. 9, 2021).

[62] 87 FR 71509 (Nov. 23, 2022); also see II(b), *Proposed Rules,* above for information about a separate and ongoing rulemaking under the Safeguards Rule.

[63] 86 FR 29533 (June 2, 2021).

[64] 86 FR 57985 (Oct. 20, 2021).

[65] 87 FR 31754 (May 25, 2022).

[66] 87 FR 61465 (Oct. 12, 2022).

[67] See II(b), *Proposed Rules,* above for information about a separate and pending rulemaking proceeding under the Energy Labeling Rule.

[68] *See* 87 FR 42031–44 (July 13, 2022).

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.

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–AA58	Management Contracts.
3141–AA68	Audit Regulations.
3141–AA69	Class II Minimum Technical Standards.
3141–AA70	Class II Minimum Internal Control Standards.
3141–AA71	Background and Licensing.
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–AA78	Annual Adjustment of Civil Monetary Penalties for Inflation 2022.
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) updates or revisions to its management contract regulations to address the current state of the industry; (ii) updates or revisions to the existing audit regulations to reduce cost burdens for small or charitable gaming operations; (iii) the review and revision of the minimum technical standards for Class II gaming; (iv) the review and revision of the minimum internal control standards (MICS) for Class II gaming; (v) background and licensing; (vi) self-regulation of Class II gaming activities; (vii) gaming ordinance submission requirements; (viii) substantial violations; (ix) appeals to the Commission; (x) fees; (xi) updating its regulations concerning suspension of licenses issued to Key Employees and Primary Management Officials who the NIGC determines are not eligible for employment; (xii) 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; (xiii) 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.

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U.S. NUCLEAR REGULATORY COMMISSION STATEMENT OF REGULATORY PRIORITIES FOR FISCAL YEAR 2023

I. Introduction

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the U.S. Nuclear Regulatory Commission (NRC) regulates the possession and use of source, byproduct, and special nuclear material. Our regulatory mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure the adequate protection of public health and safety and promote the common defense and security. As part of our mission, we

regulate the operation of nuclear power plants and fuel cycle 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) 2023 reflect our safety and security mission and will enable us to achieve our three strategic goals described in NUREG–1614, Volume 8, ''Strategic Plan: Fiscal Years 2022–2026,'' issued April 2022 (*https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v8/index.html*): (1) ensure the safe and secure use of radioactive materials, (2) continue to foster a healthy organization, and (3) inspire stakeholder confidence in the NRC.

II. Regulatory Priorities

This section contains information on some of our most important and significant regulatory actions that we are considering issuing in proposed or final form during FY 2023. This report does not include the NRC's high-priority rulemaking titled ''Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning'' (RIN 3150–AJ59; NRC–2015–0070) due to the timeframe for reporting; the agency expects to publish the final rule during FY 2024. The agency's portion of the Unified Agenda of Regulatory and Deregulatory Actions contains additional information on NRC rulemaking activities and on a broader spectrum of our upcoming regulatory 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 Priority Rulemakings

Proposed Rules

American Society of Mechanical Engineers Code Cases and Update Frequency

(RIN 3150–AK23; NRC–2018–0291): This rulemaking would incorporate by reference into the NRC's regulations the latest revision to regulatory guides that list the American Society of Mechanical Engineers Code Cases that the NRC finds to be acceptable (or conditionally acceptable). This rulemaking also would amend the NRC's regulation to revise the frequency of the in-service testing and in-service inspection program updates.

Enhanced Weapons for Spent Fuel Storage Installations and Transportation—Section 161A Authority (RIN 3150–AJ55; NRC–2015–0018): This rulemaking would amend the NRC's regulations to implement the authority in Section 161A of the Atomic Energy Act of 1954, as amended, related to access to enhanced weapons and associated firearms background checks for the protection of spent nuclear fuel.

Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296): This rulemaking would amend the NRC's environmental protection regulations by updating the environmental effect findings of renewing the operating license of a nuclear power plant. These findings would be based on a programmatic analysis under the National Environmental Policy Act. The rule will affect operating power reactor licensees that seek an initial or subsequent renewed operating license.

Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors (RIN 3150–AK31; NRC–2019–0062): This rulemaking would establish an optional technology-inclusive regulatory framework for use by applicants for new commercial advanced nuclear reactors.

Final Rules

Fitness-for-Duty Drug Testing Program Requirements (RIN 3150–AI67; NRC–2009–0225): This rulemaking amends the NRC's regulations to revise the drug testing requirements for fitness-for-duty programs to align more closely with changes in the 2008 and 2017 U.S. Department of Health and Human Services' ''Mandatory Guidelines for Federal Workplace Drug Testing Programs.''

B. Significant Final Rules

The rulemaking activity below meets the requirements of a significant regulatory action in Executive Order 12866, ''Regulatory Planning and Review,'' signed September 30, 1993, because it is likely to have an annual effect on the economy of $100 million or more.

Revision of Fee Schedules: Fee Recovery for FY 2023 (RIN 3150–AK58; NRC–2021–0024): This rule amends the NRC's fee schedules for licensing, inspection, and annual fees charged to agency applicants and licensees.

NRC

Prerule Stage

222. Enhanced Weapons for Spent Fuel Storage Installations and Transportation—Section 161A Authority [NRC–2015–0018] [3150–AJ55]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 2201a; 42 U.S.C. 5841

CFR Citation: 10 CFR 73.

Legal Deadline: None.

Abstract: This rulemaking would amend the NRC's regulations to implement the authority in section 161A of the Atomic Energy Act of 1954, as amended, related to access to enhanced weapons and associated firearms background checks for the protection of spent nuclear fuel (SNF). The rule would designate additional classes of facilities and activities appropriate for section 161A authority. This rulemaking would support a potential national strategy for the secure transportation and storage of SNF. The scope of this rulemaking would affect access to enhanced weapons during transportation and storage of SNF, high-level radioactive waste, and special nuclear material (from aged SNF).

Statement of Need: This rulemaking would amend the NRC's regulations to implement the new authority in Section 161A of the Atomic Energy Act of 1954, as amended, related to access of enhanced weapons for the protection of spent nuclear fuel (SNF). These adjustments would support a potential national strategy for the secure transportation and storage of SNF. The scope of this rulemaking would affect access to enhanced weapons during transportation and storage of SNF, high-level radioactive waste, and special nuclear material (from aged SNF). This rulemaking is a follow-on to the initial enhanced weapons rulemaking (RIN 3150–AI49).

Summary of Legal Basis: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Public Law 10958, 119 Stat. 594 (2005).

Section 653 of the EPAct amended the AEA by adding section 161A, ''Use of Firearms by Security Personnel'' (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with new authority that would enhance security at designated facilities of NRC licensees or designated activities.

Alternatives: None.

Anticipated Cost and Benefits: The NRC has not developed a regulatory analysis for this rulemaking. However, based upon the regulatory analysis conducted for rulemaking RIN 3150–AI49 (see ADAMS Accession No. ML19045A003), the NRC anticipates that 3 to 5 additional licensees could apply for newly designated activities (*e.g.,* escorting shipments of category 1 quantities of strategic special nuclear material) with costs ranging from $250,000 to $750,000 per licensee. Benefits include facilitating the interstate shipment of high security-risk material to ensure adequate protection of the common defense and security.

Risks: None.

Timetable:

Action	Date	FR Cite
Regulatory Basis	01/00/23	
NPRM	09/00/24	
Final Rule	06/00/26	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: This rulemaking is a follow-on to ''Enhanced Weapons, Firearms Background Checks, and Security Event Notification [NRC–2011–0018] (RIN 3150–AI49).''

Agency Contact: George M. Tartal, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–0016, *Email: george.tartal@nrc.gov.*

Related RIN: Related to 3150–AI49

RIN: 3150–AJ55

NRC

Proposed Rule Stage

223. American Society of Mechanical Engineers Code Cases and Update Frequency [NRC–2018–0291] [3150–AK23]

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 incorporate by reference into the NRC's regulations the latest revision to regulatory guides that list the American Society of Mechanical Engineers (ASME) Code Cases that the NRC finds to be acceptable (or conditionally acceptable). This rulemaking would affect nuclear power reactor licensees. This rulemaking would also amend the NRC's regulation to revise the frequency of the inservice testing and inservice inspection program updates required in 10 CFR 50.55a. The rulemaking would involve developing a requirement for an acceptable interval for program updates that changes from the current 120-month interval to a 240-month interval.

Statement of Need: The NRC has set the precedent to review new code cases associated with the ASME Boiler and Pressure Vessel Code and the ASME Operations and Maintenance Code and to consider approving them for use by nuclear power plant licensees. 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.

Summary of Legal Basis: 10 CFR 50.55a falls under the NRC's statute-provided authority and any such changes are within the legal authority of the NRC.

Alternatives: The NRC did not consider alternatives. This rule is a voluntary alternative to the existing required ASME codes and is not required. In addition, the existing required ASME Codes are required by regulation under 10 CFR 50.55a; therefore, in order to provide alternative requirements without the submission of exemption requests, the alternatives must be included in the NRC's regulations.

Anticipated Cost and Benefits: The NRC anticipates the use of the approved code cases in lieu of their respective existing ASME code requirements would result in similar costs to the licensee. However, as a benefit to the licensee and the NRC, the change in the interval for program code of record updates to reduce, by half, the number of times a licensee would need to review and update their inservice testing and inservice inspection programs, would then reduce those costs by half. The rule would result in net savings to the industry and the NRC of approximately $34.3 million (7-percent net present value) to $40.5 million (3-percent net present value).

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	03/00/23	
Final Rule	10/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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–AK23

NRC

224. Risk-Informed, Technology Inclusive Regulatory Framework [NRC–2019–0062] [3150–AK31]

Priority: Other Significant.

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation: 10 CFR 53.

Legal Deadline: None.

Abstract: This rulemaking would establish an optional technology-inclusive regulatory framework for use by applicants for new commercial advanced nuclear reactors. The regulatory requirements developed in this rulemaking would use methods of evaluation, including risk-informed and performance-based methods, that are flexible and practicable for application to a variety of advanced reactor technologies. This rule is being developed in accordance with the Nuclear Energy Innovation and Modernization Act (NEIMA).

Statement of Need: The current application and licensing requirements in 10 CFR part 50 and 10 CFR part 52 were developed to support large light-water and non-power reactors. These regulations do not fully reflect the range of licensing and regulatory challenges associated with other nuclear reactor technologies. This rulemaking will amend 10 CFR by creating an alternative regulatory framework for licensing future commercial nuclear plants.

Summary of Legal Basis: On January 14, 2019, the President signed the Nuclear Energy Innovation and Modernization Act (NEIMA) into law (Pub. L. 115 439). NEIMA Section 103(a)(4) directs the NRC to complete a rulemaking to establish a technology-inclusive, regulatory framework for optional use by commercial advanced nuclear reactor applicants for new reactor license applications.

Alternatives: None.

Anticipated Cost and Benefits: This rulemaking establishes two new

frameworks for licensing advanced reactors. The Part 53 approach to staffing allows the potential for facility license applicants to justify smaller operator staffing complements than what has historically been prescribed under Part 55. Additionally, the Part 53 approach to operator licensing provides for tailored operator licensing programs that may potentially result in shortened training timelines, reduced billable staff hours, and, in the case of generally licensed reactor operators, a near elimination of non-inspection related billable staff hours after initial programmatic approval. Licensees will experience significantly reduced costs for all types of applications, due to the simplifying changes made to the technical information required in the contents of applications provisions. The staff has eliminated multiple requirements from each type of application in the Part 53 rule language, for both Framework A and Framework B. Applicants who qualify to use the Alternative Evaluation for Risk Insights approach in Framework B will also avert a considerable amount of the costs of conducting a probability risk assessment, which will be required under both Parts 50 and 52 after the lessons learned rule for those parts is finalized and issued. The Integrity Assessment Program will potentially result in increased costs to licensees due to the fact that it is a new program in Part 53 that requires earlier addressal of issues, such as aging, that operating experience has shown create issues for plants earlier than considered under Part 50. Finally, the Facility Safety Program, another new program in Part 53, will result in increased costs to licensees due to its requirements for managing risks and maintaining aspects of the plant's safety features as understood at the time of licensing.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	08/00/23	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Agency Contact: Robert Beall, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–3874, *Email: robert.beall@nrc.gov.*

RIN: 3150–AK31

NRC

225. Renewing Nuclear Power Plant Operating Licenses—Environmental Review [NRC–2018–0296] [3150–AK32]

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 environmental protection regulations by updating the environmental effect findings of renewing the operating license of a nuclear power plant. These findings would be based on a programmatic analysis under the National Environmental Policy Act. The rule will affect operating power reactor licensees that seek an initial or subsequent renewed operating license.

Statement of Need: This rule would amend the NRC's environmental protection regulations by updating the Commission's 2013 findings on the environmental effect of renewing the operating license of a nuclear power plant. The rule redefines the number and scope of the environmental issues that must be addressed by the Commission in conjunction with the review of each application for license renewal. As part of this update, the NRC has prepared Revision 2 to NUREG–1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (LR GEIS), to account for new information and to address the impacts of initial license renewals, which the previous versions considered, as well as subsequent license renewals.

Summary of Legal Basis: Under the NRC's environmental protection regulations in 10 CFR part 51, which implement the National Environmental Policy Act (NEPA—42 U.S.C. 4332, 4334, 4335), renewal of a nuclear power plant operating license requires the preparation of an environmental impact statement (EIS). To support the preparation of these EISs, the NRC defined which impacts would essentially be the same at all nuclear power plants or a subset of plants and which ones would be different at different plants and would require plant-specific analyses; these determinations were codified in Table B–1 of Appendix B to Subpart A of 10 CFR part 51. As stated in preamble to Table B–1, the Commission intends to review the material in Appendix B and update it as necessary on a 10-year cycle.

Alternatives: The no-action alternative maintains the status quo. Under the no-action alternative, the NRC would not amend certain provisions of 10 CFR part 51 relating to the renewal of nuclear power plant licenses, including Table B–1 in Appendix B to Subpart A to 10 CFR part 51. Under the no-action alternative, the NRC would continue to rely upon the findings set forth in the current Table B–1 when determining the scope and magnitude of environmental impacts of an initial operating license renewal for a nuclear power plant. Licensees seeking an initial operating license renewal would continue to comply with the existing provisions of 10 CFR part 51. This alternative would result in no new direct costs to the NRC or licensees seeking an initial license renewal. This alternative would not address the environmental impacts of renewing the operating license of a nuclear power plant for subsequent license renewal. This alternative would result in additional costs to the NRC and licensees seeking a future subsequent license renewal for evaluating all environmental impacts as plant-specific issues. For licensees seeking a near-term subsequent license renewal or licensees that have submitted or received a subsequent license renewal, the no-action alternative would require the evaluation of all environmental issues as plant-specific. This alternative would result in additional costs to the NRC and licensees.

Anticipated Cost and Benefits: The rule and associated guidance would result in undiscounted total net savings of $91.4 million to the industry and $31.7 million to the NRC. The rule would reduce the cost to the industry of preparing environmental reports for license renewal applications by focusing resources on plant-specific analyses. The NRC also would recognize similar reductions in costs and be able to better focus its resources on important plant-specific issues during reviews of reactor license renewal applications.

Risks: There are no risk-informed actions related to the rule within the NRC's jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	02/00/23	
Final Action	04/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

Additional Information: A rulemaking plan was provided to the Commission for review and approval on July 22, 2021 (SECY 21–0066). On February 24, 2022, the Commission disapproved the plan, and directed staff to resubmit a revised plan within 30 days. A revised

rulemaking plan was provided to the Commission for review and approval on March 25, 2022 (SECY 22–0024).

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–AK32

NRC

226. Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024] [3150–AK58]

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: Final, Statutory, September 30, 2023.

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 2023 be collected by September 30, 2023.

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.

Statement of Need: The NRC, as required by statute, 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 put 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 2023 budget authority less the amounts appropriated for excluded activities.

Risks: None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/23	
Final Rule	05/00/23	

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.*

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